



State Affairs Committee

Thursday, April 21, 2011

11:00 AM

Morris Hall (17 HOB)

Dean Cannon
Speaker

Seth McKeel
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

State Affairs Committee

Start Date and Time: Thursday, April 21, 2011 11:00 am

End Date and Time: Thursday, April 21, 2011 02:00 pm

Location: Morris Hall (17 HOB)

Duration: 3.00 hrs

Consideration of the following bill(s):

CS/HB 43 Public Employee Compensation by Government Operations Subcommittee, Smith
CS/HB 441 Scrutinized Companies by Government Operations Subcommittee, Bernard
HB 7241 Public Retirement Plans by Government Operations Subcommittee, Patronis

NOTICE FINALIZED on 04/19/2011 16:17 by Love.John

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 43 Public Officers
SPONSOR(S): Government Operations Subcommittee, Smith and others
TIED BILLS: IDEN./SIM. BILLS: CS/SB 88

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Government Operations Subcommittee, 9 Y, 3 N, As CS, McDonald, Williamson. Row 2: 2) State Affairs Committee, McDonald, Hamby.

SUMMARY ANALYSIS

Extra compensation claims are prohibited under current law, with some exceptions. No extra compensation may be made to any officer, agent, employee, or contractor after service has been rendered or the contract made, with the following exceptions:

- Extra compensation given to state employees who are included within the senior management group pursuant to rules adopted by the Department of Management Services;
• Extra compensation given to county, municipal, or special district employees pursuant to policies adopted by county or municipal ordinances or resolutions of governing boards of special districts or to employees of the clerk of the circuit court pursuant to written policy of the clerk; or
• A clothing and maintenance allowance given to plainclothes deputies.

Notwithstanding the prohibition against extra compensation, cities and counties may, under their respective governing statutes, provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years.

Severance pay for water management district employees is specifically prohibited.

The bill makes the following changes with respect to public employee compensation:

- Prohibits the payment of severance pay with certain exceptions;
• Restricts bonus schemes;
• Deletes provisions of law inconsistent with these restrictions; and
• Prohibits confidentiality agreements related to any agreement or contract involving extra compensation.

The bill has an indeterminate fiscal impact. See "Fiscal Comments."

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Extra compensation claims are prohibited under s. 215.425, F.S., with some exceptions. The section provides that no extra compensation may be made to any officer, agent, employee, or contractor after service has been rendered or the contract made, with the following exceptions:

- Extra compensation given to state employees who are included within the senior management group pursuant to rules adopted by the Department of Management Services;
- Extra compensation given to county, municipal, or special district employees pursuant to policies adopted by county or municipal ordinances or resolutions of governing boards of special districts or to employees of the clerk of the circuit court pursuant to written policy of the clerk; or
- A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49, F.S.

Numerous attorney general opinions have been issued interpreting this section of law.¹ According to the Attorney General opinions, the following forms of remuneration violate s. 215.425, F.S.:

- Severance pay or wages in lieu of notice of termination;²
- Bonuses to existing employees for services for which they have already performed and been compensated, in the absence of a preexisting employment contract making such bonuses a part of their salary;³ and
- Lump-sum payments made as an incentive for an employee to end his or her employment.

The following do not violate s. 215.425, F.S.:

- Certain settlements;
- Lump-sum supplemental payments as an increased benefit to qualified current employees who elect early retirement; and
- Accrued annual or sick leave.⁴

The key issue in the Attorney General opinions seems to be whether the benefits are benefits that were anticipated as part of the initial contract or hiring policy, or whether they are additional payment for services over and above that fixed by contract or law when the services were rendered.⁵ Benefits that were anticipated as part of the hiring process are deemed to be included in the salary or payment for services. Whereas, additional benefits not anticipated at the hiring date or available to all employees as part of a retirement plan, are deemed to be extra compensation prohibited by current law.

Notwithstanding the prohibition against extra compensation set forth in s. 215.425, F.S., cities and counties are allowed, under their respective governing statutes, to "provide for an extra compensation program, including a lump-sum bonus payment program, to reward outstanding employees whose performance exceeds standards, if the program provides that a bonus payment may not be included in an employee's regular base rate of pay and may not be carried forward in subsequent years."⁶

Section 110.1245, F.S., tasks the Department of Management Services (DMS) with paying bonuses when funds are specifically appropriated by the Legislature for bonuses. Statutory eligibility criteria include the following:

¹ See Op. Att'y Gen. Fla. 2009-03 (2009); Op. Att'y Gen. Fla. 2007-26 (2007); Op. Att'y Gen. Fla. 97-21 (1997); and Op. Att'y Gen. Fla. 91-51 (1991).

² Op. Att'y Gen. Fla. 2007-26 (2007); Op. Att'y Gen. Fla. 91-51 (1991).

³ Op. Att'y Gen. Fla. 91-51 (1991).

⁴ Op. Att'y Gen. Fla. 2009-03 (2009).

⁵ Op. Att'y Gen. Fla. 2007-26 (2007).

⁶ See ss. 166.021(7) and 125.01(1)(bb), F.S.

- The employee must be employed prior to July 1 of that fiscal year and be continuously employed through the date of distribution.
- The employee may not be on leave, without pay, consecutively for more than 6 months during the fiscal year.
- The employee may not have sustained disciplinary action during the period beginning July 1 through the date the bonus checks are distributed. Disciplinary actions include written reprimands, suspensions, dismissals, and involuntary or voluntary demotions that were associated with a disciplinary action.
- The employee must demonstrate a commitment to the agency mission by reducing the burden on those served, continually improving the way business is conducted, producing results in the form of increased outputs, and working to improve processes.
- The employee must demonstrate initiative in work and exceed normal job expectations.
- The employee must display agency values of fairness, cooperation, respect, commitment, honesty, excellence, and teamwork.

DMS also has rules for:

- A process for peer input that is fair, respectful of employees, and affects the outcome of the bonus distribution.
- A division of the agency by work unit for purposes of peer input and bonus distribution.
- A limitation on bonus distributions equal to 35 percent of the agency's total authorized positions. This requirement may be waived by the Office of Policy and Budget in the Executive Office of the Governor upon a showing of exceptional circumstances.

Bonuses are authorized in specified circumstances to leased employees authorized by the legislature, an agency, or the judicial branch.⁷

Severance pay for water management district employees is specifically prohibited under s. 373.0795, F.S. Severance pay is defined as the actual or constructive compensation, in salary, benefits or perquisites, of an officer or employee of a water management district, or any subdivision or agency thereof, for employment services yet to be rendered for a term greater than 4 weeks before or immediately following termination of employment (excluding leave time and retirement).

Effect of Changes

The bill revises existing law that prohibits extra compensation made to a public employee after service has been rendered or the contract made by deleting current provisions allowing counties, municipalities, special districts, and clerks of the circuit court from giving bonuses as long as they had policies in place. The bill creates requirements for any policy, ordinance, rule, or resolution designed to implement a bonus scheme. The scheme must:

- Base the award of a bonus on work performance;
- Describe the performance standards and evaluation process by which a bonus will be awarded;
- Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
- Consider all employees for the bonus.

The bill prohibits units of government from contracting to give severance pay to an officer, agent, employee, or contractor. Severance pay may only be received by the officer, agent, employee, or contractor if:

- Paid wholly from private funds and is not a violation of the employee code of ethics;⁸
- It is part of an interstate interchange of employees;⁹
- It is given as part of a settlement agreement if there is no prohibition against publicly discussing the settlement; or

⁷ See s. 110.191, F.S.

⁸ Under part III of chapter 112, F.S.

⁹ Under part II of chapter 112, F.S.

- It is expressly included in a contract for employment that was entered into before July 1, 2011.

The bill clarifies that it does not create an entitlement to severance pay in the absence of its authorization.

Additionally, the term "severance pay" is defined as the actual or constructive compensation, including salary, benefits, or perquisites, for employment services yet to be rendered which is provided to an employee who has recently been or is about to be terminated. The term does not include compensation for earned and accrued annual, sick, compensatory, or administrative leave or early retirement under provisions established in an actuarially funded pension plan subject to part VII of chapter 112, F.S.

Any agreement or contract involving extra compensation between a unit of government and an officer, agent, employee, or contractor cannot include any provision that limits the ability of a party to the agreement or contract to discuss such agreement or contract.

Finally, the bill deletes provisions in other sections of law that specifically give municipalities and counties the authority to provide extra compensation programs and repeals a section of law governing severance pay for water management districts because of inconsistencies in definitions.

B. SECTION DIRECTORY:

Section 1 amends s. 215.425, F.S., deleting current provisions exempting counties, municipalities, or special districts or clerks of the circuit court from the provisions of the section if they have policies in place; creating requirements for implementation of a bonus scheme; prohibiting units of government from contracting to give severance pay; providing conditions under which a person may receive severance pay; clarifying that an entitlement to severance pay is not created in the absence of its authorization; defining the term "severance pay"; prohibiting any agreement or contract involving extra compensation in certain circumstances.

Section 2 deletes subsection (7) of s. 166.021, F.S., allowing municipalities to provide extra compensation programs.

Section 3 amends s. 112.061, F.S., conforming cross references.

Section 4 deletes paragraph (bb) of s. 125.01(1), F.S., allowing counties to provide extra compensation programs; and repeals s. 373.0795, F.S., which prohibits severance pay for water management districts.

Section 5 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

Indeterminate. See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Cost savings may arise from the prohibition against severance pay. Under current law, employees likely could receive severance pay as part of their initial contract, but not in an ad hoc manner subsequent to negotiating their terms of employment. Therefore, since ad hoc severance pay is already prohibited under s. 215.425, F.S., the bill prohibits government employers from using severance pay as a recruitment tool.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the Government Operations Subcommittee passed HB 43 as a committee substitute. The committee substitute differs from the original bill in the following ways:

- Amends s. 215.425, F.S., relating to extra compensation claims prohibited, to include bonuses and severance pay. Deletes a provision allowing counties, municipalities, or special districts to give bonuses as long as they have policies in place. Creates requirements for any policy, ordinance, rule, or resolution designed to implement a bonus scheme. Revises language on severance pay from the original bill as follows:
 - Changes the prohibition on severance from covering nonelected public officers to a prohibition on any local government entering into a contract or employment agreement containing a severance pay provision with an officer, agent, employee, or contractor.
 - Adds an exception to the prohibition for contracts for employment entered into before July 1, 2011, if those contracts contained a severance pay provision.
 - Excludes reference to "a term greater than 4 weeks" in the definition of "severance pay."
- Deletes provisions in ss. 166.021 and 125.01(1)(bb), F.S., allowing those respective units of local government to pay extra compensation.
- Repeals s. 373.0795, F.S., prohibiting severance pay in water management districts.
- Makes cross-reference changes.

1 A bill to be entitled
 2 An act relating to public employee compensation; amending
 3 s. 215.425, F.S.; revising provisions relating to the
 4 prohibition against the payment of extra compensation;
 5 providing for bonuses; specifying the conditions for
 6 paying bonuses; prohibiting provisions in contracts that
 7 provide for severance pay; allowing for severance pay
 8 under specified circumstances; defining the term
 9 "severance pay"; prohibiting a contract provision that
 10 provides for extra compensation to limit the ability to
 11 discuss the contract; amending s. 166.021, F.S.; deleting
 12 a provision that allows a municipality to pay extra
 13 compensation; amending s. 112.061, F.S.; conforming cross-
 14 references; amending s. 125.01, F.S.; deleting provisions
 15 relating to the power of a local government to pay extra
 16 compensation; repealing s. 373.0795, F.S., relating to a
 17 prohibition against severance pay for officers or
 18 employees of water management districts; providing an
 19 effective date.

20
 21 Be It Enacted by the Legislature of the State of Florida:

22
 23 Section 1. Section 215.425, Florida Statutes, is amended
 24 to read:

25 215.425 Extra compensation claims prohibited; bonuses;
 26 severance pay.-

27 (1) No extra compensation shall be made to any officer,
 28 agent, employee, or contractor after the service has been

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29 rendered or the contract made; nor shall any money be
 30 appropriated or paid on any claim the subject matter of which
 31 has not been provided for by preexisting laws, unless such
 32 compensation or claim is allowed by a law enacted by two-thirds
 33 of the members elected to each house of the Legislature.
 34 However, when adopting salary schedules for a fiscal year, a
 35 district school board or community college district board of
 36 trustees may apply the schedule for payment of all services
 37 rendered subsequent to July 1 of that fiscal year.

38 (2) The provisions of This section does de not apply to:

39 (a) Extra compensation given to state employees who are
 40 included within the senior management group pursuant to rules
 41 adopted by the Department of Management Services; ~~to extra~~
 42 ~~compensation given to county, municipal, or special district~~
 43 ~~employees pursuant to policies adopted by county or municipal~~
 44 ~~ordinances or resolutions of governing boards of special~~
 45 ~~districts or to employees of the clerk of the circuit court~~
 46 ~~pursuant to written policy of the clerk; or to~~

47 (b) A clothing and maintenance allowance given to
 48 plainclothes deputies pursuant to s. 30.49.

49 (3) Any policy, ordinance, rule, or resolution designed to
 50 implement a bonus scheme must:

51 (a) Base the award of a bonus on work performance;

52 (b) Describe the performance standards and evaluation
 53 process by which a bonus will be awarded;

54 (c) Notify all employees of the policy, ordinance, rule,
 55 or resolution before the beginning of the evaluation period on
 56 which a bonus will be based; and

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57 (d) Consider all employees for the bonus.

58 (4) (a) On or after July 1, 2011, a unit of government may
59 not enter into a contract or employment agreement that contains
60 a provision for severance pay with an officer, agent, employee,
61 or contractor.

62 (b) On or after July 1, 2011, an officer, agent, employee,
63 or contractor may receive severance pay only if:

64 1. The severance pay is paid from wholly private funds,
65 the payment and receipt of which do not otherwise violate part
66 III of chapter 112;

67 2. The severance pay is administered under part II of
68 chapter 112 on behalf of an agency outside this state and would
69 be permitted under that agency's personnel system;

70 3. The severance pay represents the settlement of an
71 employment dispute. Such settlement may not include provisions
72 that limit the ability of any party to the settlement to discuss
73 the dispute or settlement; or

74 4. Provision for the severance pay is expressly included
75 in a contract for employment which was entered into before July
76 1, 2011.

77 (c) This subsection does not create an entitlement to
78 severance pay in the absence of its authorization.

79 (d) As used in this subsection, the term "severance pay"
80 means the actual or constructive compensation, including salary,
81 benefits, or perquisites, for employment services yet to be
82 rendered which is provided to an employee who has recently been
83 or is about to be terminated. The term does not include
84 compensation for:

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85 1. Earned and accrued annual, sick, compensatory, or
 86 administrative leave; or

87 2. Early retirement under provisions established in an
 88 actuarially funded pension plan subject to part VII of chapter
 89 112.

90 (5) Any agreement or contract involving extra compensation
 91 between a unit of government and an officer, agent, employee, or
 92 contractor may not include provisions that limit the ability of
 93 any party to the agreement or contract to discuss the agreement
 94 or contract.

