

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

MEETING DATE: Thursday, March 17, 2011
TIME: 3:30 —5:30 p.m.
PLACE: *Pat Thomas Committee Room, 412 Knott 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	SB 1314 Alexander (Identical H 939)	State Financial Matters; Prohibits an agency or branch of state government, without legislative authority, from contracting to pay liquidated damages or early termination fees resulting from the breach or early termination of a contract or agreement, from paying interest because of insufficient budget authority to pay an obligation in the current year, from obligating the state to make future payments to cover unpaid payments, or from granting a party the right to collect fees or other revenues from nonparties, etc.	GO 03/17/2011 BC
2	SB 1738 Alexander (Similar H 1211)	State Financial Information; Requires the Auditor General to annually provide to the Legislature a list of school districts that have failed to comply with certain financial transparency requirements, as identified pursuant to audit. Establishes the Agency for Enterprise Business Services within the Department of Financial Services. Provides that the agency is headed by the Governor and Cabinet acting as the Financial Management Information Board. Establishes the Enterprise Financial Business Operations Council to act in an advisory capacity to the agency, etc.	GO 03/17/2011 BC

A proposed committee substitute for the following bill (SB 1128) is expected to be considered:

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Thursday, March 17, 2011, 3:30 —5:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 1128 Ring (Compare H 303)	Public Retirement Plans; Provides that a local governmental entity may not offer a defined benefit retirement plan to a plan member hired on or after a certain date. Provides that local plans must use at least 5 years to determine a plan member's average final compensation for calculating retirement benefits for members hired on or after a certain date. Directs the Department of Financial Services to rate the financial strength of local government defined benefit plans. Creates the Task Force on Public Employee Disability Presumptions, etc.	GO 02/22/2011 Workshop-Discussed GO 02/24/2011 Not Considered GO 03/17/2011 BC

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 Governmental Oversight and Accountability Committee

BILL: SB 1314

INTRODUCER: Senator Alexander

SUBJECT: State Financial Matters

DATE: March 7, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			BC	
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I. Summary:

This bill enhances the authority of the Legislature over agency contracting that affects the state budget. The bill prohibits agencies, with exceptions, from obligating the state through certain types of contractual clauses, and requires advance notice to the Governor and Legislature before entering certain high-value or no-cost contracts. The bill specifies contractual language addressing the state's ability to terminate contracts, which must be included in all executive and judicial contracts, and creates misdemeanor penalties for agency employees who willfully violate these provisions. The bill requires that acceptance or rejection contract deliverables be in writing, and prohibits agencies from entering into lease or deferred payment purchases of greater than \$500,000 without legislative approval. The bill requires agency heads, their equivalents or designated senior management staff to sign contracts worth more than \$25,000, and to certify compliance with applicable contracting provisions for all contracts with terms of greater than 12 months.

This bill substantially amends ss. 216.011, 216.311, 287.063, 287.064, 376.3075, and 403.1837, and creates ss. 216.312 and 216.313 of the Florida Statutes.

II. Present Situation:

Planning and Budgeting

Chapter 216 of the Florida Statutes, relating to planning and budgeting, provides guidelines to the Governor, the judicial branch, and state agencies for developing and submitting legislative budget requests and administering legislative appropriations.

Pursuant to s. 216.011(1)(qq), F.S., a “state agency” or “agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of Chapters 215 and 216, F.S., “state agency” or “agency” includes state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms “state agency” or “agency” include the judicial branch.

Section 216.177, F.S., requires agencies to give the Legislature certain notice of budget actions. If the presiding officers or the chair and vice chair of the Legislative Budget Commission find that the agency action is contrary to legislative intent and policy or exceeds delegated authority, those persons may object to the action – requiring the Governor to void the action until the Commission or the Legislature addresses the issue.

Section 216.311, F.S., provides that no agency or branch of state government may contract to spend, or enter into any agreement to spend, any moneys in excess of the amount appropriated to such agency or branch unless specifically authorized by law. Any contract or agreement in violation of this provision is null and void, and anyone who willfully violates the provision is guilty of a first degree misdemeanor.

Procurement

Chapter 287, F.S., specifies the requirements for agency procurement of commodities and services.

Section 287.017, F.S., specifies the purchasing categories, which are thresholds linked to other requirements in Chapter 287, F.S., as follows:

- Category One \$20,000
- Category Two \$35,000
- Category Three \$65,000
- Category Four \$195,000
- Category Five \$325,000

Section 287.0582, F.S., denotes the annual appropriation contingency statement that must be included in any contract lasting longer than one fiscal year for the purchase of a service or tangible personal property: “The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.”

Section 287.063, F.S., specifies the preaudit review and approval process required for deferred-payment commodity contracts. The section establishes a maximum interest rate, and prohibits appropriated funds from being used to acquire equipment through a lease or deferred-payment purchase arrangement, unless it is approved by the Chief Financial Officer (CFO) as economically prudent and cost-effective. The CFO is required to adopt rules relating to the approval process. For purposes of this section, deferred-payment commodity contracts for replacing the state accounting and cash management systems may include equipment, accounting software, and implementation and project management services.

Section 287.064, F.S., specifies the requirements for consolidated financing of deferred-payment purchases. Among other provisions, the section provides that deferred-payment commodity contracts for replacing the state accounting and cash management systems may include equipment, accounting software, and implementation and project management services.

III. Effect of Proposed Changes:

Section 1 amends s. 216.011, F.S., to provide a definition of a new appropriations category: “Lease or lease/purchase of equipment.”

Section 2 amends s. 216.023, F.S., to require each state agency to provide in its legislative budget request specific information regarding contracts granting concessions to other parties. That information must include:

- The name of the vendor.
- A brief description of the services provided.
- The contract term and the years remaining on the contract.
- The amount of revenue generated or expected to be generated by the vendor under the contract for the prior fiscal year, the current fiscal year, and the next fiscal year.
- The amount of revenue remitted or expected to be remitted to the state agency by the vendor for the prior fiscal year, the current fiscal year, and the next fiscal year.
- The value of capital improvements, if any, on state property, which have been funded by the vendor over the term of the contract.
- The remaining amount of capital improvements, if any, on state property, which have not been fully amortized by June 30 of the prior fiscal year.
- The amount, if any, of state appropriations made to the state agency to pay for services provided by the vendor.

Section 3 amends s. 216.311, F.S., by providing that for ss. 216.311- 216.313, F.S., “contracts” and “agreements” include all related amendments, renewals, and extensions, and by specifying additional types of contracts that may not be entered into by an agency or branch of state government.

Pursuant to s. 216.311(1), F.S., an agency or branch of state government may not enter into a contract that:

- Requires the state to pay liquidated damages or early termination fees resulting from a breach or early termination of the contract based on a legislative action to provide less than full funding of a contract.
- Requires the state to pay interest, other than interest paid under the prompt pay law, to another party because the agency or branch has insufficient budget authority to pay the underlying obligation of the contract or agreement in the current year.
- Binds the state to make future-year payments to offset payments not made in a prior year due to the insufficiency of current-year appropriations, unless the Legislature expressly authorizes the agency or branch to enter into such contract or agreement.
- Grants any party the right to collect and retain fees or revenues from persons or entities not party to the contract, unless the agency is specifically authorized by law to enter into such contracts.

The limitations of s. 216.311(1), F.S., will not apply to:

- The Department of Transportation, when, in order to spend funds appropriated for the approved 5-year work program, it enters into contracts that require liquidated damages clauses.
- The Department of Management Services, when, in order to administer the state group insurance program, it enters into contracts that permit providers and insurers to collect premiums and co-payments from participants in the group insurance program.
- The Agency for Health Care Administration, when, in order to administer the state Medicaid plan and Florida Healthy Kids program, it enters into contracts that permit providers to collect premiums and co-payments.
- The Department of Environmental Protection, when, in order to administer the state parks system, it enters into contracts that require the payment of liquidated damages or early termination fees if the vendor has made significant capital improvements to state property and the costs of such improvements are amortized over no more than a 3 year period.

The bill provides that an agency may not enter into a lease or lease purchase for tangible personal property for more than \$500,000, or a term of greater than one fiscal year, unless the lease or agreement is expressly authorized by the Legislature, or the Legislative Budget Commission has approved a transfer of budget authority to the lease or lease/purchase of equipment appropriations category. This provision will not apply to the State Board of Administration's investment duties.

Any contract or agreement in violation of these provisions is null and void, and a public officer or employee who willfully enters into a contract in violation of these provisions commits a first degree misdemeanor.

Section 4 creates s. 216.312, F.S., relating to the reporting of contract expenditures. The bill requires notification of the terms and conditions of a contract to the Governor, the President of the Senate, and the Speaker of the House of Representatives 30 days before an executive or judicial branch officer or employee enters into the following types of contracts:

- A contract or agreement which requires payments by the state in excess of \$10 million in any fiscal or calendar year.
- A contract or agreement which requires minimal or no payments by the state, or authorizes the other party to make expenditures in anticipation of revenues.
- A contract or agreement which requires initial expenditures by the other party and for which the other party will not receive payment from the state within 180 days after the expenditure.

The bill specifies that execution of any contract or agreement described in this section is an action or proposed action that is subject to the provisions of s. 216.177(2)(b), F.S.

Section 5 transfers s. 287.0582, F.S., to s. 216.313, F.S., and amends it to provide that an executive or judicial branch officer or employee may not enter into a contract for the purchase of services or tangible personal property unless the contract identifies the specific appropriation from which payment in the first year of the contract will be made, or unless the Legislature expressly authorizes entering into such a contract without a specific appropriation of funds.

The bill also requires that executive and judicial branch contracts contain specified statements that:

- The state's performance and obligation to pay under the contract is contingent upon an annual appropriation by the Legislature.
- The contract may be terminated by the state upon 10 days' written notice if funding for the contract is specifically eliminated pursuant to:
 - A deficit reduction plan implemented by the Governor or the Chief Justice or by an act of the Legislature after certification pursuant to section 216.221, F.S., that a deficit will occur in the General Revenue Fund; or
 - A deficit reduction plan implemented by the Governor or Chief Justice pursuant to section 216.221(10), F.S., or by an act of the Legislature, after a determination by the Chief Financial Officer that a deficit will occur with respect to the appropriations from a specific trust fund in the current fiscal year.

The bill provides that a contract that exceeds \$35,000¹ must be signed by the agency head, executive director, or chief judge, as appropriate, or a designated senior management employee, and a contract that exceeds 12 months may not be executed unless an agency head, executive director, or chief judge or a designated senior management employee determines that the contract is in compliance with Chapter 216, F.S., and certifies such compliance in writing in the contract. A contract that exceeds \$325,000² must require the written acceptance or rejection of contract deliverables.

Contracts in violation of s. 216.313, F.S., are null and void, and any officer or employee who willfully enters into a contract in violation of this section commits a first degree misdemeanor.

Sections 6 and 7 amend ss. 287.063 and 287.064, F.S., to prohibit an agency from entering into a lease or deferred payment purchase for the acquisition of equipment, or a master equipment financing agreement, costing greater than \$500,000, unless the Legislature has expressly authorized such an agreement in the General Appropriations Act, or the Legislative Budget Commission has approved a transfer of budget authority to the appropriations category for deferred payment commodity contracts. The bill also deletes provisions that allow deferred payment commodity contracts for replacing the state accounting and cash management systems to include equipment, accounting software, and implementation and project management services.

Sections 8 and 9 amend ss. 376.3075 and 376.1837, F.S., to correct cross references and make technical changes.

Section 10 provides that the law takes effect on July 1, 2011, and applies to all initial contracts, amendments to contracts, and extensions or renewals of contracts which are executed on or after July 1, 2011.

¹ Category Two from the purchasing categories in s. 287.017(1), F.S.

² Category Five from the purchasing categories in s. 287.017(1), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

It is unclear whether prohibiting contracts with liquidated damages clauses may act to discourage vendors from doing business with the state, or cause vendors to increase their pricing in order to account for any perceived increases in their risk.

Though the bill creates new misdemeanor offenses, it is not expected to have a prison bed impact. The bill has not been reviewed by the Criminal Justice Impact Conference.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 255.25(3)(e), F.S., allows an agency to reimburse a landlord for tenant improvements, if the agency terminates the lease before expiration. The new section 216.311(2)(b), F.S., appears to prohibit this kind of payment, and it is unclear whether the “specifically authorized by law” language in s. 216.311(2)(a), F.S., would permit it.

Section 216.312(1)(b), F.S., does not define “minimal” payments, which could lead to differing interpretations.

Section 216.313(3)(a), F.S., is partially duplicative of a requirement contained in s. 287.058(2), F.S., that agency heads sign contracts with value of greater than \$25,000.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



801692

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Wise) recommended the following:

Senate Amendment (with title amendment)

Delete lines 131 - 135
and insert:

(a) In order to implement the work program approved by the
Legislature, and in accordance with the comprehensive
legislative oversight of the department under chapter 339, the
Department of Transportation may enter into contracts and
agreements, subject to the requirements of s. 334.30 and chapter
339, in lieu of the limitations specified in paragraphs (2) (b) -
(e).



801692

13 Between lines 204 and 205

14 insert:

15 (3) In lieu of the requirements of this section, and in
16 accordance with the comprehensive legislative oversight of the
17 department under chapter 339, the Department of Transportation
18 shall implement the work program approved by the Legislature by
19 entering into contracts and agreements, subject to the
20 requirements of s. 334.30 and chapter 339. If the department
21 intends to procure a contract pursuant to s. 334.30, it must
22 provide written notification to the Governor, the President of
23 the Senate, the Speaker of the House of Representatives, and the
24 chairs of the legislative appropriations committees at least 30
25 days before advertising for proposals.

26
27 Between lines 243 and 244

28 insert flush left:

29
30 Paragraph (b) does not apply to a contract or agreement entered
31 into pursuant to s. 334.30.

32
33 ===== T I T L E A M E N D M E N T =====

34 And the title is amended as follows:

35 Delete line 25

36 and insert:

37 provisions relating to expenditures; providing an
38 exception for the Department of Transportation;
39 transferring,



261046

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Wise) recommended the following:

Senate Amendment

Delete lines 168 - 175
and insert:

(5) In order to administer the real estate and other investment portfolios as provided in s. 215.47 and to carry out such other duties of the State Board of Administration set out in law, the board may enter into contracts and such other agreements as necessary to carry out the duties of the board.

(6) Any contract or agreement in violation of this section is null and void.

(7)-(2) Any public officer or employee ~~person~~ who willfully



190450

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Wise) recommended the following:

Senate Amendment (with title amendment)

Between lines 403 and 404
insert:

Section 10. Subsection (2) of section 287.056, Florida Statutes, is repealed.

Section 11. Section 45 of chapter 2010-151, Laws of Florida, is amended to read:

Section 45. Contracts for academic program reviews, auditing services, health services, or Medicaid services are subject to the transaction or user fees imposed under ss.



190450

13 287.042(1)(h) and 287.057(22), Florida Statutes, only to the
14 extent that such contracts were ~~not~~ subject to such transaction
15 or user fees before July 1, 2010.

16
17 ===== T I T L E A M E N D M E N T =====

18 And the title is amended as follows:

19 Delete line 52

20 and insert:

21 conforming cross-references; repealing s. 287.056(2),
22 F.S., relating to provisions providing agencies with
23 the option of purchasing services from state term
24 contracts; amending s. 45, chapter 2010-151, Laws of
25 Florida; providing that certain contracts are subject
26 to transaction fees; providing for

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 Governmental Oversight and Accountability Committee

BILL: SB 1738

INTRODUCER: Senator Alexander

SUBJECT: State Financial Information

DATE: March 15, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			BC	
3.				
4.				
5.				
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I. Summary:

The bill establishes a new governance model for next generation changes to the financial infrastructure for State of Florida agencies affecting the principal subsystems of accounting (FLAIR); cash management (CMS); personnel (*PeopleFirst*); procurement (*MyFlorida Marketplace*); appropriations (LAS/PBS); and revenue collection (SUNTAX). An Agency for Enterprise Business Services is constituted as a separate, independent entity within the Department of Financial Services.

This bill substantially amends the following sections of the Florida Statutes: ss. 11.45, 215.90, 215.91, 215.92, 215.93, 215.94, 215.95, 215.985, 17.11, 216.102, 216.141, and 216.237.

The bill creates the following sections of the Florida Statutes: ss. 215.922, 215.923, 215.924, and 215.961.

The bill repeals the following sections of the Florida Statutes: ss. 215.96 and 570.07(41).

II. Present Situation:

The Florida Financial Management Information System (FFMIS) Act

The Florida Financial Management Information System (FFMIS) Act, authorized in ss. 215.90 through 215.96, F.S., was established to plan, implement and manage a unified information system which provides fiscal, management, and accounting information. The FFMIS Act established the Florida Management Information Board (FMIB) and the FFMIS Coordinating Council (Council). The FMIB is comprised of the Governor and Cabinet, and has overall responsibility for managing and overseeing the development of Florida Financial Management

Information System pursuant to s. 215.95, F.S., including establishing financial management policies and procedures for executive branch agencies. The Council is comprised of the members of the Cabinet, the secretary of the Department of Management Services, and the director of the Governor's Office of Policy and Budget. Among other duties, the Council is to approve all FFMIS subsystem designs and modifications prior to implementation and to make recommendations to the FMIB on policy alternatives to ensure coordination between the subsystems as defined in ss. 215.93 and 215.96, F. S.

