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## **Government Operations Subcommittee**

**Friday, April 8, 2011  
2:15 PM  
Morris Hall (17 HOB)**

# **Meeting Packet**

# **REVISED**

**Dean Cannon  
Speaker**

**Jimmy Patronis  
Chair**

**Committee Meeting Notice**  
**HOUSE OF REPRESENTATIVES**

**Government Operations Subcommittee**

**Start Date and Time:** Friday, April 08, 2011 02:15 pm  
**End Date and Time:** Friday, April 08, 2011 05:15 pm  
**Location:** Morris Hall (17 HOB)  
**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 441 Scrutinized Companies by Bernard

**Consideration of the following proposed committee bill(s):**

PCB GVOPS 11-17 -- Public Retirement Plans

**NOTICE FINALIZED on 04/06/2011 16:24 by Godwin.Chandra**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 441 Scrutinized Companies  
**SPONSOR(S):** Bernard and others  
**TIED BILLS:** IDEN./SIM. BILLS: SB 444

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee		McDonald	Williamson
2) Civil Justice Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

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 also does the following:

- 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,<sup>1</sup> the Arms Export Control Act,<sup>2</sup> and the Foreign Assistance Act.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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

##### 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.

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<sup>1</sup> Section 6(j), U.S. Export Administration Act.

<sup>2</sup> Section 40, U.S. Arms Export Control Act.

<sup>3</sup> Section 620A, U.S. Foreign Assistance Act.

<sup>4</sup> 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.

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

<sup>6</sup> *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.<sup>7</sup>

### The Voice Act<sup>8</sup>

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.<sup>9</sup>

#### State Agency Procurement of Commodities and Services

The process for the procurement of commodities and contractual services by state agencies<sup>10</sup> provides requirements for fair and open competition among vendors, agency maintenance of written documentation that supports procurement decisions, and implementation of monitoring mechanisms.<sup>11</sup>

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<sup>7</sup> Congressional Research Service Report RS20871, *Iran Sanctions*, February 2, 2010.

<sup>8</sup> P.L. 111-84, October 28, 2009.

<sup>9</sup> See s. 288.855, F.S.

<sup>10</sup> 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."

<sup>11</sup> 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.<sup>12</sup>

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,<sup>13</sup> creating uniform agency procurement rules,<sup>14</sup> implementing the online procurement program,<sup>15</sup> and establishing state term contracts.<sup>16</sup> 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 Companies<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup>

#### *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.<sup>21</sup>

### **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

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<sup>12</sup> Section 287.001, F.S.

<sup>13</sup> See ss. 287.032 and 287.042, F.S.

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

<sup>15</sup> See s. 287.057(23), F.S.

<sup>16</sup> See ss. 287.042(2), 287.056, and 287.1345, F.S.

<sup>17</sup> Section 215.473, F.S.

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

<sup>19</sup> See s. 215.473(1)(t), F.S.

<sup>20</sup> Section 215.473(1)(t)1.-3., F.S.

<sup>21</sup> 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.<sup>22</sup>

The federal government has expressly given state and local governments authority to divest from companies directly invested in certain Sudanese or Iranian sectors.<sup>23</sup> 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"<sup>24</sup> and "local governmental entity,"<sup>25</sup> 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 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 operations<sup>26</sup> 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.
- 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 exemption, the office would be unable to obtain the goods or services for which the contract is offered.

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<sup>22</sup> 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).

<sup>23</sup> 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.

<sup>24</sup> "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.

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

<sup>26</sup> 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."



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 \$250,000 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:

Without Congressional authorization, it might be possible that this bill would be an unconstitutional preemption of federal authority. Congress, however, has authorized the 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:**

Drafting Issues

The provisions of chapter 287, F.S., currently apply only to state agencies. The new section relates to both state agencies and local governmental entities. By placement in chapter 287, F.S., it is not known how the local government contracting processes might be altered, or the responsibilities of the Department of Management Services with regard to those processes.

To prevent any potential impairment of contract concerns, agencies and local governmental entities should include a termination provision in contracts for goods and services of \$1 million or more if a determination of false certification is made.

On lines 74-80, the bill requires a company to certify that it is not a scrutinized business operation. Lines 85-87 imply that the company must demonstrate that it has "ceased its engagement in scrutinized business operations". The bill should require a company to certify and, if necessary, demonstrate that it is not on either scrutinized companies list.

On lines 81-85, the bill implies a requirement that the agency or local governmental entity provide a company that has submitted a false certification with a written notice, and 90 days for the company to provide a written response. However, no specified process is provided in the bill to accomplish this requirement.

On line 105, the bill states the civil penalty should be equal to the greater of \$250,000 or twice the amount of the contract. The language should read "250,000 or twice the amount of the contract".

On line 115, the bill refers to the date the false certification is "made". Elsewhere in the bill, false certifications are submitted. To make the bill internally consistent, the terms need to be the same.

On lines 107-108, the bill requires the termination of an existing contract at the option of the awarding body; however, the bill does not specify if this refers to any contract the company might have with the awarding body or just the contract involving the "false swearing".

