

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Siplin, Vice Chair

MEETING DATE: Wednesday, January 12, 2011

TIME: 8:30 —10:30 a.m.

PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Ring, Chair; Senator Siplin, Vice Chair; Senators Benacquisto, Bogdanoff, Dean, Fasano, Flores, Garcia, Latvala, Margolis, Montford, Norman, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Issue Brief 2011-219	(Improving Efficiencies in State Library Use of Physical and Electronic Infrastructure) Presentation	
2	Issue Brief 2011-220	(Administrative Procedures of the Department of the Lottery) Presentation	
3	Overview of Public Pension Plans: Presentations by Florida Professional Firefighters, Florida Police Benevolent Association and Florida Education Association		



The Florida Senate

Issue Brief 2011-219

October 2010

Committee on Governmental Oversight and Accountability

IMPROVING EFFICIENCIES IN STATE LIBRARY USE OF PHYSICAL AND ELECTRONIC INFRASTRUCTURE

Statement of the Issue

State libraries provide access to information at physical locations and via electronic resources. Certain requirements in existing law, however, may not reflect current budgetary and technological realities of the State of Florida. The growth of and increased access to the internet has changed the needs of Florida citizens. The Department of State (the "department") reports that libraries have begun to take action to respond to these changed circumstances, but changes to the law could aid the process.

The purpose of this issue brief is to evaluate ways in which the Department of State Division of Library and Information Services and public libraries have altered use of physical and electronic infrastructure to adjust to changing budgetary constraints and changes in the way information is accessed and to identify areas that merit additional research for potential increased efficiencies.

Discussion

Background

The Division of Library and Information Services (the "division") provides library, records management, and archival services at the state and local level. The division has four functional areas:

- Information Resource Management;
- Information Access Services, which includes
 - The State Library, including the Capitol Branch;
 - The State Archives; and
 - The Florida Administrative Code, Weekly, and Laws;
- Development; and
- Information Systems.

The division provides direct library services to state government; develops statewide library services; and provides archival and records management services, technical assistance, education, financial aid, and cooperative services.¹

The division plans, develops, implements, monitors, and evaluates all activities and services relating to the identification, collection, storage, preservation, cataloging, and overall collections management of the published and unpublished documentary history of Florida. The division maintains a library for state officials and employees, especially of informational material pertaining to their work; provides research and information services for all state agencies; and provides informational access for the public.²

¹ Section 257.04, F.S.

² Section 257.04(1)-(4), F.S.

Changes Implemented by the Department of State and by Public Libraries

Electronic Resources and Infrastructure

The division makes many resources available to government employees and to the public online, including, but not limited to:

- Catalogs for the State Library and Archives;
- A Florida Electronic Library;
- The Florida Government Information Locator;
- The Florida Memory Project; and
- *The Florida Administrative Code and Weekly*.³

The division has also worked with the Joint Administrative Procedures Committee⁴ to revamp the electronic system for rulemaking information to make its online availability more complete and usable.⁵

Many public libraries also make resources available online, such as:

- The ability to request materials and search the library catalog;⁶
- Community assistance tools and resources;⁷ and
- Direct assistance from library staff.⁸

Physical Resources and Infrastructure

The division has ceased to maintain a popular reading collection.⁹ Now, the focus of the division is to maintain a collection of resources with the aim to assist state agency personnel in their day-to-day work and collect and preserve the published and unpublished history of Florida.

The division maintains physical storage space for the preservation of certain materials, such as historic state government records. According to the division, such resources require specific conditions for their ongoing preservation, and the area in which they are stored was built and configured for that purpose.¹⁰

Areas That Contain Potential for Improvement

Current law requires each state official, state department, state board, state court, or state agency issuing public documents to furnish the division 35 copies of each of those public documents for deposit in and distribution by the division.¹¹ The purpose of this law is to allow the division to distribute copies of such documents to libraries around the state for use by the public. The division now makes public e-documents available online as they become available from the state agencies.¹² Since many, but not all, documents are being published electronically and are available online and availability of internet access is now widespread, the Legislature may wish to

³ Florida Department of State, State Library and Archives, <http://dlis.dos.state.fl.us/> (last viewed September 23, 2010).