There are five FFMIS subsystems which must be designed, implemented, and operated pursuant to the act. Each has a statutorily-identified functional owner as well as additional statutory requirements as follows:

- Planning and Budgeting (LAS/PBS) – The Executive Office of the Governor is the functional owner. The system must also be designed, implemented, and operated pursuant to ch. 216, F.S.
- Florida Accounting Information Resource (FLAIR) – The Department of Financial Services is the functional owner. The system must also be designed, implemented and operated pursuant to ss. 17.03, 215.86, 216.141, and 216.151, F.S.
- Cash Management System (CMS) – The Chief Financial Officer is the functional owner.
- Purchasing (*MyFloridaMarketplace*) – The Department of Management Services is the functional owner.
- Personnel Information (*PeopleFirst*) – The Department of Management Services is the functional owner. The system must also be designed, implemented, and operated pursuant to s. 110.116, F. S.

The FFMIS Act identifies each subsystem's general functional requirements, but allows each functional owner to establish additional functions unless they are specifically prohibited by the FFMIS Act. Functional owners may not establish or maintain additional subsystems which duplicate any of the FFMIS subsystems.

The FMIB approved a strategic plan in March 14, 2000, that authorized the replacement of the FFMIS subsystems with an enterprise-wide financial management system that integrates financial information and standardizes policies and information. This system has never been implemented. The FMIB has not made any decisions relating to policy or the FFMIS subsystems since February 2001 when it modified the strategic plan to allow the use of outsourcing as a means to replace or enhance the functionality of the FFMIS subsystems. No subsystem designs or modifications have been brought to the FMIB for review or approval since that time. As a result, the overall governance and management of each FFMIS subsystem has been "unofficially delegated" to each functional owner and each functional owner has autonomously pursued an independent path for development and enhancement of its subsystem. The FMIB has been inactive since February 2005.

Pursuant to s. 215.95(2)(a), F.S., the FMIB is required to adopt rules, policies and procedures; however, no rules have been promulgated and no documentation was found to indicate FMIB

issued or adopted any fiscal management policies and procedures or standardized business practices as authorized by the Act.¹

Factors Contributing to the Ineffectiveness of the FFMIS Act

The ineffectiveness of the FFMIS Act has led to an uncoordinated approach to making decisions for the FFMIS and its subsystems. A review of the statutes relating to FFMIS and FFMIS subsystems identified conflicts, inconsistencies, or deficiencies which have contributed to the ineffective governance structure that currently exists.² The following is a list of factors identified in this review:

- The FFMIS statute does not clearly define the goal of the Florida Financial Management Information System as being an enterprise system as identified in the 2001 FFMIS Strategic Plan.
- The FFMIS statute does not provide authority to the FMIB to define, control or limit the business services to be provided by the Florida Financial Management Information System and its subsystems. Leaving the functionality for each subsystem undefined makes it difficult to develop requirements and difficult to estimate the cost of system replacement.
- The Financial Management Information Board has failed to enforce compliance with FFMIS Act provisions, indicating a lack of executive ownership, sponsorship and responsibility. Section 215.95(2)(b), F.S., authorizes FMIB to issue orders to executive branch agencies to enforce implementation of and compliance with provisions relating to FFMIS.
- Each subsystem owner independently requests and controls funding for issues relating to its subsystem's modification or replacement.
- The FMIB and the FFMIS Coordinating Council are not currently staffed to perform the functions required by the FFMIS Act.

FFMIS Subsystem Contracts

In the near future the state faces significant decisions relating to FFMIS subsystems including whether to:

- Renew, modify or replace the contract for the state's purchasing subsystem, *MyFloridaMarketplace*.
- Renew, modify or replace the contract for the state's personnel information subsystem. The contract for *PeopleFirst*, which began August 2002, will expire in August 2011. \$350 million is committed through the current contract period.
- Replace the current accounting subsystem. Project Aspire was intended to replace the accounting and cash management subsystems, but was suspended. The total project cost including interest payments from Fiscal Year 2002-2003 through Fiscal Year 2010-11 is estimated to be \$96.5 million.
- Replace the current cash management subsystem.

¹ Chapter 43, F.A.C., contained rules promulgated by the Fiscal Accounting Information Board, the predecessor of the FMIB. Both rules were repealed December 12, 1996, prior to the creation of the current entities by Chapter 97-286, L.O.F.

² Issue Brief 2009-321, by the Fiscal Policy and Calendar Committee.

The Financial and Cash Management Task Force

In 2008, the Financial and Cash Management Task Force (Task Force) was established in s. 17.0315, F.S., and directed to create a strategic business plan for a successor financial and cash management system. The business plan must address the interoperability of the successor system with existing systems. The Task Force submitted its strategic business plan and recommended legislation on January 30, 2009.

III. Effect of Proposed Changes:

Section 1 amends s. 11.45(7), F.S., to require that the Auditor General annually transmit to the Legislature and the Legislative Auditing Committee a list of all school districts that have failed to comply with transparency requirements as identified in specified school board audits and audit reports.

Section 2 amends the existing short title in s. 215.90, F.S., to correct a cross-reference.

Section 3 amends s. 215.91, F.S. to transfer from the existing multi-agency FFMIS participants to a successor single entity, the Agency for Enterprise Business Services, all of the authority for the decisions on the development of succeeding business information systems.

Section 4 amends s. 215.92, F.S., to provide new definitions of terms that will govern the operation of the successor systems. These terms identify the scope as being across state agencies with a reach that extends to the subsystem level in terms of design, execution, modification, enhancement and replacement. State agencies affected will be those subject to ch. 216, F.S.

Section 5 creates the Agency for Enterprise Business Services (AEBS) within the Department of Financial Services in new section 215.922, F.S. The agency head is the Governor and Cabinet in their collegial capacity as the Financial Management Information Board.

The agency will have an executive director, the Enterprise Financial Business Operations Officer, appointed by the Governor with at least three affirmative votes of the Governor and Cabinet, with the Governor and the Chief Financial Officer on the prevailing side, subject to confirmation by the Senate. The officer serves at the pleasure of the Governor and Cabinet. The Chief Financial Officer may appoint an interim director until an executive director is confirmed by the Cabinet.

The agency will have the following duties and responsibilities:

- Ensuring that decisions are identified and issues are resolved by the board.
- Coordinating and staffing the meetings of the council, which must meet at least 12 times per year for the purpose of obtaining input from council members.
- Monitoring operational and performance issues of the functional information subsystems and enterprise agency business subsystems.
- Coordinating as necessary with the Agency for Enterprise Information Technology to obtain technology-related information from state agencies.
- Developing the Enterprise Financial Business Services Strategic Plan.

- Serving as a clearinghouse for enterprise information relating to the planning, development, implementation, and evaluation of improvements to enterprise financial business processes.
- Developing policies and procedures that improve the efficiency and effectiveness of the Florida Financial Management System.
- Developing criteria for defining standardized enterprise financial business services to be provided by the Florida Financial Management Information System.
- Adopting rules.
- Providing an operational plan annually by January 1, beginning in 2014, to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The plan must contain recommendations for the current and subsequent fiscal year and identify estimated costs, budget adjustments, and legislative changes necessary to implement such recommendations.
- Submitting an inventory to the Governor and the chairs of the legislative appropriation committees by July 1, 2013, of agency financial business systems that are maintained by executive branch agencies.

Section 6 creates s. 215.923, F.S., which creates an advisory body, the Enterprise Business Services Council, as a successor to the duties now provided by the existing FFMIS Coordinating Council. The council membership will be composed of the functional owners of each of the FFMIS subsystems as well as undesignated appointees by the cabinet officers and the executive director of AEIT.

Section 7 creates s. 215.924, F.S., which provides the AEBS with the statutory mission to develop and annually update a multi-year Enterprise Financial Business Strategic Plan to be submitted to the Governor and the legislature. The plan must:

- Describe the services to be provided along with all of the system and subsystem components;
- Provide an estimate of the total financial and human capital costs of each subsystem;
- Identify all of the critical interconnectivity required for there to be coordinated and standardized information exchanges among the systems;
- Provide project management and governance for enhancement or replacement projects with cumulative funding costs in excess of \$10 million.
- Recommend improvements to processes reporting and data security and integrity which enhance management, accountability, and eliminate redundancy among the subsystems.

Section 8 amends s. 215.93, F.S., to specify the purposes of the successor FFMIS, as amended by this bill. The state accounting system, FLAIR, is renamed the Financial Management Subsystem and the separate System for Unified Taxation, SUNTAX, now administered by the Department of Revenue, will be incorporated into the new FFMIS. Each state agency must submit to the council a business case analysis for modification or replacement of any subsystem for which it is responsible.

Section 9 amends s. 215.94, F.S., to specify the duties of each state agency responsible for a FFMIS subsystem. This section makes nomenclature changes consistent with the revised duties and responsible parties and identifies the Department of Revenue as the functional owners of the SUNTAX subsystem. The new FFMIS must provide for a data-gathering and distribution facility

for the collection and storage of statewide financial information to assist decision-makers in carrying out their responsibilities.

Section 10 amends s. 215.95, F.S., to provide the Governor and Cabinet, in their collegial capacity as the Administration Commission³ and the FFMIB, as the approval body for the FFMIS strategic and operational plans, the approval of project milestones, and the resolution of agency disputes.

Section 11 repeals s. 215.96, F.S., which assigns duties to the existing FFMIS Coordinating Council.

Section 12 creates s. 215.961, F.S., to require state agencies to follow the policies developed by the AEBS for the successor financial management system and to establish July 1, 2015 as the nominal date for the transition to enterprise business services. Services migration plans from state agencies to the AEBS are due by July 1, 2013 with a list of services provided due the previous year.

Each state agency and the Judicial Branch are made responsible for the accuracy of the information entered into the FFMIS.

Section 13 amends the “Transparency Florida Act” in s. 215.985, F.S., to make nomenclature changes, and to require the Legislative Auditing Committee to develop a format for collecting and displaying information from school districts, charter schools, and charter technical career centers.

The bill requires that a state contract management system must be established on the website for the purpose of providing public access to information relating to contracts procured by state governmental entities. The data provided by the system must include, but need not be limited to, the contracting agency, amount of compensation, contract beginning and end dates, type of commodity and service, procurement method, purpose of the commodity or service, compliance information such as performance metrics for the service or commodity, contract violations, number of contract extensions or renewals, and whether the service is required by law. Procurement staff of state governmental entities must update the data within the system immediately upon making major changes to the contract, including renewal of the contract, termination of the contract, extension of the contract, or amendment of the contract.

The bill also requires that a certified public accountant conducting an audit pursuant to s. 11.45 or s. 218.39 of a unit of local government which is subject to the Transparency Florida Act must report, as part of the audit, whether the entity is in compliance with the act.

Section 14 repeals s. 570.07(41), F.S., which exempts the Department of Agriculture and Consumer Services (DACS) from the requirement of participating in MyFloridaMarketplace

³ The Administration Commission, composed of the Governor and Cabinet, is a statutory entity created in s. 14.202, F.S. There are approximately sixty-one references to its duties in the Florida Statutes. Generally, it is a decision-making body in disputed agency actions and approves agency rules that affect multiple governmental units.

(MFMP), the FFMIS-compatible procurement system. The DACS system is internally managed by the agency, and is independent of MFMP.

Sections 15-18 amend, respectively, ss. 17.11, 216.102, 216.141, and 216.237, F.S., to make nomenclature changes in statutes relating to the duties of the Chief Financial Officer and the planning and budgeting statutes consistent with the bill. Among these is the redesignation of FLAIR as the Financial Management Subsystem.

Section 19 recognizes funding provided by ch. 2008-152, Laws of Florida, the General Appropriations Act, in three specific line item appropriations for initial stages of FFMIS development. Specifically, these line items are:

- 2449 State Financial Information and State Agency Accounting
- 2451 Expenses
- 2452 Operating Capital Outlay
- 2459 Special Categories

Section 20 provides that the bill takes effect upon becoming law.

Other Potential Implications:

The AEBS is given specific rulemaking authority for the execution of its new statutory responsibilities. Currently, ch. 120, F. S., the Administrative Procedures Act, exempts agency budgets, information technology memoranda issued by the Governor, and agency claims submitted for payments to the Chief Financial Officer from the definition of a rule.⁴ Each of these processes implicates a portion of FFMIS. Close coordination will be required to make certain that the rule promulgation and adoption process is not impaired as a result of these different statutory standards exercised by common FFMIS participants.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴ Section 120.52(16)(b)1., 2., 4., F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Section 17 obligates a 2008 appropriation made in ch. 2008-152, Laws of Florida, the General Appropriations Act, for a similar purpose. The amounts are three positions with a salary rate of \$185,569 and \$300,000.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Auditor General conducts the audits pursuant to s. 11.45, F.S.

The bill could clarify reporting requirements by placing the requirements in lines 995 through 999, in the respective substantive provisions.

The Legislature may wish to clarify what is intended by the phrases “required by law” on line 990, and “major changes” on line 992, to ensure that entities are reporting the intended information.

Pursuant to a subsection in line 1000 of the bill, the Joint Legislative Auditing Committee (JLAC) is given the authority to “adopt guidelines” to “administer” the Transparency Florida Act. It is unclear how JLAC, which consists of members of both houses of the Legislature, can adopt guidelines affecting external entities, other than by acting on legislation. As of March 14, 2011, both houses of the Legislature had passed SB1204, which deleted a requirement in Section 11.40(4)(b), F.S., that JLAC provide oversight and management of the website developed pursuant to the Transparency Florida Act.

The state agencies affected will be those governed by ch. 216, F.S., and more particularly, those whose operations are defined in paragraph (qq) of subsection (1), as follows:

(qq) “State agency” or “agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government. For purposes of this chapter and chapter 215, “state agency” or “agency” includes, but is not limited to, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, the Florida Clerks of Court Operations

Corporation, the Justice Administrative Commission, the Florida Housing Finance Corporation, and the Florida Public Service Commission. Solely for the purposes of implementing s. 19(h), Art. III of the State Constitution, the terms “state agency” or “agency” shall include the judicial branch.

Chapter 20, F.S., provides standard nomenclature for the structural components of state agencies. A “department” is the basic building block of government activity and is the structure through which authority is exercised and to which money and positions are appropriated. Its principal subcomponent is a “division.” Units below that level may be created by departments; above that level they are created by statute. Since the governmental reorganization of 1969, a variety of structures have entered into the ch. 20, F.S., taxonomy. The most common of these are “offices” or “agencies” which are hybrids of departments and divisions but operating below the departmental level. Some of these were created to execute a matrix form of operations in which considerable autonomy was delegated to division-like units outside of the headquarters location. Chief among these has been the Department of Children and Family Services; the Department of Corrections; the Department of Financial Services; the Department of Revenue; and, the Department of Transportation.

Article IV of the State Constitution limits executive departments to twenty-five in number, excluding those authorized or created in that document. Using that benchmark, the following count is obtained:

- Constitutionally created or authorized (5): State Board of Administration, Department of Veterans’ Affairs; Florida Fish & Wildlife Conservation Commission; Department of Elderly Affairs; Board of Governors; and, Parole Commission.
- Authorized by statute (21): Department of State; Department of Legal Affairs; Department of Financial Services; Department of Agriculture and Consumer Services; Department of Education; Department of Business and Professional Regulation, Department of Community Affairs; Department of Children & Family Services; Florida Department of Law Enforcement; Department of Revenue; Department of Management Services; Department of Transportation; Department of Highway Safety and Motor Vehicles; Department of Environmental Protection; Department of Military Affairs; Department of Citrus; Department of Corrections; Department of Juvenile Justice; Department of the Lottery; Agency for Health Care Administration; and, Department of Health.
- Functional equivalent to department (1): Executive Office of the Governor.
- Department-like but statutorily proclaimed as subordinate (3): Agency for Persons with Disabilities; Agency for Workforce Innovation (DMS); and, Agency for Enterprise Information Technology (EOG).
- Total influenced by constitutional limitation: 22.

Unaffected by the limitation are a number of divisions with powers independent of the nominal department head. Examples of these are the Division of Emergency Management (DCA); the Division of Bond Finance (SBA), and the Division of Administrative Hearings (DMS). The

Public Service Commission is excluded from the limitation since it is, by statute, a legislative branch agency.

VIII. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



681316

LEGISLATIVE ACTION

Senate

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. .

House

The Committee on Governmental Oversight and Accountability
(Wise) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1002 - 1003.

