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Pensions: Stop the Bleeding

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Public Pension Plan Funding Requirements

Article X, Section 14, Florida Constitution:

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.

Part VII, Chapter 112, Florida Statutes

- “Florida Protection of Public Employee Retirement Benefits Act” – Little ERISA
- enacted in 1978
- Defines what “sound actuarial basis” means
- governs the operation and funding of all pension plans funded in whole or in part by public funds.

Part VII, Chapter 112, Florida Statutes

Legislative intent -- section 112.61:

- governmental retirement systems should be managed, administered and funded so as to maximize the protection of public employee retirement benefits.
- pension liabilities attributable to the benefits promised public employees should be fairly and equitably funded by current as well as future taxpayers.

Part VII, Chapter 112, Florida Statutes

Legislative intent -- section 112.61 (cont.):

- prohibit the use of any procedure, methodology, or assumptions which transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

Part VII, Chapter 112, Florida Statutes

Legislative intent -- section 112.61 (cont.):

- Actuarial experience may be used to fund additional benefits, provided that the present value of such benefits does not exceed the net actuarial experience accumulated from all sources of gains and losses.
- Act establishes minimum standards for the operation and funding of public employee retirement systems and plans.

State Review of Actuarial Reports

Section 112.63(4)

- If the Department determines that an actuarial report is not complete, accurate, or based on reasonable assumptions, or if additional information is needed to complete its review, or if the Department does not receive an actuarial report, the Department must notify the plan administrator and request appropriate adjustment, additional information, or the required report.

State Review of Actuarial Reports

Section 112.63(4)

- If, after a reasonable period of time, a satisfactory adjustment is not made ... DMS may notify the Department of Revenue and the Department of Financial Services.
- The Department of Financial Services “shall withhold any funds not pledged for satisfaction of bond debt service which are payable to the affected governmental entity until the adjustment is made or the report, statement, or additional material information is provided...”

State Review of Actuarial Reports

Section 112.63(4)

- The affected governmental entity may petition for an administrative hearing if it disagrees with the Department's position.
- The Department may prepare the actuarial report or impact statement, and if it prevails the governmental entity is required to pay the cost.

Pension Benefits and Collective Bargaining

City of Tallahassee v. PERC, 410 So.2d 487 (Fla. 1981)

- Public employee retirement benefits are terms and conditions of employment that are mandatory subjects of collective bargaining.

Pension Benefits and Collective Bargaining

City of New Port Richey v. Hillsborough PBA ,
505 So.2d 1096 (Fla. 2nd DCA 1987);

- Bargaining required for changes in pension benefits and employee contributions
- However, where the change affects only employer contributions, and there is no impact on employee benefits or contributions, or the actuarial soundness of the plan, the public employer is not required to bargain over the change.

Pension Benefits and Collective Bargaining

City of New Port Richey v. Hillsborough PBA

“the City, as a public employer, has a responsibility not only to its employees, but also to the taxpayers it serves. The City's duty is to provide services to those taxpayers as inexpensively as possible. Unlike a corporation that is responsible to a limited number of stockholders to produce a profit if possible, a public employer is responsible to the public and to the community as a whole to operate in the public interest as economically as possible.” 518 So.2d 1275 at 1098.

Reduction of Pension Benefits

Florida Sheriffs Association v. State Dept. of Administration, Division of Retirement, 408 So.2d 1033 (Fla. 1982):

- Prospective reduction in benefit multiplier from 3% to 2% upheld
- Can't reduce benefits already earned or benefits of retirees

Financial Urgency

447.4095, Florida Statutes:

- In the event of a **financial urgency** requiring modification of an agreement, the chief executive officer or his or her representative and the bargaining agent or its representative shall meet as soon as possible to negotiate the impact of the financial urgency.

Financial Urgency

447.4095, Florida Statutes (cont.):

- If after a reasonable period of negotiation which shall not exceed 14 days, a dispute exists between the public employer and the bargaining agent, an impasse shall be deemed to have occurred . . .
- The parties shall then proceed pursuant to the provisions of s. 447.403.

Chapters 175 & 185, F.S.

- Chapters 175 and 185, F.S. provide for a rebate of the state excise tax on property and casualty insurance premiums to cities and districts that have local pension plans for police officers and firefighters.
- The premium tax monies must be used exclusively for police and firefighter pensions, and the local pension plan must comply with the requirements of Chapters 175 and 185.

Chapters 175 & 185, F.S.

- City must comply with Chapters 175 and 185 to receive PT monies.
- PT monies received in excess of the “frozen amount” must be used for extra benefits.
- If excess PT monies are used to provide formula benefits, the cost shifts to the City over time.
- Under current law the City will lose PT monies if:
 - The current plan is closed, frozen or terminated; or
 - The City joins FRS.

Chapters 175 & 185, F.S.

- In many cities & districts, the “Base/Frozen” amount is a small portion of overall premium tax revenues received.
- PT revenues above the “Base/Frozen” amount must be held in reserve and used for additional extra benefits.
- Possible Option: “Stop/Restart” -- converts old benefits into extra benefits, allowing use of more PT revenues to reduce city/district cost.

Chapters 175 & 185, F.S.

“Share Plans”

- Provide an additional benefit to retiring firefighters and police officers.
- Premium tax monies are allocated to individual member accounts in accordance with a formula contained in the plan.
- Share account monies are invested; member accounts are credited each year with investment gains (losses).

Local Government Financial Emergency Act

- Sections 218.50 through 218.504, Florida Statutes, establish the "Local Governmental ...Financial Emergencies Act."
- This Act provides a workout process through which local governments, with state oversight and assistance, can overcome temporary inability to meet current obligations due to a lack of funds.

Local Government Financial Emergency Act

Financial emergency process is triggered when one of the following occur:

- Failure to transfer taxes withheld on employee income, social security contributions or contributions to an employee pension, retirement or benefit plan;

Local Government Financial Emergency Act

When a financial emergency occurs, the Governor is authorized to:

- Appoint a **financial emergency board** to oversee the activities of the local government, and make recommendations for management, efficiency, productivity and financing of local government operations.

Local Government Financial Emergency Act

When a financial emergency occurs, the Governor is authorized to:

- Require and approve a plan of action that will allow the local government to pay all obligations as they become due, and prohibit a level of operations which can be sustained only with non-recurring revenues.

Bankruptcy

Chapter 9 of U.S. Bankruptcy Code:

- permits municipalities to file for bankruptcy protection **if**
- the state has specifically authorized municipalities to do so.

Bankruptcy

Section 218.01, Florida Statutes:

- enacted in 1933
- authorizes Florida municipalities, taxing districts and political subdivisions to seek bankruptcy protection

Bankruptcy

Section 218.503, Florida Statutes:

“A local government entity ... may not seek application of laws under the bankruptcy provisions of the United States Constitution except with the prior approval of the Governor ...”

Bankruptcy

In re City of Vallejo, California:

- City filed for bankruptcy protection in May 2008.
- In September 2009, the Bankruptcy Court concluded that the city could reject its collective bargaining agreement with an employee union.