95 Section 2. Present subsections (8) through (10) of section
 96 166.021, Florida Statutes, are redesignated as subsections (7)
 97 through (9) respectively, and present subsection (7) of that
 98 section is amended, to read:

99 166.021 Powers.—

100 ~~(7) Notwithstanding the prohibition against extra~~
 101 ~~compensation set forth in s. 215.425, the governing body of a~~
 102 ~~municipality may provide for an extra compensation program,~~
 103 ~~including a lump-sum bonus payment program, to reward~~
 104 ~~outstanding employees whose performance exceeds standards, if~~
 105 ~~the program provides that a bonus payment may not be included in~~
 106 ~~an employee's regular base rate of pay and may not be carried~~
 107 ~~forward in subsequent years.~~

108 Section 3. Paragraphs (a) and (c) of subsection (14) of
 109 section 112.061, Florida Statutes, are amended to read:

110 112.061 Per diem and travel expenses of public officers,
 111 employees, and authorized persons.—

112 (14) APPLICABILITY TO COUNTIES, COUNTY OFFICERS, DISTRICT

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113 SCHOOL BOARDS, SPECIAL DISTRICTS, AND METROPOLITAN PLANNING
 114 ORGANIZATIONS.—

115 (a) The following entities may establish rates that vary
 116 from the per diem rate provided in paragraph (6)(a), the
 117 subsistence rates provided in paragraph (6)(b), or the mileage
 118 rate provided in paragraph (7)(d) if those rates are not less
 119 than the statutorily established rates that are in effect for
 120 the 2005-2006 fiscal year:

121 1. The governing body of a county by the enactment of an
 122 ordinance or resolution;

123 2. A county constitutional officer, pursuant to s. 1(d),
 124 Art. VIII of the State Constitution, by the establishment of
 125 written policy;

126 3. The governing body of a district school board by the
 127 adoption of rules;

128 4. The governing body of a special district, as defined in
 129 s. 189.403(1), except those special districts that are subject
 130 to s. 166.021(9) ~~166.021(10)~~, by the enactment of a resolution;
 131 or

132 5. Any metropolitan planning organization created pursuant
 133 to s. 339.175 or any other separate legal or administrative
 134 entity created pursuant to s. 339.175 of which a metropolitan
 135 planning organization is a member, by the enactment of a
 136 resolution.

137 (c) Except as otherwise provided in this subsection,
 138 counties, county constitutional officers and entities governed
 139 by those officers, district school boards, special districts,
 140 and metropolitan planning organizations, other than those

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141 subject to s. 166.021(9) ~~166.021(10)~~, remain subject to the
 142 requirements of this section.

143 Section 4. Paragraphs (cc) and (dd) of subsection (1) of
 144 section 125.01, Florida Statutes, are redesignated as paragraphs
 145 (bb) and (cc), respectively, and paragraph (bb) of that
 146 subsection is amended to read:

147 125.01 Powers and duties.—

148 (1) The legislative and governing body of a county shall
 149 have the power to carry on county government. To the extent not
 150 inconsistent with general or special law, this power includes,
 151 but is not restricted to, the power to:

152 ~~(bb) Notwithstanding the prohibition against extra~~
 153 ~~compensation set forth in s. 215.425, provide for an extra~~
 154 ~~compensation program, including a lump-sum bonus payment~~
 155 ~~program, to reward outstanding employees whose performance~~
 156 ~~exceeds standards, if the program provides that a bonus payment~~
 157 ~~may not be included in an employee's regular base rate of pay~~
 158 ~~and may not be carried forward in subsequent years.~~

159 Section 5. Section 373.0795, Florida Statutes, is
 160 repealed.

161 Section 6. This act shall take effect July 1, 2011.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 43 (2011)

Amendment No. **1**

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Burgin offered the following:

Amendment (with title amendment)

5 Remove lines 58-76 and insert:

6 (4) (a) On or after July 1, 2011, a unit of government that
7 enters into a contract or employment agreement, or renewal or
8 renegotiation of an existing contract or employment agreement,
9 that contains a provision for severance pay with an officer,
10 agent, employee, or contractor must include the following
11 provisions in the contract:

12 1. A requirement that severance pay provided may not
13 exceed an amount greater than 20 weeks of compensation, unless
14 the unit of government approves the contract or employment
15 agreement, or renewal or renegotiation of a contract or
16 employment agreement, by a two-thirds vote of the membership of
17 the approving body of the unit of government.

18 2. A prohibition of provision of severance pay when the

Amendment No.

19 officer, agent, employee, or contractor has been fired for
20 misconduct, as defined in s. 443.036(29), by the unit of
21 government.

22 (b) Notwithstanding paragraph (a), on or after July 1,
23 2011, an officer, agent, employee, or contractor may receive
24 severance pay if:

25 1. The severance pay is paid from wholly private funds,
26 the payment and receipt of which do not otherwise violate part
27 III of chapter 112;

28 2. The severance pay is administered under part II of
29 chapter 112 on behalf of an agency outside this state and would
30 be permitted under that agency's personnel system.

31

32

33

T I T L E A M E N D M E N T

34

Remove lines 6-7 and insert:

35

36 paying bonuses; permitting provisions in contracts that provide
37 for severance pay; providing requirements for such contracts;
38 allowing for severance pay

Amendment No. *2*

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Smith offered the following:

3
4 **Amendment**

5 Remove lines 86-89 and insert:

6 administrative leave;

7 2. Early retirement under provisions established in an
8 actuarially funded pension plan subject to part VII of chapter
9 112; or

10 3. Any subsidy for the cost of a group insurance plan
11 available to an employee upon normal or disability retirement
12 that is by policy available to all employees of the unit of
13 government pursuant to the unit's health insurance plan. This
14 subparagraph shall not be construed to limit the ability of a
15 unit of government to reduce or eliminate such subsidies.

Amendment No. **3**

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)

ADOPTED AS AMENDED _____ (Y/N)

ADOPTED W/O OBJECTION _____ (Y/N)

FAILED TO ADOPT _____ (Y/N)

WITHDRAWN _____ (Y/N)

OTHER

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative Smith offered the following:

Amendment (with title amendment)

5 Remove line 90 and insert:

6 (5) Any agreement or contract, executed on or after July
7 1, 2011, which involves extra compensation

10 **T I T L E A M E N D M E N T**

11 Remove lines 9-10 and insert:

12 "severance pay"; prohibiting certain contract provisions that
13 provide for extra compensation to limit the ability to

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 441 Scrutinized Companies
SPONSOR(S): Government Operations Subcommittee; Bernard and others
TIED BILLS: IDEN./SIM. BILLS: SB 444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	15 Y, 0 N, As CS	McDonald	Williamson
2) Judiciary Committee	16 Y, 0 N	De La Paz	Havlicak
3) State Affairs Committee		McDonald	Hamby <i>72E</i>

SUMMARY ANALYSIS

This bill prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more.

The bill also does the following:

- Requires public entities to have a contract provision that allows contracts to be terminated if the company submitted a false certification or is placed on either of the Scrutinized Companies lists.
- Provides an exception to the prohibition.
- Requires a company seeking to enter into a contract of \$1 million or more to certify that it is not a scrutinized business operation.
- Provides a process by which an agency or local governmental entity can report a false certification and by which the relevant government attorney may bring civil suit.
- Specifies penalties for a company that makes a false certification.
- Preempts an ordinance or rule of any local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.
- Requires the Department of Management Services to submit a written notice describing the act to the Attorney General of the United States, within 30 days after the effective date of the bill.
- Provides that the act becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided for in the bill.

The bill has an indeterminate fiscal impact on state and local governments. The bill will adversely affect companies on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List that seek to enter into contracts with Florida governmental entities.

The bill takes effect July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Federal Law

State Sponsors of Terrorism

Countries that are determined by the United States Secretary of State to have repeatedly provided support for acts of international terrorism are designated as "State Sponsors of Terrorism" and are subject to sanctions under the Export Administration Act,¹ the Arms Export Control Act,² and the Foreign Assistance Act.³ The four main categories of sanctions resulting from designations under these acts are: restrictions on U.S. foreign assistance, a ban on defense exports and sales, certain controls over exports of dual use items, and miscellaneous financial and other restrictions.⁴ Some of the miscellaneous restrictions include opposition to loans by the World Bank and other financial institutions, removal of diplomatic immunity to allow victims of terrorism to file civil lawsuits, denial of tax credits to companies and individuals for income earned in named countries, authority to prohibit U.S. citizens from engaging in transactions without a Treasury Department license, and prohibition of Department of Defense contracts above \$100,000 with companies controlled by terrorist-list states.⁵

The four countries currently designated by the U.S. Secretary of State as "State Sponsors of Terrorism" are Cuba, Iran, Sudan, and Syria.⁶

United States Sanctions against Iran

The United States has instituted a number of sanctions against Iran as a result of its state support of terrorism, human rights violations, and pursuit of a policy of nuclear development. The situation is summarized in the following excerpt from a recent Congressional Research Service report:

Iran is subject to a wide range of U.S. sanctions, restricting trade with, investment, and U.S. foreign aid to Iran, and requiring the United States to vote against international lending to Iran.

Several laws and Executive Orders authorize the imposition of U.S. penalties against foreign companies that do business with Iran, as part of an effort to persuade foreign firms to choose between the Iranian market and the much larger U.S. market. Most notable among these sanctions is a ban, imposed in 1995, on U.S. trade with and investment in Iran. That ban has since been modified slightly to allow for some bilateral trade in luxury and humanitarian-related goods. Foreign subsidiaries of U.S. firms remain generally exempt from the trade ban since they are under the laws of the countries where they are incorporated. Since 1995, several U.S. laws and regulations that seek to pressure Iran's economy, curb Iran's support for militant groups, and curtail supplies to Iran of advanced technology have been enacted. Since 2006, the United Nations Security Council has imposed some sanctions primarily attempting to curtail supply to Iran of weapons-related technology but also sanctioning some Iranian banks.

¹ Section 6(j), U.S. Export Administration Act.

² Section 40, U.S. Arms Export Control Act.

³ Section 620A, U.S. Foreign Assistance Act.

⁴ U.S. Department of State website, <http://www.state.gov/s/ct/c14151.htm>, Office of Coordinator for Counterterrorism, State Sponsors of Terrorism, last viewed on February 21, 2011.

⁵ U.S. Department of State website, <http://www.state.gov/s/ct>, Country Reports on Terrorism, last viewed on February 21, 2011.

⁶ *Id.*

U.S. officials have identified Iran's energy sector as a key Iranian vulnerability because Iran's government revenues are approximately 80% dependent on oil revenues and in need of substantial foreign investment. A U.S. effort to curb international energy investment in Iran began in 1996 with the Iran Sanctions Act (ISA), but no firms have been sanctioned under it and the precise effects of ISA, as distinct from other factors affecting international firms' decisions on whether to invest in Iran, have been unclear. International pressure on Iran to curb its nuclear program has increased the hesitation of many major foreign firms to invest in Iran's energy sector, hindering Iran's efforts to expand oil production beyond 4.1 million barrels per day, but some firms continue to see opportunity in Iran.

Some in Congress express concern about the reticence of U.S. allies, of Russia, and of China, to impose U.N. sanctions that would target Iran's civilian economy. In an attempt to strengthen U.S. leverage with its allies to back such international sanctions, several bills in the 111th Congress would add U.S. sanctions on Iran. For example, H.R. 2194 (which passed the House on December 15, 2009), H.R. 1985, H.R. 1208, and S. 908 would include as ISA violations selling refined gasoline to Iran; providing shipping insurance or other services to deliver gasoline to Iran; or supplying equipment to or performing the construction of oil refineries in Iran. Several of these bills would also expand the menu of available sanctions against violators. A bill passed by the Senate on January 28, 2010 (S. 2799), contains these sanctions as well as a broad range of other measures against Iran, including reversing previous easing of the U.S. ban on trade with Iran.

In light of the strength of the democratic opposition in Iran, one trend in Congress is to alter some U.S. sanctions laws in order to facilitate the democracy movement's access to information, and to target those persons or institutions in the regime who are committing human rights abuses against protesters.⁷

The Voice Act⁸

In the Voice Act, Congress directed the President of the United States to submit a report on non-Iranian persons, including corporations with U.S. subsidiaries, who have knowingly or negligently provided hardware, software, or other forms of assistance to the government of Iran, which has furthered Iran's efforts to filter online political content, disrupt cell phone and Internet communications, and monitor the online activities of Iranian citizens.

State Law

Foreign Trade

Florida prohibits the export or sale for export of any goods, products, or services to a foreign country in violation of any federal law. Additionally, Florida law specifically restricts any interference with foreign exports except as prohibited by federal law.⁹

State Agency Procurement of Commodities and Services

The process for the procurement of commodities and contractual services by state agencies¹⁰ provides requirements for fair and open competition among vendors, agency maintenance of written documentation that supports procurement decisions, and implementation of monitoring mechanisms.¹¹

⁷ Congressional Research Service Report RS20871, *Iran Sanctions*, February 2, 2010.

⁸ P.L. 111-84, October 28, 2009.

⁹ See s. 288.855, F.S.

¹⁰ Section 287.012(1), F.S., defines "agency" to mean "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government." The term "does not include the university and college boards of trustees or the state universities and colleges."

¹¹ See part I of chapter 287, F.S.

Legislative intent for chapter 287, F.S., states the process provided in the chapter is necessary in order to:

- Reduce improprieties and opportunities for favoritism;
- Ensure the equitable and economical award of public contracts; and
- Inspire public confidence in state procurement.¹²

The Department of Management Services (DMS) is statutorily designated as the central executive agency procurement authority and its responsibilities include overseeing agency implementation of the procurement process,¹³ creating uniform agency procurement rules,¹⁴ implementing the online procurement program,¹⁵ and establishing state term contracts.¹⁶ The agency procurement process is partly decentralized in that agencies, except in the case of state term contracts, may procure goods and services themselves in accordance with requirements set forth in statute and rule, rather than placing orders through DMS.

Protecting Florida's Investments Act: Scrutinized Companies¹⁷

The Protecting Florida's Investments Act (PFIA), enacted in 2008, requires the State Board of Administration (SBA), acting on behalf of the Florida Retirement System Trust Fund (FRSTF), to assemble and publish a list of scrutinized companies that have prohibited business operations in Sudan and Iran.¹⁸ Once placed on a list, the SBA and its investment managers are prohibited from acquiring those companies' securities and must divest those securities if the companies do not cease prohibited activities or take certain specified actions. PFIA does not affect FRSTF investments in U.S. companies. PFIA only affects foreign companies with certain operations in Sudan and Iran involving the petroleum or energy sector, oil or mineral extraction, power production, or military support activities.

The criteria used in defining what constitute a scrutinized company in Sudan or Iran is in PFIA.¹⁹ A scrutinized company is judged according to whether it meets the following criteria:

Sudan:

1. Has a material business relationship with the government of Sudan or a government-created project involving oil related, mineral extraction, or power generation activities;
2. Has a material business relationship involving the supply of military equipment;
3. Imparts minimal benefit to disadvantaged citizens that are typically located in the geographic periphery of Sudan; or
4. Is complicit in the genocidal campaign in Darfur.²⁰

Iran:

1. Has a material business relationship with the government of Iran or a government-created project involving oil related or mineral extraction activities; or
2. Has made material investments with the effect of significantly enhancing Iran's petroleum sector.²¹

Authority to Prohibit Contracts

State and local governments have proposed or enacted measures restricting agencies having economic ties with firms that transact business with or in foreign countries of whose conduct the state or local government finds objectionable. Case law, however, indicates that in the absence of federal

¹² Section 287.001, F.S.

¹³ See ss. 287.032 and 287.042, F.S.