#### Comments by the Department of Management Services

According to the Department of Management Services in its analysis of HB 441:

The bill provides for certain processes that are not given specific direction in the statute, including a requirement that companies making a false certification be barred from bidding on state or local contracts for 3 years. It is not clear how this debarment is to take place and whether the vendor will have Chapter 120 rights based on an agency's determination. In addition, it is not clear how any debarment would be communicated to other state agencies.<sup>27</sup>

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

Not applicable.

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A bill to be entitled  
 An act relating to scrutinized companies; creating s.  
 287.135, F.S.; prohibiting a state agency or local  
 governmental entity from contracting for goods and  
 services of more than a certain amount with a company that  
 is on the Scrutinized Companies with Activities in Sudan  
 List or the Scrutinized Companies with Activities in the  
 Iran Petroleum Energy Sector List; providing exceptions;  
 providing for a civil action; providing penalties;  
 providing a statute of repose; prohibiting a private right  
 of action; requiring the Department of Management Services  
 to notify the Attorney General after the act becomes law;  
 providing that the act becomes inoperative if federal law  
 ceases to authorize states to enact such contracting  
 prohibitions; providing an effective date.

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

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

287.135 Prohibition against contracting with scrutinized  
 companies.-

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

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

CODING: Words stricken are deletions; words underlined are additions.

29 (b) "Local governmental entity" means a county,  
 30 municipality, special district, or other political subdivision  
 31 of the state.

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

40 (3) Notwithstanding subsection (2), an agency or local  
 41 governmental entity, on a case-by-case basis, may permit a  
 42 company on the Scrutinized Companies with Activities in Sudan  
 43 List or the Scrutinized Companies with Activities in the Iran  
 44 Petroleum Energy Sector List to be eligible for, bid on, submit  
 45 a proposal for, or enter into or renew a contract for goods or  
 46 services of \$1 million or more under either of the following  
 47 conditions:

48 (a) All of the following occur:

49 1. The scrutinized business operations were made before  
 50 July 1, 2010.

51 2. The scrutinized business operations have not been  
 52 expanded or renewed after July 1, 2010.

53 3. The agency or local governmental entity determines that  
 54 it is in the best interest of the state or local community to  
 55 contract with the company.

56 4. The company has adopted, has publicized, and is

57 implementing a formal plan to cease scrutinized business  
 58 operations and to refrain from engaging in any new scrutinized  
 59 business operations.

60 (b) One of the following occurs:

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

65 2. For a contract with an executive agency, the Governor  
 66 makes a public finding that, absent such an exemption, the  
 67 agency would be unable to obtain the goods or services for which  
 68 the contract is offered.

69 3. For a contract with an office of a state constitutional  
 70 officer other than the Governor, the state constitutional  
 71 officer makes a public finding that, absent such an exemption,  
 72 the office would be unable to obtain the goods or services for  
 73 which the contract is offered.

74 (4) An agency or a local governmental entity shall require  
 75 a company that submits a bid or proposal for, or that otherwise  
 76 proposes to enter into or renew, a contract with the agency or  
 77 governmental entity for goods or services of \$1 million or more  
 78 to certify, at the time the bid or proposal is submitted or  
 79 before the contract is executed or renewed, that the company is  
 80 not a scrutinized business operation under s. 215.473.

81 (a) If, after the agency or the local governmental entity  
 82 determines, using credible information available to the public,  
 83 that the company has submitted a false certification and has  
 84 provided the company with written notice and 90 days to respond

85 in writing to such determination, the company fails to  
 86 demonstrate that it has ceased its engagement in scrutinized  
 87 business operations, the following applies:

88 1. The awarding body shall report the company to the  
 89 Attorney General, together with information demonstrating the  
 90 false certification, and the Attorney General shall determine  
 91 whether to bring a civil action against the company. The  
 92 awarding body of a local governmental entity may also report the  
 93 company to the municipal attorney, county attorney, or district  
 94 attorney, together with information demonstrating the false  
 95 certification, and the municipal attorney, county attorney, or  
 96 district attorney may determine whether to bring a civil action  
 97 against the company. If a civil action is brought and the court  
 98 determines that the company submitted a false certification, the  
 99 company shall pay the penalty described in subparagraph 2. and  
 100 all reasonable attorney's fees and costs, including any costs  
 101 for investigations that led to the finding of false  
 102 certification. Only one civil action for false certification per  
 103 contract may be brought against a company.

104 2. Pursuant to subparagraph 1., a civil penalty equal to  
 105 the greater of \$250,000 or twice the amount of the contract for  
 106 which the false certification was submitted shall be imposed.

107 3. An existing contract with the company shall be  
 108 terminated at the option of the awarding body.

109 4. The company is ineligible to bid on any contract with  
 110 an agency or a local governmental entity for 3 years after the  
 111 date of determining that the company submitted a false  
 112 certification.

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

116           (5) Only the awarding body may cause a civil action to be  
 117 brought under this section. This section does not create or  
 118 authorize a private right of action or enforcement of the  
 119 penalties provided in this section. An unsuccessful bidder, or  
 120 any other person other than the awarding body, may not protest  
 121 the award of a contract or contract renewal on the basis of a  
 122 false certification.

123           (6) This section preempts any ordinance or rule of any  
 124 local governmental entity involving public contracts for goods  
 125 or services of \$1 million or more with a company engaged in  
 126 scrutinized business operations.

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

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



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 441 (2011)

Amendment No.