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

And the title is amended as follows:

Delete lines 72 - 75

and insert:

administering the act; conforming terms; amending

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 Governmental Oversight and Accountability Committee

BILL: SB 1128

INTRODUCER: Senator Ring

SUBJECT: Local Government Retirement Plans

DATE: February 19, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill makes a number of changes affecting local government pension plans:

- A local government may not offer defined benefit retirement plans after July 1, 2011;
- Local government plans must use at least 5 years in determining an employee’s average final compensation;
- Plan sponsors must provide a death benefit to members killed in the line of duty;
- Firefighter and police pension plans are eligible to enter the Florida Retirement System only if the plan has no unfunded actuarial liabilities;
- Overtime compensation, unused leave, and other forms of compensation are removed from the definition of “compensation” or “salary” as used in firefighter and police pension plans, which would affect any calculation that uses those definitions;
- Premium tax income is required to be used for unfunded actuarial liabilities, before it can be used to fund extra benefits in firefighter and police pension plans;
- A Task Force on Public Employee Disability Presumptions is created to study and make recommendations on disabilities incurred in the line of duty;
- The Department of Financial Services is required to make recommendations regarding how local pension plan financial data should be reported; and
- The Department of Financial Services is required to create and provide standardized ratings for the financial strength of all local government defined benefit plans in Florida, to be provided on the department’s website.

This bill substantially amends sections 112.66, 121.051, 175.032, 175.351, 185.02, and 185.35, and creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Local Retirement Systems and Plans

The Department of Management Services' Division of Retirement reports¹ that as of September 30, 2010, there are 489 defined benefit plans sponsored by 239 local governments. The vast majority of the plans, 483, are local government defined benefit systems that provide benefits to 67,724 retirees, with 107,007 active employees, and total plan assets of \$23.1 billion.² The average annual pension in these local plans is \$23,854, and the average annual required contribution rate as a percentage of payroll is 26.04%.

Collective Bargaining

Collective bargaining, pursuant to ch. 447, F.S., consists of a series of negotiations between a public employer's chief executive officer³ and the selected bargaining agent⁴ for an employee organization regarding the terms and conditions of employment.⁵ The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.⁶

Employees have the right to collectively bargain under article I, section 6 of the Florida Constitution.⁷ Statewide regulations for collective bargaining amongst public employees are addressed in part II of ch. 447, F.S.⁸ Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.⁹

¹ Division of Management Services, *Florida Local Government Retirement Systems, 2010 Annual Report*, available online at: https://www.rol.frs.state.fl.us/forms/2010_Local_Report.pdf (last visited on February 13, 2011).

² The other 6 plans are school board early retirement programs that provide benefits to 1,570 retirees, with active plan membership of 9,157, and total plan assets of \$61.6 million.

³ Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state, and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer."

⁴ The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employers Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S., or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the PERC, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization, that is approved by the commission to be appropriate for the purposes of collective bargaining.

⁵ Section 447.203(14), F.S.

⁶ Section 447.201, F.S., *See also*, Public Employees Relations Commission, *A Practical Handbook on Florida's Public Employment Collective Bargaining Law*, 6 (2d ed. 2004).

⁷ FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

⁸ *See* s. 447.201, F.S. The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s. 6, Art. I of the State Constitution.

⁹ Section 447.309(5), F.S. ("Any collective bargaining agreement shall not provide for a term of existence of more than 3 years ...").

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to the Public Employees Relations Commission.¹⁰

Actuarial Soundness and Minimum Funding Standards for Pensions

Article X, s. 14, of the State Constitution requires public retirement benefits to be funded on a sound actuarial basis:

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.¹¹

The “Florida Protection of Public Employee Retirement Benefits Act” located in part VII of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this act is 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 tax payers.”¹²

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

The Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts, located in chapters 175 and 185, Florida Statutes, declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, in implementing the provisions of s. 14, Art. X of the State Constitution. Pursuant to ss. 175.021(1) and 185.01(1), F.S., 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.¹³ The Division of Retirement within the Department of Management Services is the primary state agency responsible for administrative oversight, including monitoring for actuarial soundness, of the funds in the Municipal Police Officers’ Retirement Trust Fund and the Firefighters’ Pension Trust Fund.¹⁴

Firefighters Pension Trust Fund - The Firefighters Pension Trust Fund is funded through an excise tax on property insurance policies that amounts up to 1.85 percent of the gross amount of receipts on premiums for policies issued within the municipality boundary or the legally defined boundary of a special fire control district.¹⁵ This excise tax is payable to the Department of Revenue on March 1 of each year, and the net proceeds are transferred to the appropriate fund at

¹⁰ The Public Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.

¹¹ Art. X, section 14 of the Florida Constitution.

¹² Section 112.61, F.S.

¹³ See ss. 175.021(1) and 185.01(1), F.S., (2006).

¹⁴ See ss. 175.121 and 185.10, F.S.

¹⁵ Section 175.101(1), F.S.

the Division of Retirement.¹⁶ In 2008, premium tax distributions to cities and special fire control districts from the Firefighters Pension Trust Fund amounted to \$70.5 million.¹⁷ The 2009 Legislature clarified the that boundaries of a special fire control district for purposes of the 1.85 percent excise tax shall “include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3)”¹⁸.

Municipal Police Officers Retirement Trust Fund - The Police Officers Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amounts up to .85 percent of the gross receipts on premiums for policies issued within the municipality boundary.¹⁹ This excise tax is also payable to the Department of Revenue and the net proceeds are transferred to the appropriate fund at the Division of Retirement. In 2009, premium tax distributions to municipalities from the Police Officers Retirement Trust Fund amounted to \$59.4 million.²⁰

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, and fines for employees violating board rules and regulations, and other sources.²¹

Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.²² 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 a 1 percent on annuity policies or contracts, to be distributed into the General Revenue Fund. Pursuant to s. 624.51055, F.S., 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.²³ Each time a municipality that is currently 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.²⁴

Board of Trustees

Firefighters and Police Officers Retirement Trust Funds are administered by a local governing board of trustees that is created in participating cities and special fire control districts and subject

¹⁶ Section 175.101(3), F.S.

¹⁷ Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Fire*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2009.pdf (last visited on February 10, 2011).

¹⁸ Chapter 2009-97, s. 6, Laws of Florida (L.O.F.).

¹⁹ Section 185.08, F.S.

²⁰ Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2009.pdf (last visited on February 10, 2011).

²¹ See ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

²² Section 624.509(1), F.S.

²³ 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 ...”).

²⁴ According to the Department of Management Services the state premium tax distribution made during 2009, amount to approximately \$131,113,000.

to the regulatory oversight of the Division of Retirement.²⁵ 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 that are subject to two-year terms. The chair and secretary of the board are elected by a majority vote.²⁶

The general powers and duties of the board of trustees are:

- To invest and reinvest pension trust fund assets in amounts sufficient to provide entitled benefits and initial and subsequent premiums;
- To invest and reinvest pension trust fund assets into:
 - Annuities and life insurance contracts;
 - Time or savings accounts of specified banks and financial institutions;
 - Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States;
 - Bonds issued by the State of Israel;
 - Bonds (which must hold a rating in one of the three highest classifications by a major rating service), stocks, and other indebtedness issued or guaranteed by a United States Corporation; and
 - Foreign securities not to exceed 10 percent of plan assets;
- To issue drafts upon the pension trust fund;
- To convert fund securities into cash; and
- To keep record on all receipts and disbursements and the board's acts and proceedings.²⁷

In addition to these duties, the board must hold quarterly meetings and retain a professional consultant at least once every three years to evaluate the performance of any existing money manager.²⁸

Chapters 175 and 185 Plan Provisions

Sections 175.041(3) and 185.03(2), F.S., each provide that the provisions of the respective chapters do not apply to any governmental entity whose firefighters and/or police officers are eligible to participate in the FRS. Exceptions are provided for those cities and special districts that opted out of the FRS and established a chapter plan for all police officers and firefighters hired after January 1, 1996, and for a city or special district subject to a transfer, consolidation, or merger, and whose fire and law enforcement services are provided by the county in which the city or special districts are located.

Sections 175.411 and 185.60, F.S., provide that cities and special districts who opt out of a local or chapter plan but do not terminate the plan, are prohibited from receiving future insurance premium tax money used to fund the pension plans. Premium tax funds previously received must be used to fund existing benefits for vested firefighters or police officers, and the accrued benefits of such vested firefighters or police officers may not be reduced. Annual reports to the

²⁵ See ss. 175.061 and 185.05, F.S.

²⁶ The secretary of the board shall keep a record of all persons receiving retirement payments under ch. 175 and ch. 185. See ss. 175.071(4) and 185.06(3), F.S., respectively.

²⁷ See ss. 175.07(1)(a)-(e) and 185.06(1)-(f), F.S., (note s. 185.06(1)(d), F.S., provides that the board of trustees may also decide all claims to relief for municipal police pension plans).

²⁸ See ss. 175.061(3), 175.071(6)(a), 185.05(3), and 185.06(5), F.S.

Municipal Police Officers' and Firefighters' Pension Office in the Division of Retirement at the Department of Management Services are required. Sections 175.361 and 185.37, F.S., provide requirements for distribution of plan assets when a city or a special district does terminate a chapter or local law pension plan.

Sections 175.371 and 185.38, F.S., provide that when every active firefighter or police officer in a chapter or local law pension plan elects to transfer to another state retirement system, the pension plan must be terminated and the assets must be distributed in accordance with ss. 175.361 and 185.37, F.S. If some participants elect to transfer to another state retirement system and others elect to remain in the chapter or local law plan, the chapter or local law plan will continue to receive insurance premium taxes until the plan is fully funded meaning that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis.

Disability Presumptions

General Provisions - Section 112.18(1)(a), F.S., provides that any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death will be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. The presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

The presumption for workers' compensation claims is different. For any workers' compensation claim filed under this section and chapter 440 occurring on or after July 1, 2010, a law enforcement officer, correctional officer, or correctional probation officer suffering from tuberculosis, heart disease, or hypertension is presumed not to have incurred disease in the line of duty as provided in this section if the law enforcement officer, correctional officer, or correctional probation officer:

- Departed in a material fashion from the prescribed course of treatment of his or her personal physician and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; or
- Was previously compensated pursuant to this section and chapter 440 for tuberculosis, heart disease, or hypertension and thereafter sustains and reports a new compensable workers' compensation claim under this section and chapter 440, and the law enforcement officer, correctional officer, or correctional probation officer has departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment.

Disability of Firefighters Suffered in Line of Duty – Pursuant to s. 175.231, F.S., for any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this ch. 175, F.S., any condition or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary is shown by competent evidence, provided that such firefighter shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section is applicable to all firefighters only with reference to pension and retirement benefits under ch. 175, F.S.

Disability of Police Officers Suffered in Line of Duty - Pursuant to s. 185.34, F.S., for any municipality, chapter plan, local law municipality, or local law plan ch. 185, F.S., any condition or impairment of health of any and all police officers employed in the state caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. This section is applicable to all police officers only with reference to pension and retirement benefits under ch. 185, F.S.

Financial Reporting Requirements for Local Governments

Section 218.39, F.S., specifies the requirements for annual financial audit reports for local governments. If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within 12 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

- Each county;
- Any municipality with revenues or the total of expenditures and expenses in excess of \$250,000;
- Any special district with revenues or the total of expenditures and expenses in excess of \$100,000;
- Each district school board;
- Each charter school;
- Each charter technical center;
- Each municipality with revenues or the total of expenditures and expenses between \$100,000 and \$250,000 that has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.

- Each special district with revenues or the total of expenditures and expenses between \$50,000 and \$100,000 that has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.

All audits conducted in accordance with this section must be conducted in accordance with the rules of the Auditor General. All audit reports and the officer's written statement of explanation or rebuttal must be submitted to the Auditor General within 45 days after delivery of the audit report to the entity's governing body, but no later than 12 months after the end of the fiscal year.

Section 218.32, F.S., provides that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district must submit to the Department of Financial Services (DFS) a copy of its annual financial report for the previous fiscal year in a format prescribed by DFS. Each local governmental entity that is required to provide for an audit in accordance with s. 218.39(1), F.S., must submit the annual financial report with the audit report. A copy of the audit report and annual financial report must be submitted to the department within 45 days after the completion of the audit report but no later than 12 months after the end of the fiscal year. Each local governmental entity that is not required to provide for an audit report in accordance with s. 218.39, F.S., must submit the annual financial report to DFS no later than April 30 of each year. DFS must consult with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. DFS must forward the financial information contained within these entities' annual financial reports to the Auditor General in electronic form.

Financial Reporting Requirements for Local Pension Plans

Sections 175.261 and 185.221, F.S., specify the financial reporting requirements for firefighter and municipal police pensions, respectively, which generally require an annual independent audit, and an actuarial valuation every three years. The reports must be submitted to DMS' Division of Retirement, which issues an annual report to the Legislature based upon the reporting from the local plans.

III. Effect of Proposed Changes:

Local Plans

Section 1 amends s. 112.66, F.S., to prohibit a plan sponsor from offering or providing membership in a defined benefit retirement system to an employee hired on or after July 1, 2011. For those employees whose terms and conditions of employment are collectively bargained, this provision applies to the first agreement negotiated on or after July 1, 2011.

The bill requires local plans to use a minimum of five years when determining an employee's average final compensation. For those employees whose terms and conditions of employment are collectively bargained, this provision applies to the first agreement negotiated on or after July 1, 2011.

The bill requires local plans that local plans provide death benefits for members killed in the line of duty with minimum standards:

- The surviving spouse of a member killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of death for the remainder of the surviving spouse's lifetime.
- If the surviving spouse of a member killed in the line of duty dies, the monthly payments must be paid for the use and benefit of the member's children under 18 years of age and unmarried until the 18th birthday of the member's youngest unmarried child.
- If a member killed in the line of duty leaves no surviving spouse but is survived by children under 18 years of age, the benefits must be paid for the use of the member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest unmarried child.

This death benefits provision does not abrogate other applicable provisions of state or federal law providing death benefits.

Florida Retirement System

Section 2 amends s. 121.051(2), F.S., by adding a new paragraph providing that firefighters' or police officers' pension or retirement plans established in Ch. 175 or 185 are eligible for membership in the FRS at the sole discretion of DMS, and only if the plans have no unfunded liabilities.

Firefighter Pensions

Section 3 amends s. 175.032, F.S., to provide that overtime compensation, unused leave, or any other form of compensation beyond base hourly or annual salary may not be included when calculating the member's compensation or salary.

Section 4 amends s. 175.351, F.S., to specify that premium tax income must first be used to pay down any unfunded actuarial liabilities in a pension plan, before paying for other benefits.

Municipal Police Pensions

Section 5 amends s. s. 185.02, F.S., to provide that overtime compensation, unused leave, or any other form of compensation beyond base hourly or annual salary may not be included when calculating the member's compensation or salary. In implementing this provision, the bill also deletes a provision that allowed up to 300 overtime hours to be included in a retirement benefit calculation.

Section 6 amends s. 185.35, F.S., to specify that premium tax income must first be used to pay down any unfunded actuarial liabilities in a pension plan, before paying for extra benefits.

Financial Rating of Local Plans

Section 7 requires the Department of Financial Services to create and provide standardized ratings for the financial strength of all local government defined benefit plans in Florida, to be provided on the department's website. The ratings must include the following factors:

- Current and future unfunded liabilities;
- The net asset value, managed returns, and funded ratio;
- Metrics related to the sustainability of the plan, including, but not limited to the percentage that the annual contribution is of the participating employee payroll;
- Municipal bond ratings for the local government, if applicable;
- 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 the plan.

The department may obtain the data needed to formulate the ratings from all relevant sources, which must cooperate in furnishing the data.

Task Force on Public Employee Disability Presumptions

Section 8 creates the Task Force on Public Employee Disability Presumptions for the purpose of developing findings and issuing recommendations on the disability presumptions applicable to firefighters and police officers employed by the state and local governments.²⁹ The task force consists of nine members to be appointed by July 15, 2011, as follows:

- An attorney in private practice appointed by the President of the Senate;
- A representative of organized labor appointed by the President of the Senate;
- A representative from the Florida League of Cities appointed by the President of the Senate;
- An attorney in private practice appointed by the Speaker of the House;
- A representative of organized labor appointed by the Speaker of the House;
- A representative from the Florida League of Cities appointed by the Speaker of the House;
- A representative from the Auditor General;
- A representative from DMS' Division of Retirement; and
- A representative from the Department of Financial Services.

The task force must address, at a minimum, the following issues:

- Data related to the operation of the statutory disability presumptions;
- How disability presumptions are handled in other states; and
- Proposals for changes to the existing disability presumptions.

By January 1, 2012, the task force must submit, a report to the Legislature and the Governor on recommendations for legislative action to be taken.

Local Government Pension Plan Transparency

Section 9 requires the Department of Financial Services to consider issues related to the transparency of the financial condition of local government pension plans, including:

- Whether and what kinds of local pension plan data should be included in the financial audit reports required under s. 218.39, F.S;

²⁹ Sections 112.18, 185.34, and 175.231, Florida Statutes.

- Whether the reporting requirements related to local police and firefighter pension plans should be supplemented with other types of financial data in order to give a more complete and transparent picture of a local government's financial solvency;
- Proposals for a uniform format for providing pension data, including standard terminology and the specific types of data which should be provided, including funding ratios, and whether contributions are sufficient to fund actuarial liabilities;
- Whether to require local governments to provide pension financial data on local public websites;
- Other related issues, including insurance benefits, health care benefits, postemployment plan benefits; and
- Proposals related to the composition of local pension plan boards.

The department must report its recommendations to the Legislature and Governor by December 1, 2011.

Important State Interest

Section 10 provides that the Legislature determines that the bill fulfills an important state interest as related to public pension plans.