¹⁴ See ss. 287.032(2) and 287.042(3), (4), and (12), F.S.

¹⁵ See s. 287.057(23), F.S.

¹⁶ See ss. 287.042(2), 287.056, and 287.1345, F.S.

¹⁷ Section 215.473, F.S.

¹⁸ A complete list of scrutinized companies and companies that are under continuing examination by the SBA can be found on the SBA website.

¹⁹ See s. 215.473(1)(t), F.S.

²⁰ Section 215.473(1)(t)1.-3., F.S.

²¹ Section 215.473(1)(t)4., F.S.

authority being granted for such action, those statutes may be preempted by the dormant federal foreign affairs powers.²²

The federal government has expressly given state and local governments authority to divest from companies directly invested in certain Sudanese or Iranian sectors.²³ The laws define an "investment" to include the entry into or the renewal of a contract for goods or services. The federal laws require that the state or local government provide written notice to each person to which a measure is applied, provide an opportunity to each person to comment in writing on the applicability of the measures, and provide that the application of the measure cannot occur earlier than 90 days after the written notice date. The government enacting the measure is required to send notice to the U.S. Attorney General within 30 days after adopting a measure.

EFFECT OF PROPOSED CHANGES

The bill creates a prohibition against contracting with scrutinized companies for goods or services. It creates definitions for the terms "awarding body"²⁴ and "local governmental entity,"²⁵ and definitions contained in s. 287.012, F.S., and s. 215.473, F.S., are included by reference.

The bill prohibits a company on the Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of \$1 million or more.

The bill requires that any contract with an agency or local governmental entity for goods or services of \$1 million or more, entered into or renewed on or after July 1, 2011, contain a provision that allows for the termination of the contract, at the option of the awarding body, if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

The bill allows an agency or local governmental entity to make a case-by-case exception to the prohibition if all of the following conditions are met:

- The scrutinized business operations²⁶ were made before July 1, 2010;
- The scrutinized business operations have not been expanded or renewed after July 1, 2010;
- The agency or local governmental entity determines that it is in the best interest of the state or local community to contract with the company; or
- The company has adopted, has publicized, and is implementing a formal plan to cease scrutinized business operations and to refrain from engaging in any new scrutinized business operations.

An exception may also be granted if one of the following conditions is met:

- The local governmental entity makes a public finding that, absent such an exemption, the local governmental entity would be unable to obtain the goods or services for which the contract is offered.

²² In 2000, the U.S. Supreme Court unanimously held in *Crosby v. National Foreign Trade Council* that a Massachusetts law restricting state transactions with firms doing business in Burma was preempted by a federal Burma statute. *See* 530 U.S. 363(2003); *but see Faculty Senate of Fla. Int'l Univ. v. Winn*, 616 F.3d 1206 (11th Cir. 2010) (upholding a university prohibition on using state or nonstate funds on activities related to travel to a terrorist state).

²³ The Sudan Accountability and Divestment Act of 2007, Pub. L. No. 110-174, ss. 1 to 12, Dec. 31, 2007, 121 Stat. 2516, as amended Pub. L. No. 111-195, Title II, s. 205(a), July 1, 2010, 124 Stat. 1344.; 22 U.S.C. s. 8532.

²⁴ "Awarding body" means, for purposes of state contracts, an agency or department, and for purposes of local contracts, means the governing body of the local governmental entity.

²⁵ "Local governmental entity" means "a county, municipality, special district, or other political subdivision of the state."

²⁶ Section 215.473(1)(s), F.S., defines "scrutinized business operations" to mean "business operations that have resulted in a company becoming a scrutinized company."

- For a contract with an executive agency, the Governor makes a public finding that, absent such an exemption, the agency would be unable to obtain the goods or services for which the contract is offered.
- For a contract with an office of a state constitutional officer other than the Governor, the state constitutional officer makes a public finding that, absent such an exception, the office would be unable to obtain the goods or services for which the contract is offered.

An agency or local governmental entity must require a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew, a contract with the agency or local governmental entity for goods or services of \$1 million or more to certify that the company is not a scrutinized business operation under s. 215.473, F.S. The certification must be submitted at the time a bid or proposal is submitted or before a contract is executed or renewed.

When an agency or local governmental entity determines that a company has submitted a false certification that it is not a scrutinized business operation, it must provide the company with written notice and 90 days to respond in writing to the determination. If the company fails to demonstrate that it has ceased its engagement in scrutinized business operations, then:

- The awarding body *must* report the company to the Attorney General and provide information demonstrating the false certification. The Attorney General must determine whether to bring a civil action against the company. Additionally, the awarding body *may* report the company to the municipal attorney, county attorney, or district attorney who may determine whether to bring a civil action against the company.
- If a civil action is brought and the court determines that the company submitted a false certification, the company is required to pay all reasonable attorney's fees and costs (including costs for investigations that led to the finding of false certification) and a civil penalty equal to the greater of \$2 million or twice the amount of the contract for which the false certification was submitted. A civil action to collect the penalties must commence within 3 years after the date the false certification is made.
 - The bill specifies that only the awarding body may cause a civil action to be brought, and that the section does not create or authorize a private right of action or enforcement of the provided penalties. An unsuccessful bidder, or any other person other than the awarding body, may not protest the award or contract renewal on the basis of a false certification.
- An existing contract with the company must be terminated at the option of the awarding body.
- The company is ineligible to bid on any contract with an agency or a local governmental entity for 3 years after the date of determining that the company submitted a false certification.

The bill specifies that its provisions preempt any ordinance or rule of any local governmental entity involving public contracts for goods or services of \$1 million or more with a company engaged in scrutinized business operations.

Within 30 days after the effective date of the bill, the Department of Management Services must submit a written notice describing the act to the Attorney General of the United States.

Finally, the act becomes inoperative on the date that federal law ceases to authorize the state to adopt and enforce the contracting prohibitions of the type provided.

B. SECTION DIRECTORY:

Section 1. Creates s. 287.135, F.S., to create prohibitions against contracting with scrutinized companies.

Section 2. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
Indeterminate.
2. Expenditures:
Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
Indeterminate.
2. Expenditures:
Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The impact on the private sector is indeterminate; however, there will likely be an adverse affect on companies on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List that seek to enter into contracts with governmental entities in the state.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue

2. Other:

Under the Supremacy Clause of the United States Constitution,²⁷ where the federal government and a state government legislates on the same subject, the federal law is supreme and will, in general, have the effect of voiding the conflicting state law.²⁸ The Supremacy Clause applies when state law is inconsistent with federal law. If state law attempts to invalidate the substance of a federal law or treaty, the state law cannot stand. Similarly, state law which encourages conduct inconsistent with that required by federal law is invalid. The same result holds if state law forbids conduct that federal law allows, or interferes with the achievement of a federal objective.²⁹ However, states are generally free to legislate in areas not controlled by federal law.

²⁷ U.S. Const. art. VI, cl. 2.

²⁸ See, *Northwest Central Pipeline Corp. v. State Corp. Comm'n of Kansas*, 489 U.S. 493, 509 (1989).

²⁹ *Perez v. Campbell*, 402 U.S. 637 (1971); *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

Congress, however, has authorized the type of contractual restrictions included in this bill and the bill contains a provision that specifically makes it inoperative if Congress ever rescinds that authority. Therefore, this bill should not violate the Supremacy Clause of the U.S. Constitution.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 8, 2011, the Government Operations Subcommittee adopted a strike-all amendment and reported the bill favorably with committee substitute. The committee substitute addresses the drafting issues noted in the original bill analysis. Additionally, it requires public entities to have a contract provision that allows contracts to be terminated if the company submits a false certification or is placed on either of the Scrutinized Companies list.

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1 A bill to be entitled
 2 An act relating to scrutinized companies; creating s.
 3 287.135, F.S.; providing definitions; prohibiting a state
 4 agency or local governmental entity from contracting for
 5 goods and services of more than a certain amount with a
 6 company that is on the Scrutinized Companies with
 7 Activities in Sudan List or the Scrutinized Companies with
 8 Activities in the Iran Petroleum Energy Sector List;
 9 providing for a contract provision that allows for
 10 termination of the contract if the company is found to
 11 have been placed on such list; providing exceptions;
 12 providing for civil action; providing penalties; providing
 13 a statute of repose; prohibiting a private right of
 14 action; requiring the Department of Management Services to
 15 notify the Attorney General after the act becomes law;
 16 providing that the act becomes inoperative if federal law
 17 ceases to authorize states to enact such contracting
 18 prohibitions; providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Section 287.135, Florida Statutes, is created
 23 to read:

24 287.135 .Prohibition against contracting with scrutinized
 25 companies.-

26 (1) In addition to the terms defined in ss. 287.012 and
 27 215.473, as used in this section, the term:

28 (a) "Awarding body" means, for purposes of state

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29 contracts, an agency or the department, and for purposes of
 30 local contracts, the governing body of the local governmental
 31 entity.

32 (b) "Local governmental entity" means a county,
 33 municipality, special district, or other political subdivision
 34 of the state.

35 (2) A company that, at the time of bidding or submitting a
 36 proposal for a new contract or renewal of an existing contract,
 37 is on the Scrutinized Companies with Activities in Sudan List or
 38 the Scrutinized Companies with Activities in the Iran Petroleum
 39 Energy Sector List, created pursuant to s. 215.473, is
 40 ineligible for, and may not bid on, submit a proposal for, or
 41 enter into or renew a contract with an agency or local
 42 governmental entity for goods or services of \$1 million or more.

43 (3) Any contract with an agency or local governmental
 44 entity for goods or services of \$1 million or more entered into
 45 or renewed on or after July 1, 2011, must contain a provision
 46 that allows for the termination of such contract at the option
 47 of the awarding body if the company is found to have submitted a
 48 false certification as provided under subsection (5) or been
 49 placed on the Scrutinized Companies with Activities in Sudan
 50 List or the Scrutinized Companies with Activities in the Iran
 51 Petroleum Energy Sector List.

52 (4) Notwithstanding subsection (2) or subsection (3), an
 53 agency or local governmental entity, on a case-by-case basis,
 54 may permit a company on the Scrutinized Companies with
 55 Activities in Sudan List or the Scrutinized Companies with
 56 Activities in the Iran Petroleum Energy Sector List to be

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57 eligible for, bid on, submit a proposal for, or enter into or
58 renew a contract for goods or services of \$1 million or more
59 under either of the following conditions:

60 (a) All of the following occur:

61 1. The scrutinized business operations were made before
62 July 1, 2011.

63 2. The scrutinized business operations have not been
64 expanded or renewed after July 1, 2011.

65 3. The agency or local governmental entity determines that
66 it is in the best interest of the state or local community to
67 contract with the company.

68 4. The company has adopted, has publicized, and is
69 implementing a formal plan to cease scrutinized business
70 operations and to refrain from engaging in any new scrutinized
71 business operations.

72 (b) One of the following occurs:

73 1. The local governmental entity makes a public finding
74 that, absent such an exemption, the local governmental entity
75 would be unable to obtain the goods or services for which the
76 contract is offered.

77 2. For a contract with an executive agency, the Governor
78 makes a public finding that, absent such an exemption, the
79 agency would be unable to obtain the goods or services for which
80 the contract is offered.

81 3. For a contract with an office of a state constitutional
82 officer other than the Governor, the state constitutional
83 officer makes a public finding that, absent such an exemption,
84 the office would be unable to obtain the goods or services for

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85 which the contract is offered.

86 (5) At the time a company submits a bid or proposal for a
87 contract or before the company enters into or renews a contract
88 with an agency or governmental entity for goods or services of
89 \$1 million or more, the company must certify that the company is
90 not on the Scrutinized Companies with Activities in Sudan List
91 or the Scrutinized Companies with Activities in the Iran
92 Petroleum Energy Sector List.

93 (a) If, after the agency or the local governmental entity
94 determines, using credible information available to the public,
95 that the company has submitted a false certification, the agency
96 or local governmental entity shall provide the company with
97 written notice of its determination. The company shall have 90
98 days following receipt of the notice to respond in writing and
99 to demonstrate that the determination of false certification was
100 made in error. If the company does not make such demonstration
101 within 90 days after receipt of the notice, the agency or the
102 local governmental entity shall bring a civil action against the
103 company. If a civil action is brought and the court determines
104 that the company submitted a false certification, the company
105 shall pay the penalty described in subparagraph 1. and all
106 reasonable attorneys' fees and costs, including any costs for
107 investigations that led to the finding of false certification.

108 1. A civil penalty equal to the greater of \$2 million or
109 twice the amount of the contract for which the false
110 certification was submitted shall be imposed.

111 2. The company is ineligible to bid on any contract with
112 an agency or local governmental entity for 3 years after the

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113 date the agency or local governmental entity determined that the
 114 company submitted a false certification.

115 (b) A civil action to collect the penalties described in
 116 paragraph (a) must commence within 3 years after the date the
 117 false certification is submitted.

118 (6) Only the agency or local governmental entity that is a
 119 party to the contract may cause a civil action to be brought
 120 under this section. This section does not create or authorize a
 121 private right of action or enforcement of the penalties provided
 122 in this section. An unsuccessful bidder, or any other person
 123 other than the agency or local governmental entity, may not
 124 protest the award of a contract or contract renewal on the basis
 125 of a false certification.

126 (7) This section preempts any ordinance or rule of any
 127 agency or local governmental entity involving public contracts
 128 for goods or services of \$1 million or more with a company
 129 engaged in scrutinized business operations.

130 (8) The department shall submit to the Attorney General of
 131 the United States a written notice describing this section
 132 within 30 days after July 1, 2011. This section becomes
 133 inoperative on the date that federal law ceases to authorize the
 134 states to adopt and enforce the contracting prohibitions of the
 135 type provided for in this section.


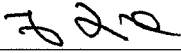
136 Section 2. This act shall take effect July 1, 2011.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7241 PCB GVOPS 11-17 Public Retirement Plans

SPONSOR(S): Government Operations Subcommittee, Patronis

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	10 Y, 5 N	Meadows	Williamson
1) State Affairs Committee		Meadows 	Hamby 

SUMMARY ANALYSIS

The Municipal Firefighters' Pension Trust Fund and the Police Officers' Retirement Trust Fund were created to provide a uniform retirement system for the benefit of firefighters, who are employed by a municipality or special fire district, and for municipal police officers.

This bill makes several changes to the firefighters' and police officers' pension trust funds. The bill:

- Revises the definition of "compensation" and "salary" to prohibit the inclusion of overtime compensation in excess of 300 hours per year and payments for accrued, unused sick or annual leave time, effective July 1, 2011.
- Authorizes the use of additional insurance premium tax revenues to pay extra benefits to firefighters and police officers, and to pay the unfunded actuarial accrued liabilities of the plan.
- Revises the definition of "extra benefits" to mean benefits in addition to or greater than those provided to general employees of the municipality or special fire control district, regardless of when the additional or greater benefit was or is provided.
- Requires boards of trustees of the plans to submit a detailed report of their expenses for each fiscal year, and to submit a proposed administrative budget for each fiscal year.
- Requires the Division of Retirement in the Department of Management Services to develop a standardized rating system for classifying the financial strength of the local government pension plans.
- Creates a Task Force on Public Employee Disability Presumptions to study and make recommendations regarding current disability presumptions. The task force must submit a report of its findings and recommendations to the Governor, Chief Financial Officer, and Legislature by January 1, 2012.

The bill creates an unknown fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution: Governmental Unit Retirement and Pension Systems

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.