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: Government Operations  
2 Subcommittee

3 Representative Bernard offered the following:

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

6 Remove everything after the enacting clause and insert:  
7 Section 1. Section 287.135, Florida Statutes, is created  
8 to read:

9 287.135 Prohibition against contracting with scrutinized  
10 companies.-

11 (1) In addition to the terms defined in ss. 287.012 and  
12 215.473, as used in this section, the term:

13 (a) "Awarding body" means, for purposes of state  
14 contracts, an agency or the department, and for purposes of  
15 local contracts, the governing body of the local governmental  
16 entity.

17 (b) "Local governmental entity" means a county,  
18 municipality, special district, or other political subdivision  
19 of the state.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 441 (2011)

Amendment No.

20       (2) A company that, at the time of bidding or submitting a  
21 proposal for a new contract or renewal of an existing contract,  
22 is on the Scrutinized Companies with Activities in Sudan List or  
23 the Scrutinized Companies with Activities in the Iran Petroleum  
24 Energy Sector List, created pursuant to s. 215.473, is  
25 ineligible for, and may not bid on, submit a proposal for, or  
26 enter into or renew a contract with an agency or local  
27 governmental entity for goods or services of \$1 million or more.

28       (3) Any contract with an agency or local governmental  
29 entity for goods or services of \$1 million or more entered into  
30 or renewed on or after July 1, 2011, must contain a provision  
31 that allows for the termination of such contract at the option  
32 of the awarding body if the company is found to have submitted a  
33 false certification as provided under subsection (5) or been  
34 placed on the Scrutinized Companies with Activities in Sudan  
35 List or the Scrutinized Companies with Activities in the Iran  
36 Petroleum Energy Sector List.

37       (4) Notwithstanding subsection (2) or subsection (3), an  
38 agency or local governmental entity, on a case-by-case basis,  
39 may permit a company on the Scrutinized Companies with  
40 Activities in Sudan List or the Scrutinized Companies with  
41 Activities in the Iran Petroleum Energy Sector List to be  
42 eligible for, bid on, submit a proposal for, or enter into or  
43 renew a contract for goods or services of \$1 million or more  
44 under either of the following conditions:

45       (a) All of the following occur:

46       1. The scrutinized business operations were made before  
47 July 1, 2011.

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

50       3. The agency or local governmental entity determines that  
51 it is in the best interest of the state or local community to  
52 contract with the company.

53       4. The company has adopted, has publicized, and is  
54 implementing a formal plan to cease scrutinized business  
55 operations and to refrain from engaging in any new scrutinized  
56 business operations.

57       (b) One of the following occurs:

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

62       2. For a contract with an executive agency, the Governor  
63 makes a public finding that, absent such an exemption, the  
64 agency would be unable to obtain the goods or services for which  
65 the contract is offered.

66       3. For a contract with an office of a state constitutional  
67 officer other than the Governor, the state constitutional  
68 officer makes a public finding that, absent such an exemption,  
69 the office would be unable to obtain the goods or services for  
70 which the contract is offered.

71       (5) At the time a company submits a bid or proposal for a  
72 contract or before the company enters into or renews a contract  
73 with an agency or governmental entity for goods or services of  
74 \$1 million or more, the company must certify that the company is  
75 not on the Scrutinized Companies with Activities in Sudan List

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76 or the Scrutinized Companies with Activities in the Iran  
77 Petroleum Energy Sector List.

78 (a) If, after the agency or the local governmental entity  
79 determines, using credible information available to the public,  
80 that the company has submitted a false certification, the agency  
81 or local governmental entity shall provide the company with  
82 written notice of its determination. The company shall have 90  
83 days following receipt of the notice to respond in writing and  
84 to demonstrate that the determination of false certification was  
85 made in error. If the company does not make such demonstration  
86 within 90 days after receipt of the notice, the agency or the  
87 local governmental entity shall bring a civil action against the  
88 company. If a civil action is brought and the court determines  
89 that the company submitted a false certification, the company  
90 shall pay the penalty described in subparagraph 1. and all  
91 reasonable attorney's fees and costs, including any costs for  
92 investigations that led to the finding of false certification.

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

96 2. The company is ineligible to bid on any contract with  
97 an agency or local governmental entity for 3 years after the  
98 date the agency or local governmental entity determined that the  
99 company submitted a false certification.

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

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103       (6) Only the agency or local governmental entity that is a  
104 party to the contract may cause a civil action to be brought  
105 under this section. This section does not create or authorize a  
106 private right of action or enforcement of the penalties provided  
107 in this section. An unsuccessful bidder, or any other person  
108 other than the agency or local governmental entity, may not  
109 protest the award of a contract or contract renewal on the basis  
110 of a false certification.