Effective Date

Section 11 provides that the bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill would require 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 (done in section 10 of the bill) and one of the following relevant exceptions must apply:

- a. funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- b. Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- c. the expenditure is required to comply with a law that applies to all persons similarly situated; or
- d. the law must be approved by two-thirds of the membership of each house of the Legislature.

It is unclear whether this constitutional provision applies, given that some of the provisions in the bill should reduce long term costs to local governments, while the provision requiring a death benefit could increase costs. The issue is further compounded by the fact that premium tax income pays for at least some of the retirement benefits in plans created pursuant to Chapters 175 and 185, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Some of the provisions of the bill may help reduce local plans' long term unfunded liabilities. The provision requiring a death benefit requires local governments to fund the benefit. Any costs or savings caused by the bill are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Lines 57 through 63 may not be necessary, since the effect of another provision in the bill is to prohibit used of defined benefit plans after July 1, 2011.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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 Governmental Oversight and Accountability Committee

BILL: PCS/SB 1128 (172428)

INTRODUCER: Governmental Oversight and Accountability

SUBJECT: Local Government Retirement Plans

DATE: March 11, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	Pre-meeting
2.			BC	
3.				
4.				
5.				
6.				

I. Summary:

The bill makes a number of changes affecting local government pension plans:

- Accrued sick or annual leave may not be included in calculations of retirement benefits; overtime may be included, but is capped at 300 hours;
- Actuarial or cash surpluses in a local plan may not be used outside the plan;
- Local plans may not temporarily reduce contributions required to fund normal cost;
- Local governments must provide disability retirement benefits;
- Local governments must provide death benefits to firefighters, police officers, and correctional officers killed in the line of duty;
- Local plans are eligible to enter the Florida Retirement System only if the plan has no unfunded actuarial liabilities;
- Premium tax revenues, and accumulated excess premium tax revenues, may be used only once towards unfunded actuarial liabilities;
- A Task Force on Public Employee Disability Presumptions is created to study and make recommendations on disabilities incurred in the line of duty;
- The Department of Financial Services is required to make recommendations regarding how local pension plan financial data should be reported; and
- The Department of Financial Services is required to create and provide standardized ratings for the financial strength of all local government defined benefit plans in Florida, to be provided on the department’s website.

This bill substantially amends sections 112.66, 121.051, 175.032, 175.351, 185.02, and 185.35, and creates unnumbered sections of the Florida Statutes.

II. Present Situation:

Local Retirement Systems and Plans

The Department of Management Services' Division of Retirement reports¹ that as of September 30, 2010, there are 489 defined benefit plans sponsored by 239 local governments. The vast majority of the plans, 483, are local government defined benefit systems that provide benefits to 67,724 retirees, with 107,007 active employees, and total plan assets of \$23.1 billion.² The average annual pension in these local plans is \$23,854, and the average annual required contribution rate as a percentage of payroll is 26.04%.

Collective Bargaining

Collective bargaining, pursuant to ch. 447, F.S., consists of a series of negotiations between a public employer's chief executive officer³ and the selected bargaining agent⁴ for an employee organization regarding the terms and conditions of employment.⁵ The purpose of collective bargaining is to encourage "cooperative relationships between the government and its employees," and provide public employees with a means to participate in the establishment of their employment conditions.⁶

Employees have the right to collectively bargain under Article I, Section 6 of the Florida Constitution.⁷ Statewide regulations for collective bargaining amongst public employees are addressed in part II of ch. 447, F.S.⁸ Section 447.309, F.S., requires any matter addressing a public employee's "wages, hours, and terms and conditions of employment" to be collectively bargained in good faith by the chief executive officer and the bargaining agent.

Any collective bargaining agreement that is reached must be placed in writing and signed by both the chief executive officer and the bargaining agent. The agreement is effective for a period of not more than three years, at which point the contract must be renegotiated.⁹

¹ Division of Management Services, *Florida Local Government Retirement Systems, 2010 Annual Report*, available online at: https://www.rol.frs.state.fl.us/forms/2010_Local_Report.pdf (last visited on February 13, 2011).

² The other 6 plans are school board early retirement programs that provide benefits to 1,570 retirees, with active plan membership of 9,157, and total plan assets of \$61.6 million.

³ Section 447.203(9), F.S., defines "chief executive officer" as the Governor for the state, and for all other public employees, the person selected or appointed that is "responsible to the legislative body of the public employer for the administration of the governmental affairs of the public employer."

⁴ The term "bargaining agent" is defined in s. 447.203(12), F.S., as the employee organization certified by the Public Employers Relations Commission (PERC) to represent the employees in the bargaining unit, as provided in s. 447.307, F.S., or its representative. Section 447.203(8) F.S., defines "bargaining unit" as a unit determined by either the PERC, through local regulations promulgated pursuant to s. 447.603, F.S., or by the public employer and the public employee organization, that is approved by the commission to be appropriate for the purposes of collective bargaining.

⁵ Section 447.203(14), F.S.

⁶ Section 447.201, F.S., *See also*, Public Employees Relations Commission, *A Practical Handbook on Florida's Public Employment Collective Bargaining Law*, 6 (2d ed. 2004).

⁷ FLA. CONST. art. I, § 6 (1968) (amendment to the "Right to Work" section: "[t]he right of employees, by and through a labor organization, to bargain collectively [which] shall not be denied or abridged").

⁸ *See* s. 447.201, F.S. The Public Employees Relations Act provided statutory implementation of the 1968 amendment to s. 6, Art. I of the State Constitution.

⁹ Section 447.309(5), F.S. ("Any collective bargaining agreement shall not provide for a term of existence of more than 3 years ...").

If the parties cannot reach a collective bargaining agreement after a reasonable period of negotiation, either party can declare a written impasse to the Public Employees Relations Commission.¹⁰

Actuarial Soundness and Minimum Funding Standards for Pensions

Article X, s. 14, of the State Constitution requires public retirement benefits to be funded on a sound actuarial basis:

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.¹¹

The “Florida Protection of Public Employee Retirement Benefits Act” located in part VII of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this act is 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 tax payers.”¹²

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

The Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts, located in chapters 175 and 185, Florida Statutes, declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, in implementing the provisions of s. 14, Art. X of the State Constitution. Pursuant to ss. 175.021(1) and 185.01(1), F.S., 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.¹³ The Division of Retirement within the Department of Management Services is the primary state agency responsible for administrative oversight, including monitoring for actuarial soundness, of the funds in the Municipal Police Officers’ Retirement Trust Fund and the Firefighters’ Pension Trust Fund.¹⁴

Firefighters Pension Trust Fund - The Firefighters Pension Trust Fund is funded through an excise tax on property insurance policies that amounts up to 1.85 percent of the gross amount of receipts on premiums for policies issued within the municipality boundary or the legally defined boundary of a special fire control district.¹⁵ This excise tax is payable to the Department of Revenue on March 1 of each year, and the net proceeds are transferred to the appropriate fund at

¹⁰ The Public Employees Relations Commission (PERC) is an independent agency that was created pursuant to s. 447.205, F.S., to assist in resolving disputes between public employers and their employees.

¹¹ Art. X, section 14 of the Florida Constitution.

¹² Section 112.61, F.S.

¹³ See ss. 175.021(1) and 185.01(1), F.S., (2006).

¹⁴ See ss. 175.121 and 185.10, F.S.

¹⁵ Section 175.101(1), F.S.

the Division of Retirement.¹⁶ In 2008, premium tax distributions to cities and special fire control districts from the Firefighters Pension Trust Fund amounted to \$70.5 million.¹⁷ The 2009 Legislature clarified that the boundaries of a special fire control district for purposes of the 1.85 percent excise tax shall “include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3)”¹⁸.

Municipal Police Officers Retirement Trust Fund - The Police Officers Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amounts up to .85 percent of the gross receipts on premiums for policies issued within the municipality boundary.¹⁹ This excise tax is also payable to the Department of Revenue and the net proceeds are transferred to the appropriate fund at the Division of Retirement. In 2009, premium tax distributions to municipalities from the Police Officers Retirement Trust Fund amounted to \$59.4 million.²⁰

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, and fines for employees violating board rules and regulations, and other sources.²¹

Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.²² 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 a 1 percent on annuity policies or contracts, to be distributed into the General Revenue Fund. Pursuant to s. 624.51055, F.S., 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.²³ Each time a municipality that is currently 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.²⁴

Board of Trustees

Firefighters and Police Officers Retirement Trust Funds are administered by a local governing board of trustees that is created in participating cities and special fire control districts and subject

¹⁶ Section 175.101(3), F.S.

¹⁷ Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Fire*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2009.pdf (last visited on February 10, 2011).

¹⁸ Chapter 2009-97, s. 6, Laws of Florida (L.O.F.).

¹⁹ Section 185.08, F.S.

²⁰ Division of Management Services, *Municipal Police Officers and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2009.pdf (last visited on February 10, 2011).

²¹ See ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

²² Section 624.509(1), F.S.

²³ 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 ...”).

²⁴ According to the Department of Management Services, the state premium tax distribution made during 2009, amount to approximately \$131,113,000.

to the regulatory oversight of the Division of Retirement.²⁵ 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 that are subject to two-year terms. The chair and secretary of the board are elected by a majority vote.²⁶

The general powers and duties of the board of trustees are:

- To invest and reinvest pension trust fund assets in amounts sufficient to provide entitled benefits and initial and subsequent premiums;
- To invest and reinvest pension trust fund assets into:
 - Annuities and life insurance contracts;
 - Time or savings accounts of specified banks and financial institutions;
 - Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States;
 - Bonds issued by the State of Israel;
 - Bonds (which must hold a rating in one of the three highest classifications by a major rating service), stocks, and other indebtedness issued or guaranteed by a United States Corporation; and
 - Foreign securities not to exceed 10 percent of plan assets;
- To issue drafts upon the pension trust fund;
- To convert fund securities into cash; and
- To keep record on all receipts and disbursements and the board's acts and proceedings.²⁷

In addition to these duties, the board must hold quarterly meetings and retain a professional consultant at least once every three years to evaluate the performance of any existing money manager.²⁸

Chapters 175 and 185 Plan Provisions

Sections 175.041(3) and 185.03(2), F.S., each provide that the provisions of the respective chapters do not apply to any governmental entity whose firefighters and/or police officers are eligible to participate in the FRS. Exceptions are provided for those cities and special districts that opted out of the FRS and established a chapter plan for all police officers and firefighters hired after January 1, 1996, and for a city or special district subject to a transfer, consolidation, or merger, and whose fire and law enforcement services are provided by the county in which the city or special districts are located.

Sections 175.411 and 185.60, F.S., provide that cities and special districts who opt out of a local or chapter plan but do not terminate the plan, are prohibited from receiving future insurance premium tax money used to fund the pension plans. Premium tax funds previously received must be used to fund existing benefits for vested firefighters or police officers, and the accrued benefits of such vested firefighters or police officers may not be reduced. Annual reports to the

²⁵ See ss. 175.061 and 185.05, F.S.

²⁶ The secretary of the board shall keep a record of all persons receiving retirement payments under ch. 175 and ch. 185. See ss. 175.071(4) and 185.06(3), F.S., respectively.

²⁷ See ss. 175.07(1)(a)-(e) and 185.06(1)-(f), F.S., (note s. 185.06(1)(d), F.S., provides that the board of trustees may also decide all claims to relief for municipal police pension plans).

²⁸ See ss. 175.061(3), 175.071(6)(a), 185.05(3), and 185.06(5), F.S.

Municipal Police Officers' and Firefighters' Pension Office in the Division of Retirement at the Department of Management Services are required. Sections 175.361 and 185.37, F.S., provide requirements for distribution of plan assets when a city or a special district does terminate a chapter or local law pension plan.

Sections 175.371 and 185.38, F.S., provide that when every active firefighter or police officer in a chapter or local law pension plan elects to transfer to another state retirement system, the pension plan must be terminated and the assets must be distributed in accordance with ss. 175.361 and 185.37, F.S. If some participants elect to transfer to another state retirement system and others elect to remain in the chapter or local law plan, the chapter or local law plan will continue to receive insurance premium taxes until the plan is fully funded meaning that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis.

Disability Presumptions

General Provisions - Section 112.18(1)(a), F.S., provides that any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, correctional officer, or correctional probation officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death will be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer must have successfully passed a physical examination upon entering into any service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. The presumption does not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

The presumption for workers' compensation claims is different. For any workers' compensation claim filed under this section and chapter 440 occurring on or after July 1, 2010, a law enforcement officer, correctional officer, or correctional probation officer suffering from tuberculosis, heart disease, or hypertension is presumed not to have incurred disease in the line of duty as provided in this section if the law enforcement officer, correctional officer, or correctional probation officer:

- Departed in a material fashion from the prescribed course of treatment of his or her personal physician and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; or
- Was previously compensated pursuant to this section and chapter 440 for tuberculosis, heart disease, or hypertension and thereafter sustains and reports a new compensable workers' compensation claim under this section and chapter 440, and the law enforcement officer, correctional officer, or correctional probation officer has departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment.

Disability of Firefighters Suffered in Line of Duty – Pursuant to s. 175.231, F.S., for any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this ch. 175, F.S., any condition or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty unless the contrary is shown by competent evidence, provided that such firefighter shall have successfully passed a physical examination before entering into such service, which examination failed to reveal any evidence of such condition. This section is applicable to all firefighters only with reference to pension and retirement benefits under ch. 175, F.S.

Disability of Police Officers Suffered in Line of Duty - Pursuant to s. 185.34, F.S., for any municipality, chapter plan, local law municipality, or local law plan adopted pursuant to ch. 185, F.S., any condition or impairment of health of any and all police officers employed in the state caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer shall have successfully passed a physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. This section is applicable to all police officers only with reference to pension and retirement benefits under ch. 185, F.S.

Financial Reporting Requirements for Local Governments

Section 218.39, F.S., specifies the requirements for annual financial audit reports for local governments. If, by the first day in any fiscal year, a local governmental entity, district school board, charter school, or charter technical career center has not been notified that a financial audit for that fiscal year will be performed by the Auditor General, each of the following entities shall have an annual financial audit of its accounts and records completed within 12 months after the end of its fiscal year by an independent certified public accountant retained by it and paid from its public funds:

- Each county;
- Any municipality with revenues or the total of expenditures and expenses in excess of \$250,000;
- Any special district with revenues or the total of expenditures and expenses in excess of \$100,000;
- Each district school board;
- Each charter school;
- Each charter technical center;
- Each municipality with revenues or the total of expenditures and expenses between \$100,000 and \$250,000 that has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.

- Each special district with revenues or the total of expenditures and expenses between \$50,000 and \$100,000 that has not been subject to a financial audit pursuant to this subsection for the 2 preceding fiscal years.

All audits conducted in accordance with this section must be conducted in accordance with the rules of the Auditor General. All audit reports and the officer's written statement of explanation or rebuttal must be submitted to the Auditor General within 45 days after delivery of the audit report to the entity's governing body, but no later than 12 months after the end of the fiscal year.

Section 218.32, F.S., provides that each local governmental entity that is determined to be a reporting entity, as defined by generally accepted accounting principles, and each independent special district must submit to the Department of Financial Services (DFS) a copy of its annual financial report for the previous fiscal year in a format prescribed by DFS. Each local governmental entity that is required to provide for an audit in accordance with s. 218.39(1), F.S., must submit the annual financial report with the audit report. A copy of the audit report and annual financial report must be submitted to the department within 45 days after the completion of the audit report but no later than 12 months after the end of the fiscal year. Each local governmental entity that is not required to provide for an audit report in accordance with s. 218.39, F.S., must submit the annual financial report to DFS no later than April 30 of each year. DFS must consult with the Auditor General in the development of the format of annual financial reports submitted pursuant to this paragraph. DFS must forward the financial information contained within these entities' annual financial reports to the Auditor General in electronic form.

Financial Reporting Requirements for Local Pension Plans

Sections 175.261 and 185.221, F.S., specify the financial reporting requirements for firefighter and municipal police pensions, respectively, which generally require an annual independent audit, and an actuarial valuation every three years. The reports must be submitted to DMS' Division of Retirement, which issues an annual report to the Legislature based upon the reporting from the local plans.

III. Effect of Proposed Changes:

Local Plans

Section 1 amends s. 112.66, F.S., to:

- Prohibit inclusion of accrued sick or annual leave in calculating retirement benefits, and cap inclusion of overtime at 300 hours per year, starting July 1, 2011;
- Prohibit a cash or actuarial surplus in a local plan from being used outside the plan;
- Prohibit temporarily reducing contributions required to fund normal costs;
- Require local governments to provide a disability retirement benefit that meets specified minimum standards;
- Require local plans to provide death benefits for police, firefighters, and correctional officers killed in the line of duty, with specified minimum standards:
 - The surviving spouse of a member killed in the line of duty may receive a monthly pension equal to one-half of the monthly salary being received by the member at the time of death for the remainder of the surviving spouse's lifetime.

- If the surviving spouse of a member killed in the line of duty dies, the monthly payments must be paid for the use and benefit of the member's children under 18 years of age and unmarried until the 18th birthday of the member's youngest unmarried child.
- If a member killed in the line of duty leaves no surviving spouse but is survived by children under 18 years of age, the benefits must be paid for the use of the member's child or children under 18 years of age and unmarried until the 18th birthday of the member's youngest unmarried child.