Florida Statutes: 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 or operating a retirement system for public employees, which is funded in whole or in part by public funds.

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 of Retirement in the Department of Management Services.¹ The statement also 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 Acts² 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.³

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., 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.

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 of any extra amount needed to keep the plan solvent. 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 of Retirement, but day-to-day operational control rests with local boards of trustees. Most firefighters and police officers participate in these plans.

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on fire insurance companies, fire insurance associations, or other property insurers on the gross amount of

¹ Section 112.63, F.S.

² Chapters 175 and 185, F.S.

³ See ss. 175.021(1) and 185.01(1), F.S.,

receipts of premiums from policyholders on all premiums collected on property insurance.⁴ This excise tax is imposed on the policies located within the municipality or special fire control district. It is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.⁵ In 2009, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to \$91.94 million.⁶

The Police Officers' Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amount up to 0.85 percent of the gross receipts on premiums for policies issued within the municipality.⁷ Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.⁸ In 2009, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$64.44 million.⁹

In 1999, the Legislature passed legislation that made virtually all provisions of chapters 175 and 185, F.S., expressly applicable to all participating police officer and firefighter pension plans. All pension plans falling under these chapters were required to meet specific "minimum benefit" standards. The law required that insurance premium tax revenues over a base amount be used to provide additional or "extra benefits" in firefighter and police officer pension plans. The term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality, and in addition to those in existence for firefighters and police officers on March 12, 1999.

Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.¹⁰ 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 1.00 percent on annuity policies or contracts, to be distributed into the General Revenue Fund. 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.¹¹ Each time a municipality that is not imposing the tax 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.

Board of Trustees

The Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Fund 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.¹² The membership of the board consists of five members: two residents appointed by the governing body of the municipality or special fire district, two police officers or firefighters selected by the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma, who are subject to two-year terms.¹³

The board of trustees has the authority to invest and reinvest pension trust fund assets into annuities and life insurance contracts in amounts sufficient to provide entitled benefits and initial and subsequent

⁴ Section 175.091(1)(a), F.S.

⁵ Section 175.121, F.S.

⁶ Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Firefighters*, available online at: https://www.rol.frs.state.fl.us/forms/Fire_2009.pdf (last visited on April 4, 2011).

⁷ Section 185.08, F.S.

⁸ Section 185.10, F.S.

⁹ 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 (last visited on April 4, 2011).

¹⁰ Section 624.509(1), F.S.

¹¹ Section 624.51055, F.S., state, "[t]here 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 ...

¹² See ss. 175.061 and 185.05, F.S.

¹³ *Id.*

premiums.¹⁴ Under current law, if the trust fund is not sufficient to provide entitled benefits, any additional contributions necessary to maintain the plan actuarial soundness must be paid by the municipality.¹⁵

Disability Presumption

Any conditions or impairments of health suffered by firefighters or police officers that are caused by tuberculosis, hypertension, or heart disease, and that result in total or partial disability or death, are presumed to have been accidental and suffered in the line of duty unless contrary evidence is presented.¹⁶ The firefighters and police officers are required to submit to and successfully pass a physical examination.¹⁷ This physical examination must be taken prior to entering into service. Provisions regarding disability presumption are only applicable to firefighters and police officers with regard to pension and retirement benefits.

Effect of Proposed Changes

Compensation

The bill redefines the terms “compensation” and “salary” contained in ss. 175.032 and 185.02, F.S. The terms are revised to mean the monthly salary paid to a firefighter or police officer for noncollectively bargained service earned before July 1, 2011. It also encompasses salary earned under collective bargaining agreements in place before July 1, 2011. Overtime in excess of 300 hours per year may not be used to calculate retirement benefits for noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011. Furthermore, payments for accrued, unused sick or annual leave may not be used in the calculation of retirement benefits.

The bill also provides that the municipalities, special fire control districts, chapter plans, local law municipalities, local law special fire control districts, and local law plans can increase the member contribution rates without providing greater benefits. This member contribution increase must be approved by the collective bargaining representative or by a majority of the members if there is not a collective bargaining representative.

Insurance Premium Tax Revenues

The bill requires local law plans that participate in the distribution of the insurance premium tax revenues to provide benefits to firefighters and police officers that are greater than the pension benefits provided to general employees of the municipality or special fire control district. The bill revises the definition of “extra benefits” to mean benefits in addition to or greater than those provided to general employees of the municipality or special fire control district regardless of when the additional or greater benefit was or is provided. It deletes language that defined “extra benefits” as benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for firefighters and police officers on March 12, 1999.

The bill authorizes the use of additional insurance premium tax revenues to pay extra benefits to firefighters or police officers, or to pay the unfunded actuarial accrued liabilities of the plan. Further, if the aggregate level cost method is the actuarial cost method used to fund the plan, the unfunded actuarial accrued liabilities must be measured using the entry age normal cost method.

Board of Trustees

The bill requires the board of trustees to provide a detailed report that contains an accounting report of its expenses for each fiscal year. It must include all administrative expenses related to any legal counsel, actuary, plan administrator, consultants, travel, and any other expenses paid to or on behalf of

¹⁴ See ss. 175.071 and 185.06, F.S.

¹⁵ See ss. 175.091(1)(d) and 185.07(1)(d), F.S.; see also ss. 175.051 and 185.04, F.S., stating, “[f]or any municipality, chapter plan, local law municipality, or local plan under this chapter, actuarial deficits, if any, arising under this chapter are not the obligation of the state”.

¹⁶ Sections 175.231 and 185.34, F.S.

¹⁷ *Id.*

the members of the board of trustees or anyone else on behalf of the plan. The report must be submitted to the plan sponsor and the Department of Management Services, and must be made available to each member of the plan.

The board must submit its proposed administrative budget for each fiscal year at least 120 days before the beginning of the fiscal year. It must be submitted to and approved by the plan sponsor. The budget is only effective upon approval of the plan sponsor, and may not be amended without prior approval from the plan sponsor.

Financial Rating

The bill requires the Division of Retirement (Division) in the Department of Management Services to develop standardized ratings for classifying the financial strength of the local government pension plans. The factors to be considered in formulating these ratings are as follows:

- The plan's current and future unfunded liabilities;
- The plan's net asset value, managed returns, and funded ratio;
- Metrics related to the sustainability of the plan;
- Municipal bond rating for the local governments;
- 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 of the plan.

The bill further requires the local governments and pension boards to provide the Division with all necessary data and records to formulate the ratings. Finally, this rating is required to be posted on the Division's website.

Task Force on Public Employee Disability Presumptions

The bill creates the Task Force on Public Employee Disability Presumptions (task force) to develop findings and issue recommendations on the disability presumptions in ss. 112.18, 175.231, and 185.34, F.S. Members of the task force must be appointed on or before July 15, 2011, and is composed of nine members as follows:

- Three members appointed by the President of the Senate;
- Three members appointed by the Speaker of the House of Representatives;
- A member employed by the Office of the Auditor General;
- A member employed by the Division of Retirement; and
- A member employed by the Department of Financial Services.

The task force must address the data related to the operation of the statutory disability presumptions, the manner in which other states handle disability presumptions, and proposals for changes to the existing disability presumptions.

The task force is required to submit a report to the Governor, Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives by January 1, 2012. The report must include the findings of the task force and recommendations for legislative action during the 2012 regular session. The task force is dissolved once the report is submitted.

The bill designates the Department of Financial Services to provide administrative support for the task force.

Miscellaneous Provisions

The bill provides a statement of important state interest.

B. SECTION DIRECTORY:

Section 1 amends s. 175.032, F.S., to revise definitions.

Section 2 amends s. 175.061, F.S., to provide duties of the board of trustees relating to the reporting of expenses and the submission of a proposed administrative expense budget.

Section 3 amends s. 175.071, F.S., to revise requirements of the board of trustees relating to the employment of legal counsel, actuaries, and other advisors.

Section 4 amends s. 175.091, F.S., to remove an adjustment requirement for member contribution rates to a retirement plan for firefighters.

Section 5 amends s. 175.351, F.S., to revise provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan.

Section 6 amends s. 185.02, F.S., to revise definitions.

Section 7 amends s. 185.05, F.S., to provide duties of the board of trustees relating to the reporting of expenses and the submission of a proposed administrative expense budget.

Section 8 amends s. 185.06, F.S., to revise requirements of the board of trustees relating to the employment of legal counsel, actuaries, and other advisors.

Section 9 amends s. 185.07, F.S., to remove an adjustment requirement for member contribution rates to a retirement plan for police officers.

Section 10 amends s. 185.35, F.S., to revise provisions relating to benefits paid by a municipality that has its own pension plan.

Section 11 directs the Division of Retirement to rate the financial strength of local government defined benefit plans; to specify the factors for assigning the ratings; requires local pension boards and local governments to cooperate in providing data for the ratings; to require the ratings to be posted on the division's website.

Section 12 creates the Task Force on Public Employee Disability Presumptions; provides for appointment and membership; specifies issues to be addressed; requires a report to be submitted to the Governor, Chief Financial Officer, and Legislature by a certain date.

Section 13 provides a declaration of important state interest.

Section 14 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an unknown, significant fiscal impact on the Division of Retirement. The Division is required to provide a rating plan for the financial strength of the local government pension plans.

The bill has a fiscal impact on the Department of Financial Services. The Department is required to provide administrative support for the task force. In addition members of the task force are entitled to reimbursement for per diem and travel expenses. The total fiscal impact is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill has a fiscal impact on local governments. It allows insurance premium tax revenues to be utilized to pay for additional benefits for firefighters and police officers. In addition, the insurance premium tax revenues may be used to pay down the unfunded actuarial accrued liabilities. The bill will free up monies available to municipalities and special fire districts, but the amount is unknown at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

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.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits 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.

This bill appears to meet the requirements of Article X, s. 14 of the State Constitution.

B. RULE-MAKING AUTHORITY:

The bill does not appear to authorize nor require any additional grants of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments were provided by the Department of Management Services:¹⁸

We are unaware of any standard rating system for the financial strength of pension plans. Evaluation of the health of a defined benefit pension plan is a complex, subjective field that must factor in many variables and assumptions. There are nearly 500 local pension plans sponsored by Florida local governments and each one is administered by its own independent local board of trustees. The methods and assumptions used are determined individually for each plan and make direct plan-to-plan comparisons difficult.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 8, 2011, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as amended.

The first amendment clarifies that members of the police officer and firefighter pension funds may include up to 300 hours of overtime per year in the calculation of retirement benefits, as collectively bargained. The proposed committee bill stated overtime compensation in excess of 300 hours per year may not be included for purposes of calculating retirement benefits. This gave the impression that 300 hours of overtime compensation would automatically be included in the calculation of retirement benefits for the members of the pension plans.

The second amendment changes the date that deemed local law plans compliant with chapters 175 and 185, F.S., from May 23, 1939, to May 27, 1939.

¹⁸ Substantive Analysis, Florida Department of Management Services, April 7, 2011, at 11 (on file with the Government Operations Subcommittee).

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1 A bill to be entitled
 2 An act relating to public retirement plans; amending s.
 3 175.032, F.S.; revising the definition of the term
 4 "compensation" or "salary" for purposes of firefighters'
 5 pensions; amending s. 175.061, F.S.; providing duties of
 6 the board of trustees relating to the reporting of
 7 expenses and the submission of a proposed administrative
 8 expense budget; amending s. 175.071, F.S.; revising
 9 requirements of the board relating to the employment of
 10 legal counsel, actuaries, and other advisers; amending s.
 11 175.091, F.S.; removing an adjustment requirement for
 12 member contribution rates to a retirement plan for
 13 firefighters; amending s. 175.351, F.S.; revising
 14 provisions relating to benefits paid from the premium tax
 15 by a municipality or special fire control district that
 16 has its own pension plan; providing definitions; providing
 17 uses for additional premium tax revenues; amending s.
 18 185.02, F.S.; revising the definition of the term
 19 "compensation" or "salary" for purposes of police
 20 officers' pensions; amending s. 185.05, F.S.; providing
 21 duties of the board of trustees relating to the reporting
 22 of expenses and submission of a proposed administrative
 23 expense budget; amending s. 185.06, F.S.; revising
 24 requirements of the board relating to the employment of
 25 legal counsel, actuaries, and other advisers; amending s.
 26 185.07, F.S.; removing an adjustment requirement for
 27 member contribution rates to a retirement plan for police
 28 officers; amending s. 185.35, F.S.; revising provisions

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29 relating to benefits paid by a municipality that has its
 30 own pension plan; providing definitions; providing uses
 31 for additional premium tax revenues; directing the
 32 Division of Retirement in the Department of Management
 33 Services to rate the financial strength of local
 34 government defined benefit plans; specifying the factors
 35 for assigning the ratings; requiring local pension boards,
 36 local governments, and all relevant entities to cooperate
 37 in providing data for the ratings; requiring the ratings
 38 to be posted on the division's website; creating the Task
 39 Force on Public Employee Disability Presumptions;
 40 providing for appointment and membership; specifying the
 41 issues for the task force to address; providing for a
 42 report to be submitted to the Governor, Chief Financial
 43 Officer, and Legislature by a certain date; providing for
 44 future expiration; providing a declaration of important
 45 state interest; providing an effective date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Subsection (3) of section 175.032, Florida
 50 Statutes, is amended to read:

51 175.032 Definitions.—For any municipality, special fire
 52 control district, chapter plan, local law municipality, local
 53 law special fire control district, or local law plan under this
 54 chapter, the following words and phrases have the following
 55 meanings:

56 (3) "Compensation" or "salary" means, for noncollectively

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57 bargained service earned before July 1, 2011, or for service
58 earned under collective bargaining agreements in place before
59 July 1, 2011, the fixed monthly remuneration paid a firefighter.
60 ~~If , where, as in the case of a volunteer firefighter,~~
61 remuneration is based on actual services rendered, as in the
62 case of a volunteer firefighter, the term means the total cash
63 remuneration received yearly for such services, prorated on a
64 monthly basis. For noncollectively bargained service earned on
65 or after July 1, 2011, or for service earned under collective
66 bargaining agreements entered into on or after July 1, 2011, the
67 term has the same meaning except that overtime compensation up
68 to 300 hours per year may be included for purposes of
69 calculating retirement benefits as specified in the plan or
70 collective bargaining agreement, but payments for unused sick or
71 annual leave may not be included for purposes of calculating
72 retirement benefits.

73 ~~(a) A retirement trust fund or plan may use a definition~~
74 ~~of salary other than the definition in this subsection but only~~
75 ~~if the monthly retirement income payable to each firefighter~~
76 ~~covered by the retirement trust fund or plan, as determined~~
77 ~~under s. 175.162(2)(a) and using such other definition, equals~~
78 ~~or exceeds the monthly retirement income that would be payable~~
79 ~~to each firefighter if his or her monthly retirement income were~~
80 ~~determined under s. 175.162(2)(a) and using the definition in~~
81 ~~this subsection.~~

82 ~~(a)(b)~~ Any retirement trust fund or plan that ~~which now or~~
83 ~~hereafter~~ meets the requirements of this chapter does ~~shall~~ not,
84 solely by virtue of this subsection, reduce or diminish the

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85 monthly retirement income otherwise payable to each firefighter
86 covered by the retirement trust fund or plan.