⁴ The Joint Administrative Procedures Committee ("JAPC") is a joint committee of the Florida Legislature that "conducts continuous oversight of executive branch actions implementing legislatively delegated powers, ensuring that each action has an adequate statutory basis, that all applicable procedures are followed, and that no illegal rules are imposed on the people of Florida." See JAPC's website, <http://www.japc.state.fl.us/> (last viewed September 23, 2010).

⁵ Meeting with Department staff (July 15, 2010); see also the Florida Administrative Weekly and Florida Administrative Code website, <https://www.flrules.org/Default.asp> (last viewed September 23, 2010).

⁶ LeRoy Collins Leon County Public Library System, <http://www.leoncountyfl.gov/library/> (last visited September 23, 2010).

⁷ Marion County Public Library System, *Tools to Help During Tough Economic Times*, http://24.248.52.224/Library/Economic_Resources.aspx (last viewed September 23, 2010).

⁸ Miami-Dade Public Library System, *Ask a Librarian*, <http://www.askalibrarian.org/local.php?LibraryName=Miami-Dade%20Public%20Library&DepartmentNumber=22865&Secondary=23217&LibraryType=Public> (last viewed September 23, 2010).

⁹ Meeting with Department staff (July 15, 2010).

¹⁰ *Id.*

¹¹ Section 257.05(2), F.S.

¹² Meeting with Department staff (July 15, 2010). see also the division website, <http://dlis.dos.state.fl.us/> (last viewed September 23, 2010).

consider lowering the number of copies required. A provision to do so was included in the Senate's 2010 agency sunset review legislation for the Department of State, but the bill did not become law.¹³

As state government transitions to more e-government resources the division must plan for long-term accessibility and storage of public documents and records acquired by the State Library and Archives pursuant to statute and rule.¹⁴ The division presented information to the Agency for Enterprise Information Technology¹⁵ and the state Agency Chief Information Officer Council¹⁶ on these issues and is participating in a federally-funded pilot program¹⁷ to consider the most efficient and effective way to address the issues involved in accessibility and storage.¹⁸ Because of the complexity of the factors and the number of stakeholders involved, however, the Legislature may wish to monitor progress or to designate an entity to coordinate planning efforts.¹⁹

The division currently operates two locations: the State Library and Archives are in the primary location in the Department of State's R. A. Gray Building and in a branch location in the Capitol. While both locations serve the information needs of governmental entities and the general public, the Capitol Branch "provides priority information and research services to the members and staff of the Florida Legislature."²⁰ The division reports, however, that the primary location could continue to provide those services if the Capitol Branch was eliminated.²¹ The expenses incurred to operate the Capitol Branch for the 2009-2010 fiscal year were \$278,930.²²

¹³ Senate Bill 2330 by the Committees on Transportation and Economic Development Appropriations, Governmental Oversight and Accountability, and Commerce passed the Senate but died in House messages.

¹⁴ Section 257.05(2), F.S., requires all state officials and governmental entities to provide copies of all state publications to the division. Section 119.021(2), F.S., requires the division to adopt rules regarding retention and disposal of public records and requires agencies as defined in the Public Records Act to comply with the rules. Rules 1B-24 and 1B-26, F.A.C., contain the division's rules on public-records management, retention, and disposal. Because the division receives and stores public records and state publications from other governmental entities, its digital storage requirements grow each year (phone calls with Department staff, September 23 and 29, 2010).

¹⁵ The Agency for Enterprise Information Technology is responsible for making recommendations relating to development of enterprise information technology services (section 14.204, F.S.).

¹⁶ The Agency Chief Information Officer Council ("council") is tasked with enhancing communication and collaboration among the Agency Chief Information Officers and the Agency for Enterprise Information Technology ("AEIT"); identifying and recommending best practices and efficiency opportunities; and making recommendations to and assisting the AEIT in identifying and solving efficiency and enterprise information technology issues (section 282.315(1), F.S.). Members of the council include the Agency Chief Information Officers, including the Chief Information Officers of the Agencies and governmental entities, except that there will be one Chief Information Officer selected by the state attorneys and one Chief Information Officer selected by the public defenders (section 282.315(2), F.S.).

¹⁷ Florida is one of six states participating in a pilot program funded by the Library of Congress.