This death benefits provision does not abrogate other applicable provisions of state or federal law providing death benefits.

Florida Retirement System

Section 2 amends s. 121.051(2), F.S., by adding a new paragraph providing that local retirement systems or plans, including firefighters' or police officers' pension or retirement plans established in chapters 175 or 185, F.S., are eligible for membership in the FRS only if the plans have no unfunded actuarial liabilities.

Retirement Calculation - Firefighter and Municipal Police Pensions

Sections 3 and 5 amend ss. 175.032 and 185.02, F.S., respectively, to provide that payments for accrued sick or annual leave may not be included in a member's compensation or salary for purposes of calculating retirement benefits. Overtime compensation may be included in the calculation, but must be capped at 300 hours. This provision applies to:

- non-collectively bargained service earned on or after July 1, 2011, and
- service earned under collective bargaining agreements entered into on or after July 1, 2011.

Premium Tax Income - Firefighter and Municipal Police Pensions

Sections 4 and 6 amend ss. 175.351 and 185.35, F.S., respectively, to specify that all premium tax revenues received by a municipality or special fire control district in excess of the adjusted base amount, and all accumulated excess premium tax revenues held in reserve, may be used only once to pay down any unfunded actuarial liabilities in a pension plan.

The bill also provides that if the actuarial cost method used in a plan is the aggregate cost method, that the unfunded actuarial accrued liabilities will be measured using the entry age normal cost method.

Section 6 amends s. 185.35, F.S., to specify that all premium tax revenues received by a municipality in excess of the adjusted base amount, and all accumulated excess premium tax revenues held in reserve, may be used only once to pay down any unfunded actuarial accrued liabilities in a pension plan.

Financial Rating of Local Plans

Section 7 requires the Department of Financial Services to create and provide standardized ratings for the financial strength of all local government defined benefit plans in Florida, to be provided on the department's website. The ratings must include the following factors:

- Current and future unfunded liabilities;
- The net asset value, managed returns, and funded ratio;
- Metrics related to the sustainability of the plan, including, but not limited to the percentage that the annual contribution is of the participating employee payroll;
- Municipal bond ratings for the local government, if applicable;
- 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 the plan.

The department may obtain the data needed to formulate the ratings from all relevant sources, which must cooperate in furnishing the data.

Task Force on Public Employee Disability Presumptions

Section 8 creates the Task Force on Public Employee Disability Presumptions for the purpose of developing findings and issuing recommendations on the disability presumptions applicable to firefighters and police officers employed by the state and local governments.²⁹ The task force consists of nine members to be appointed by July 15, 2011, as follows:

- An attorney in private practice appointed by the President of the Senate;
- A representative of organized labor appointed by the President of the Senate;
- A representative from the Florida League of Cities appointed by the President of the Senate;
- An attorney in private practice appointed by the Speaker of the House;
- A representative of organized labor appointed by the Speaker of the House;
- A representative from the Florida League of Cities appointed by the Speaker of the House;
- A representative from the Auditor General;
- A representative from DMS' Division of Retirement; and
- A representative from the Department of Financial Services.

The task force must address, at a minimum, the following issues:

- Data related to the operation of the statutory disability presumptions;
- How disability presumptions are handled in other states; and
- Proposals for changes to the existing disability presumptions.

By January 1, 2012, the task force must submit, a report to the Legislature and the Governor on recommendations for legislative action to be taken.

²⁹ Sections 112.18, 185.34, and 175.231, Florida Statutes.

Local Government Pension Plan Transparency

Section 9 requires the Department of Financial Services, in consultation with the Legislature's Office of Economic and Demographic Research, to consider issues related to the transparency of the financial condition of local government pension plans, including:

- Whether and what kinds of local pension plan data should be included in the financial audit reports required under s. 218.39, F.S;
- Whether the reporting requirements related to local police and firefighter pension plans should be supplemented with other types of financial data in order to give a more complete and transparent picture of a local government's financial solvency;
- Proposals for a uniform format for providing pension data, including standard terminology and the specific types of data which should be provided, including funding ratios, and whether contributions are sufficient to fund actuarial liabilities;
- Whether to require local governments to provide pension financial data on local public websites;
- Other related issues, including insurance benefits, health care benefits, postemployment plan benefits; and
- Proposals related to the composition of local pension plan boards.

The department must report its recommendations to the Legislature and Governor by December 1, 2011.

Important State Interest

Section 10 provides that the Legislature determines that the bill fulfills an important state interest as related to public pension plans.

Effective Date

Section 11 provides that the bill takes effect July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill would require 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 (done in section 10 of the bill) and one of the following relevant exceptions must apply:

- a. funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- b. Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;

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

It is unclear whether this constitutional provision applies, given that some of the provisions in the bill should reduce long term costs to local governments, while the provisions requiring death benefits and disability retirement benefits could increase costs. The issue is further compounded by the fact that premium tax income pays for at least some of the retirement benefits in plans created pursuant to Chapters 175 and 185, F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Some of the provisions of the bill may help reduce local plans' long term unfunded liabilities. The provisions requiring death and disability retirement benefits require local governments to fund the benefits. The overall costs or savings associated with the bill are indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

The following table summarizes the differences between SB 1128 and the PCS/SB 1128:

SB 1128	PCS/SB 1128
Prohibits local governments from offering defined benefit plans	Prohibition on defined benefit plans no longer in bill
Requires minimum of 5 years to determine average final compensation	5 year AFC no longer in bill
Requires death benefit for plan members	Requires death benefit for firefighters, police, and correctional officers; paid for by local government
Prohibits firefighter and police pension plans with unfunded actuarial liabilities from joining FRS	Prohibits all local plans with unfunded actuarial liabilities from joining FRS
Prohibits use of overtime, unused leave or any form of compensation beyond base salary in calculation of retirement benefits	Prohibits use of payments for accrued sick or annual leave in calculation; caps use of overtime compensation in calculation at 300 hours
For firefighter/police plans, requires premium tax income to pay unfunded actuarial liabilities, before funding extra benefits	For firefighter/police plans, allows premium tax revenues in excess of adjusted base amount, and accumulated excess revenues held in reserve, to be used once to pay unfunded actuarial liabilities, before funding extra benefits
	<i>New:</i> Local governments must provide disability retirement benefits
	<i>New:</i> Actuarial or cash surpluses in a local plan may not be used outside the plan
	<i>New:</i> Local plans may not temporarily reduce contributions required to fund normal cost
	<i>New:</i> Requires DFS to consult with the Legislature’s Office of Economic and Demographic Research when considering issues related to the transparency of the financial condition of local government pension plans

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



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Proposed Committee Substitute by the Committee on Governmental
Oversight and Accountability

A bill to be entitled

An act relating to public retirement plans; amending
s. 112.66, F.S.; providing for the calculation of
local government retirement benefits after a certain
date; providing a prohibition on the use of plan
revenues; prohibiting a reduction in certain
contributions to a plan; requiring a plan to provide
disability benefits on or after a certain date;
providing a death benefit for the spouse and minor
children of a member who is a firefighter, police
officer, or correctional officer hired on or after a
certain date who is killed in the line of duty;
amending s. 121.051, F.S.; providing that a plan is
eligible for participation in the Florida Retirement
System if it has no unfunded actuarial liabilities;
amending s. 175.032, F.S.; revising the definition of
the term "compensation" or "salary" for purposes of
firefighters' pensions; amending s. 175.351, F.S.;
revising provisions relating to benefits paid from the
premium tax by a municipality or special fire control
district that has its own pension plan; conforming a
cross-reference; amending s. 185.02, F.S.; revising
the definition of the terms "compensation" or "salary"
for purposes of police officers' pensions; amending s.
185.35, F.S.; revising provisions relating to benefits
paid by a municipality that has its own pension plan;
directing the Department of Financial Services to rate



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28 the financial strength of local government defined
29 benefit plans; specifying the factors for assigning
30 the ratings; requiring local pension boards, local
31 governments, the Division of Retirement, and all
32 relevant entities to cooperate in providing data for
33 the ratings; requiring the ratings to be posted on the
34 department's website; creating the Task Force on
35 Public Employee Disability Presumptions; providing for
36 appointment and membership; specifying the issues for
37 the task force to address; providing for a report to
38 be submitted to the Governor, Chief Financial Officer,
39 and Legislature by a certain date; providing for
40 future expiration; directing the Department of
41 Financial Services to submit a report on the financial
42 health of local government pension plans to the
43 Governor and Legislature by a certain date; specifying
44 the issues the report must address; providing a
45 declaration of important state interest; providing an
46 effective date.

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

49
50 Section 1. Subsections (11) through (15) are added to
51 section 112.66, Florida Statutes, to read:

52 112.66 General provisions.—The following general provisions
53 relating to the operation and administration of any retirement
54 system or plan covered by this part shall be applicable:

55 (11) Effective July 1, 2011, for purposes of calculating
56 retirement benefits, a pension system or plan sponsored by a



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57 local government may not include any overtime in excess of 300
58 hours per year, or any payments for accrued sick leave or annual
59 leave. For those members whose terms and conditions of
60 employment are collectively bargained, this subsection is
61 effective for the first agreement negotiated on or after July 1,
62 2011. This subsection does not apply to state-administered
63 retirement systems or plans.

64 (12) An actuarial or cash surplus in any system or plan may
65 not be used for any expenses outside the plan.

66 (13) A plan or system may not temporarily reduce
67 contributions required to fund normal cost.

68 (14) For each member hired on or after July 1, 2011, the
69 local government shall provide a disability retirement benefit
70 that meets the following minimum standards:

71 (a) A member who becomes totally and permanently disabled,
72 as defined in s. 121.091(4)(b), after completing a specified
73 amount of service as determined by the local government, is
74 entitled to a monthly disability benefit.

75 (b) The local government must specify what constitutes
76 permanent and total disability, how to determine proof of
77 disability, provisions related to recovery from disability, and
78 other necessary components of a disability retirement program.

79 (15) For each member who is a firefighter, police officer,
80 or correctional officer hired on or after July 1, 2011, the
81 local government shall provide a death benefit entitlement and
82 payments that meet the following minimum standards:

83 (a) The surviving spouse of a member killed in the line of
84 duty may receive a monthly pension equal to one-half of the
85 monthly salary being received by the member at the time of death



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86 for the remainder of the surviving spouse's life.

87 (b) If the surviving spouse of a member killed in the line
88 of duty dies, the monthly payments that would have been payable
89 to the surviving spouse had such surviving spouse lived shall be
90 paid for the use and benefit of the member's children under 18
91 years of age and unmarried until the 18th birthday of the
92 member's youngest unmarried child.

93 (c) If a member killed in the line of duty leaves no
94 surviving spouse but is survived by children under 18 years of
95 age, the benefits normally payable to a surviving spouse shall
96 be paid for the use and benefit of the member's children under
97 18 years of age and unmarried until the 18th birthday of the
98 member's youngest unmarried child.

99
100 This subsection does not abrogate other applicable provisions of
101 state or federal law providing death benefits.

102 Section 2. Paragraph (g) is added to subsection (2) of
103 section 121.051, Florida Statutes, to read:

104 121.051 Participation in the system.—

105 (2) OPTIONAL PARTICIPATION.—

106 (g) A local government retirement system or plan, including
107 a firefighters' pension plan or a municipal police officers'
108 retirement plan established in accordance with chapter 175 or
109 chapter 185, is eligible for membership under this chapter if
110 the plan has no unfunded actuarial liabilities.

111 Section 3. Subsection (3) of section 175.032, Florida
112 Statutes, is amended to read:

113 175.032 Definitions.—For any municipality, special fire
114 control district, chapter plan, local law municipality, local



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115 law special fire control district, or local law plan under this
116 chapter, the following words and phrases have the following
117 meanings:

118 (3) "Compensation" or "salary" means, for noncollectively
119 bargained service earned before July 1, 2011, or for service
120 earned under collective bargaining agreements in place before
121 July 1, 2011, the fixed monthly remuneration paid a firefighter.
122 ~~If, where, as in the case of a volunteer firefighter,~~
123 remuneration is based on actual services rendered, as in the
124 case of a volunteer firefighter, the term means the total cash
125 remuneration received yearly for such services, prorated on a
126 monthly basis. For noncollectively bargained service earned on
127 or after July 1, 2011, or for service earned under collective
128 baraining agreements entered into on or after July 1, 2011, the
129 term has the same meaning except that overtime compensation in
130 excess of 300 hours per year, or payments for accrued sick or
131 annual leave, may not be included for purposes of calculating
132 retirement benefits.

133 ~~(a) A retirement trust fund or plan may use a definition of~~
134 ~~salary other than the definition in this subsection but only if~~
135 ~~the monthly retirement income payable to each firefighter~~
136 ~~covered by the retirement trust fund or plan, as determined~~
137 ~~under s. 175.162(2)(a) and using such other definition, equals~~
138 ~~or exceeds the monthly retirement income that would be payable~~
139 ~~to each firefighter if his or her monthly retirement income were~~
140 ~~determined under s. 175.162(2)(a) and using the definition in~~
141 ~~this subsection.~~

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



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144 solely by virtue of this subsection, reduce or diminish the
145 monthly retirement income otherwise payable to each firefighter
146 covered by the retirement trust fund or plan.

147 (b)~~(e)~~ The member's compensation or salary contributed as
148 employee-elective salary reductions or deferrals to any salary
149 reduction, deferred compensation, or tax-sheltered annuity
150 program authorized under the Internal Revenue Code shall be
151 deemed to be the compensation or salary the member would receive
152 if he or she were not participating in such program and shall be
153 treated as compensation for retirement purposes under this
154 chapter.

155 (c)~~(d)~~ For any person who first becomes a member in any
156 plan year beginning on or after January 1, 1996, compensation
157 for that ~~any~~ plan year may ~~shall~~ not include any amounts in
158 excess of the Internal Revenue Code s. 401(a)(17) limitation,
159 ~~(as amended by the Omnibus Budget Reconciliation Act of 1993),~~
160 which limitation of \$150,000 shall be adjusted as required by
161 federal law for qualified government plans and shall be further
162 adjusted for changes in the cost of living in the manner
163 provided by Internal Revenue Code s. 401(a)(17)(B). For any
164 person who first became a member before ~~prior to~~ the first plan
165 year beginning on or after January 1, 1996, the limitation on
166 compensation may ~~shall be~~ not be less than the maximum
167 compensation amount that was allowed to be taken into account
168 under the plan ~~as~~ in effect on July 1, 1993, which limitation
169 shall be adjusted for changes in the cost of living since 1989
170 in the manner provided by Internal Revenue Code s.
171 401(a)(17)(1991).

172 Section 4. Section 175.351, Florida Statutes, is amended to



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173 read:

174 175.351 Municipalities and special fire control districts
175 having their own pension plans for firefighters.—For any
176 municipality, special fire control district, local law
177 municipality, local law special fire control district, or local
178 law plan under this chapter, in order for municipalities and
179 special fire control districts with their own pension plans for
180 firefighters, or for firefighters and police officers if, where
181 included, to participate in the distribution of the tax fund
182 established pursuant to s. 175.101, local law plans must meet
183 the minimum benefits and minimum standards set forth in this
184 chapter.

185 (1) ~~PREMIUM TAX INCOME.~~—If a municipality or special fire
186 control district has a pension plan for firefighters, or a
187 pension plan for firefighters and police officers if, where
188 included, which in the opinion of the division meets the minimum
189 benefits and minimum standards set forth in this chapter, all
190 premium tax revenues received by the municipality or special
191 fire control district in excess of the adjusted base amount and
192 all accumulated excess premium tax revenues held in reserve may
193 be used only once to pay the unfunded actuarial accrued
194 liabilities of the plan. If the aggregate level cost method is
195 the actuarial cost method used to fund the plan, the unfunded
196 actuarial accrued liabilities shall be measured using the entry
197 age normal cost method. After a one-time application of the
198 excess premium tax revenues to the unfunded actuarial accrued
199 liabilities, the board of trustees of the pension plan, as
200 approved by a majority of firefighters, or firefighters and
201 police officers, of the municipality or fire control district,



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202 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 if, 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
208 firefighters, or firefighters and police officers, included in
209 that pension plan; or

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

214 (2) The premium tax provided by this chapter shall in all
215 cases be used in its entirety to provide retirement ~~extra~~
216 benefits to firefighters, or to firefighters and police officers
217 if, where included. However, local law plans in effect on
218 October 1, 1998, must ~~shall be required to~~ comply with the
219 minimum benefit provisions of this chapter only to the extent
220 that additional premium tax revenues become available to
221 incrementally fund the cost of such compliance as provided in s.
222 175.162(2) (a). If when a plan is in compliance with such minimum
223 benefit provisions, as subsequent additional premium tax
224 revenues become available, they must ~~shall~~ be used to provide
225 extra benefits, except as provided in subsection (1). For the
226 purpose of this chapter, "additional premium tax revenues" means
227 revenues received by a municipality or special fire control
228 district pursuant to s. 175.121 which exceed that amount
229 received for calendar year 1997, and the term "extra benefits"
230 means benefits in addition to or greater than those provided to



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231 general employees of the municipality and in addition to those
232 in existence for firefighters on March 12, 1999. Local law plans
233 created by special act before May 23, 1939, shall be deemed to
234 comply with this chapter.

