

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

BILL: CS/SB 216

INTRODUCER: Community Affairs Committee and Senator Bradley

SUBJECT: Publicly Funded Retirement Programs

DATE: March 10, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Fav/CS
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 216 requires local government pension plans, in conducting the actuarial valuations of their pension plans, to use mortality table methodologies consistent with the methodologies used in the most recently published actuarial valuation report of the Florida Retirement System. In most instances, the mortality tables used will recognize longer lifetimes for annuitants and result in higher annual contributions being required to be paid into the pension funds in the near term.

Similarly, the bill revises the mortality tables to be used in the actuarial disclosures in financial statements submitted to the Department of Management Services. This modification does not impact the actuarial funding of the various pension plans but does provide some information that may be useful when comparing local pension plans and the Florida Retirement System.

To the extent the use of the updated mortality tables result in increases to the normal costs or unfunded liabilities of local government pension plans, this bill will result in higher contributions being paid into the local government pension plans in the near term.

In addition, the bill allows a municipality providing fire protection services to a Municipal Services Taxing Unit (MSTU) through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

This bill will have an indeterminate but negative impact on the General Revenue Fund because insurance premium taxes imposed pursuant to ch. 175, F.S., are credited against insurance premium taxes paid to the state.

II. Present Situation:

Florida Local Retirement Systems and Plans

The Division of Retirement of the Department of Management Services (DMS) reports¹ that as of September 30, 2014, there are 491 defined benefit plans sponsored by 249 local governments in Florida. The vast majority of the plans, 486, are local government defined benefit systems that provide benefits to 87,097 retirees, with 97,677 active employees, and total plan assets of \$30.5 billion.² The average annual pension in these local defined benefit plans is \$25,252, and the average annual required contribution rate as a percentage of payroll is 31.96 percent. The total unfunded actuarial accrued liability for all the defined benefit plans as of September 30, 2014, was \$10.5 billion.

Actuarial Reporting for Local Government Pension Plans

Public pension plans, including the municipal police and firefighter pension plans, are required to have regularly scheduled actuarial reports prepared and certified by an enrolled actuary, at least every three years. The actuarial reports must include at least the following information:

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

The actuarial cost methods used to establish the annual normal costs of the plans must be those methods approved in the Employee Retirement Income Security Act of 1974.³

The actuarial reports must be submitted to the DMS. DMS is required to review each report to determine whether the actuarial valuation is complete, accurate, and based on reasonable assumptions.⁴

¹ Division of Management Services, *Florida Local Government Retirement Systems*, 2014 Annual Report, available online at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last visited on February 12, 2015).

² The other 6 plans are school board early retirement programs that provide benefits to 1,686 retirees, with active plan membership of 4,506, and total plan assets of \$64.8 million.

³ Section 112.63(1)(f), F.S.

⁴ Section 112.63(4)(a), F.S.

The board of trustees for a local government pension plan, with guidance from its professional advisors, is permitted to choose the mortality table to be used in the actuarial valuation report in the determination of actuarially required contributions for the plan. The table below shows the various mortality tables used by local government retirement plans and the frequency of use among the plans.

Mortality Table	Number of local government plans using this table
1983 Group Annuity Mortality (GAM 83)	20
1994 Group Annuity Mortality (GAM 94)	10
1994 Group Annuity Mortality with Scale AA (GAR 94)	7
Uninsured Population 1994 (UP 94)	4
Retirement Plans 2000 (RP 2000)	437
Internal Revenue Service Prescribed	8
Other	3
Total	489

Section 112.664, F.S., requires additional reporting requirements for all publicly-funded defined benefit retirement plans, other than FRS. The following information must be provided to DMS annually, within 60 days after receipt of the certified actuarial report submitted after the close of the plan year that ends after June 30, 2014, and thereafter in each year in which an actuarial valuation of the plan is done:

- Annual financial statements in compliance with the requirements of the Government Accounting Standards Board’s Statement No. 67, Financial Reporting for Pension Plans and Statement No. 68 Accounting and Financial Reporting for Pensions using RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA.
- Annual financial statements similar to GASB, but which use an assumed rate of return and assumed discount rate 200 basis points less than a plan’s assumed rate of return.
- The number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits.
- The recommended contributions to the plan based on financial statements stated as an annual dollar value and a percentage of valuation payroll.

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

Mortality Tables

Section 430 of the Internal Revenue Code (IRC) outlines minimum funding standards for single-employer defined benefit pension plans. Section 430(h)(3) of the IRC provides that the Secretary of the Treasury must by regulation prescribe mortality tables to be used in determining any

present value or making any computation under section 430 of the Code, implemented as the RP-2000 Mortality Tables.⁵

The FRS uses different mortality tables for its general employee and special risk classes for non-disability retirement. The 2014 FRS Valuation used the RP 2000 mortality table with Scale BB with varying mixes of white collar and blue collar; non-disability retirement retirements have a separate mortality basis for Special Risk Class members compared to all other membership classes. Disability retirements have a common mortality basis for all classes. The disability requirement for FRS members is total and permanent from all forms of employment as certified by two licensed physicians.