¹⁸ Phone calls with Department staff, September 29, 2010.

¹⁹ The factors include both technical and policy issues. For example, decisions that must be made include a determination of the best technological option for making maps and blueprints electronically available and the reconciliation of electronic document management practices and public records requirements (phone calls with Department staff, September 29, 2010).

²⁰ See the website for the State Library and Archives, Capitol Branch, <http://dlis.dos.state.fl.us/leglib/> (last viewed September 23, 2010).

²¹ Meeting with Department staff (July 15, 2010).

²² Costs information provided by Department staff (September 28, 2010).



The Florida Senate

Issue Brief 2011-220

September 2010

Committee on Governmental Oversight and Accountability

ADMINISTRATIVE PROCEDURES OF THE DEPARTMENT OF THE LOTTERY

Statement of the Issue

Due to the unique nature of state lottery operations, the Legislature granted to the Department of the Lottery administrative authority not given to other executive agencies. For example:

- The department may adopt all of its rules as emergency rules without the findings required of other agencies, regardless of the subject of the rule.
- If the department finds by rule that compliance with state laws pertaining to public property, state-owned personal property, or procurement would impair or impede the effective operation of the lottery, the department may adopt rules providing alternative procurement procedures.

Most of the approximately 1100 emergency rules adopted by the department since 1995 pertain to instant ticket games, but some of those rules address rules for retailers, a code of ethics, overtime compensation, the procurement of commodities and services, and facility leases.

Discussion

In 1987, the Department of Lottery ("department") was established "to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens."¹ In order to maximize revenues and respond quickly to changing market conditions, the department was given the authority to adopt emergency rules under s. 120.54, F.S. The Legislature determined that the department is not subject to s. 120.54(4)(a), F.S., which requires finding an immediate danger to the public health, safety, or welfare before an emergency rule is adopted.² In addition, emergency rules adopted by the department do not expire unless replaced by other emergency rules, or by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act.³

The department was also given authority⁴ to perform the functions of the Department of Management Services under chapters 255, 273, 281, 283, and 287, F.S.,⁵ if the department finds by rule that compliance with any such chapter would impair or impede the effective or efficient operation of the lottery. The statute does not contain further guidance as to the meaning of "effective and efficient operation," nor is it clear whether the authority to adopt alternative procurement procedures includes the ability to adopt alternative rules for other requirements within Ch. 287, F.S., like the contract documentation requirements of s. 287.058, F.S.

From 1995 through September 23, 2010, the Department has only adopted 19 permanent rules, but has used its emergency power to enact 1,087 rules.⁶ The majority of the emergency rules pertain to instant

¹ Section 24.104, F.S.

² Section 120.54(4)(a), F.S.

³ Section 24.109(1), F.S.

⁴ Section 24.105(13), F.S.

⁵ Relating, respectively, to Public Property and Publicly Owned Buildings, State-Owned Tangible Personal Property, Safety and Security Services, Public Printing, and Procurement of Personal Property and Services.

⁶ Florida Administrative Weekly & Florida Administrative Code, Department of Lottery, <https://www.flrules.org/gateway/Division.asp?DivID=421>.

ticket games offered by the department; however, it has adopted by emergency rule provisions relating to Powerball, Lotto, retailer bonus commissions for certain games, retailer accountability, retailer responsibility, retailer contracts, a code of ethics, overtime compensation, procurement of commodities and contractual services, and facility leases.⁷ The chart below shows the adoption of emergency rules for instant games, non-instant games, and activities not related to games:⁸