87 ~~(b)-(e)~~ The member's compensation or salary contributed as
88 employee-elective salary reductions or deferrals to any salary
89 reduction, deferred compensation, or tax-sheltered annuity
90 program authorized under the Internal Revenue Code shall be
91 deemed to be the compensation or salary the member would receive
92 if he or she were not participating in such program and shall be
93 treated as compensation for retirement purposes under this
94 chapter.

95 ~~(c)-(d)~~ For any person who first becomes a member in any
96 plan year beginning on or after January 1, 1996, compensation
97 for that ~~any~~ plan year may ~~shall~~ not include any amounts in
98 excess of the Internal Revenue Code s. 401(a)(17) limitation,
99 ~~(as amended by the Omnibus Budget Reconciliation Act of 1993),~~
100 which limitation of \$150,000 shall be adjusted as required by
101 federal law for qualified government plans and shall be further
102 adjusted for changes in the cost of living in the manner
103 provided by Internal Revenue Code s. 401(a)(17)(B). For any
104 person who first became a member before ~~prior to~~ the first plan
105 year beginning on or after January 1, 1996, the limitation on
106 compensation may ~~shall be~~ not be less than the maximum
107 compensation amount that was allowed to be taken into account
108 under the plan as in effect on July 1, 1993, which limitation
109 shall be adjusted for changes in the cost of living since 1989
110 in the manner provided by Internal Revenue Code s.
111 401(a)(17)(1991).

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112 Section 2. Subsections (4), (5), (6), and (7) of section
 113 175.061, Florida Statutes, are renumbered as subsections (5),
 114 (6), (7), and (8), respectively, and a new subsection (4) is
 115 added to that section, to read:

116 175.061 Board of trustees; members; terms of office;
 117 meetings; legal entity; costs; attorney's fees.—For any
 118 municipality, special fire control district, chapter plan, local
 119 law municipality, local law special fire control district, or
 120 local law plan under this chapter:

121 (4) The board of trustees shall:

122 (a) Provide a detailed accounting report of its expenses
 123 for each fiscal year to the plan sponsor and the Department of
 124 Management Services and shall make the report available to every
 125 member of the plan. The report must include, but need not be
 126 limited to, all administrative expenses which, for purposes of
 127 this subsection, are all expenses relating to any legal counsel,
 128 actuary, plan administrator, and all other consultants, and all
 129 travel and other expenses paid to or on behalf of the members of
 130 the board of trustees or anyone else on behalf of the plan.

131 (b) Submit its proposed administrative expense budget for
 132 each fiscal year at least 120 days before the beginning of the
 133 fiscal year to the plan sponsor for review and modification. The
 134 administrative expense budget is effective only upon approval by
 135 the plan sponsor and must regulate the administrative expenses
 136 of the board of trustees. The board of trustees may not amend
 137 the budget without the prior approval of the plan sponsor.

138 Section 3. Subsection (7) of section 175.071, Florida
 139 Statutes, is amended to read:

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140 175.071 General powers and duties of board of trustees.—
 141 For any municipality, special fire control district, chapter
 142 plan, local law municipality, local law special fire control
 143 district, or local law plan under this chapter:

144 (7) To assist the board in meeting its responsibilities
 145 under this chapter, the board, if it so elects, and subject to
 146 s. 175.061(4), may:

147 (a) Employ independent legal counsel at the pension fund's
 148 expense.

149 (b) Employ an independent actuary, as defined in s.
 150 175.032(7), at the pension fund's expense.

151 (c) Employ such independent professional, technical, or
 152 other advisers as it deems necessary at the pension fund's
 153 expense.

154
 155 If the board chooses to use the municipality's or special
 156 district's legal counsel or actuary, or chooses to use any of
 157 the municipality's or special district's other professional,
 158 technical, or other advisers, it must do so only under terms and
 159 conditions acceptable to the board.

160 Section 4. Paragraph (b) of subsection (2) of section
 161 175.091, Florida Statutes, is amended to read:

162 175.091 Creation and maintenance of fund.—For any
 163 municipality, special fire control district, chapter plan, local
 164 law municipality, local law special fire control district, or
 165 local law plan under this chapter:

166 (2) Member contribution rates may be adjusted as follows:

167 (b) Firefighter member contributions may be increased by

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168 consent of the members' collective bargaining representative or,
 169 if none, by majority consent of firefighter members of the fund
 170 ~~to provide greater benefits.~~

171
 172 Nothing in this section shall be construed to require adjustment
 173 of member contribution rates in effect on the date this act
 174 becomes a law, including rates that exceed 5 percent of salary,
 175 provided that such rates are at least one-half of 1 percent of
 176 salary.

177 Section 5. Section 175.351, Florida Statutes, is amended
 178 to read:

179 175.351 Municipalities and special fire control districts
 180 having their own pension plans for firefighters.—For any
 181 municipality, special fire control district, local law
 182 municipality, local law special fire control district, or local
 183 law plan under this chapter, in order for municipalities and
 184 special fire control districts with their own pension plans for
 185 firefighters, or for firefighters and police officers, where
 186 included, to participate in the distribution of the tax fund
 187 established pursuant to s. 175.101, local law plans must provide
 188 a benefit or benefits within those pension plans for
 189 firefighters, or for firefighters and police officers, where
 190 included, that is in addition to or greater than a pension
 191 benefit provided to general employees of the municipality or
 192 special fire control district regardless of when such additional
 193 or greater benefit was or is provided ~~meet the minimum benefits~~
 194 ~~and minimum standards set forth in this chapter.~~

195 (1) For the purpose of this chapter:

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196 (a) "Additional premium tax revenues" means revenues
 197 received by a municipality or special fire control district
 198 pursuant to s. 175.121 which exceed that amount received for
 199 calendar year 1997.

200 (b) "Extra benefits" means benefits in addition to or
 201 greater than those provided to general employees of the
 202 municipality or special fire control district regardless of when
 203 such additional or greater benefit was or is provided. PREMIUM
 204 TAX INCOME. If a municipality has a pension plan for
 205 firefighters, or a pension plan for firefighters and police
 206 officers, where included, which in the opinion of the division
 207 meets the minimum benefits and minimum standards set forth in
 208 this chapter, the board of trustees of the pension plan, as
 209 approved by a majority of firefighters of the municipality, may:

210 ~~(a) Place the income from the premium tax in s. 175.101 in~~
 211 ~~such pension plan for the sole and exclusive use of its~~
 212 ~~firefighters, or for firefighters and police officers, where~~
 213 ~~included, where it shall become an integral part of that pension~~
 214 ~~plan and shall be used to pay extra benefits to the firefighters~~
 215 ~~included in that pension plan; or~~

216 ~~(b) Place the income from the premium tax in s. 175.101 in~~
 217 ~~a separate supplemental plan to pay extra benefits to~~
 218 ~~firefighters, or to firefighters and police officers where~~
 219 ~~included, participating in such separate supplemental plan.~~

220 (2) For plans that comply with the minimum benefit
 221 provisions of this chapter, the additional premium tax revenues
 222 provided by this chapter shall in all cases be used in its
 223 entirety to:

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224 (a) ~~Pay provide~~ extra benefits to firefighters, or to
 225 firefighters and police officers, where included; or

226 (b) Pay the unfunded actuarial accrued liabilities of the
 227 plan. If the aggregate level cost method is the actuarial cost
 228 method used to fund the plan, the unfunded actuarial accrued
 229 liabilities shall be measured using the entry age normal cost
 230 method.

231 (3) ~~For However,~~ local law plans in effect on October 1,
 232 1998, ~~that do not shall be required to~~ comply with the minimum
 233 benefit provisions of this chapter, ~~as only to the extent that~~
 234 additional premium tax revenues become available, such revenues
 235 shall be used to incrementally fund the cost of such compliance
 236 as provided in s. 175.162(2)(a).

237 (4) ~~If When~~ a plan is in compliance with such minimum
 238 benefit provisions, as subsequent additional premium tax
 239 revenues become available, they shall be used to pay for provide
 240 extra benefits or to pay the unfunded actuarial accrued
 241 liabilities of the plan, as provided in subsection (2). ~~For the~~
 242 ~~purpose of this chapter, "additional premium tax revenues" means~~
 243 ~~revenues received by a municipality or special fire control~~
 244 ~~district pursuant to s. 175.121 which exceed that amount~~
 245 ~~received for calendar year 1997, and the term "extra benefits"~~
 246 ~~means benefits in addition to or greater than those provided to~~
 247 ~~general employees of the municipality and in addition to those~~
 248 ~~in existence for firefighters on March 12, 1999.~~

249 (5) Local law plans created by special act before May 27
 250 23, 1939, shall be deemed to comply with this chapter.

251 ~~(6)-(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~

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252 retirement plan or amendment to a retirement plan may not ~~shall~~
 253 be proposed for adoption unless the proposed plan or amendment
 254 contains an actuarial estimate of the costs involved. The ~~No~~
 255 ~~such~~ proposed plan or proposed plan change may not ~~shall~~ be
 256 adopted without the approval of the municipality, special fire
 257 control district, or, where permitted, the Legislature. Copies
 258 of the proposed plan or proposed plan change and the actuarial
 259 impact statement of the proposed plan or proposed plan change
 260 shall be furnished to the division before ~~prior to~~ the last
 261 public hearing thereon. Such statement must ~~shall~~ also indicate
 262 whether the proposed plan or proposed plan change is in
 263 compliance with s. 14, Art. X of the State Constitution and
 264 those provisions of part VII of chapter 112 which are not
 265 expressly provided in this chapter. Notwithstanding any other
 266 provision, only those local law plans created by special act of
 267 legislation before ~~prior to~~ May 27 ~~23~~, 1939, are ~~shall be~~ deemed
 268 to meet the minimum benefits and minimum standards only in this
 269 chapter.

270 (7) ~~(3)~~ Notwithstanding any other provision, with respect
 271 to any supplemental plan municipality:

272 (a) Section 175.032(3)(a) does ~~shall~~ not apply, and a
 273 local law plan and a supplemental plan may continue to use their
 274 definition of compensation or salary in existence on March 12,
 275 1999 ~~the effective date of this act.~~

276 (b) Section 175.061(1)(b) does ~~shall~~ not apply, and a
 277 local law plan and a supplemental plan shall continue to be
 278 administered by a board or boards of trustees numbered,
 279 constituted, and selected as the board or boards were numbered,

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280 constituted, and selected on December 1, 2000.

281 (c) The election set forth in paragraph (1)(b) is ~~shall be~~
 282 deemed to have been made.

283 ~~(8)(4)~~ The retirement plan setting forth the benefits and
 284 the trust agreement, if any, covering the duties and
 285 responsibilities of the trustees and the regulations of the
 286 investment of funds must be in writing, and copies ~~thereof must~~
 287 ~~be~~ made available to the participants and to the general public.

288 Section 6. Subsection (4) of section 185.02, Florida
 289 Statutes, is amended to read:

290 185.02 Definitions.—For any municipality, chapter plan,
 291 local law municipality, or local law plan under this chapter,
 292 the following words and phrases as used in this chapter shall
 293 have the following meanings, unless a different meaning is
 294 plainly required by the context:

295 (4) "Compensation" or "salary" means, for noncollectively
 296 bargained service earned before July 1, 2011, or for service
 297 earned under collective bargaining agreements in place before
 298 July 1, 2011, the total cash remuneration including "overtime"
 299 paid by the primary employer to a police officer for services
 300 rendered, but not including any payments for extra duty or a
 301 special detail work performed on behalf of a second party
 302 employer. ~~However,~~ A local law plan may limit the amount of
 303 overtime payments which can be used for retirement benefit
 304 calculation purposes; however, ~~but in no event shall~~ such
 305 overtime limit may not be less than 300 hours per officer per
 306 calendar year. For noncollectively bargained service earned on
 307 or after July 1, 2011, or for service earned under collective

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308 bargaining agreements entered into on or after July 1, 2011, the
309 term has the same meaning except that overtime compensation up
310 to 300 hours per year may be included for purposes of
311 calculating retirement benefits as specified in the plan or
312 collective bargaining agreement, but payments for unused sick or
313 annual leave may not be included for purposes of calculating
314 retirement benefits.

315 (a) Any retirement trust fund or plan that ~~which now or~~
316 ~~hereafter~~ meets the requirements of this chapter does ~~shall~~ not,
317 solely by virtue of this subsection, reduce or diminish the
318 monthly retirement income otherwise payable to each police
319 officer covered by the retirement trust fund or plan.

320 (b) The member's compensation or salary contributed as
321 employee-elective salary reductions or deferrals to any salary
322 reduction, deferred compensation, or tax-sheltered annuity
323 program authorized under the Internal Revenue Code shall be
324 deemed to be the compensation or salary the member would receive
325 if he or she were not participating in such program and shall be
326 treated as compensation for retirement purposes under this
327 chapter.

328 (c) For any person who first becomes a member in any plan
329 year beginning on or after January 1, 1996, compensation for
330 that any plan year may ~~shall~~ not include any amounts in excess
331 of the Internal Revenue Code s. 401(a)(17) limitation, ~~(as~~
332 ~~amended by the Omnibus Budget Reconciliation Act of 1993),~~ which
333 limitation of \$150,000 shall be adjusted as required by federal
334 law for qualified government plans and shall be further adjusted
335 for changes in the cost of living in the manner provided by

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336 Internal Revenue Code s. 401(a)(17)(B). For any person who first
 337 became a member before ~~prior to~~ the first plan year beginning on
 338 or after January 1, 1996, the limitation on compensation may
 339 ~~shall be~~ be not less than the maximum compensation amount that
 340 was allowed to be taken into account under the plan as in effect
 341 on July 1, 1993, which limitation shall be adjusted for changes
 342 in the cost of living since 1989 in the manner provided by
 343 Internal Revenue Code s. 401(a)(17)(1991).

344 Section 7. Subsections (4), (5), (6), and (7) of section
 345 185.05, Florida Statutes, are renumbered as subsections (5),
 346 (6), (7), and (8), respectively, and a new subsection (4) is
 347 added to that section, to read:

348 185.05 Board of trustees; members; terms of office;
 349 meetings; legal entity; costs; attorney's fees.—For any
 350 municipality, chapter plan, local law municipality, or local law
 351 plan under this chapter:

352 (4) The board of trustees shall:

353 (a) Provide a detailed accounting report of its expenses
 354 for each fiscal year to the plan sponsor and the Department of
 355 Management Services and shall make the report available to every
 356 member of the plan. The report must include, but need not be
 357 limited to, all administrative expenses which, for purposes of
 358 this subsection, are all expenses relating to any legal counsel,
 359 actuary, plan administrator, and all other consultants, and all
 360 travel and other expenses paid to or on behalf of the members of
 361 the board of trustees or anyone else on behalf of the plan.

362 (b) Submit its proposed administrative expense budget for
 363 each fiscal year at least 120 days before the beginning of the

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364 fiscal year to the plan sponsor for review and modification. The
 365 administrative expense budget is effective only upon approval by
 366 the plan sponsor and must regulate the administrative expenses
 367 of the board of trustees. The board of trustees may not amend
 368 the budget without the prior approval of the plan sponsor.

369 Section 8. Subsection (6) of section 185.06, Florida
 370 Statutes, is amended to read:

371 185.06 General powers and duties of board of trustees.—For
 372 any municipality, chapter plan, local law municipality, or local
 373 law plan under this chapter:

374 (6) To assist the board in meeting its responsibilities
 375 under this chapter, the board, if it so elects, and subject to
 376 s. 185.05(4), may:

377 (a) Employ independent legal counsel at the pension fund's
 378 expense.