Required Minimum Funding Standards for Public Pensions

Under current law, total contributions to a public sector retirement plan must be sufficient to fund the normal cost of the retirement plan and to amortize the unfunded actuarial liability over a period not to exceed 40 years.⁶ If an unfunded liability arises from a plan amendment, changes in actuarial assumptions, changes in funding methods or actuarial gains or losses, the liability must be amortized within 30 plan years.⁷ The laws establishing the municipal police⁸ and firefighter⁹ pension plans have similar provisions.

Actuarial Soundness of Retirement Plans

The Florida Constitution requires benefit improvements under public pension plans in the State of Florida to be concurrently funded on a sound actuarial basis.¹⁰ The “Florida Protection of Public Employee Retirement Benefits Act,” (Act)¹¹ establishes the minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. The Act states the legislative intent to “prohibit the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.”¹²

Enrolled actuaries prepare and certify actuarial reports for each retirement plan subject to the Act, at regular intervals of at least three years.¹³ When determining the actuarially required contributions for a pension plan, the pension plan board of trustees, with guidance from its professional advisors, chooses the mortality table to be applied in the valuation report.¹⁴ In addition to the valuation report, s. 112.664, F.S., requires certain actuarial disclosures used to determine required funding. These additional actuarial disclosures mandate the use of the “RP-

⁵ RP-2000 Mortality Tables are available at http://www.pensionsoft.com/references_mort_other.html (last visited on March 20, 2013).

⁶ Section 112.64(2), F.S.

⁷ Section 112.64(4), F.S.

⁸ Section 185.07, F.S.

⁹ Section 175.091, F.S.

¹⁰ FLA. CONST. art. X, s. 14 (1976).

¹¹ Part VII of Ch. 112, F.S., implements Article X, Section 14, of the Florida Constitution.

¹² Section 112.61, F.S.

¹³ Section 112.63, F.S.

¹⁴ Dep’t of Management Services, *2015 Legislative Bill Analysis: SB 242*, at 2 (Jan. 20, 2015).

2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by Scale AA.”¹⁵

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

The Marvin B. Clayton Firefighters’ and Police Officers’ Pension Trust Fund Acts¹⁶ declare a legitimate state purpose of providing 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.¹⁷

In 1939, the Legislature enacted ch. 175, F.S., thereby encouraging cities to establish firefighter retirement plans by providing cities with the incentive of access to premium tax revenues. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.

Participation in the trust fund is limited to incorporated municipalities and to special fire control districts. Single consolidated governments of a county and one or more municipalities are also allowed to participate in the trust fund. Currently, unincorporated areas of a county may not participate unless a special fire control district includes the unincorporated areas.

Administration of Retirement Plans

The Division of Retirement (division) in the Department of Management Services (DMS) administers benefits to firefighters under two types of plans, a chapter plan or a local plan. A chapter plan is a plan that adopts the provisions of either ch. 175 or 185, F.S., by reference. A local plan is a plan that is created by a special act of the Legislature, or by a local ordinance or resolution that meets the minimum statutory requirements. The division is responsible for overseeing and monitoring these plans, but day-to-day operational control rests with local boards of trustees subject to the regulatory authority of the division.¹⁸ If the division were to deem that a firefighter or police pension plan created pursuant to ch. 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

Funding Sources

Four sources provide funding for these pension plans: 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 the normal cost of the plan.¹⁹ To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175 and 185, F.S.

¹⁵ Section 112.664(1)(a), F.S.

¹⁶ See ch. 175 and 185, F.S.

¹⁷ See ss. 175.021(1) and 185.01(1), F.S.

¹⁸ The division is responsible for administrative oversight of funds, including monitoring for actuarial soundness.

¹⁹ Sections 175.091(1)(a) and 185.07(1), F.S.

An excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district funds the Firefighters' Pension Trust Fund of each municipality or special fire control district.²⁰ The insurers pay the tax to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.²¹ For fiscal year 2014-15, premium tax collections are estimated to be \$804 million, and distributions to the Firefighters' Pension Trust Fund are predicted to be \$179.5 million.²²

A municipality that has entered into a one year or longer interlocal agreement to provide fire services to another incorporated municipality may receive its premium taxes.²³ The municipality providing fire services must notify the division of the interlocal agreement. The division may then distribute any premium taxes reported for the other incorporated municipality to the municipality providing the fire services.²⁴

Counties Furnishing Municipal Services

General law implements the constitutional provision authorizing a county furnishing municipal services to levy additional taxes within the limits fixed for municipal purposes via the establishment of MSTUs.²⁵ The creation of a MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties are authorized to levy up to ten mills.²⁶

The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area, or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to the consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 112.63, F.S., to require the actuarial valuations of local government pension plans to use mortality table methodology consistent with the most recently published actuarial valuation report of the FRS. The RP-2000 mortality table with Scale BB was used for the 2014 Actuarial Valuation of the Florida Retirement System.