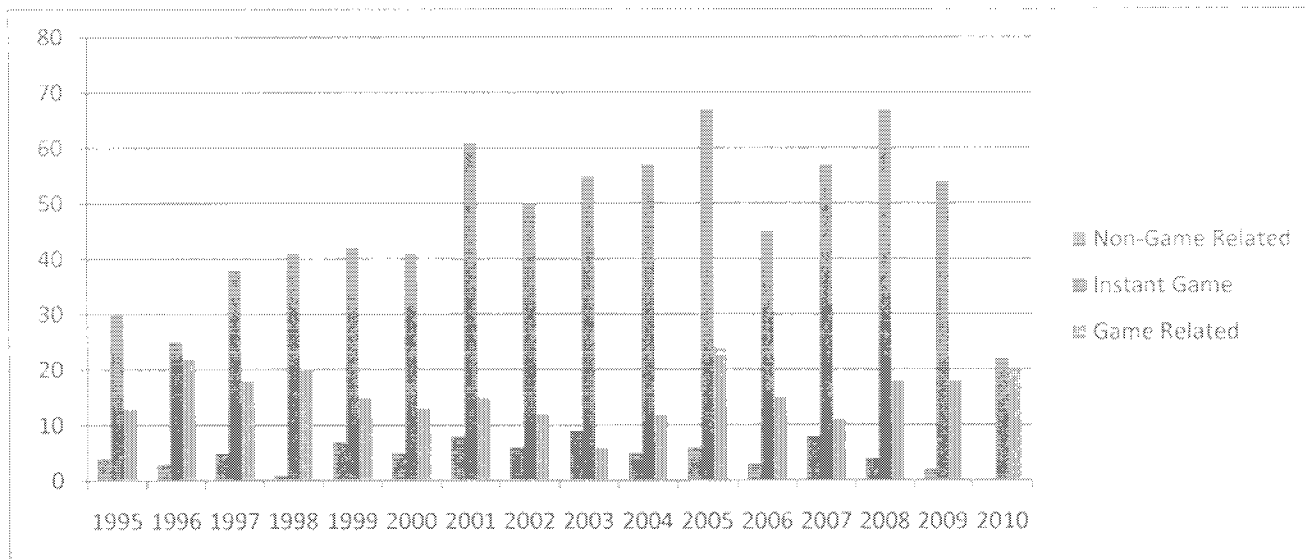


Chart 1: Disparity between non-game related, instant game, and game-related emergency rules.

Since 1995, the department has enacted seven emergency rules regarding alternative procurement procedures and facility leasing. For example, in 2008, the department enacted an emergency rule outlining its procedure for the purchase of commodities or contractual services that have a total contract value in excess of \$65,000 provided for in s. 287.017, F.S.⁹ Though each agency must develop its own procurement procedures for commodities and services above the \$65,000 threshold, it may not be necessary for the department to enact the procedure through its emergency rulemaking authority.

In both 2008 and 2009, the department has also used its rulemaking authority to develop an alternative procedure for leasing office or warehouse space of less than 10,000 square feet. Although the department still requires competitive offers to be solicited, the negotiation of the terms will be conducted by either the department or a contracted Tenant Broker. This removes the approval needed from the Department of Management Services for leases over 5,000 square feet.¹⁰ Although the department has the authority to change the procedure for obtaining facility leases under s 24.105, F.S., it is not clear that it is necessary to do so by emergency rule.

In addition to using its emergency rulemaking authority to develop alternative procurement procedures, the department has also used this authority to enact rules regarding compensation and its workforce. The department enacted at least thirty-one emergency rules relating to incentive leave, leave payment, sick leave, administrative leave for mentoring and tutoring activities, administrative leave for family

⁷ *Id.*

⁸ Game-related emergency rules consist of the Florida Lottery, Powerball, retailer incentives, retailer sales contests, procedures for awarding prizes, retailer commissions, ticket sales, and other retailer-related rules. Non-game emergency rules consist of procurement commodities and services, facility leases, salaries, benefits, codes of ethics, leave, and other workforce-related rules.

⁹ Section 287.017(3), F.S., provides that the Category Three threshold is \$65,000.

¹⁰ Section 255.25(3)(b), F.S..

activities, reduction in workforce, overtime compensation, salary, benefits, and codes of ethics. Although these rules may be necessary for the management of the department, it is probably unnecessary to adopt these rules with emergency rulemaking authority.

Although it may have been reasonable and necessary to grant the department emergency rulemaking authority at its inception in 1987 for it to respond quickly to the market and to establish the lottery system, the department has been fully functional for twenty-three years and may no longer require such overarching rulemaking authority. Now that the department is fully operational, the Legislature could consider whether its emergency rulemaking authority should be limited to rules only regarding lottery games, and consider whether rules pertaining to retailers, a code of ethics, overtime compensation, administrative leave, procurement of commodities and services, facility leases, and other similar rules should be enacted only by the default rulemaking procedures followed by other agencies.

