



Klausner & Kaufman
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW

MEMORANDUM

TO: ALL FLORIDA PENSION PLANS

FROM: KLAUSNER & KAUFMAN, P.A.

RE: IMPORTANT AMENDMENTS TO CHAPTERS 175/185 (SB 1128)

DATE: MAY 18, 2011

During this year's recently completed legislative session, one pension bill was adopted that applies to all governmental plans in Florida. Senate Bill 1128 (hereinafter "SB 1128") is currently awaiting signature by the Governor, which we understand to be likely. Unlike the substantial amendments which were made to the Florida Retirement System this year, the amendments in SB 1128 for municipal plans are relatively modest.

While not exhaustive, this memo is intended to highlight the primary provisions of SB 1128:

- New actuarial disclosure: SB 1128 amends Section 112.63, Florida Statutes, to create a new actuarial disclosure requirement. All governmental pension plans in Florida must now disclose the present value of the plan's accrued vested, nonvested, and total benefits. The calculations are required to be performed using the assumed rate of return applied by the Florida Retirement System ("FRS"), currently 7.75%. The reason for the new disclosure is to make it easier for non-actuaries to compare actuarial data between different plans by permitting "apples to apples" comparisons of funded levels. This amendment does not require plans to adopt the FRS rate. In other words, you are not required to adjust your plan's investment assumption to match the FRS rate of 7.75%.
- Limitations on "pensionable earnings" to exclude accrued leave and cap overtime: SB 1128 amends Section 112.66, Florida Statutes, to restrict the pensionable earnings used to calculate pension benefits. For non-collectively bargained service earned after July 1, 2011 and for service earned under a collectively bargained agreement ("CBA") entered into after

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July 1, 2011, only 300 hours of overtime may be treated as pensionable. Similarly, payments for accrued unused sick leave or annual leave may not be treated as pensionable earnings. For collectively bargained plans, these limitations will not apply until the first CBA entered into on or after July 1, 2011. In other words, these restrictions on accumulated leave and overtime do not take effect until the expiration of your current CBA.

We understand that this provision is being studied by the Division of Retirement, with regard to the Legislature's intent to avoid any diminution of accrued benefits. Please watch for future updates from our office regarding any guidance from the State. We anticipate working with your plan actuaries to implement this amendment. For example, if your plan treats accumulated leave as pensionable, a plan amendment will likely be required. In our view, any plan amendments would not apply to members who are eligible for normal retirement on or before the effective date of the statute. The FRS is exempted from this restriction.

- Protection of actuarial or cash surplus: SB 1128 amends Section 112.66, Florida Statutes, to specify that an actuarial or cash surplus within the plan may not be used for any expenses outside the plan.
- Prohibition against lowering contributions below normal cost: SB 1128 amends Section 112.66, Florida Statutes, to provide that a plan sponsor may not reduce contributions required to fund the normal cost of the plan. The FRS is exempted from this restriction.
- Fact sheet summarizing actuarial status: SB 1128 amends Section 112.665, Florida Statutes, to require the Department of Management Services (which oversees the Division of Retirement) to create an actuarial fact sheet for each local government defined benefit plan. The new actuarial disclosure requirements in Section 112.63, described above, will enable the Department to more easily summarize a plan's actuarial status. The fact sheet is required to describe each plan's most current actuarial data, minimum funding requirements as a percentage of pay, and a 5-year funded ratio history. The new fact sheets will be posted on the Department's website. Plan sponsors that have their own websites are required to provide a link to the Department's website.
- Limitations on "pensionable earnings" to exclude accrued leave and cap overtime: SB 1128 amends the definition of compensation and salary for Chapter 175 and 185 plans to exclude accrued leave and cap pensionable overtime at 300 hours. This provision effectively repeats the same amendments to Section 112.66, described above, by placing the exclusion into Sections 175.032(3) and 185.02(4) for police and fire plans. The restrictions are effective July 1, 2011, for non-collectively bargained plans. For collectively bargained plans, these limitations will not apply until the first CBA entered into on or after July 1, 2011. SB 1128 further deletes existing language in Chapters 175 and 185 giving local law plans the flexibility to use their own definitions of salary.

- Board composition: SB 1128 amends Sections 175.061 and 185.05, Florida Statutes, to provide that a municipality may change the municipal representation on a board of trustees, provided that the ordinance amendment does not reduce the membership percentage on the board. This, in our view does not affect elected members or the 5th person. This provision, could for example, allow a city to select someone other than a resident for its positions. This amendment in the municipal representation is limited to those plans that were grandfathered under the law in 1986 who had a greater than 40% employee representation by Ordinance.
- Adjustment to member contribution rate: SB 1128 amends Sections 175.091 and 185.07, Florida Statutes, to permit the member contribution rate to be adjusted by consent of the union, or by majority consent if there is no union. Under current law, the member contribution could only be increased in exchange for greater benefits. With this new amendment, increased member contributions do not need to be accompanied by a benefit enhancement.
- Financial rating of local pension plans: SB 1128 requires the Department of Management Services to develop a standardized rating system for classifying the financial strength of local government defined benefit plans. Various factors can be considered, including unfunded liabilities, asset value, managed returns, and the employer contribution as a percentage of payroll. The Department is permitted to request data and assistance from state and local government. The Department shall submit its findings and recommendations by January 1, 2012, with specific legislative recommendations for the 2012 Regular Session of the Florida Legislature.
- Task Force on Public Employee Disability Presumptions: SB 1128 creates an 8-member task force charged with making findings and issuing recommendations on the disability presumptions contained in Sections 112.18, 175.231 and 185.34, Florida Statutes. Under current law, disability presumption provides special protection for public safety officers who have been injured in the line of duty. The appointees to the task force shall include representatives with managerial, labor, and pension backgrounds, including one pension trustee. The task force shall submit its report by January 1, 2012, with specific legislative recommendations for the 2012 Regular Session of the Florida Legislature.

SB 1128 law takes effect on July 1, 2011, unless another effective date is otherwise provided. Our office looks forward to discussing the new legislation at upcoming board meetings.