379 (b) Employ an independent actuary, as defined in s.
 380 185.02(8), at the pension fund's expense.

381 (c) Employ such independent professional, technical, or
 382 other advisers as it deems necessary at the pension fund's
 383 expense.

384
 385 If the board chooses to use the municipality's or special
 386 district's legal counsel or actuary, or chooses to use any of
 387 the municipality's other professional, technical, or other
 388 advisers, it must do so only under terms and conditions
 389 acceptable to the board.

390 Section 9. Paragraph (b) of subsection (2) of section
 391 185.07, Florida Statutes, is amended to read:

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392 185.07 Creation and maintenance of fund.—For any
 393 municipality, chapter plan, local law municipality, or local law
 394 plan under this chapter:

395 (2) Member contribution rates may be adjusted as follows:

396 (b) Police officer member contributions may be increased
 397 by consent of the members' collective bargaining representative
 398 or, if none, by majority consent of police officer members of
 399 the fund ~~to provide greater benefits.~~

400
 401 Nothing in this section shall be construed to require adjustment
 402 of member contribution rates in effect on the date this act
 403 becomes a law, including rates that exceed 5 percent of salary,
 404 provided that such rates are at least one-half of 1 percent of
 405 salary.

406 Section 10. Section 185.35, Florida Statutes, is amended
 407 to read:

408 185.35 Municipalities having their own pension plans for
 409 police officers.—For any municipality, chapter plan, local law
 410 municipality, or local law plan under this chapter, in order for
 411 municipalities with their own pension plans for police officers,
 412 or for police officers and firefighters where included, to
 413 participate in the distribution of the tax fund established
 414 pursuant to s. 185.08, local law plans must provide a benefit or
 415 benefits within those pension plans for police officers, or for
 416 police officers and firefighters, where included, that is in
 417 addition to or greater than a pension benefit provided to
 418 general employees of the municipality regardless of when such
 419 additional or greater benefit was or is provided. ~~meet the~~

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420 ~~minimum benefits and minimum standards set forth in this~~
 421 ~~chapter:~~

422 (1) For the purposes of this chapter:

423 (a) "Additional premium tax revenues" means revenues
 424 received by a municipality pursuant to s. 185.10 which exceed
 425 the amount received for calendar year 1997.

426 (b) "Extra benefits" means benefits in addition to or
 427 greater than those provided to general employees of the
 428 municipality regardless of when such additional or greater
 429 benefit was or is provided. PREMIUM TAX INCOME. If a
 430 ~~municipality has a pension plan for police officers, or for~~
 431 ~~police officers and firefighters where included, which, in the~~
 432 ~~opinion of the division, meets the minimum benefits and minimum~~
 433 ~~standards set forth in this chapter, the board of trustees of~~
 434 ~~the pension plan, as approved by a majority of police officers~~
 435 ~~of the municipality, may:~~

436 (a) ~~Place the income from the premium tax in s. 185.08 in~~
 437 ~~such pension plan for the sole and exclusive use of its police~~
 438 ~~officers, or its police officers and firefighters where~~
 439 ~~included, where it shall become an integral part of that pension~~
 440 ~~plan and shall be used to pay extra benefits to the police~~
 441 ~~officers included in that pension plan; or~~

442 (b) ~~May place the income from the premium tax in s. 185.08~~
 443 ~~in a separate supplemental plan to pay extra benefits to the~~
 444 ~~police officers, or police officers and firefighters where~~
 445 ~~included, participating in such separate supplemental plan.~~

446 (2) For plans that comply with the minimum benefit
 447 provisions of this chapter, the additional premium tax revenues

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448 provided by this chapter shall ~~in all cases~~ be used in its
 449 entirety to:

450 (a) Pay ~~provide~~ extra benefits to police officers, or to
 451 police officers and firefighters, where included; or

452 (b) Pay the unfunded actuarial accrued liabilities of the
 453 plan. If the aggregate level cost method is the actuarial cost
 454 method used to fund the plan, the unfunded actuarial accrued
 455 liabilities shall be measured using the entry age normal cost
 456 method.

457 (3) For ~~However,~~ local law plans in effect on October 1,
 458 1998, that do not ~~shall be required to~~ comply with the minimum
 459 benefit provisions of this chapter, as ~~only to the extent that~~
 460 additional premium tax revenues become available, such revenues
 461 shall be used to incrementally fund the cost of such compliance
 462 as provided in s. 185.16(2).

463 (4) If ~~When~~ a plan is in compliance with such minimum
 464 benefit provisions, as subsequent additional tax revenues become
 465 available, they shall be used to pay for ~~provide~~ extra benefits
 466 or to pay the unfunded actuarial accrued liabilities of the
 467 plan, as provided in subsection (2). ~~For the purpose of this~~
 468 ~~chapter, "additional premium tax revenues" means revenues~~
 469 ~~received by a municipality pursuant to s. 185.10 which exceed~~
 470 ~~the amount received for calendar year 1997, and the term "extra~~
 471 ~~benefits" means benefits in addition to or greater than those~~
 472 ~~provided to general employees of the municipality and in~~
 473 ~~addition to those in existence for police officers on March 12,~~
 474 ~~1999.~~

475 (5) Local law plans created by special act before May 27

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476 ~~23~~, 1939, shall be deemed to comply with this chapter.

477 ~~(6)(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~
 478 retirement plan or amendment to a retirement plan may not shall
 479 be proposed for adoption unless the proposed plan or amendment
 480 contains an actuarial estimate of the costs involved. The ~~No~~
 481 ~~such~~ proposed plan or proposed plan change may not shall be
 482 adopted without the approval of the municipality or, where
 483 permitted, the Legislature. Copies of the proposed plan or
 484 proposed plan change and the actuarial impact statement of the
 485 proposed plan or proposed plan change shall be furnished to the
 486 division before ~~prior to~~ the last public hearing thereon. Such
 487 statement must shall also indicate whether the proposed plan or
 488 proposed plan change is in compliance with s. 14, Art. X of the
 489 State Constitution and those provisions of part VII of chapter
 490 112 which are not expressly provided in this chapter.
 491 Notwithstanding any other provision, only those local law plans
 492 created by special act of legislation before ~~prior to~~ May 27 ~~23~~,
 493 1939, are shall be deemed to meet the minimum benefits and
 494 minimum standards only in this chapter.

495 ~~(7)(3)~~ Notwithstanding any other provision, with respect
 496 to any supplemental plan municipality:

497 (a) Section 185.02(4)(a) does shall not apply, and a local
 498 law plan and a supplemental plan may continue to use their
 499 definition of compensation or salary in existence on March 12,
 500 1999 ~~the effective date of this act.~~

501 (b) Section 185.05(1)(b) does shall not apply, and a local
 502 law plan and a supplemental plan shall continue to be
 503 administered by a board or boards of trustees numbered,

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504 constituted, and selected as the board or boards were numbered,
 505 constituted, and selected on December 1, 2000.

506 (c) The election set forth in paragraph (1) (b) is ~~shall be~~
 507 deemed to have been made.

508 ~~(8)-(4)~~ The retirement plan setting forth the benefits and
 509 the trust agreement, if any, covering the duties and
 510 responsibilities of the trustees and the regulations of the
 511 investment of funds must be in writing and copies made available
 512 to the participants and to the general public.

513 Section 11. Financial rating of local pension plans.—The
 514 Division of Retirement in the Department of Management Services
 515 shall develop standardized ratings for classifying the financial
 516 strength of all local government defined benefit pension plans.

517 (1) In assigning a rating to a plan, the division shall
 518 consider, without limitation:

519 (a) The plan's current and future unfunded liabilities.

520 (b) The plan's net asset value, managed returns, and
 521 funded ratio.

522 (c) Metrics related to the sustainability of the plan,
 523 including, but not limited to, the percentage that the annual
 524 contribution is of the participating employee payroll.

525 (d) Municipal bond ratings for the local government, if
 526 applicable.

527 (e) Whether the local government has reduced contribution
 528 rates to the plan when the plan has an actuarial surplus.

529 (f) Whether the local government uses any actuarial
 530 surplus in the plan for obligations outside the plan.

531 (2) The division may obtain all necessary data to

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532 formulate the ratings from all relevant entities, including
533 local pension boards and local governments, all of which shall
534 cooperate with the division in supplying all necessary
535 information.

536 (3) The ratings shall be posted on the division's website
537 in a standardized format.

538 Section 12. Task Force on Public Employee Disability
539 Presumptions.—

540 (1) The Task Force on Public Employee Disability
541 Presumptions is created for the purpose of developing findings
542 and issuing recommendations on the disability presumptions in
543 ss. 112.18, 175.231, and 185.34, Florida Statutes.

544 (2) All members of the task force shall be appointed on or
545 before July 15, 2011, and the task force shall hold its first
546 meeting on or before August 15, 2011. The task force shall be
547 composed of nine members as follows:

548 (a) Three members appointed by the President of the
549 Senate, one of whom must be an attorney in private practice who
550 has experience in the relevant laws, one of whom must be a
551 representative of organized labor and a member of a pension plan
552 under chapter 175, Florida Statutes, and one of whom must be
553 from the Florida Association of Counties.

554 (b) Three members appointed by the Speaker of the House of
555 Representatives, one of whom must be an attorney in private
556 practice who has experience in the relevant laws, one of whom
557 must be a representative of organized labor and a member of a
558 pension plan under chapter 185, Florida Statutes, and one of
559 whom must be from the Florida League of Cities.

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560 (c) A member employed by the Office of the Auditor General
 561 who has experience in local government auditing and finances.

562 (d) A member employed by the Division of Retirement of the
 563 Department of Management Services who has experience in local
 564 government pension plans, appointed by the Governor.

565 (e) A member employed by the Department of Financial
 566 Services who has relevant expertise in state risk management,
 567 appointed by the Chief Financial Officer.

568 (3) The task force shall address issues, including, but
 569 not limited to:

570 (a) Data related to the operation of the statutory
 571 disability presumptions.

572 (b) The manner in which other states handle disability
 573 presumptions.

574 (c) Proposals for changes to the existing disability
 575 presumptions.

576 (4) The Department of Financial Services shall provide
 577 administrative support to the task force.

578 (5) Members of the task force shall serve without
 579 compensation, but are entitled to reimbursement for per diem and
 580 travel expenses in accordance with s. 112.061, Florida Statutes.

581 (6) The task force may obtain data, information, and
 582 assistance from any officer or state agency and any political
 583 subdivision thereof. All such officers, agencies, and political
 584 subdivisions shall provide the task force with all relevant
 585 information and assistance on any matter within their knowledge
 586 or control.

587 (7) The task force shall submit a report, including

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588 findings and recommendations, to the Governor, the Chief
589 Financial Officer, the President of the Senate, and the Speaker
590 of the House of Representatives by January 1, 2012. The report
591 must include specific recommendations for legislative action
592 during the 2012 Regular Session of the Legislature.

593 (8) The task force is dissolved upon submission of its
594 report.

595 Section 13. The Legislature finds that a proper and
596 legitimate state purpose is served when employees and retirees
597 of the state and its political subdivisions, and the dependents,
598 survivors, and beneficiaries of such employees and retirees, are
599 extended the basic protections afforded by governmental
600 retirement systems that provide fair and adequate benefits and
601 that are managed, administered, and funded in an actuarially
602 sound manner as required by s. 14, Art. X of the State
603 Constitution and part VII of chapter 112, Florida Statutes.
604 Therefore, the Legislature determines and declares that this act
605 fulfill an important state interest.

606 Section 14. This act shall take effect July 1, 2011.

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COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

1 Committee/Subcommittee hearing bill: State Affairs Committee
2 Representative(s) Patronis and Mayfield offered the following:

3
4 **Amendment (with title amendment)**

5 Remove everything after the enacting clause and insert:

6 Section 1. Subsection (3) of section 175.032, Florida
7 Statutes, is amended to read:

8 175.032 Definitions.—For any municipality, special fire
9 control district, chapter plan, local law municipality, local
10 law special fire control district, or local law plan under this
11 chapter, the following words and phrases have the following
12 meanings:

13 (3) "Compensation" or "salary" means, for noncollectively
14 bargained service earned before July 1, 2011, or for service
15 earned under collective bargaining agreements in place before
16 July 1, 2011, the fixed monthly remuneration paid a firefighter.
17 ~~If ; where, as in the case of a volunteer firefighter,~~
18 remuneration is based on actual services rendered, as in the
19 case of a volunteer firefighter, the term means the total cash

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20 remuneration received yearly for such services, prorated on a
21 monthly basis. For noncollectively bargained service earned on
22 or after July 1, 2011, or for service earned under collective
23 bargaining agreements entered into on or after July 1, 2011, the
24 term has the same meaning except that overtime compensation and
25 payments for unused sick or annual leave may be included for
26 purposes of calculating retirement benefits as specified in the
27 plan or collective bargaining agreement.

28 ~~(a) A retirement trust fund or plan may use a definition~~
29 ~~of salary other than the definition in this subsection but only~~
30 ~~if the monthly retirement income payable to each firefighter~~
31 ~~covered by the retirement trust fund or plan, as determined~~
32 ~~under s. 175.162(2) (a) and using such other definition, equals~~
33 ~~or exceeds the monthly retirement income that would be payable~~
34 ~~to each firefighter if his or her monthly retirement income were~~
35 ~~determined under s. 175.162(2) (a) and using the definition in~~
36 ~~this subsection.~~

37 ~~(a)(b)~~ Any retirement trust fund or plan that ~~which now or~~
38 ~~hereafter~~ meets the requirements of this chapter does shall not,
39 solely by virtue of this subsection, reduce or diminish the
40 monthly retirement income otherwise payable to each firefighter
41 covered by the retirement trust fund or plan.

42 ~~(b)(c)~~ The member's compensation or salary contributed as
43 employee-elective salary reductions or deferrals to any salary
44 reduction, deferred compensation, or tax-sheltered annuity
45 program authorized under the Internal Revenue Code shall be
46 deemed to be the compensation or salary the member would receive
47 if he or she were not participating in such program and shall be

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48 treated as compensation for retirement purposes under this
49 chapter.

50 ~~(c)(d)~~ For any person who first becomes a member in any
51 plan year beginning on or after January 1, 1996, compensation
52 for that any plan year may shall not include any amounts in
53 excess of the Internal Revenue Code s. 401(a)(17) limitation,
54 ~~(as amended by the Omnibus Budget Reconciliation Act of 1993),~~
55 which limitation of \$150,000 shall be adjusted as required by
56 federal law for qualified government plans and shall be further
57 adjusted for changes in the cost of living in the manner
58 provided by Internal Revenue Code s. 401(a)(17)(B). For any
59 person who first became a member before ~~prior to~~ the first plan
60 year beginning on or after January 1, 1996, the limitation on
61 compensation may shall be not be less than the maximum
62 compensation amount that was allowed to be taken into account
63 under the plan as in effect on July 1, 1993, which limitation
64 shall be adjusted for changes in the cost of living since 1989
65 in the manner provided by Internal Revenue Code s.
66 401(a)(17)(1991).