Senate Committee on
Governmental Oversight
and Accountability

January 12, 2011



PRESENTATION ON FLORIDA'S PUBLIC PENSIONS

OVERVIEW

Some reports from 2007 and 2008 have pointed to affordability problems for state and local government pension systems.

These reports and actuarial evaluations were based on data from the lowest point of investment returns. With respect to many local plans, these numbers were further exacerbated by the bursting of the housing bubble.

However, state and local government experienced exceptional returns on investments which allowed them to reduce pension contributions for over ten years.

Florida has two similar public pension systems established and controlled by many different provisions of Florida Statutes, such as Chapters 112, 121, 175 and 185.



TWO MAJOR PENSION SYSTEMS

The Florida Retirement System

The FRS was established by the legislature in 1970 to consolidate many existing state administered retirement programs. The FRS is a compulsory non-contributory system for all state and county employees with an option for cities and special districts to participate. There are five groups of employees within the FRS

Municipal and Special Districts Pension Funds

These Pension Trust Funds date back to the 40's and 50's. Insurance premium tax revenues were available for defined benefit pensions for firefighters and police officers administered through local pension boards. Many of these plans have been in existence for 30 to 40 years. They have been amended by State Statute more than once, and some require local bills for operation or codification.

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FLORIDA RETIREMENT SYSTEM

The average salary is \$41,449 annually. The average distribution is \$17,465 and to just special risk \$31,563 annually.

The current FRS was created to rescue many unsustainable plans with little or no actuarial funding, and originally required employee contributions. Due to superior investment returns less than 1/3 of the required funding comes from tax dollars.

In the 1980's contribution rates were set to pay off the unfunded liability created by free past service credit. The liability was scheduled to be paid off in 2014. Due to very good investment management and aggressive funding, the debt was retired in 1997.

The FRS Trust Fund began to experience surplus assets in 1998. The statutes provide for an asset valuation corridor between 80% and 120% of market value.

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FLORIDA RETIREMENT SYSTEM

Since 1999, around 12 billion dollars have been used to lower the contribution rate to state and local government.

The FRS is the 4th largest pension fund in the country, and 10th largest in the world. The FRS is one of the healthiest plans in the country. The SBA has investment returns of 14.03%, adding 13.9 billion dollars to the fund before 4.1 billion distribution to retirees, resulting in a net asset value increase of 9.8 billion.

The FRS is one of the best plans in the country with respect to cost of operation in pension funds of similar size.

If new employees are placed in a defined contribution plan, the defined benefit will see a dramatic increase in funding requirements. Some groups will see contribution rates in excess of 50% of payroll by 2018.

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LOCAL PENSION PLANS

The average annual pension for local governmental defined benefit retirement systems is \$23,854.

The League of Cities has singled out a few financially unhealthy municipal plans as a representation of local plans.

To imply that all local plans are operating with employer contribution rates in excess of 50% of payroll is incorrect.

While there are some that have made bad decisions, they made these decisions at publicly advertised and openly conducted meetings to enact ordinances creating benefits or unfunded liability.

These same provisions received an actuarial analysis and were negotiated by the employees and management.

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LOCAL PENSION PLANS

Any and all of these provisions that are deemed to be problematic can be amended by the same group that created them.

There are many plans that are operating at, or operating with, a funding ratio of 90% or better. In fact there are many operating at 100%.

The following is an average of local plans with the understanding that it's not exact due to varying provisions (e.g., multipliers, disability benefits, ...) of the plans.

Total Assets	\$10,042,601,357
Unfunded Actuarial Accrued Liability	\$2,915,974,587
Active Employee Payroll	\$1,474,173,225
Employee Contributions (as a % of payroll)	6.67
Employer Contributions	25.45
Other Contributions (excise tax)	7.13

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LOCAL PENSION PLANS

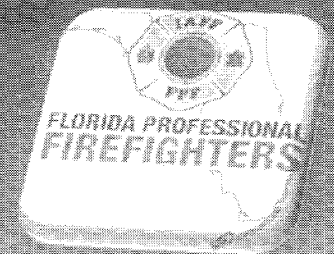
The theory that public sector employees are overpaid while afforded greater benefits is untrue.