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

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

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

122 -----  
123  
124                   **T I T L E   A M E N D M E N T**

125       Remove the entire title and insert:

126                   A bill to be entitled

127       An act relating to scrutinized companies; creating s.  
128       287.135, F.S.; providing definitions; prohibiting a state  
129       agency or local governmental entity from contracting for  
130       goods and services of more than a certain amount with a

COMMITTEE/SUBCOMMITTEE AMENDMENT

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131 | company that is on the Scrutinized Companies with  
132 | Activities in Sudan List or the Scrutinized Companies with  
133 | Activities in the Iran Petroleum Energy Sector List;  
134 | providing for a contract provision that allows for  
135 | termination of the contract if the company is found to  
136 | have been placed on such list; providing exceptions;  
137 | providing for a civil action; providing penalties;  
138 | providing a statute of repose; prohibiting a private right  
139 | of action; requiring the Department of Management Services  
140 | to notify the Attorney General after the act becomes law;  
141 | providing that the act becomes inoperative if federal law  
142 | ceases to authorize states to enact such contracting  
143 | prohibitions; providing an effective date.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB GVOPS 11-17 Public Retirement Plans  
**SPONSOR(S):** Government Operations Subcommittee  
**TIED BILLS:** IDEN./SIM. BILLS: SB 1128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Meadows	Williamson

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 government.



## 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.<sup>1</sup> 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 Acts<sup>2</sup> 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.<sup>3</sup>

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

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<sup>1</sup> Section 112.63, F.S.

<sup>2</sup> Chapters 175 and 185, F.S.

<sup>3</sup> See ss. 175.021(1) and 185.01(1), F.S.,

receipts of premiums from policyholders on all premiums collected on property insurance.<sup>4</sup> 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.<sup>5</sup> In 2009, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to \$91.94 million.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> In 2009, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$64.44 million.<sup>9</sup>

### Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.<sup>10</sup> These taxes must be paid to the Department of Revenue on March 1 of each year in an amount equal to 1.75 percent of the gross amount of receipts on the specified policies, and 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.<sup>11</sup> 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.<sup>12</sup> The membership of the board consists of five members: two residents, two police officers or firefighters selected through the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma, who are subject to two-year terms.<sup>13</sup>

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 premiums.<sup>14</sup> 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.<sup>15</sup>

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<sup>4</sup> Section 175.091(1)(a), F.S.

<sup>5</sup> Section 175.121, F.S.

<sup>6</sup> 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](https://www.rol.frs.state.fl.us/forms/Fire_2009.pdf) (last visited on April 4, 2011).

<sup>7</sup> Section 185.08, F.S.

<sup>8</sup> Section 185.10, F.S.

<sup>9</sup> Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: [https://www.rol.frs.state.fl.us/forms/Police\\_2009.pdf](https://www.rol.frs.state.fl.us/forms/Police_2009.pdf) (last visited on April 4, 2011).

<sup>10</sup> Section 624.509(1), F.S.

<sup>11</sup> Section 624.51055, F.S., ("There is allowed a credit of 100 percent of ... However, such credit may not exceed 75 percent of the tax due under s. 624.509(1) after deducting such tax deductions for ... credits for taxes paid under ss. 175.101 and 185.08 ...").

<sup>12</sup> See ss. 175.061 and 185.05, F.S.

<sup>13</sup> *Id.*

<sup>14</sup> See ss. 175.071 and 185.06, F.S.

<sup>15</sup> 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".

### 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.<sup>16</sup> The firefighters and police officers are required to submit to and successfully pass a physical examination.<sup>17</sup> This physical 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.

#### 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.

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 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 in the Department of Management Services (Division) 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;

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<sup>16</sup> Sections 175.231 and 185.34, F.S.

<sup>17</sup> *Id.*

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

#### 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 a 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 fiscal impact is unknown at this time.

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:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.

BILL

ORIGINAL

YEAR

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

BILL ORIGINAL YEAR

29 for assigning the ratings; requiring local pension boards  
 30 and local governments to cooperate in providing data for  
 31 the ratings; requiring the ratings to be posted on the  
 32 division's website; creating the Task Force on Public  
 33 Employee Disability Presumptions; providing for  
 34 appointment and membership; specifying the issues for the  
 35 task force to address; providing for a report to be  
 36 submitted to the Governor, Chief Financial Officer, and  
 37 Legislature by a certain date; providing for future  
 38 expiration; providing a declaration of important state  
 39 interest; providing an effective date.

40  
 41 Be It Enacted by the Legislature of the State of Florida:

42  
 43 Section 1. Subsection (3) of section 175.032, Florida  
 44 Statutes, is amended to read:

45 175.032 Definitions.—For any municipality, special fire  
 46 control district, chapter plan, local law municipality, local  
 47 law special fire control district, or local law plan under this  
 48 chapter, the following words and phrases have the following  
 49 meanings:

50 (3) "Compensation" or "salary" means, for noncollectively  
 51 bargained service earned before July 1, 2011, or for service  
 52 earned under collective bargaining agreements in place before  
 53 July 1, 2011, the fixed monthly remuneration paid a firefighter.  
 54 ~~If ; where, as in the case of a volunteer firefighter,~~  
 55 remuneration is based on actual services rendered, as in the  
 56 case of a volunteer firefighter, the term means the total cash



BILL

ORIGINAL

YEAR

57 remuneration received yearly for such services, prorated on a  
 58 monthly basis. For noncollectively bargained service earned on  
 59 or after July 1, 2011, or for service earned under collective  
 60 bargaining agreements entered into on or after July 1, 2011, the  
 61 term has the same meaning except that overtime compensation in  
 62 excess of 300 hours per year, as specified in the collective  
 63 bargaining agreement, or payments for accrued, unused sick or  
 64 annual leave, may not be included for purposes of calculating  
 65 retirement benefits.