235 ~~(3)(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~
236 retirement plan or amendment to a retirement plan may not ~~shall~~
237 be proposed for adoption unless the proposed plan or amendment
238 contains an actuarial estimate of the costs involved. ~~No~~ Such
239 proposed plan or proposed plan change may not ~~shall~~ be adopted
240 without the approval of the municipality, special fire control
241 district, or, where permitted, the Legislature. Copies of the
242 proposed plan or proposed plan change and the actuarial impact
243 statement of the proposed plan or proposed plan change shall be
244 furnished to the division before ~~prior to~~ the last public
245 hearing thereon. Such statement must ~~shall~~ also indicate whether
246 the proposed plan or proposed plan change is in compliance with
247 s. 14, Art. X of the State Constitution and those provisions of
248 part VII of chapter 112 which are not expressly provided in this
249 chapter. Notwithstanding any other provision, only those local
250 law plans created by special act of legislation before ~~prior to~~
251 May 23, 1939, are ~~shall be~~ deemed to meet the minimum benefits
252 and minimum standards only in this chapter.

253 ~~(4)(3)~~ Notwithstanding any other provision, with respect to
254 any supplemental plan municipality:

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

259 (b) Section 175.061(1)(b) does ~~shall~~ not apply, and a local



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260 law plan and a supplemental plan shall continue to be
261 administered by a board or boards of trustees numbered,
262 constituted, and selected as the board or boards were numbered,
263 constituted, and selected on December 1, 2000.

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

266 ~~(5)-(4)~~ The retirement plan setting forth the benefits and
267 the trust agreement, if any, covering the duties and
268 responsibilities of the trustees and the regulations of the
269 investment of funds must be in writing, and copies ~~thereof must~~
270 ~~be~~ made available to the participants and to the general public.

271 Section 5. Subsection (4) of section 185.02, Florida
272 Statutes, is amended to read:

273 185.02 Definitions.—For any municipality, chapter plan,
274 local law municipality, or local law plan under this chapter,
275 the following words and phrases as used in this chapter shall
276 have the following meanings, unless a different meaning is
277 plainly required by the context:

278 (4) "Compensation" or "salary" means, for noncollectively
279 bargained service earned before July 1, 2011, or for service
280 earned under collective bargaining agreements in place before
281 July 1, 2011, the total cash remuneration including "overtime"
282 paid by the primary employer to a police officer for services
283 rendered, but not including any payments for extra duty or a
284 special detail work performed on behalf of a second party
285 employer. ~~However,~~ A local law plan may limit the amount of
286 overtime payments which can be used for retirement benefit
287 calculation purposes; however, ~~but in no event shall~~ such
288 overtime limit may not be less than 300 hours per officer per



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289 calendar year. For noncollectively bargained service earned on
290 or after July 1, 2011, or for service earned under collective
291 bargaining agreements entered into on or after July 1, 2011, the
292 term has the same meaning except that overtime compensation in
293 excess of 300 hours per year, or payments for accrued sick or
294 annual leave, may not be included for purposes of calculating
295 retirement benefits.

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

301 (b) The member's compensation or salary contributed as
302 employee-elective salary reductions or deferrals to any salary
303 reduction, deferred compensation, or tax-sheltered annuity
304 program authorized under the Internal Revenue Code shall be
305 deemed to be the compensation or salary the member would receive
306 if he or she were not participating in such program and shall be
307 treated as compensation for retirement purposes under this
308 chapter.

309 (c) For any person who first becomes a member in any plan
310 year beginning on or after January 1, 1996, compensation for
311 that any plan year may shall not include any amounts in excess
312 of the Internal Revenue Code s. 401(a)(17) limitation, ~~(as~~
313 ~~amended by the Omnibus Budget Reconciliation Act of 1993)~~, which
314 limitation of \$150,000 shall be adjusted as required by federal
315 law for qualified government plans and shall be further adjusted
316 for changes in the cost of living in the manner provided by
317 Internal Revenue Code s. 401(a)(17)(B). For any person who first



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318 became a member before ~~prior to~~ the first plan year beginning on
319 or after January 1, 1996, the limitation on compensation may
320 ~~shall be~~ not be less than the maximum compensation amount that
321 was allowed to be taken into account under the plan as in effect
322 on July 1, 1993, which limitation shall be adjusted for changes
323 in the cost of living since 1989 in the manner provided by
324 Internal Revenue Code s. 401(a)(17)(1991).

325 Section 6. Section 185.35, Florida Statutes, is amended to
326 read:

327 185.35 Municipalities having their own pension plans for
328 police officers.—For any municipality, chapter plan, local law
329 municipality, or local law plan under this chapter, in order for
330 municipalities with their own pension plans for police officers,
331 or for police officers and firefighters if where included, to
332 participate in the distribution of the tax fund established
333 pursuant to s. 185.08, local law plans must meet the minimum
334 benefits and minimum standards set forth in this chapter:

335 (1) ~~PREMIUM TAX INCOME.~~—If a municipality has a pension
336 plan for police officers, or for police officers and
337 firefighters if where included, which, in the opinion of the
338 division, meets the minimum benefits and minimum standards set
339 forth in this chapter, all premium tax revenues received by the
340 municipality in excess of the adjusted base amount and all
341 accumulated excess premium tax revenues held in reserve may be
342 used only once to pay off the unfunded actuarial accrued
343 liabilities of the plan. If the aggregate level cost method is
344 the actuarial cost method used to fund the plan, the unfunded
345 actuarial accrued liabilities shall be measured using the entry
346 age normal cost method. After a one-time application of the



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347 excess premium tax revenues to the unfunded actuarial accrued
348 liabilities, the board of trustees of the pension plan, as
349 approved by a majority of police officers, or police officers
350 and firefighters, of the municipality, may:

351 (a) Place the income from the premium tax in s. 185.08 in
352 such pension plan for the sole and exclusive use of its police
353 officers, or its police officers and firefighters if where
354 included, where it shall become an integral part of that pension
355 plan and shall be used to pay extra benefits to the police
356 officers, or police officers and firefighters, included in that
357 pension plan; or

358 (b) May place the income from the premium tax in s. 185.08
359 in a separate supplemental plan to pay extra benefits to the
360 police officers, or police officers and firefighters if where
361 included, participating in such separate supplemental plan.

362 (2) The premium tax provided by this chapter shall in all
363 cases be used in its entirety to provide retirement ~~extra~~
364 benefits to police officers, or to police officers and
365 firefighters if, where included. However, local law plans in
366 effect on October 1, 1998, must ~~shall be required to~~ comply with
367 the minimum benefit provisions of this chapter only to the
368 extent that additional premium tax revenues become available to
369 incrementally fund the cost of such compliance as provided in s.
370 185.16(2). If when a plan is in compliance with such minimum
371 benefit provisions, as subsequent additional tax revenues become
372 available, they shall be used to provide extra benefits, except
373 as provided under subsection (1). For the purpose of this
374 chapter, "additional premium tax revenues" means revenues
375 received by a municipality pursuant to s. 185.10 which exceed



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376 the amount received for calendar year 1997, and the term "extra
377 benefits" means benefits in addition to or greater than those
378 provided to general employees of the municipality and in
379 addition to those in existence for police officers on March 12,
380 1999. Local law plans created by special act before May 23,
381 1939, shall be deemed to comply with this chapter.

382 ~~(3)-(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~
383 retirement plan or amendment to a retirement plan may not shall
384 be proposed for adoption unless the proposed plan or amendment
385 contains an actuarial estimate of the costs involved. ~~No~~ Such
386 proposed plan or proposed plan change may not shall be adopted
387 without the approval of the municipality or, where permitted,
388 the Legislature. Copies of the proposed plan or proposed plan
389 change and the actuarial impact statement of the proposed plan
390 or proposed plan change shall be furnished to the division
391 before ~~prior to~~ the last public hearing thereon. Such statement
392 must shall also indicate whether the proposed plan or proposed
393 plan change is in compliance with s. 14, Art. X of the State
394 Constitution and those provisions of part VII of chapter 112
395 which are not expressly provided in this chapter.
396 Notwithstanding any other provision, only those local law plans
397 created by special act of legislation before ~~prior to~~ May 23,
398 1939, are shall be deemed to meet the minimum benefits and
399 minimum standards only in this chapter.

400 ~~(4)-(3)~~ Notwithstanding any other provision, with respect to
401 any supplemental plan municipality:

402 (a) Section 185.02(4)(a) does shall not apply, and a local
403 law plan and a supplemental plan may continue to use their
404 definition of compensation or salary in existence on March 12,



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405 ~~1999 the effective date of this act.~~

406 (b) Section 185.05(1)(b) does ~~shall~~ not apply, and a local
407 law plan and a supplemental plan shall continue to be
408 administered by a board or boards of trustees numbered,
409 constituted, and selected as the board or boards were numbered,
410 constituted, and selected on December 1, 2000.

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

413 ~~(5)(4)~~ The retirement plan setting forth the benefits and
414 the trust agreement, if any, covering the duties and
415 responsibilities of the trustees and the regulations of the
416 investment of funds must be in writing and copies made available
417 to the participants and to the general public.

418 Section 7. Financial rating of local pension plans.—The
419 Department of Financial Services shall develop standardized
420 ratings for classifying the financial strength of all local
421 government defined benefit pension plans.

422 (1) In assigning a rating to a plan, the department shall
423 consider, without limitation:

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

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

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

430 (d) Municipal bond ratings for the local government, if
431 applicable.

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



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

436 (2) The department may obtain all necessary data to
437 formulate the ratings from all relevant entities, including
438 local pension boards, local governments, and the Division of
439 Retirement, all of which shall cooperate with the department in
440 supplying all necessary information.

441 (3) The ratings shall be posted on the department's website
442 in a standardized format.

443 Section 8. Task Force on Public Employee Disability
444 Presumptions.-

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

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

453 (a) Three members appointed by the President of the Senate,
454 one of whom must be an attorney in private practice who has
455 experience in the relevant laws; one of whom must be a
456 representative of organized labor; and one of whom must be from
457 the Florida Association of Counties.

458 (b) Three members appointed by the Speaker of the House of
459 Representatives, one of whom must be an attorney in private
460 practice who has experience in the relevant laws; one of whom
461 must be a representative of organized labor; and one of whom
462 must be from the Florida League of Cities.



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

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

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

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

473 (a) Data related to the operation of the statutory
474 disability presumptions.

475 (b) The manner in which other states handle disability
476 presumptions.

477 (c) Proposals for changes to the existing disability
478 presumptions.

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

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

485 (6) The task force may obtain data, information, and
486 assistance from any officer or state agency and any political
487 subdivision thereof. All such officers, agencies, and political
488 subdivisions shall provide the task force with all relevant
489 information and assistance on any matter within their knowledge
490 or control.

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



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492 findings and recommendations, to the Governor, the Chief
493 Financial Officer, the President of the Senate, and the Speaker
494 of the House of Representatives by January 1, 2012. The report
495 must include specific recommendations for legislative action
496 during the 2012 Regular Session of the Legislature.

497 (8) The task force is dissolved upon submission of its
498 report.

499 Section 9. By December 1, 2011, the Department of Financial
500 Services shall submit a report and recommendations to the
501 Governor, the President of the Senate, and the Speaker of the
502 House of Representatives on actions to be taken to increase the
503 visibility and transparency of local government pension plans,
504 including, but not limited to, those created pursuant to chapter
505 175 or chapter 185, Florida Statutes, with the goal of
506 increasing the ability of a taxpayer or policymaker to assess
507 the financial health of the local plans. The report must include
508 specific recommendations for legislative action during the 2012
509 Regular Session of the Legislature. The department shall consult
510 with the Legislature's Office of Economic and Demographic
511 Research in formulating the recommendations, which must address,
512 but need not be limited to:

513 (1) Whether and what kinds of local pension plan data
514 should be included in the financial audit reports required under
515 s. 218.39, Florida Statutes.

516 (2) Whether the reporting requirements of ss. 175.261 and
517 185.221, Florida Statutes, should be supplemented with other
518 types of financial data in order to give a more complete and
519 transparent picture of a local government's financial solvency.

520 (3) Proposals for a uniform format for providing pension



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521 data, including standard terminology and data and the specific
522 types of data which should be provided, including funding
523 ratios, and whether contributions are sufficient to fund
524 actuarial liabilities.

525 (4) Whether to require local governments to provide pension
526 financial data on local public websites.

527 (5) Other related issues, including insurance benefits,
528 health care benefits, and postemployment plan benefits.

529 (6) Proposals related to the composition of local pension
530 plan boards.

531 Section 10. The Legislature finds that a proper and
532 legitimate state purpose is served when employees and retirees
533 of the state and of its political subdivisions, and the
534 dependents, survivors, and beneficiaries of those employees and
535 retirees, are extended the basic protections afforded by
536 governmental retirement systems that provide fair and adequate
537 benefits and that are managed, administered, and funded in an
538 actuarially sound manner as required by s. 14, Article X of the
539 State Constitution and part VII of chapter 112, Florida
540 Statutes. Therefore, the Legislature determines and declares
541 that this act fulfills an important state interest.

542 Section 11. This act shall take effect July 1, 2011.



285050

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment

Delete line 66
and insert:
(13) A plan or system may not reduce



475032

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 68 - 101.

===== **D I R E C T O R Y C L A U S E A M E N D M E N T**=====

And the directory clause is amended as follows:

Delete lines 50 - 51

and insert:

Section 1. Subsections (11) through (13) are added to section
112.66, Florida Statutes, to read:

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



475032

13 And the title is amended as follows:
14 Delete lines 7 - 12
15 and insert:
16 contributions to a plan;



553532

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 362 - 413
and insert:

(2) Except as provided in subsection (3), the premium tax provided by this chapter shall in all cases be used in its entirety to provide retirement ~~extra~~ benefits to police officers, or to police officers and firefighters if, ~~where~~ included. However, local law plans in effect on October 1, 1998, must ~~shall be required to~~ comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the



553532

13 cost of such compliance as provided in s. 185.16(2). ~~If~~ ~~When~~ a
14 plan is in compliance with such minimum benefit provisions, as
15 subsequent additional tax revenues become available, they shall
16 be used to provide extra benefits, except as provided under
17 subsection (1). For the purpose of this chapter, "additional
18 premium tax revenues" means revenues received by a municipality
19 pursuant to s. 185.10 which exceed the amount received for
20 calendar year 1997, and the term "extra benefits" means benefits
21 in addition to or greater than those provided to general
22 employees of the municipality and in addition to those in
23 existence for police officers on March 12, 1999. Local law plans
24 created by special act before May 23, 1939, shall be deemed to
25 comply with this chapter.

26 (3) In a closed plan where police services have been
27 transferred or merged with another governmental agency and the
28 plan has fewer than five active members, the municipality may
29 advance payment for purchasing an annuity contract applicable to
30 the accrued liabilities of the plan. In such case, the board of
31 trustees, as approved by the members, may authorize repayment
32 from the future receipt of premium taxes; however, the plan may
33 not be deemed fully funded until the full cost of the advanced
34 payment has been returned to the municipality by the plan. This
35 subsection does not preclude the continued receipt of premium
36 tax to provide extra benefits for active or retired police
37 officers as provided under subsection (2).

38 ~~(4) (2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~
39 retirement plan or amendment to a retirement plan may not ~~shall~~
40 be proposed for adoption unless the proposed plan or amendment
41 contains an actuarial estimate of the costs involved. ~~No~~ Such



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42 proposed plan or proposed plan change may not ~~shall~~ be adopted
43 without the approval of the municipality or, where permitted,
44 the Legislature. Copies of the proposed plan or proposed plan
45 change and the actuarial impact statement of the proposed plan
46 or proposed plan change shall be furnished to the division
47 before ~~prior to~~ the last public hearing thereon. Such statement
48 must ~~shall~~ also indicate whether the proposed plan or proposed
49 plan change is in compliance with s. 14, Art. X of the State
50 Constitution and those provisions of part VII of chapter 112
51 which are not expressly provided in this chapter.

52 Notwithstanding any other provision, only those local law plans
53 created by special act of legislation before ~~prior to~~ May 23,
54 1939, are ~~shall be~~ deemed to meet the minimum benefits and
55 minimum standards only in this chapter.

56 (5) ~~(3)~~ Notwithstanding any other provision, with respect to
57 any supplemental plan municipality:

58 (a) Section 185.02(4)(a) does ~~shall~~ not apply, and a local
59 law plan and a supplemental plan may continue to use their
60 definition of compensation or salary in existence on March 12,
61 1999 ~~the effective date of this act.~~

62 (b) Section 185.05(1)(b) does ~~shall~~ not apply, and a local
63 law plan and a supplemental plan shall continue to be
64 administered by a board or boards of trustees numbered,
65 constituted, and selected as the board or boards were numbered,
66 constituted, and selected on December 1, 2000.