State and local employees are twice as likely to hold a college degree or higher, as compared to private sector employees. Only 23% of private sector employees have completed college, as compared to about 48% in the public sector.

On average, full-time state and local government employees are undercompensated by 3.78% in comparison to otherwise similar private sector workers.

For a long time, there has been a compensation trade-off in public sector jobs. Better benefits come with lower pay, as compared with private sector jobs.

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SUMMARY

Recent information shows that government jobs have experienced a greater loss than other occupations:

Technology	45,000
Finance	93,000
Construction	117,000
Civil Service	246,000

Generally speaking, employees and employers desire the same thing with respect to employment.

- Stability of wages / payroll
- Stability of pensions / costs
- Promotional opportunities / recruitment tools for long-term employees / jobs
- Retention / security of critical professions / jobs
- Stability of health coverage working and retirement

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SUMMARY

We acknowledge that salaries and benefits make up a large portion of government expenditures. We understand publicly funded retirement systems in Florida must adhere to state and federal funding requirements, as well as contractually negotiated terms and conditions of employment.

When the investment returns allowed employers to reduce their contribution, the employees making contributions, continued to make them as previously agreed.

Many of our 25,000 members have extended contracts with concessions in wages and benefits to assist. Most have not received a pay raise in several years nor do they expect one in the near future.

That being said, we remain ready and willing to work with you as we move forward in this tough economy.

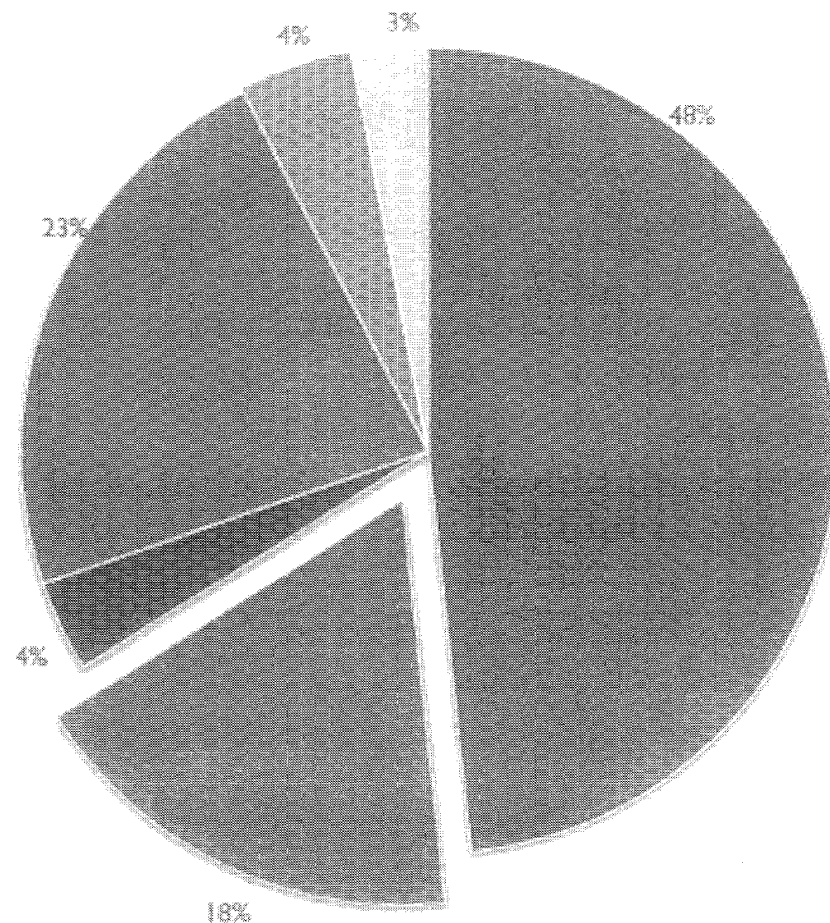
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FLORIDA EDUCATION ASSOCIATION

Presentation to
Senate Governmental Oversight
and Accountability Committee
12 January 2011