66 ~~(a) A retirement trust fund or plan may use a definition~~  
 67 ~~of salary other than the definition in this subsection but only~~  
 68 ~~if the monthly retirement income payable to each firefighter~~  
 69 ~~covered by the retirement trust fund or plan, as determined~~  
 70 ~~under s. 175.162(2) (a) and using such other definition, equals~~  
 71 ~~or exceeds the monthly retirement income that would be payable~~  
 72 ~~to each firefighter if his or her monthly retirement income were~~  
 73 ~~determined under s. 175.162(2) (a) and using the definition in~~  
 74 ~~this subsection.~~

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

80 (b)(e) The member's compensation or salary contributed as  
 81 employee-elective salary reductions or deferrals to any salary  
 82 reduction, deferred compensation, or tax-sheltered annuity  
 83 program authorized under the Internal Revenue Code shall be  
 84 deemed to be the compensation or salary the member would receive

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85 | if he or she were not participating in such program and shall be  
 86 | treated as compensation for retirement purposes under this  
 87 | chapter.

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

105 |        Section 2. Subsections (4), (5), (6), and (7) of section  
 106 | 175.061, Florida Statutes, are renumbered as subsections (5),  
 107 | (6), (7), and (8), respectively, and subsection (4) is added to  
 108 | that section, to read:

109 |        175.061 Board of trustees; members; terms of office;  
 110 | meetings; legal entity; costs; attorney's fees.—For any  
 111 | municipality, special fire control district, chapter plan, local  
 112 | law municipality, local law special fire control district, or

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113 local law plan under this chapter:

114 (4) The board of trustees shall:

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

124 (b) Submit its proposed administrative expense budget for  
 125 each fiscal year at least 120 days before the beginning of the  
 126 fiscal year to the plan sponsor for review and modification. The  
 127 administrative expense budget is effective only upon approval by  
 128 the plan sponsor and must regulate the administrative expenses  
 129 of the board of trustees. The board of trustees may not amend  
 130 the budget without the prior approval of the plan sponsor.

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

133 175.071 General powers and duties of board of trustees.—  
 134 For any municipality, special fire control district, chapter  
 135 plan, local law municipality, local law special fire control  
 136 district, or local law plan under this chapter:

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

140 (a) Employ independent legal counsel at the pension fund's

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141 expense.

142 (b) Employ an independent actuary, as defined in s.  
143 175.032(7), at the pension fund's expense.

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

147  
148 If the board chooses to use the municipality's or special  
149 district's legal counsel or actuary, or chooses to use any of  
150 the municipality's or special district's other professional,  
151 technical, or other advisers, it must do so only under terms and  
152 conditions acceptable to the board.

153 Section 4. Paragraph (b) of subsection (2) of section  
154 175.091, Florida Statutes, is amended to read:

155 175.091 Creation and maintenance of fund.—For any  
156 municipality, special fire control district, chapter plan, local  
157 law municipality, local law special fire control district, or  
158 local law plan under this chapter:

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

160 (b) Firefighter member contributions may be increased by  
161 consent of the members' collective bargaining representative or,  
162 if none, by majority consent of firefighter members of the fund  
163 ~~to provide greater benefits.~~

164  
165 Nothing in this section shall be construed to require adjustment  
166 of member contribution rates in effect on the date this act  
167 becomes a law, including rates that exceed 5 percent of salary,  
168 provided that such rates are at least one-half of 1 percent of

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169 salary.

170 Section 5. Section 175.351, Florida Statutes, is amended  
171 to read:

172 175.351 Municipalities and special fire control districts  
173 having their own pension plans for firefighters.—For any  
174 municipality, special fire control district, local law  
175 municipality, local law special fire control district, or local  
176 law plan under this chapter, in order for municipalities and  
177 special fire control districts with their own pension plans for  
178 firefighters, or for firefighters and police officers, where  
179 included, to participate in the distribution of the tax fund  
180 established pursuant to s. 175.101, local law plans must provide  
181 a benefit or benefits within those pension plans for  
182 firefighters, or for firefighters and police officers, where  
183 included, that is in addition to or greater than a pension  
184 benefit provided to general employees of the municipality or  
185 special fire control district regardless of when such additional  
186 or greater benefit was or is provided~~meet the minimum benefits~~  
187 ~~and minimum standards set forth in this chapter.~~

188 (1) For the purpose of this chapter:

189 (a) "Additional premium tax revenues" means revenues  
190 received by a municipality or special fire control district  
191 pursuant to s. 175.121 which exceed that amount received for  
192 calendar year 1997.

193 (b) "Extra benefits" means benefits in addition to or  
194 greater than those provided to general employees of the  
195 municipality or special fire control district regardless of when  
196 such additional or greater benefit was or is provided.