67 Section 2. Paragraph (b) of subsection (1) of section
68 175.061, Florida Statutes, is amended, subsections (4), (5),
69 (6), and (7) of that section are renumbered as subsections (5),
70 (6), (7), and (8), respectively, and a new subsection (4) is
71 added to that section, to read:

72 175.061 Board of trustees; members; terms of office;
73 meetings; legal entity; costs; attorney's fees.—For any
74 municipality, special fire control district, chapter plan, local

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75 law municipality, local law special fire control district, or
76 local law plan under this chapter:

77 (1) In each municipality and in each special fire control
78 district there is hereby created a board of trustees of the
79 firefighters' pension trust fund, which shall be solely
80 responsible for administering the trust fund. Effective October
81 1, 1986, and thereafter:

82 (b) The membership of boards of trustees for local law
83 plans is ~~shall be~~ as follows:

84 1. If a municipality or special fire control district has
85 a pension plan for firefighters only, the provisions of
86 paragraph (a) ~~shall~~ apply.

87 2. If a municipality has a pension plan for firefighters
88 and police officers, the provisions of paragraph (a) ~~shall~~
89 apply, except that one member of the board must ~~shall~~ be a
90 firefighter ~~as defined in s. 175.032~~ and one member of the board
91 must ~~shall~~ be a police officer as defined in s. 185.02,
92 respectively elected by a majority of the active firefighters or
93 police officers who are members of the plan.

94 3. A ~~Any~~ board of trustees operating a local law plan on
95 July 1, 1999, which is combined with a plan for general
96 employees shall hold an election of the firefighters, or
97 firefighters and police officers, if included, to determine
98 whether a plan is to be established for firefighters only, or
99 for firefighters and police officers where included. Based on
100 the election results, a new board shall be established as
101 provided in subparagraph 1. or subparagraph 2., as appropriate.
102 The municipality or fire control district shall enact an

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103 ordinance or resolution to implement the new board by October 1,
104 1999. The newly established board shall take whatever action is
105 necessary to determine the amount of assets ~~which is~~
106 attributable to firefighters, or firefighters and police
107 officers where included. Such assets ~~shall~~ include all employer,
108 employee, and state contributions made by or on behalf of
109 firefighters, or firefighters and police officers where
110 included, and any investment income derived from such
111 contributions. All such moneys shall be transferred into the
112 newly established retirement plan, as directed by the board.
113

114 With respect to a any board of trustees operating a local law
115 plan on June 30, 1986, ~~nothing in this paragraph does not shall~~
116 permit the reduction of the membership percentage of
117 firefighters, or of firefighters and police officers where a
118 joint or mixed fund exists. However, for the purpose of changing
119 municipal representation only, a municipality may, by ordinance,
120 change the municipal representation on the board of trustees
121 operating a local law plan by ordinance, only if such change
122 does not reduce the membership percentage of firefighters, or
123 firefighters and police officers, or the membership percentage
124 of the municipal representation.

125 (4) The board of trustees shall:

126 (a) Provide a detailed accounting report of its expenses
127 for each fiscal year to the plan sponsor and the Department of
128 Management Services and make the report available to every
129 member of the plan. The report must include, but need not be
130 limited to, all administrative expenses which, for purposes of

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131 this subsection, are all expenses relating to any legal counsel,
132 actuary, plan administrator, and all other consultants, and all
133 travel and other expenses paid to or on behalf of the members of
134 the board of trustees or anyone else on behalf of the plan.

135 (b) Operate under an administrative expense budget for
136 each fiscal year, and provide a copy of the budget to the plan
137 sponsor and make available a copy of the budget to plan members,
138 prior to the beginning of the fiscal year. The administrative
139 expense budget must regulate the administrative expenses of the
140 board of trustees. If the board of trustees amends the
141 administrative expense budget, the board must provide a copy of
142 the amended budget to the plan sponsor and make available a copy
143 of the amended budget to plan members prior to the amendment
144 taking effect.

145 Section 3. Subsection (7) of section 175.071, Florida
146 Statutes, is amended to read:

147 175.071 General powers and duties of board of trustees.—
148 For any municipality, special fire control district, chapter
149 plan, local law municipality, local law special fire control
150 district, or local law plan under this chapter:

151 (7) To assist the board in meeting its responsibilities
152 under this chapter, the board, if it so elects, and subject to
153 s. 175.061(4), may:

154 (a) Employ independent legal counsel at the pension fund's
155 expense.

156 (b) Employ an independent actuary, as defined in s.
157 175.032(7), at the pension fund's expense.

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158 (c) Employ such independent professional, technical, or
159 other advisers as it deems necessary at the pension fund's
160 expense.

161

162 If the board chooses to use the municipality's or special
163 district's legal counsel or actuary, or chooses to use any of
164 the municipality's or special district's other professional,
165 technical, or other advisers, it must do so only under terms and
166 conditions acceptable to the board.

167 Section 4. Paragraph (b) of subsection (2) of section
168 175.091, Florida Statutes, is amended to read:

169 175.091 Creation and maintenance of fund.—For any
170 municipality, special fire control district, chapter plan, local
171 law municipality, local law special fire control district, or
172 local law plan under this chapter:

173 (2) Member contribution rates may be adjusted as follows:

174 (b) Firefighter member contributions may be increased by
175 consent of the members' collective bargaining representative or,
176 if none, by majority consent of firefighter members of the fund.
177 ~~to provide greater benefits.~~

178

179 Nothing in this section shall be construed to require adjustment
180 of member contribution rates in effect on the date this act
181 becomes a law, including rates that exceed 5 percent of salary,
182 provided that such rates are at least one-half of 1 percent of
183 salary.

184 Section 5. Section 175.351, Florida Statutes, is amended
185 to read:

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186 175.351 Municipalities and special fire control districts
187 having their own pension plans for firefighters.—For any
188 municipality, special fire control district, local law
189 municipality, local law special fire control district, or local
190 law plan under this chapter, in order for municipalities and
191 special fire control districts with their own pension plans for
192 firefighters, or for firefighters and police officers, where
193 included, to participate in the distribution of the tax fund
194 established pursuant to s. 175.101, local law plans must meet
195 the minimum benefits and minimum standards set forth in this
196 chapter.

197 (1) Notwithstanding any other provision, retirement
198 benefits provided pursuant to this chapter and the use of the
199 income from the premium tax in s. 175.101 must be determined and
200 implemented in accordance with the collective bargaining
201 process, and where collective bargaining is not applicable, in
202 accordance with the pension plan, except as provided in
203 subsection (2). ~~PREMIUM TAX INCOME.—If a municipality has a~~
204 ~~pension plan for firefighters, or a pension plan for~~
205 ~~firefighters and police officers, where included, which in the~~
206 ~~opinion of the division meets the minimum benefits and minimum~~
207 ~~standards set forth in this chapter, the board of trustees of~~
208 ~~the pension plan, as approved by a majority of firefighters of~~
209 ~~the municipality, may:~~

210 ~~(a) Place the income from the premium tax in s. 175.101 in~~
211 ~~such pension plan for the sole and exclusive use of its~~
212 ~~firefighters, or for firefighters and police officers, where~~
213 ~~included, where it shall become an integral part of that pension~~

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214 ~~plan and shall be used to pay extra benefits to the firefighters~~
215 ~~included in that pension plan; or~~

216 ~~(b) Place the income from the premium tax in s. 175.101 in~~
217 ~~a separate supplemental plan to pay extra benefits to~~
218 ~~firefighters, or to firefighters and police officers where~~
219 ~~included, participating in such separate supplemental plan.~~

220
221 ~~The premium tax provided by this chapter shall be used in its~~
222 ~~entirety to provide extra benefits to firefighters, or to~~
223 ~~firefighters and police officers, where included.~~

224 ~~(2) For However,~~ local law plans in effect on October 1,
225 1998, that do not shall be required to comply with the minimum
226 benefit provisions of this chapter, as only to the extent that
227 additional premium tax revenues become available, such revenues
228 shall be used to incrementally fund the cost of such compliance
229 as provided in s. 175.162(2)(a). "Additional premium tax
230 revenues" means revenues received by a municipality or special
231 fire control district pursuant to s. 175.121 which exceed that
232 amount received for calendar year 1997. Once a plan is in
233 compliance with the minimum benefit provisions of this chapter,
234 the provisions of subsection (1) shall apply. ~~When a plan is in~~
235 ~~compliance with such minimum benefit provisions, as subsequent~~
236 ~~additional premium tax revenues become available, they shall be~~
237 ~~used to provide extra benefits. For the purpose of this chapter,~~
238 ~~"additional premium tax revenues" means revenues received by a~~
239 ~~municipality or special fire control district pursuant to s.~~
240 ~~175.121 which exceed that amount received for calendar year~~
241 ~~1997, and the term "extra benefits" means benefits in addition~~

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242 ~~to or greater than those provided to general employees of the~~
243 ~~municipality and in addition to those in existence for~~
244 ~~firefighters on March 12, 1999.~~

245 (3) Local law plans created by special act before May 27
246 23, 1939, shall be deemed to comply with this chapter.

247 (4) ~~(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~
248 ~~retirement plan or amendment to a retirement plan may not shall~~
249 ~~be proposed for adoption unless the proposed plan or amendment~~
250 ~~contains an actuarial estimate of the costs involved. The No~~
251 ~~such proposed plan or proposed plan change may not shall be~~
252 ~~adopted without the approval of the municipality, special fire~~
253 ~~control district, or, where permitted, the Legislature. Copies~~
254 ~~of the proposed plan or proposed plan change and the actuarial~~
255 ~~impact statement of the proposed plan or proposed plan change~~
256 ~~shall be furnished to the division before ~~prior to~~ the last~~
257 ~~public hearing thereon. Such statement must ~~shall~~ also indicate~~
258 ~~whether the proposed plan or proposed plan change is in~~
259 ~~compliance with s. 14, Art. X of the State Constitution and~~
260 ~~those provisions of part VII of chapter 112 which are not~~
261 ~~expressly provided in this chapter. Notwithstanding any other~~
262 ~~provision, only those local law plans created by special act of~~
263 ~~legislation before ~~prior to~~ May 27 23, 1939, are ~~shall be~~ deemed~~
264 ~~to meet the minimum benefits and minimum standards only in this~~
265 ~~chapter.~~

266 (5) ~~(3)~~ Notwithstanding any other provision, with respect
267 to any supplemental plan municipality:

268 (a) Section 175.032(3)(a) does ~~shall~~ not apply, and a
269 local law plan and a supplemental plan may continue to use their

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270 definition of compensation or salary in existence on March 12,
271 1999 ~~the effective date of this act.~~

272 (b) Section 175.061(1)(b) does ~~shall~~ not apply, and a
273 local law plan and a supplemental plan shall continue to be
274 administered by a board or boards of trustees numbered,
275 constituted, and selected as the board or boards were numbered,
276 constituted, and selected on December 1, 2000.

277 (c) The election set forth in paragraph (1)(b) is ~~shall be~~
278 deemed to have been made.

279 (d) The annual amount of premium tax revenues allocated to
280 the supplemental plan shall be determined through collective
281 bargaining, where applicable, and by the plan sponsor where
282 collective bargaining does not apply, provided the annual amount
283 of premium tax revenues allocated to the supplemental plan is
284 not less than the amount received for calendar year 1997, plus
285 50 percent of the additional premium tax revenues.

286 ~~(6)(4)~~ The retirement plan setting forth the benefits and
287 the trust agreement, if any, covering the duties and
288 responsibilities of the trustees and the regulations of the
289 investment of funds must be in writing, and copies ~~thereof must~~
290 ~~be~~ made available to the participants and to the general public.

291 Section 6. Subsection (4) of section 185.02, Florida
292 Statutes, is amended to read:

293 185.02 Definitions.—For any municipality, chapter plan,
294 local law municipality, or local law plan under this chapter,
295 the following words and phrases as used in this chapter shall
296 have the following meanings, unless a different meaning is
297 plainly required by the context:

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298 (4) "Compensation" or "salary" means, for noncollectively
299 bargained service earned before July 1, 2011, or for service
300 earned under collective bargaining agreements in place before
301 July 1, 2011, the total cash remuneration including "overtime"
302 paid by the primary employer to a police officer for services
303 rendered, but not including any payments for extra duty or a
304 special detail work performed on behalf of a second party
305 employer. ~~However,~~ A local law plan may limit the amount of
306 overtime payments which can be used for retirement benefit
307 calculation purposes; however, but in no event shall such
308 overtime limit may not be less than 300 hours per officer per
309 calendar year. For noncollectively bargained service earned on
310 or after July 1, 2011, or for service earned under collective
311 bargaining agreements entered into on or after July 1, 2011, the
312 term has the same meaning except that overtime compensation and
313 payments for unused sick or annual leave may be included for
314 purposes of calculating retirement benefits as specified in the
315 plan or collective bargaining agreement.

316 (a) Any retirement trust fund or plan that ~~which now or~~
317 ~~hereafter~~ meets the requirements of this chapter does shall not,
318 solely by virtue of this subsection, reduce or diminish the
319 monthly retirement income otherwise payable to each police
320 officer covered by the retirement trust fund or plan.

321 (b) The member's compensation or salary contributed as
322 employee-elective salary reductions or deferrals to any salary
323 reduction, deferred compensation, or tax-sheltered annuity
324 program authorized under the Internal Revenue Code shall be
325 deemed to be the compensation or salary the member would receive

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326 if he or she were not participating in such program and shall be
327 treated as compensation for retirement purposes under this
328 chapter.

329 (c) For any person who first becomes a member in any plan
330 year beginning on or after January 1, 1996, compensation for
331 that any plan year may shall not include any amounts in excess
332 of the Internal Revenue Code s. 401(a)(17) limitation, ~~(as~~
333 ~~amended by the Omnibus Budget Reconciliation Act of 1993),~~ which
334 limitation of \$150,000 shall be adjusted as required by federal
335 law for qualified government plans and shall be further adjusted
336 for changes in the cost of living in the manner provided by
337 Internal Revenue Code s. 401(a)(17)(B). For any person who first
338 became a member before ~~prior to~~ the first plan year beginning on
339 or after January 1, 1996, the limitation on compensation may
340 ~~shall be~~ not be less than the maximum compensation amount that
341 was allowed to be taken into account under the plan as in effect
342 on July 1, 1993, which limitation shall be adjusted for changes
343 in the cost of living since 1989 in the manner provided by
344 Internal Revenue Code s. 401(a)(17)(1991).

345 Section 7. Paragraph (b) of subsection (1) of section
346 185.05, Florida Statutes, subsections (4), (5), (6), and (7) of
347 that section, are renumbered as subsections (5), (6), (7), and
348 (8), respectively, and a new subsection (4) is added to that
349 section, to read:

350 185.05 Board of trustees; members; terms of office;
351 meetings; legal entity; costs; attorney's fees.—For any
352 municipality, chapter plan, local law municipality, or local law
353 plan under this chapter:

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354 (1) In each municipality described in s. 185.03 there is
355 hereby created a board of trustees of the municipal police
356 officers' retirement trust fund, which shall be solely
357 responsible for administering the trust fund. Effective October
358 1, 1986, and thereafter:

359 (b) The membership of boards of trustees for local law
360 plans is ~~shall be~~ as follows:

361 1. If a municipality has a pension plan for police officers
362 only, the provisions of paragraph (a) ~~shall~~ apply.

363 2. If a municipality has a pension plan for police officers
364 and firefighters, the provisions of paragraph (a) ~~shall~~ apply,
365 except that one member of the board shall be a police officer ~~as~~
366 ~~defined in s. 185.02~~ and one member shall be a firefighter as
367 defined in s. 175.032, respectively, elected by a majority of
368 the active firefighters and police officers who are members of
369 the plan.