While the FRS uses RP-2000 mortality table with Scale BB, additional adjustments are made based on gender, membership class, and varying mixes of white collar and blue collar work. For example, different mortality bases are used for non-disability retirements in the Special Risk

²⁰ Section 175.101(1), F.S.

²¹ See s. 175.121, F.S.

²² Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014), at 110.

²³ Although, the criteria in s. 175.041(3)(c), F.S., must be met.

²⁴ See Chapter 2005-205, Laws of Fla. (HB 1159).

²⁵ Section 125.01(1)(q), F.S.

²⁶ Section 200.071(3), F.S.

²⁷ Office of Economic and Demographic Research, *Local Government Financial Information Handbook* (2014).

Class compared to the mortality bases used for non-disability retirements in other membership classes. At first glance, one would assume that the mortality assumptions used for FRS Special Risk Class would be an acceptable assumption to use for the police and firefighter pension plans. However, the FRS Special Risk Class has a broader membership than those local pension plans.²⁸ This broader membership base may result in a different mix of white collar and blue collar jobs.

Section 2 amends s. 112.664, F.S., to revise the information included in a defined benefit retirement system or plan's annual report to DMS to include financial statements that use mortality table methodology consistent with the most recently published actuarial valuation report of the FRS. In general, this change will require local plans to use Scale BB rather than Scale AA with the RP-2000 mortality table.

Sections 3, 4, 5, 6, 7 and 8 amend ss. 175.041, 175.101, 175.111, 175.122, 175.351, and 175.411, F.S., respectively, to allow a municipality providing fire protection services to a MSTU through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, for the purpose of providing pension benefits to the municipality's firefighters.

Section 8 provides the bill will take effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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

Since this bill requires all public sector pension plans to use the same mortality methodologies, it appears the bill applies to all persons similarly situated (state, municipalities and special districts sponsoring pension plans). The bill does not contain a finding that the bill fulfills an important state interest. Thus, the bill may not be binding upon cities and counties that sponsor retirement plans in terms of the use of the mortality methodologies.

B. Public Records/Open Meetings Issues:

None.

²⁸ Section 121.0515, F.S., defines membership in the FRS Special Risk Class also to include correctional officers, certain emergency medical technicians and paramedics, certain nurses and other health professionals, certain forensic laboratory technicians, and certain employees of a medical examiner's office.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Provisions of this bill will have an indeterminate but negative impact on the General Revenue Fund, because taxes imposed pursuant to ch. 175, F.S., are credited against insurance premium taxes paid to the state.²⁹ The provisions of this bill have not been reviewed by the Revenue Estimating Conference.

Municipalities providing fire services to MSTUs will receive an indeterminate amount of additional revenue to fund firefighter pension plans.

The pension plan board of trustees, and its professional advisors, will be required to use the FRS mortality tables in their actuarial valuations, which may result in different contribution requirements from prior plans' valuation reports.³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether the information required under s. 112.644 (1)(a), F.S., to be reported by each public sector plan will differ from the information contained in the plan's actuarial valuation under the provisions of this legislation. Under current law, the actuarial valuation could use any mortality table the plan sponsor deemed appropriate and the information reported pursuant to s. 112.644, F.S., requires the use of RP-2000 with Scale AA. Under the bill, the mortality tables used in the valuation and the information reported pursuant to s. 112.644, F.S., will be the same – those that are consistent with the mortality table methodologies used by the FRS.

²⁹ Section 175.141, F.S., allows for the Firefighters' Pension credit, by which a payor of the insurance premium tax is authorized a credit on their state excise or license tax, but must pay the balance of state excise or license tax to the Dep't of Revenue. For the order in which credits and deductions against the insurance premium tax are to be taken, see s. 624.509(7), F.S. See also, The Florida Senate Committee on Finance and Tax, *An Overview of Florida's Insurance Premium Tax*, Report No. 2007-122, at 10 (Oct. 2006).

³⁰ Dep't of Management Services, *2015 Legislative Bill Analysis: SB 242*, at 5 (Jan. 20, 2015).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 175.041, 175.101, 175.111, 175.122, 175.351, 175.411, 112.63, and 112.664.

IX. Additional Information:

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

CS by Community Affairs on February 3, 2015:

Requires local government pension plan actuarial valuations, and the additional actuarial disclosures required under s. 112.664, F.S., to use a mortality table methodology for funding purposes that is consistent with the most recent actuarial report issued by the FRS.

- B. **Amendments:**

None.