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197 ~~PREMIUM TAX INCOME. If a municipality has a pension plan for~~  
 198 ~~firefighters, or a pension plan for firefighters and police~~  
 199 ~~officers, where included, which in the opinion of the division~~  
 200 ~~meets the minimum benefits and minimum standards set forth in~~  
 201 ~~this chapter, the board of trustees of the pension plan, as~~  
 202 ~~approved by a majority of firefighters of the municipality, may:~~

203 ~~(a) Place the income from the premium tax in s. 175.101 in~~  
 204 ~~such pension plan for the sole and exclusive use of its~~  
 205 ~~firefighters, or for firefighters and police officers, where~~  
 206 ~~included, where it shall become an integral part of that pension~~  
 207 ~~plan and shall be used to pay extra benefits to the firefighters~~  
 208 ~~included in that pension plan; or~~

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

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

217 (a) Pay provide extra benefits to firefighters, or to  
 218 firefighters and police officers, where included; or

219 (b) Pay the unfunded actuarial accrued liabilities of the  
 220 plan. If the aggregate level cost method is the actuarial cost  
 221 method used to fund the plan, the unfunded actuarial accrued  
 222 liabilities shall be measured using the entry age normal cost  
 223 method.

224 (3) For However, local law plans in effect on October 1,

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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).

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

242 |       (5) Local law plans created by special act before May 23,  
 243 | 1939, shall be deemed to comply with this chapter.

244 |       (6) ~~(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~  
 245 | retirement plan or amendment to a retirement plan may not ~~shall~~  
 246 | be proposed for adoption unless the proposed plan or amendment  
 247 | contains an actuarial estimate of the costs involved. ~~No~~ Such  
 248 | proposed plan or proposed plan change shall be adopted without  
 249 | the approval of the municipality, special fire control district,  
 250 | or, where permitted, the Legislature. Copies of the proposed  
 251 | plan or proposed plan change and the actuarial impact statement  
 252 | of the proposed plan or proposed plan change shall be furnished

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253 to the division before ~~prior to~~ the last public hearing thereon.  
 254 Such statement must ~~shall~~ also indicate whether the proposed  
 255 plan or proposed plan change is in compliance with s. 14, Art. X  
 256 of the State Constitution and those provisions of part VII of  
 257 chapter 112 which are not expressly provided in this chapter.  
 258 Notwithstanding any other provision, only those local law plans  
 259 created by special act of legislation before ~~prior to~~ May 23,  
 260 1939, are ~~shall be~~ deemed to meet the minimum benefits and  
 261 minimum standards only in this chapter.

262 (7)~~(3)~~ Notwithstanding any other provision, with respect  
 263 to any supplemental plan municipality:

264 (a) ~~Section 175.032(3)(a) shall not apply,~~ and A local law  
 265 plan and a supplemental plan may continue to use their  
 266 definition of compensation or salary in existence on the  
 267 effective date of this act.

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

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

275 (8)~~(4)~~ The retirement plan setting forth the benefits and  
 276 the trust agreement, if any, covering the duties and  
 277 responsibilities of the trustees and the regulations of the  
 278 investment of funds must be in writing, and copies ~~thereof must~~  
 279 ~~be~~ made available to the participants and to the general public.



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

282 185.02 Definitions.—For any municipality, chapter plan,  
 283 local law municipality, or local law plan under this chapter,  
 284 the following words and phrases as used in this chapter shall  
 285 have the following meanings, unless a different meaning is  
 286 plainly required by the context:

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

306 (a) Any retirement trust fund or plan that ~~which now or~~  
 307 ~~hereafter~~ meets the requirements of this chapter does ~~shall~~ not,

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308 solely by virtue of this subsection, reduce or diminish the  
 309 monthly retirement income otherwise payable to each police  
 310 officer covered by the retirement trust fund or plan.

311 (b) The member's compensation or salary contributed as  
 312 employee-elective salary reductions or deferrals to any salary  
 313 reduction, deferred compensation, or tax-sheltered annuity  
 314 program authorized under the Internal Revenue Code shall be  
 315 deemed to be the compensation or salary the member would receive  
 316 if he or she were not participating in such program and shall be  
 317 treated as compensation for retirement purposes under this  
 318 chapter.

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

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335 Section 7. Subsections (4), (5), (6), and (7) of section  
 336 185.05, Florida Statutes, are renumbered as subsections (5),  
 337 (6), (7), and (8), respectively, and subsection (4) is added to  
 338 that section, to read:

339 185.05 Board of trustees; members; terms of office;  
 340 meetings; legal entity; costs; attorney's fees.—For any  
 341 municipality, chapter plan, local law municipality, or local law  
 342 plan under this chapter:

343 (4) The board of trustees shall:

344 (a) Provide a detailed accounting report of its expenses  
 345 for each fiscal year to the plan sponsor and the Department of  
 346 Management Services and shall make the report available to every  
 347 member of the plan. The report must include, but need not be  
 348 limited to, all administrative expenses, which for purposes of  
 349 this subsection are all expenses relating to any legal counsel,  
 350 actuary, plan administrator, and all other consultants, and all  
 351 travel and other expenses paid to or on behalf of the members of  
 352 the board of trustees or anyone else on behalf of the plan.

353 (b) Submit its proposed administrative expense budget for  
 354 each fiscal year at least 120 days before the beginning of the  
 355 fiscal year to the plan sponsor for review and modification. The  
 356 administrative expense budget is effective only upon approval by  
 357 the plan sponsor and must regulate the administrative expenses  
 358 of the board of trustees. The board of trustees may not amend  
 359 the budget without the prior approval of the plan sponsor.