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

69 (6) ~~(4)~~ The retirement plan setting forth the benefits and
70



553532

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

72 And the title is amended as follows:

73 After line 26

74 insert:

75 authorizing a municipality to advance payment for
76 purchasing an annuity contract for a closed plan;



761130

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Flores) recommended the following:

Senate Amendment

Delete lines 118 - 155
and insert:

(3) "Compensation" or "salary" means the fixed monthly remuneration paid a firefighter for service. ~~If, where, as in the case of a volunteer firefighter,~~ remuneration is based on actual services rendered, as in the case of a volunteer firefighter, the term means the total cash remuneration received yearly for such services, prorated on a monthly basis. For service earned on or after July 1, 2011, overtime compensation, unused leave compensation, or other form of compensation in



761130

13 excess of a total of 300 hours beyond adjusted base hourly,
14 monthly, or annual remuneration may not be included when
15 calculating a member's compensation or salary. As used in this
16 subsection, the term "adjusted base hourly, monthly, or annual
17 remuneration" means that amount of salary paid to a firefighter
18 as regular wages, used sick and vacation leave, holiday pay, or
19 incentives.

20 (a) A retirement trust fund or plan may use a definition of
21 compensation or salary other than the definition used in this
22 subsection but only if overtime compensation, unused leave
23 compensation, or other form of compensation in excess of 300
24 hours beyond adjusted base hourly, monthly, or annual
25 remuneration are not included in that definition ~~the monthly~~
26 ~~retirement income payable to each firefighter covered by the~~
27 ~~retirement trust fund or plan, as determined under s.~~
28 ~~175.162(2) (a) and using such other definition, equals or exceeds~~
29 ~~the monthly retirement income that would be payable to each~~
30 ~~firefighter if his or her monthly retirement income were~~
31 ~~determined under s. 175.162(2) (a) and using the definition in~~
32 ~~this subsection.~~

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

38 (c) The member's compensation or salary contributed as
39 employee-elective salary reductions or deferrals to any salary
40 reduction, deferred compensation, or tax-sheltered annuity
41 program authorized under the Internal Revenue Code shall be



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42 deemed to be the compensation or salary the member would receive
43 if he or she were not participating in such program and shall be
44 treated as compensation for retirement purposes under this
45 chapter.

46 (d) For any person who first becomes a member in any



308272

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Fasano) recommended the following:

Senate Amendment

Delete lines 189 - 252
and insert:
benefits and minimum standards set forth in this chapter, the
board of trustees of the pension plan, as approved by a majority
of firefighters, or firefighters and police officers, of the
municipality or fire control district, may:

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



308272

13 plan and shall be used to pay extra benefits to the
14 firefighters, or firefighters and police officers, included in
15 that pension plan; or

16 (b) Place the income from the premium tax in s. 175.101 in
17 a separate supplemental plan to pay extra benefits to
18 firefighters, or to firefighters and police officers if where
19 included, participating in such separate supplemental plan.

20 (2) The premium tax provided by this chapter shall in all
21 cases be used in its entirety to provide retirement ~~extra~~
22 benefits to firefighters, or to firefighters and police officers
23 if, where included. However, local law plans in effect on
24 October 1, 1998, must ~~shall be required to~~ comply with the
25 minimum benefit provisions of this chapter only to the extent
26 that additional premium tax revenues become available to
27 incrementally fund the cost of such compliance as provided in s.
28 175.162(2) (a). If when a plan is in compliance with such minimum
29 benefit provisions, as subsequent additional premium tax
30 revenues become available, they must ~~shall~~ be used to provide
31 extra benefits, except as provided in subsection (1). For the
32 purpose of this chapter, "additional premium tax revenues" means
33 revenues received by a municipality or special fire control
34 district pursuant to s. 175.121 which exceed that amount
35 received for calendar year 1997, and the term "extra benefits"
36 means benefits in addition to or greater than those provided to
37 general employees of the municipality and in addition to those
38 in existence for firefighters on March 12, 1999. Local law plans
39 created by special act before May 23, 1939, shall be deemed to
40 comply with this chapter. Notwithstanding any other provisions
41 of the section, if less than 80 percent of the plan's actuarial



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42 accrued liability is fully funded as of March 1, 2011, 50
43 percent of the accumulated excess premium tax revenues which are
44 not being used to fund the adjusted base amount or extra
45 benefits may be used one time only to pay the unfunded actuarial
46 accrued liabilities of the plan; however, such one-time use must
47 occur on or before September 30, 2011.



155388

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/16/2011	.	
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The Committee on Governmental Oversight and Accountability
(Dean) recommended the following:

Senate Amendment

Delete lines 285 - 288
and insert:
employer. However, ~~a local law plan may limit~~ the amount of
overtime payments which can be used for retirement benefit
calculation purposes is limited to no more, ~~but in no event~~
~~shall such overtime limit be less~~ than 300 hours per officer per



762940

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (11) through (16) are added to
section 112.66, Florida Statutes, to read:

112.66 General provisions.—The following general provisions
relating to the operation and administration of any retirement
system or plan covered by this part shall be applicable:

(11) A plan sponsor may not offer or provide membership in
a defined benefit retirement system or plan to an employee hired
on or after July 1, 2011. For those members whose terms and



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13 conditions of employment are collectively bargained, this
14 subsection is effective for the first agreement negotiated on or
15 after July 1, 2011. Compliance with this subsection does not
16 disqualify a plan or plan sponsor from receiving premium tax
17 revenues pursuant to chapters 175 and 185.

18 (12) Effective July 1, 2011, for purposes of calculating
19 retirement benefits, a pension system or plan sponsored by a
20 local government may not include any overtime, unused leave, or
21 any other form of compensation beyond base hourly or annual
22 salary in calculating a member's compensation or salary. For
23 those members whose terms and conditions of employment are
24 collectively bargained, this subsection is effective for the
25 first agreement negotiated on or after July 1, 2011.

26 (13) An actuarial or cash surplus in any system or plan may
27 not be used for any expenses outside the plan.

28 (14) A plan or system may not temporarily reduce
29 contributions required to fund normal cost.

30 (15) For each member hired on or after July 1, 2011, the
31 local government shall provide a disability retirement benefit
32 that meets the following minimum standards:

33 (a) A member who becomes totally and permanently disabled,
34 as defined in s. 121.091(4) (b), after completing a specified
35 amount of service as determined by the local government, is
36 entitled to a monthly disability benefit.

37 (b) The local government must specify what constitutes
38 permanent and total disability, how to determine proof of
39 disability, provisions related to recovery from disability, and
40 other necessary components of a disability retirement program.

41 (16) For each member who is a firefighter, police officer,



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42 or correctional officer hired on or after July 1, 2011, local
43 government shall provide a death benefit entitlement and
44 payments that meet the following minimum standards:

45 (a) The surviving spouse of a member killed in the line of
46 duty may receive a monthly pension equal to one-half of the
47 monthly salary being received by the member at the time of death
48 for the remainder of the surviving spouse's life.

49 (b) If the surviving spouse of a member killed in the line
50 of duty dies, the monthly payments that would have been payable
51 to the surviving spouse had such surviving spouse lived shall be
52 paid for the use and benefit of the member's children under 18
53 years of age and unmarried until the 18th birthday of the
54 member's youngest unmarried child.

55 (c) If a member killed in the line of duty leaves no
56 surviving spouse but is survived by children under 18 years of
57 age, the benefits normally payable to a surviving spouse shall
58 be paid for the use and benefit of the member's child or
59 children under 18 years of age and unmarried until the 18th
60 birthday of the member's youngest unmarried child.

61
62 This subsection does not abrogate other applicable provisions of
63 state or federal law providing death benefits.

64 Section 2. Paragraph (g) is added to subsection (2) of
65 section 121.051, Florida Statutes, to read:

66 121.051 Participation in the system.—

67 (2) OPTIONAL PARTICIPATION.—

68 (g) A local government retirement system or plan, including
69 a firefighters' pension plan or a municipal police officers'
70 retirement plan established in accordance with chapter 175 or



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71 chapter 185, is eligible for membership under this chapter if
72 the plan has no unfunded actuarial liabilities.

73 Section 3. Subsection (3) of section 175.032, Florida
74 Statutes, is amended to read:

75 175.032 Definitions.—For any municipality, special fire
76 control district, chapter plan, local law municipality, local
77 law special fire control district, or local law plan under this
78 chapter, the following words and phrases have the following
79 meanings:

80 (3) "Compensation" or "salary" for service earned and
81 collective bargaining agreements in place before July 1, 2011,
82 means the fixed monthly remuneration paid a firefighter. If
83 ~~where, as in the case of a volunteer firefighter,~~ remuneration
84 is based on actual services rendered, as in the case of a
85 volunteer firefighter, the term means the total cash
86 remuneration received yearly for such services, prorated on a
87 monthly basis. For service earned and collective bargaining
88 agreements entered into on or after July 1, 2011, overtime
89 compensation, unused leave, or any other form of compensation
90 beyond base hourly or annual salary may not be included when
91 calculating a member's compensation or salary.

92 ~~(a) A retirement trust fund or plan may use a definition of~~
93 ~~salary other than the definition in this subsection but only if~~
94 ~~the monthly retirement income payable to each firefighter~~
95 ~~covered by the retirement trust fund or plan, as determined~~
96 ~~under s. 175.162(2) (a) and using such other definition, equals~~
97 ~~or exceeds the monthly retirement income that would be payable~~
98 ~~to each firefighter if his or her monthly retirement income were~~
99 ~~determined under s. 175.162(2) (a) and using the definition in~~



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100 ~~this subsection.~~

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

106 (b) ~~(e)~~ The member's compensation or salary contributed as
107 employee-elective salary reductions or deferrals to any salary
108 reduction, deferred compensation, or tax-sheltered annuity
109 program authorized under the Internal Revenue Code shall be
110 deemed to be the compensation or salary the member would receive
111 if he or she were not participating in such program and ~~shall be~~
112 treated as compensation for retirement purposes under this
113 chapter.

114 (c) ~~(d)~~ For any person who first becomes a member in any
115 plan year beginning on or after January 1, 1996, compensation
116 for that ~~any~~ plan year may ~~shall~~ not include any amounts in
117 excess of the Internal Revenue Code s. 401(a)(17) limitation,
118 ~~(as amended by the Omnibus Budget Reconciliation Act of 1993),~~
119 which limitation of \$150,000 shall be adjusted as required by
120 federal law for qualified government plans and shall be further
121 adjusted for changes in the cost of living in the manner
122 provided by Internal Revenue Code s. 401(a)(17)(B). For any
123 person who first became a member before ~~prior to~~ the first plan
124 year beginning on or after January 1, 1996, the limitation on
125 compensation may ~~shall be~~ not be less than the maximum
126 compensation amount that was allowed to be taken into account
127 under the plan ~~as~~ in effect on July 1, 1993, which limitation
128 shall be adjusted for changes in the cost of living since 1989



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129 in the manner provided by Internal Revenue Code s.
130 401(a) (17) (1991).

131 Section 4. Section 175.351, Florida Statutes, is amended to
132 read:

133 175.351 Municipalities and special fire control districts
134 having their own pension plans for firefighters.—For any
135 municipality, special fire control district, local law
136 municipality, local law special fire control district, or local
137 law plan under this chapter, in order for municipalities and
138 special fire control districts with their own pension plans for
139 firefighters, or for firefighters and police officers if, where
140 included, to participate in the distribution of the tax fund
141 established pursuant to s. 175.101, local law plans must meet
142 the minimum benefits and minimum standards set forth in this
143 chapter.

144 (1) ~~PREMIUM TAX INCOME.~~—If a municipality has a pension
145 plan for firefighters, or a pension plan for firefighters and
146 police officers if, where included, which in the opinion of the
147 division meets the minimum benefits and minimum standards set
148 forth in this chapter, all premium tax revenues received by the
149 municipality in excess of the adjusted base amount and all
150 accumulated excess premium tax revenues held in reserve must
151 first be used to pay the unfunded actuarial accrued liabilities
152 of the plan. After all unfunded actuarial accrued liabilities
153 are paid, the board of trustees of the pension plan, as approved
154 by a majority of firefighters of the municipality, may:

155 (a) Place the income from the premium tax in s. 175.101 in
156 such pension plan for the sole and exclusive use of its
157 firefighters, or for firefighters and police officers if, where



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158 included, where it shall become an integral part of that pension
159 plan and ~~shall be~~ used to pay extra benefits to the firefighters
160 included in that pension plan; or

161 (b) Place the income from the premium tax in s. 175.101 in
162 a separate supplemental plan to pay extra benefits to
163 firefighters, or to firefighters and police officers if ~~where~~
164 included, participating in such separate supplemental plan.

165 (2) The premium tax provided by this chapter shall in all
166 cases be used in its entirety to provide retirement ~~extra~~
167 benefits to firefighters, or to firefighters and police officers
168 if, ~~where~~ included. However, local law plans in effect on
169 October 1, 1998, must ~~shall be required to~~ comply with the
170 minimum benefit provisions of this chapter only to the extent
171 that additional premium tax revenues become available to
172 incrementally fund the cost of such compliance as provided in s.
173 175.162(2) (a). If ~~When~~ a plan is in compliance with such minimum
174 benefit provisions, as subsequent additional premium tax
175 revenues become available, they must ~~shall~~ be used to provide
176 extra benefits, except as provided in subsection (1). For the
177 purpose of this chapter, "additional premium tax revenues" means
178 revenues received by a municipality or special fire control
179 district pursuant to s. 175.121 which exceed that amount
180 received for calendar year 1997, and the term "extra benefits"
181 means benefits in addition to or greater than those provided to
182 general employees of the municipality and in addition to those
183 in existence for firefighters on March 12, 1999. Local law plans
184 created by special act before May 23, 1939, shall be deemed to
185 comply with this chapter.

186 ~~(3)-(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~



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187 retirement plan or amendment to a retirement plan may not shall
188 be proposed for adoption unless the proposed plan or amendment
189 contains an actuarial estimate of the costs involved. ~~No~~ Such
190 proposed plan or proposed plan change may not shall be adopted
191 without the approval of the municipality, special fire control
192 district, or, where permitted, the Legislature. Copies of the
193 proposed plan or proposed plan change and the actuarial impact
194 statement of the proposed plan or proposed plan change shall be
195 furnished to the division before ~~prior to~~ the last public
196 hearing thereon. Such statement must shall also indicate whether
197 the proposed plan or proposed plan change is in compliance with
198 s. 14, Art. X of the State Constitution and those provisions of
199 part VII of chapter 112 which are not expressly provided in this
200 chapter. Notwithstanding any other provision, only those local
201 law plans created by special act of legislation before ~~prior to~~
202 May 23, 1939, are ~~shall be~~ deemed to meet the minimum benefits
203 and minimum standards only in this chapter.

204 (4) ~~(3)~~ Notwithstanding any other provision, with respect to
205 any supplemental plan municipality:

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

210 (b) Section 175.061(1)(b) does shall not apply, and a local
211 law plan and a supplemental plan shall continue to be
212 administered by a board or boards of trustees numbered,
213 constituted, and selected as the board or boards were numbered,
214 constituted, and selected on December 1, 2000.

215 (c) The election set forth in paragraph (1)(b) is shall be



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216 deemed to have been made.

217 ~~(5)~~~~(4)~~ The retirement plan setting forth the benefits and
218 the trust agreement, if any, covering the duties and
219 responsibilities of the trustees and the regulations of the
220 investment of funds must be in writing, and copies ~~thereof must~~
221 ~~be~~ made available to the participants and to the general public.

222 Section 5. Subsection (4) of section 185.02, Florida
223 Statutes, is amended to read:

224 185.02 Definitions.—For any municipality, chapter plan,
225 local law municipality, or local law plan under this chapter,
226 the following words and phrases as used in this chapter shall
227 have the following meanings, unless a different meaning is
228 plainly required by the context:

229 (4) "Compensation" or "salary" for service earned and
230 collective bargaining agreements in place before July 1, 2011,
231 means the total cash remuneration including "overtime" paid by
232 the primary employer to a police officer for services rendered,
233 but not including any payments for extra duty or a special
234 detail work performed on behalf of a second party employer. For
235 service earned and collective bargaining agreements in place
236 before July 1, 2011 ~~However,~~ a local law plan may limit the
237 amount of overtime payments which can be used for retirement
238 benefit calculation purposes; however, ~~but in no event shall~~
239 such overtime limit may not be less than 300 hours per officer
240 per calendar year. For service earned and collective bargaining
241 agreements entered into on or after July 1, 2011, total cash
242 remuneration may not include payments for extra duty or special
243 detail work performed on behalf of a second party employer, or
244 any overtime, unused leave, or other compensation beyond base



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245 hourly or annual salary.

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

251 (b) The member's compensation or salary contributed as
252 employee-elective salary reductions or deferrals to any salary
253 reduction, deferred compensation, or tax-sheltered annuity
254 program authorized under the Internal Revenue Code shall be
255 deemed to be the compensation or salary the member would receive
256 if he or she were not participating in such program and ~~shall be~~
257 treated as compensation for retirement purposes under this
258 chapter.