370 3. Any board of trustees operating a local law plan on July
371 1, 1999, which is combined with a plan for general employees
372 shall hold an election of the police officers, or police
373 officers and firefighters if included, to determine whether a
374 plan is to be established for police officers only, or for
375 police officers and firefighters where included. Based on the
376 election results, a new board shall be established as provided
377 in subparagraph 1. or subparagraph 2., as appropriate. The
378 municipality shall enact an ordinance to implement the new board
379 by October 1, 1999. The newly established board shall take
380 whatever action is necessary to determine the amount of assets
381 which is attributable to police officers, or police officers and

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382 firefighters where included. Such assets shall include all
383 employer, employee, and state contributions made by or on behalf
384 of police officers, or police officers and firefighters where
385 included, and any investment income derived from such
386 contributions. All such moneys shall be transferred into the
387 newly established retirement plan, as directed by the board.
388 With respect to any board of trustees operating a local law plan
389 on June 30, 1986, ~~nothing in~~ this paragraph does not shall
390 permit the reduction of the membership percentage of police
391 officers or police officers and firefighters. However, for the
392 purpose of changing municipal representation only, a
393 municipality may, by ordinance, change the municipal
394 representation on the board of trustees operating a local law
395 plan by ordinance, only if such change does not reduce the
396 membership percentage of police officers, or police officers and
397 firefighters, or the membership percentage of the municipal
398 representation.

399 (4) The board of trustees shall:

400 (a) Provide a detailed accounting report of its expenses
401 for each fiscal year to the plan sponsor and the Department of
402 Management Services and make the report available to every
403 member of the plan. The report must include, but need not be
404 limited to, all administrative expenses which, for purposes of
405 this subsection, are all expenses relating to any legal counsel,
406 actuary, plan administrator, and all other consultants, and all
407 travel and other expenses paid to or on behalf of the members of
408 the board of trustees or anyone else on behalf of the plan.

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409 (b) Operate under an administrative expense budget for
410 each fiscal year, and provide a copy of the budget to the plan
411 sponsor and make available a copy of the budget to plan members,
412 prior to the beginning of the fiscal year. The administrative
413 expense budget must regulate the administrative expenses of the
414 board of trustees. If the board of trustees amends the
415 administrative expense budget, the board must provide a copy of
416 the amended budget to the plan sponsor and make available a copy
417 of the amended budget to plan members prior to the amendment
418 taking effect.

419 Section 8. Subsection (6) of section 185.06, Florida
420 Statutes, is amended to read:

421 185.06 General powers and duties of board of trustees.—For
422 any municipality, chapter plan, local law municipality, or local
423 law plan under this chapter:

424 (6) To assist the board in meeting its responsibilities
425 under this chapter, the board, if it so elects, and subject to
426 s. 185.05(4), may:

427 (a) Employ independent legal counsel at the pension fund's
428 expense.

429 (b) Employ an independent actuary, as defined in s.
430 185.02(8), at the pension fund's expense.

431 (c) Employ such independent professional, technical, or
432 other advisers as it deems necessary at the pension fund's
433 expense.

434

435 If the board chooses to use the municipality's or special
436 district's legal counsel or actuary, or chooses to use any of

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437 the municipality's other professional, technical, or other
438 advisers, it must do so only under terms and conditions
439 acceptable to the board.

440 Section 9. Paragraph (b) of subsection (2) of section
441 185.07, Florida Statutes, is amended to read:

442 185.07 Creation and maintenance of fund.—For any
443 municipality, chapter plan, local law municipality, or local law
444 plan under this chapter:

445 (2) Member contribution rates may be adjusted as follows:

446 (b) Police officer member contributions may be increased
447 by consent of the members' collective bargaining representative
448 or, if none, by majority consent of police officer members of
449 the fund ~~to provide greater benefits.~~

450

451 Nothing in this section shall be construed to require adjustment
452 of member contribution rates in effect on the date this act
453 becomes a law, including rates that exceed 5 percent of salary,
454 provided that such rates are at least one-half of 1 percent of
455 salary.

456 Section 10. Section 185.35, Florida Statutes, is amended
457 to read:

458 185.35 Municipalities having their own pension plans for
459 police officers.—For any municipality, chapter plan, local law
460 municipality, or local law plan under this chapter, in order for
461 municipalities with their own pension plans for police officers,
462 or for police officers and firefighters where included, to
463 participate in the distribution of the tax fund established

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464 pursuant to s. 185.08, local law plans must meet the minimum
465 benefits and minimum standards set forth in this chapter.†

466 (1) Notwithstanding any other provision, retirement
467 benefits provided pursuant to this chapter and the use of the
468 income from the premium tax in s. 185.08 must be determined and
469 implemented in accordance with the collective bargaining
470 process, and where collective bargaining is not applicable, in
471 accordance with the pension plan, except as provided in
472 subsection (2). ~~PREMIUM TAX INCOME. If a municipality has a~~
473 ~~pension plan for police officers, or for police officers and~~
474 ~~firefighters where included, which, in the opinion of the~~
475 ~~division, meets the minimum benefits and minimum standards set~~
476 ~~forth in this chapter, the board of trustees of the pension~~
477 ~~plan, as approved by a majority of police officers of the~~
478 ~~municipality, may:~~

479 ~~(a) Place the income from the premium tax in s. 185.08 in~~
480 ~~such pension plan for the sole and exclusive use of its police~~
481 ~~officers, or its police officers and firefighters where~~
482 ~~included, where it shall become an integral part of that pension~~
483 ~~plan and shall be used to pay extra benefits to the police~~
484 ~~officers included in that pension plan; or~~

485 ~~(b) May place the income from the premium tax in s. 185.08~~
486 ~~in a separate supplemental plan to pay extra benefits to the~~
487 ~~police officers, or police officers and firefighters where~~
488 ~~included, participating in such separate supplemental plan.~~

489
490 ~~The premium tax provided by this chapter shall in all cases be~~
491 ~~used in its entirety to provide extra benefits to police~~

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492 ~~officers, or to police officers and firefighters, where~~
493 ~~included.~~

494 (2) For ~~However,~~ local law plans in effect on October 1,
495 1998, that do not ~~shall be required to~~ comply with the minimum
496 benefit provisions of this chapter, as only to the extent that
497 additional premium tax revenues become available, such revenues
498 shall be used to incrementally fund the cost of such compliance
499 as provided in s. 185.16(2). "Additional premium tax revenues"
500 means revenues received by a municipality pursuant to s. 185.10
501 which exceed that amount received for calendar year 1997. Once a
502 plan is in compliance with the minimum benefit provisions of
503 this chapter, the provisions of subsection (1) shall apply. When
504 ~~a plan is in compliance with such minimum benefit provisions, as~~
505 ~~subsequent additional tax revenues become available, they shall~~
506 ~~be used to provide extra benefits. For the purpose of this~~
507 ~~chapter, "additional premium tax revenues" means revenues~~
508 ~~received by a municipality pursuant to s. 185.10 which exceed~~
509 ~~the amount received for calendar year 1997, and the term "extra~~
510 ~~benefits" means benefits in addition to or greater than those~~
511 ~~provided to general employees of the municipality and in~~
512 ~~addition to those in existence for police officers on March 12,~~
513 ~~1999.~~

514 (3) Local law plans created by special act before May 27
515 23, 1939, shall be deemed to comply with this chapter.

516 ~~(4)-(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~
517 ~~retirement plan or amendment to a retirement plan may not shall~~
518 ~~be proposed for adoption unless the proposed plan or amendment~~
519 ~~contains an actuarial estimate of the costs involved. The No~~

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520 ~~such~~ proposed plan or proposed plan change may not ~~shall~~ be
521 adopted without the approval of the municipality or, where
522 permitted, the Legislature. Copies of the proposed plan or
523 proposed plan change and the actuarial impact statement of the
524 proposed plan or proposed plan change shall be furnished to the
525 division before ~~prior to~~ the last public hearing thereon. Such
526 statement must ~~shall~~ also indicate whether the proposed plan or
527 proposed plan change is in compliance with s. 14, Art. X of the
528 State Constitution and those provisions of part VII of chapter
529 112 which are not expressly provided in this chapter.
530 Notwithstanding any other provision, only those local law plans
531 created by special act of legislation before ~~prior to~~ May 27 ~~23~~,
532 1939, are ~~shall be~~ deemed to meet the minimum benefits and
533 minimum standards only in this chapter.

534 ~~(5)-(3)~~ Notwithstanding any other provision, with respect
535 to any supplemental plan municipality:

536 (a) Section 185.02(4)(a) does ~~shall~~ not apply, and a local
537 law plan and a supplemental plan may continue to use their
538 definition of compensation or salary in existence on March 12,
539 1999 ~~the effective date of this act.~~

540 (b) Section 185.05(1)(b) does ~~shall~~ not apply, and a local
541 law plan and a supplemental plan shall continue to be
542 administered by a board or boards of trustees numbered,
543 constituted, and selected as the board or boards were numbered,
544 constituted, and selected on December 1, 2000.

545 (c) The election set forth in paragraph (1)(b) is ~~shall be~~
546 deemed to have been made.

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547 (d) The annual amount of premium tax revenues allocated to
548 the supplemental plan shall be determined through collective
549 bargaining, where applicable, and by the plan sponsor where
550 collective bargaining does not apply, provided the annual amount
551 of premium tax revenues allocated to the supplemental plan is
552 not less than the amount received for calendar year 1997, plus
553 50 percent of the additional premium tax revenues.

554 (6)(4) The retirement plan setting forth the benefits and
555 the trust agreement, if any, covering the duties and
556 responsibilities of the trustees and the regulations of the
557 investment of funds must be in writing and copies made available
558 to the participants and to the general public.

559 Section 11. Task Force on Public Employee Disability
560 Presumptions.—

561 (1) The Task Force on Public Employee Disability
562 Presumptions is created for the purpose of developing findings
563 and issuing recommendations on the disability presumptions in
564 ss. 112.18, 175.231, and 185.34, Florida Statutes.

565 (2) All members of the task force shall be appointed on or
566 before July 15, 2011, and the task force shall hold its first
567 meeting on or before August 15, 2011. The task force shall be
568 composed of eight members as follows:

569 (a) Three members appointed by the President of the
570 Senate, one of whom must be an attorney who primarily represents
571 plaintiffs and who has experience in the relevant laws, one of
572 whom must be a representative of organized labor and a member of
573 a pension plan under chapter 175, Florida Statutes, and one of
574 whom must be from the Florida Association of Counties.

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575 (b) Three members appointed by the Speaker of the House of
576 Representatives, one of whom must be an attorney who primarily
577 represents defendants and who has experience in the relevant
578 laws, one of whom must be a representative of organized labor
579 and a member of a pension plan under chapter 185, Florida
580 Statutes, and one of whom must be from the Florida League of
581 Cities.

582 (c) A member employed by the Division of Retirement of the
583 Department of Management Services who has experience in local
584 government pension plans, appointed by the Governor.

585 (d) A member employed by the Department of Financial
586 Services who has relevant expertise in state risk management,
587 appointed by the Chief Financial Officer.

588 (3) The task force shall address issues, including, but
589 not limited to:

590 (a) Data related to the operation of the statutory
591 disability presumptions, and the fiscal impact on public
592 employers in the areas of pensions and workers' compensation.

593 (b) The manner in which other states handle disability
594 presumptions, and the fiscal impact on those public employers.

595 (c) Proposals for changes to the existing disability
596 presumptions.

597 (d) Evidentiary standards and burdens of proof necessary
598 to overcome statutory disability presumptions, and whether
599 consideration of risk factors and epidemiological data relating
600 to non work-related conditions, such as blood cholesterol, body
601 mass index, history of tobacco and alcohol use, and other
602 medical conditions or behaviors unique to the individual

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603 employee that are associated with the diseases or conditions
604 listed in disability presumptions, are appropriate to consider.

605 (4) The Department of Financial Services shall provide
606 administrative support to the task force.

607 (5) Members of the task force shall serve without
608 compensation, but are entitled to reimbursement for per diem and
609 travel expenses in accordance with s. 112.061, Florida Statutes.

610 (6) The task force may obtain data, information, and
611 assistance from any officer or state agency and any political
612 subdivision thereof. All such officers, agencies, and political
613 subdivisions shall provide the task force with all relevant
614 information and assistance on any matter within their knowledge
615 or control.

616 (7) The task force shall submit a report, including
617 findings and recommendations, to the Governor, the Chief
618 Financial Officer, the President of the Senate, and the Speaker
619 of the House of Representatives by January 1, 2012. The report
620 must include specific recommendations for legislative action
621 during the 2012 Regular Session of the Legislature.

622 (8) The task force is dissolved upon submission of its
623 report.

624 Section 12. The Legislature finds that a proper and
625 legitimate state purpose is served when employees and retirees
626 of the state and its political subdivisions, and the dependents,
627 survivors, and beneficiaries of such employees and retirees, are
628 extended the basic protections afforded by governmental
629 retirement systems that provide fair and adequate benefits and
630 that are managed, administered, and funded in an actuarially

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631 sound manner as required by s. 14, Art. X of the State
632 Constitution and part VII of chapter 112, Florida Statutes.
633 Therefore, the Legislature determines and declares that this act
634 fulfill an important state interest.

635 Section 13. This act shall take effect July 1, 2011.

636

637

638

639

T I T L E A M E N D M E N T

640

Remove the entire title and insert:

641

A bill to be entitled

642

643

An act relating to public retirement plans; amending s. 175.032,

644

F.S.; revising the definition of the term "compensation" or

645

"salary" for purposes of firefighters' pensions; amending s.

646

175.061, F.S.; authorizing a municipality to change the

647

municipal representation of the board of trustees provided

648

certain requirements are met; providing duties of the board of

649

trustees relating to the reporting of expenses and operating

650

under an administrative expense budget; amending s. 175.071,

651

F.S.; revising requirements of the board relating to the

652

employment of legal counsel, actuaries, and other advisers;

653

amending s. 175.091, F.S.; removing an adjustment requirement

654

for member contribution rates to a retirement plan for

655

firefighters; amending s. 175.351, F.S.; revising provisions

656

relating to benefits paid from the premium tax by a municipality

657

or special fire control district that has its own pension plan;

658

providing definitions; providing a process for determining the

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659 allocation of the premium tax revenues to a supplemental plan;
660 amending s. 185.02, F.S.; revising the definition of the term
661 "compensation" or "salary" for purposes of police officers'
662 pensions; amending s. 185.05, F.S.; authorizing a municipality
663 to change the municipal representation of the board of trustees
664 provided certain requirements are met; providing duties of the
665 board of trustees relating to the reporting of expenses and
666 operating under an administrative expense budget; amending s.
667 185.06, F.S.; revising requirements of the board relating to the
668 employment of legal counsel, actuaries, and other advisers;
669 amending s. 185.07, F.S.; removing an adjustment requirement for
670 member contribution rates to a retirement plan for police
671 officers; amending s. 185.35, F.S.; revising provisions relating
672 to benefits paid by a municipality that has its own pension
673 plan; providing definitions; providing a process for determining
674 the allocation of the premium tax revenues to a supplemental
675 plan; creating the Task Force on Public Employee Disability
676 Presumptions; providing for appointment and membership;
677 specifying the issues for the task force to address; providing
678 for a report to be submitted to the Governor, Chief Financial
679 Officer, and Legislature by a certain date; providing for future
680 expiration; providing a declaration of important state interest;
681 providing an effective date.