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

362 185.06 General powers and duties of board of trustees.—For

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363 any municipality, chapter plan, local law municipality, or local  
 364 law plan under this chapter:

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

368 (a) Employ independent legal counsel at the pension fund's  
 369 expense.

370 (b) Employ an independent actuary, as defined in s.  
 371 185.02(8), at the pension fund's expense.

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

375  
 376 If the board chooses to use the municipality's or special  
 377 district's legal counsel or actuary, or chooses to use any of  
 378 the municipality's other professional, technical, or other  
 379 advisers, it must do so only under terms and conditions  
 380 acceptable to the board.

381 Section 9. Paragraph (b) of subsection (2) of section  
 382 185.07, Florida Statutes, is amended to read:

383 185.07 Creation and maintenance of fund.—For any  
 384 municipality, chapter plan, local law municipality, or local law  
 385 plan under this chapter:

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

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

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391  
 392 Nothing in this section shall be construed to require adjustment  
 393 of member contribution rates in effect on the date this act  
 394 becomes a law, including rates that exceed 5 percent of salary,  
 395 provided that such rates are at least one-half of 1 percent of  
 396 salary.

397 Section 10. Section 185.35, Florida Statutes, is amended  
 398 to read:

399 185.35 Municipalities having their own pension plans for  
 400 police officers.—For any municipality, chapter plan, local law  
 401 municipality, or local law plan under this chapter, in order for  
 402 municipalities with their own pension plans for police officers,  
 403 or for police officers and firefighters where included, to  
 404 participate in the distribution of the tax fund established  
 405 pursuant to s. 185.08, local law plans must provide a benefit or  
 406 benefits within those pension plans for police officers, or for  
 407 police officers and firefighters, where included, that is in  
 408 addition to or greater than a pension benefit provided to  
 409 general employees of the municipality regardless of when such  
 410 additional or greater benefit was or is provided. ~~meet the~~  
 411 ~~minimum benefits and minimum standards set forth in this~~  
 412 ~~chapter.~~

413 (1) For the purpose of this chapter:

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

417 (b) "Extra benefits" means benefits in addition to or  
 418 greater than those provided to general employees of the

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419 municipality regardless of when such additional or greater  
 420 benefit was or is provided.

421 ~~PREMIUM TAX INCOME. If a municipality has a pension plan for~~  
 422 ~~police officers, or for police officers and firefighters where~~  
 423 ~~included, which, in the opinion of the division, meets the~~  
 424 ~~minimum benefits and minimum standards set forth in this~~  
 425 ~~chapter, the board of trustees of the pension plan, as approved~~  
 426 ~~by a majority of police officers of the municipality, may:~~

427 ~~(a) Place the income from the premium tax in s. 185.08 in~~  
 428 ~~such pension plan for the sole and exclusive use of its police~~  
 429 ~~officers, or its police officers and firefighters where~~  
 430 ~~included, where it shall become an integral part of that pension~~  
 431 ~~plan and shall be used to pay extra benefits to the police~~  
 432 ~~officers included in that pension plan; or~~

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

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

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

443 (b) Pay the unfunded actuarial accrued liabilities of the  
 444 plan. If the aggregate level cost method is the actuarial cost  
 445 method used to fund the plan, the unfunded actuarial accrued  
 446 liabilities shall be measured using the entry age normal cost

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447 method.

448 (3) For ~~However,~~ local law plans in effect on October 1,  
 449 1998, that do not ~~shall be required to~~ comply with the minimum  
 450 benefit provisions of this chapter, as only to the extent that  
 451 additional premium tax revenues become available, such revenues  
 452 shall be used to incrementally fund the cost of such compliance  
 453 as provided in s. 185.16(2).

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

466 (5) Local law plans created by special act before May 23,  
 467 1939, shall be deemed to comply with this chapter.

468 (6)-(2) ~~A ADOPTION OR REVISION OF A LOCAL LAW PLAN.~~ ~~No~~  
 469 retirement plan or amendment to a retirement plan may not ~~shall~~  
 470 be proposed for adoption unless the proposed plan or amendment  
 471 contains an actuarial estimate of the costs involved. ~~No~~ Such  
 472 proposed plan or proposed plan change shall be adopted without  
 473 the approval of the municipality or, where permitted, the  
 474 Legislature. Copies of the proposed plan or proposed plan change

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475 and the actuarial impact statement of the proposed plan or  
 476 proposed plan change shall be furnished to the division before  
 477 ~~prior to~~ the last public hearing thereon. Such statement must  
 478 ~~shall~~ also indicate whether the proposed plan or proposed plan  
 479 change is in compliance with s. 14, Art. X of the State  
 480 Constitution and those provisions of part VII of chapter 112  
 481 which are not expressly provided in this chapter.

482 Notwithstanding any other provision, only those local law plans  
 483 created by special act of legislation before ~~prior to~~ May 23,  
 484 1939, are ~~shall be~~ deemed to meet the minimum benefits and  
 485 minimum standards only in this chapter.

486 (7)~~(3)~~ Notwithstanding any other provision, with respect  
 487 to any supplemental plan municipality:

488 (a) ~~Section 185.02(4)(a) shall not apply, and~~ A local law  
 489 plan and a supplemental plan may continue to use their  
 490 definition of compensation or salary in existence on the  
 491 effective date of this act.