259 (c) For any person who first becomes a member in any plan
260 year beginning on or after January 1, 1996, compensation for
261 that any plan year may ~~shall~~ not include any amounts in excess
262 of the Internal Revenue Code s. 401(a)(17) limitation, ~~(as~~
263 ~~amended by the Omnibus Budget Reconciliation Act of 1993),~~ which
264 limitation of \$150,000 shall be adjusted as required by federal
265 law for qualified government plans and shall be further adjusted
266 for changes in the cost of living in the manner provided by
267 Internal Revenue Code s. 401(a)(17)(B). For any person who first
268 became a member before ~~prior to~~ the first plan year beginning on
269 or after January 1, 1996, the limitation on compensation may
270 ~~shall be~~ not be less than the maximum compensation amount that
271 was allowed to be taken into account under the plan as in effect
272 on July 1, 1993, which limitation shall be adjusted for changes
273 in the cost of living since 1989 in the manner provided by



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274 Internal Revenue Code s. 401(a)(17)(1991).

275 Section 6. Section 185.35, Florida Statutes, is amended to
276 read:

277 185.35 Municipalities having their own pension plans for
278 police officers.—For any municipality, chapter plan, local law
279 municipality, or local law plan under this chapter, in order for
280 municipalities with their own pension plans for police officers,
281 or for police officers and firefighters if where included, to
282 participate in the distribution of the tax fund established
283 pursuant to s. 185.08, local law plans must meet the minimum
284 benefits and minimum standards set forth in this chapter:

285 (1) ~~PREMIUM TAX INCOME.~~—If a municipality has a pension
286 plan for police officers, or for police officers and
287 firefighters if where included, which, in the opinion of the
288 division, meets the minimum benefits and minimum standards set
289 forth in this chapter, all premium tax revenues received by the
290 municipality in excess of the adjusted base amount and all
291 accumulated excess premium tax revenues held in reserve, must
292 first be used to pay off the unfunded actuarial accrued
293 liabilities of the plan. After all unfunded actuarial accrued
294 liabilities are paid off, the board of trustees of the pension
295 plan, as approved by a majority of police officers of the
296 municipality, may:

297 (a) Place the income from the premium tax in s. 185.08 in
298 such pension plan for the sole and exclusive use of its police
299 officers, or its police officers and firefighters if where
300 included, where it shall become an integral part of that pension
301 plan and ~~shall~~ be used to pay extra benefits to the police
302 officers included in that pension plan; or



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303 (b) May place the income from the premium tax in s. 185.08
304 in a separate supplemental plan to pay extra benefits to the
305 police officers, or police officers and firefighters if ~~where~~
306 included, participating in such separate supplemental plan.

307 (2) The premium tax provided by this chapter shall in all
308 cases be used in its entirety to provide retirement ~~extra~~
309 benefits to police officers, or to police officers and
310 firefighters if, ~~where~~ included. However, local law plans in
311 effect on October 1, 1998, must ~~shall be required to~~ comply with
312 the minimum benefit provisions of this chapter only to the
313 extent that additional premium tax revenues become available to
314 incrementally fund the cost of such compliance as provided in s.
315 185.16(2). If ~~When~~ a plan is in compliance with such minimum
316 benefit provisions, as subsequent additional tax revenues become
317 available, they shall be used to provide extra benefits, except
318 as provided under subsection (1). For the purpose of this
319 chapter, "additional premium tax revenues" means revenues
320 received by a municipality pursuant to s. 185.10 which exceed
321 the amount received for calendar year 1997, and the term "extra
322 benefits" means benefits in addition to or greater than those
323 provided to general employees of the municipality and in
324 addition to those in existence for police officers on March 12,
325 1999. Local law plans created by special act before May 23,
326 1939, shall be deemed to comply with this chapter.

327 ~~(3)-(2) A ADOPTION OR REVISION OF A LOCAL LAW PLAN. No~~
328 retirement plan or amendment to a retirement plan may not ~~shall~~
329 be proposed for adoption unless the proposed plan or amendment
330 contains an actuarial estimate of the costs involved. ~~No~~ Such
331 proposed plan or proposed plan change may not ~~shall~~ be adopted



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332 without the approval of the municipality or, where permitted,
333 the Legislature. Copies of the proposed plan or proposed plan
334 change and the actuarial impact statement of the proposed plan
335 or proposed plan change shall be furnished to the division
336 before ~~prior to~~ the last public hearing thereon. Such statement
337 must ~~shall~~ also indicate whether the proposed plan or proposed
338 plan change is in compliance with s. 14, Art. X of the State
339 Constitution and those provisions of part VII of chapter 112
340 which are not expressly provided in this chapter.

341 Notwithstanding any other provision, only those local law plans
342 created by special act of legislation before ~~prior to~~ May 23,
343 1939, are ~~shall be~~ deemed to meet the minimum benefits and
344 minimum standards only in this chapter.

345 (4) ~~(3)~~ Notwithstanding any other provision, with respect to
346 any supplemental plan municipality:

347 (a) Section 185.02(4)(a) does ~~shall~~ not apply, and a local
348 law plan and a supplemental plan may continue to use their
349 definition of compensation or salary in existence on March 12,
350 1999 ~~the effective date of this act.~~

351 (b) Section 185.05(1)(b) does ~~shall~~ not apply, and a local
352 law plan and a supplemental plan shall continue to be
353 administered by a board or boards of trustees numbered,
354 constituted, and selected as the board or boards were numbered,
355 constituted, and selected on December 1, 2000.

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

358 (5) ~~(4)~~ The retirement plan setting forth the benefits and
359 the trust agreement, if any, covering the duties and
360 responsibilities of the trustees and the regulations of the



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361 investment of funds must be in writing and copies made available
362 to the participants and to the general public.

363 Section 7. Financial rating of local pension plans.—The
364 Department of Financial Services shall develop standardized
365 ratings for classifying the financial strength of all local
366 government defined benefit pension plans.

367 (1) In assigning a rating to a plan, the department shall
368 consider, but need not be limited to:

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

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

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

375 (d) Municipal bond ratings for the local government, if
376 applicable.

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

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

381 (2) The department may obtain all necessary data to
382 formulate the ratings from all relevant entities, including
383 local pension boards, local governments, and the Division of
384 Retirement, all of which shall cooperate with the department in
385 supplying all necessary information.

386 (3) The ratings shall be posted on the department's website
387 in a standardized format.

388 Section 8. Task Force on Public Employee Disability
389 Presumptions.—



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

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

398 (a) Three members appointed by the President of the Senate,
399 one of whom must be an attorney in private practice who has
400 experience in the relevant laws; one of whom must be a
401 representative of organized labor; and one of whom must be from
402 the Florida Association of Counties.

403 (b) Three members appointed by the Speaker of the House of
404 Representatives, one of whom must be an attorney in private
405 practice who has experience in the relevant laws; one of whom
406 must be a representative of organized labor; and one of whom
407 must be from the Florida League of Cities.

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

410 (d) A member employed by the Department of Management
411 Services' Division of Retirement who has experience in local
412 government pension plans, appointed by the Governor.

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

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

418 (a) Data related to the operation of the statutory



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419 disability presumptions.

420 (b) How disability presumptions are handled in other
421 states.

422 (c) Proposals for changes to the existing disability
423 presumptions.

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

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

430 (6) The task force may obtain data, information, and
431 assistance from any officer or state agency and any political
432 subdivision thereof. All such officers, agencies, and political
433 subdivisions shall provide the task force with all relevant
434 information and assistance on any matter within their knowledge
435 or control.

436 (7) The task force shall submit a report, including
437 findings and recommendations, to the Governor, the Chief
438 Financial Officer, the President of the Senate, and the Speaker
439 of the House of Representatives by January 1, 2012. The report
440 must include specific recommendations for legislative action
441 during the 2012 Regular Session of the Legislature.

442 (8) The task force is dissolved upon submission of its
443 report.

444 Section 9. By December 1, 2011, the Department of Financial
445 Services shall submit a report and recommendations to the
446 Governor, the President of the Senate, and the Speaker of the
447 House of Representatives on actions to be taken to increase the



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448 visibility and transparency of local government pension plans,
449 including, but not limited to, those created pursuant to
450 chapters 175 and 185, Florida Statutes, with the goal of
451 increasing the ability of a taxpayer or policymaker to assess
452 the financial health of the local plans. The report must include
453 specific recommendations for legislative action during the 2012
454 Regular Session of the Legislature. The department shall consult
455 with the Legislature's office of Economic and Demographic
456 Research in formulating the recommendations, which must address,
457 but need not be limited to:

458 (1) Whether and what kinds of local pension plan data
459 should be included in the financial audit reports required under
460 s. 218.39, Florida Statutes.

461 (2) Whether the reporting requirements of ss. 175.261 and
462 185.221, Florida Statutes, should be supplemented with other
463 types of financial data in order to give a more complete and
464 transparent picture of a local government's financial solvency.

465 (3) Proposals for a uniform format for providing pension
466 data, including standard terminology and data and the specific
467 types of data which should be provided, including funding
468 ratios, and whether contributions are sufficient to fund
469 actuarial liabilities.

470 (4) Whether to require local governments to provide pension
471 financial data on local public websites.

472 (5) Other related issues, including insurance benefits,
473 health care benefits, and postemployment plan benefits.

474 (6) Proposals related to the composition of local pension
475 plan boards.

476 Section 10. The Legislature finds that a proper and



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477 legitimate state purpose is served when employees and retirees
478 of the state and of its political subdivisions, and the
479 dependents, survivors, and beneficiaries of those employees and
480 retirees, are extended the basic protections afforded by
481 governmental retirement systems that provide fair and adequate
482 benefits and that are managed, administered, and funded in an
483 actuarially sound manner as required by s. 14, Article X of the
484 State Constitution and part VII of chapter 112, Florida
485 Statutes. Therefore, the Legislature determines and declares
486 that this act fulfills an important state interest.

487 Section 11. This act shall take effect July 1, 2011.

488
489 ===== T I T L E A M E N D M E N T =====

490 And the title is amended as follows:

491 Delete everything before the enacting clause
492 and insert:

493 A bill to be entitled
494 An act relating to public retirement plans; amending
495 s. 112.66, F.S.; providing that a local governmental
496 entity may not offer a defined benefit retirement plan
497 to a plan member hired on or after a certain date;
498 providing for the calculation of retirement benefits
499 after a certain date; providing a prohibition on the
500 use of plan revenues; prohibiting a reduction in
501 certain contributions to a plan; requiring a plan to
502 provide disability benefits after a certain date;
503 providing a death benefit for the spouse and minor
504 children of a member hired after a certain date who is
505 killed in the line of duty; amending s. 121.051, F.S.;



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506 providing that a plan is eligible for participation in
507 the Florida Retirement System if it has no unfunded
508 actuarial liabilities; amending s. 175.032, F.S.;
509 revising the definition of the term "compensation" or
510 "salary" for purposes of firefighter pensions;
511 amending s. 175.351, F.S.; revising provisions
512 relating to benefits paid from the premium tax by a
513 municipality or special fire control district that has
514 its own pension plan; conforming a cross-reference;
515 amending s. 185.02, F.S.; revising the definition of
516 the terms "compensation" or "salary" for purposes of
517 police officer pensions; amending s. 185.35, F.S.;
518 revising provisions relating to benefits paid by a
519 municipality that has its own pension plan; directing
520 the Department of Financial Services to rate the
521 financial strength of local government defined benefit
522 plans; specifying the factors for assigning the
523 ratings; requiring certain entities to cooperate in
524 providing data for the ratings; requiring the ratings
525 to be posted on the department's website; creating the
526 Task Force on Public Employee Disability Presumptions;
527 providing for appointment and membership; specifying
528 the issues for the task force to address; providing
529 for a report to be submitted to the Governor, Chief
530 Financial Officer, and Legislature by a certain date;
531 providing for expiration; directing the Department of
532 Financial Services to submit a report on the financial
533 health of local government pension plans to the
534 Governor and Legislature by a certain date; specifying



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535 the issues the report must address; providing a
536 declaration of important state interest; providing an
537 effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/16/2011	.	
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The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment to Amendment (762940)

Delete lines 236 - 240
and insert:
before July 1, 2011 ~~However, a local law plan may limit the~~
amount of overtime payments which can be used for retirement
benefit calculation purposes is limited to no more, ~~but in no~~
~~event shall such overtime limit be less~~ than 300 hours per
officer per calendar year. For service earned and collective
bargaining



338756

LEGISLATIVE ACTION

Senate	.	House
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The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

1 **Senate Amendment to Amendment (762940) (with title**
2 **amendment)**

3
4 Delete lines 5 - 41
5 and insert:

6 Section 1. Subsections (11) through (15) are added to
7 section 112.66, Florida Statutes, to read:

8 112.66 General provisions.—The following general provisions
9 relating to the operation and administration of any retirement
10 system or plan covered by this part shall be applicable:

11 (11) Effective July 1, 2011, for purposes of calculating
12 retirement benefits, a pension system or plan sponsored by a



338756

13 local government may not include any overtime, unused leave, or
14 any other form of compensation beyond base hourly or annual
15 salary in calculating a member's compensation or salary. For
16 those members whose terms and conditions of employment are
17 collectively bargained, this subsection is effective for the
18 first agreement negotiated on or after July 1, 2011.

19 (12) An actuarial or cash surplus in any system or plan may
20 not be used for any expenses outside the plan.

21 (13) A plan or system may not temporarily reduce
22 contributions required to fund normal cost.

23 (14) For each member hired on or after July 1, 2011, the
24 local government shall provide a disability retirement benefit
25 that meets the following minimum standards:

26 (a) A member who becomes totally and permanently disabled,
27 as defined in s. 121.091(4) (b), after completing a specified
28 amount of service as determined by the local government, is
29 entitled to a monthly disability benefit.

30 (b) The local government must specify what constitutes
31 permanent and total disability, how to determine proof of
32 disability, provisions related to recovery from disability, and
33 other necessary components of a disability retirement program.

34 (15) For each member who is a firefighter, police officer,
35

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

37 And the title is amended as follows:

38 Delete lines 495 - 497

39 and insert:

40 s. 112.66, F.S.;



497304

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment to Amendment (762940)

Delete line 20

and insert:

local government may not include more than 300 hours per year of
overtime, unused leave, or

Delete line 89

and insert:

compensation in excess of 300 hours per year, unused leave, or
any other form of compensation



422222

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment to Amendment (762940)

Delete lines 150 - 151

and insert:

accumulated excess premium tax revenues held in reserve may be
used only once to pay the unfunded actuarial accrued liabilities



452798

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment to Amendment (762940)

Delete lines 291 - 292

and insert:

accumulated excess premium tax revenues held in reserve, may be
used only once to pay off the unfunded actuarial accrued



313084

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Latvala) recommended the following:

Senate Amendment to Amendment (762940)

Delete line 244

and insert:

any overtime in excess of 300 hours per year, unused leave, or
other compensation beyond base



967576

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment to Amendment (762940)

Delete line 89

and insert:

compensation or any other form of compensation

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371260

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Bogdanoff) recommended the following:

Senate Amendment to Amendment (762940)

Delete line 90

and insert:

beyond adjusted base hourly or annual salary may not be included
when



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LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Fasano) recommended the following:

Senate Amendment to Amendment (762940)

Delete lines 148 - 185

and insert:

forth in this chapter, the board of trustees of the pension
plan, as approved by a majority of firefighters of the
municipality, may:

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



632960

13 included in that pension plan; or

14 (b) Place the income from the premium tax in s. 175.101 in
15 a separate supplemental plan to pay extra benefits to
16 firefighters, or to firefighters and police officers if ~~where~~
17 included, participating in such separate supplemental plan.

18 (2) The premium tax provided by this chapter shall in all
19 cases be used in its entirety to provide retirement ~~extra~~
20 benefits to firefighters, or to firefighters and police officers
21 if, ~~where~~ included. However, local law plans in effect on
22 October 1, 1998, must ~~shall be required to~~ comply with the
23 minimum benefit provisions of this chapter only to the extent
24 that additional premium tax revenues become available to
25 incrementally fund the cost of such compliance as provided in s.
26 175.162(2)(a). If ~~When~~ a plan is in compliance with such minimum
27 benefit provisions, as subsequent additional premium tax
28 revenues become available, they must ~~shall~~ be used to provide
29 extra benefits, except as provided in subsection (1). For the
30 purpose of this chapter, "additional premium tax revenues" means
31 revenues received by a municipality or special fire control
32 district pursuant to s. 175.121 which exceed that amount
33 received for calendar year 1997, and the term "extra benefits"
34 means benefits in addition to or greater than those provided to
35 general employees of the municipality and in addition to those
36 in existence for firefighters on March 12, 1999. Local law plans
37 created by special act before May 23, 1939, shall be deemed to
38 comply with this chapter. Notwithstanding any other provisions
39 of this section, if less than 80 percent of the plan's actuarial
40 accrued liability is fully funded as of March 1, 2011, 50
41 percent of the accumulated excess premium tax revenues that are



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42 not being used to fund the adjusted base amount or extra
43 benefits may be used one time only to pay the unfunded actuarial
44 accrued liabilities of the plan; however, such one-time use must
45 occur on or before September 30, 2011.



807032

LEGISLATIVE ACTION

Senate

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House

The Committee on Governmental Oversight and Accountability
(Dean) recommended the following:

Senate Amendment

Delete lines 212 - 221
and insert:

(4) "Compensation" or "salary" means the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, ~~a local law plan may limit~~ the amount of overtime payments which can be used for retirement benefit calculation purposes are limited to no more ~~7~~ but in no event shall such overtime limit be less than 300 hours



807032

13 ~~per officer~~ per calendar year.