FRS Active Membership by Employer Type



■ School Districts
316,785 members
\$11.9 billion payroll

■ State
116,204 members
\$4.4 billion payroll

■ State University System
23,994 members
\$1.0 billion payroll

■ Counties
149,398 members
\$7.3 billion payroll

■ Cities & Special Districts
29,568 members
\$1.5 billion payroll

State Community Colleges
19,418 members
\$0.8 billion payroll

FY 2009/2010
Total Members - 655,367
Actual Payroll - \$26,896,707,047

% = Percent of Total Active Members on 6/30/10

FRS Average Annual Salary

	Regular Class	Senior Management Service Class	Special Risk Class	Special Risk Administrative Support Class	Elected Officers' Class	Average Salary
State	\$36,423	\$64,773	\$37,923	\$43,794	\$123,046	\$38,595
State Universities	\$43,249	\$172,361	\$52,727	N/A	N/A	\$43,642
School Boards	\$37,642	\$98,294	\$57,493	N/A	\$38,279	\$37,790
County Governments	\$42,955	\$99,088	\$61,535	\$53,810	\$76,008	\$49,263
Cities and Special Districts	\$47,394	\$107,620	\$66,751	\$73,778	\$14,590	\$50,311
Community Colleges	\$40,873	\$131,932	\$48,909	N/A	\$60,439	\$41,904
Average Salary	\$39,188	\$80,855	\$53,435	\$44,922	\$78,296	\$41,449

School Board Data

as of June 30 2010

Employer Group	Membership Class	Count	Avg Age	Avg Service	Avg Salary	Total Salary Amt
School Boards	Regular Class	315,413	45.55	11.22	\$37,642	\$11,811,769,209
	Senior Management Service Class	632	50.83	18.55	\$98,294	\$62,065,422
	Special Risk Class	419	44.48	11.23	\$57,493	\$23,865,767
	Elected Officers' Class	321	56.52	11.89	\$38,279	\$12,235,471
	Totals	316,785	45.57	11.24	\$37,790	\$11,909,935,868

Average Benefit for Selected FEA Members (calculated)

Calculated Retirement Benefits for Various Classes - 09-10

	Avg. salary	yrs	rate	Avg. retirement	per month
Teacher	\$ 46,708.00	30	1.60%	\$ 22,419.84	\$ 1,868.00
Secretary	\$ 31,789.00	30	1.60%	\$ 15,258.72	\$ 1,271.00
Aides (Para)	\$ 17,348.00	30	1.60%	\$ 8,327.04	\$ 693.00
Bus Driver	\$ 17,484.00	30	1.60%	\$ 8,392.32	\$ 699.00
Food Service	\$ 15,385.00	30	1.60%	\$ 7,384.80	\$ 615.00
Custodian	\$ 23,650.00	30	1.60%	\$ 11,352.00	\$ 946.00

National Comparisons

Selected statistics (Congressional Quarterly Press, Florida Education in Perspective 2010-2011)	State data	National rank
Per capita Public Elementary and Secondary School Expenditures for salary, wages and benefits (2008)	\$1,012	45
Per capita Public Elementary and Secondary School Expenditures for Employee Benefits (2008)	\$237	42
Public Elementary and secondary school current expenditures per \$1,000 personal income (2008)	\$33.50	50
Average teacher's salary as a percent of average pay of all workers - average salary compared to each state's average annual pay for all workers covered by unemployment. (2008)	115.7%	34 (117.6 %)

Summary

- Education employees are the largest portion of the FRS system. Even modest little changes in the sector has huge impacts to the system.
- National and state data on salaries and retirement show Florida's educators and staff professionals are already at, or near, the bottom in almost every ranking (yet their performance is at the top).
- Florida's citizens already pay the smallest cost per person income to maintain these expenditures – FL is 50th.
- Contrary to some of the perceptions about rich public sector employees, as a percent, Florida's average teacher's salary is below the average pay of all workers.

FEA Positions

- ⑥ Protect all current retirees and fully vested employee benefits and conditions.
- ⑥ Florida already provides for defined benefit and defined contribution options for education (regular class) employees. These options should be maintained and continued for all education employees.
- ⑥ Continue to add transparency, independent oversight, and accountability to the system.
- ⑥ Retirement system changes should reflect a consideration of total compensation, should be based on the independently verified facts, and should not disadvantage any class in order to benefit another.
- ⑥ In the education arena, policy makers will need to carefully monitor and consider the potential changes that are being proposed regarding public education employee pay.