492 (b) Section 185.05(1)(b) does ~~shall~~ not apply, and a local  
 493 law plan and a supplemental plan shall continue to be  
 494 administered by a board or boards of trustees numbered,  
 495 constituted, and selected as the board or boards were numbered,  
 496 constituted, and selected on December 1, 2000.

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

499 (8)~~(4)~~ The retirement plan setting forth the benefits and  
 500 the trust agreement, if any, covering the duties and  
 501 responsibilities of the trustees and the regulations of the  
 502 investment of funds must be in writing and copies made available



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503 to the participants and to the general public.

504 Section 11. Financial rating of local pension plans.—The  
 505 Division of Retirement in the Department of Management Services  
 506 shall develop standardized ratings for classifying the financial  
 507 strength of all local government defined benefit pension plans.

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

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

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

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

516 (d) Municipal bond ratings for the local government, if  
 517 applicable.

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

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

522 (2) The division may obtain all necessary data to  
 523 formulate the ratings from all relevant entities, including  
 524 local pension boards and local governments, all of which shall  
 525 cooperate with the division in supplying all necessary  
 526 information.

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

529 Section 12. Task Force on Public Employee Disability  
 530 Presumptions.—

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

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

539 (a) Three members appointed by the President of the  
 540 Senate, one of whom must be an attorney in private practice who  
 541 has experience in the relevant laws; one of whom must be a  
 542 representative of organized labor and who is a member of a  
 543 pension plan under chapter 175, Florida Statutes; and one of  
 544 whom must be from the Florida Association of Counties.

545 (b) Three members appointed by the Speaker of the House of  
 546 Representatives, one of whom must be an attorney in private  
 547 practice who has experience in the relevant laws; one of whom  
 548 must be a representative of organized labor and who is a member  
 549 of a pension plan under chapter 185, Florida Statutes; and one  
 550 of whom must be from the Florida League of Cities.

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

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

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

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559 |       (3) The task force shall address issues, including, but  
 560 | not limited to:

561 |       (a) Data related to the operation of the statutory  
 562 | disability presumptions.

563 |       (b) The manner in which other states handle disability  
 564 | presumptions.

565 |       (c) Proposals for changes to the existing disability  
 566 | presumptions.

567 |       (4) The Department of Financial Services shall provide  
 568 | administrative support to the task force.

569 |       (5) Members of the task force shall serve without  
 570 | compensation while in the performance of their duties, but are  
 571 | entitled to reimbursement for per diem and travel expenses in  
 572 | accordance with s. 112.061, Florida Statutes.

573 |       (6) The task force may obtain data, information, and  
 574 | assistance from any officer or state agency and any political  
 575 | subdivision thereof. All such officers, agencies, and political  
 576 | subdivisions shall provide the task force with all relevant  
 577 | information and assistance on any matter within their knowledge  
 578 | or control.

579 |       (7) The task force shall submit a report, including  
 580 | findings and recommendations, to the Governor, the Chief  
 581 | Financial Officer, the President of the Senate, and the Speaker  
 582 | of the House of Representatives by January 1, 2012. The report  
 583 | must include specific recommendations for legislative action  
 584 | during the 2012 Regular Session of the Legislature.

585 |       (8) The task force is dissolved upon submission of its  
 586 | report.

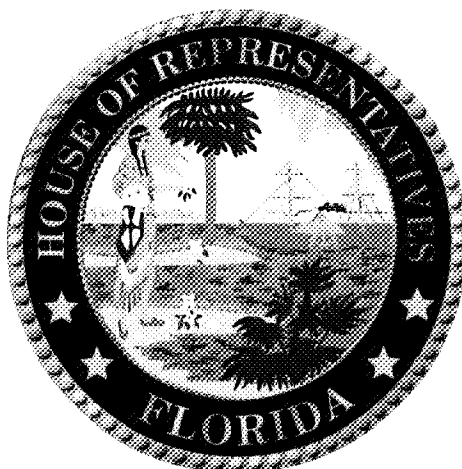
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YEAR

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

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



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# **Government Operations Subcommittee**

**REVISED**

**Friday, April 8, 2011  
2:15 p.m.  
Morris Hall (17 HOB)**

**Addendum A (4/7/2011 6:48 PM)  
Amendments for PCB GVOPS 11-17**

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB GVOPS 11-17 (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 PCB: Government Operations  
 2 Subcommittee  
 3 Representative(s) Patronis offered the following:

**Amendment**

7 **Remove lines 61 - 64 and 302 - 305, and insert on those**  
 8 **lines:**

10 term has the same meaning except that overtime compensation up  
 11 to 300 hours per year may be included for purposes of  
 12 calculating retirement benefits as specified in the plan or  
 13 collective bargaining agreement, but payments for unused sick or  
 14 annual leave may not be included for purposes of calculating

COMMITTEE/SUBCOMMITTEE AMENDMENT

PCB Name: PCB GVOPS 11-17 (2011)

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 PCB: Government Operations  
2 Subcommittee

3 Representative(s) Young offered the following:

4  
5 **Amendment**

6  
7 **On lines 242, 260, 467, and 484, remove:**

8  
9 "May 23"

10  
11 **And insert:**

12  
13 "May 27 23"