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MEMORANDUM

TO: PENSION CLIENTS

FROM: KLAUSNER & KAUFMAN, P.A.

RE: COSTELLO BILL - HB 303

DATE: 1/21/2011

The purpose of this memo is to summarize recently proposed pension legislation, House Bill 303 (hereinafter "H.B. 303"), which would amend Chapter 112, Chapter 121 and Chapters 175 & 185, Florida Statutes. While we are aware of a range of proposals, H.B. 303 is the first specific pension bill relating to municipal plans that has been pre-filed for the 2011 Legislative session. H.B. 303 was filed by Representative Fred Costello. At the moment, there are no co-sponsors or companion bills in the Senate.

H.B. 303 is titled, an act "relating to public retirement plans." As such, it contains fifty-seven pages of detailed amendments relating in many instances to *all* public pension plans in Florida, including sections regarding municipal plans, Chapter 175 and 185 plans, and separate sections amending the Florida Retirement System ("FRS").

This memo, which is not exhaustive, is intended to highlight the provisions of H.B. 303 relating to municipal defined benefit plans. In other words this memo focuses on proposed amendments that apply to municipal plans for general employees, as well as amendments applicable to police and fire plans under Chapters 175 and 185. This memo will not focus in detail on FRS amendments. This memo avoids editorializing or otherwise predicting the bill's chances of passage. Recognizing that it is very early in the legislative process, it will be important for readers to follow the bill and other proposed legislation for any subsequent amendments or future developments.

It is clear that multiple provisions will invite litigation and present unanswered implementation questions raised by several of the proposed amendments. Many provisions also raise local autonomy and control issues.

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Because it is early in the legislative process, there are no staff summaries available. Likewise, the Division of Retirement has not yet commented on the bills.

H.B. 303 would become effective immediately upon adoption, unless otherwise provided in the bill. Various provisions, including benefit reductions and the DROP elimination provision described below, have separate effective dates.

In its current form, H.B. 303 provides as follows:

Amendments applicable to all governmental retirement plans in Florida

- Higher normal retirement age of 55: Section 1 of H.B. 303 would add a new Section 112.65(3)(a), Florida Statutes, raising normal retirement eligibility for all public employees to a minimum of age 55. This amendment would apply to *all* municipal plans along with FRS. The age 55 provision would become effective immediately upon adoption, as would all other provisions unless specifically provided otherwise.
- Lower benefit multiplier of 1.6% for future service: Section 1 of H.B. 303 would add a new Section 112.65(3)(b), Florida Statutes, lowering the plan multiplier (or benefit accrual rate) for all public employees to 1.6% per year, for *future* years of service. This amendment would apply to all municipal plans, along with FRS. Accrued benefits earned under higher multipliers would not be retroactively reduced. The prospective benefit rate reduction would apply to both current and new plan participants, effective for fiscal years beginning after June 30, 2011.
- Equivalent employer and member contributions for DC plans: Section 1 of H.B. 303 would add a new Section 112.65(3)(b), Florida Statutes, requiring member contributions to defined contribution (DC) plans to equal or exceed the public employer's contributions to the DC plan. The amendment also clarifies that public employers may offer a DC plan to plan participants in a defined benefit (DB) plan.
- Maximum 15% employer contribution: Section 1 of H.B. 303 would add a new Section 112.65(3)(c), Florida Statutes, prohibiting public employers from contributing more than 15% of collective payroll into a public retirement system. This amendment would apply to all municipal plans along with FRS. Collective payroll is defined as all plan costs, including administrative and other plan expenses. If the plan's actuarial valuation indicates that the employer contribution exceeds 15%, the employer shall provide the membership 30 days within which to agree, by majority vote, to increase the member contribution accordingly. After the 30 day period, or upon a vote not to pay the excess costs, the employer shall unilaterally decrease benefits so that the employer's contribution does not exceed 15%.
- Elimination of DROP plans: Section 1 of H.B. 303 would add a new Section 112.65(3)(d), Florida Statutes, prohibiting public employers from providing deferred retirement option (DROP) plans. This amendment would apply to all municipal plans, along with FRS. The

amendment would be effective December 31, 2012, at which time participation in a DROP plan shall cease. DROP balances shall be distributed on or before December 31, 2012.

- Legislative declaration of important state interest: Section 35 of H.B. 303 sets forth the Legislative finding that a proper and legitimate state purpose is served when employees and retirees are extended “basic protections afforded by governmental retirement systems that provide fair and adequate benefits that are managed, administered, and funded in an actuarially sound manner,” as required by Chapter 112 and Section 14, Article X of the Florida Constitution.

Amendments to FRS

- Base pay used as compensation for FRS: Section 2 of H.B. 303 would amend Section 121.021(22) and (24), Florida Statutes, the FRS definitions of “compensation” and “average final compensation,” to exclude overtime, annual leave or other payments above an employee’s base hourly or annual salary. Similar amendments are discussed below regarding Chapter 175 and 185 plans.
- Clarification of FRS benefit limitations: Section 3 of H.B. 303 would create a new Section 121.024, Florida Statutes, explicitly clarifying that the benefit limitations in Section 112.65, Florida Statutes, shall apply to Chapter 121 (which establishes and regulates the FRS). The amendment states that notwithstanding anything to the contrary, the benefit limitations in Section 112.65 shall apply to all of Chapter 121 and shall control over any conflicting provisions.
- Past service buyback for FRS special risk service: Section 4 of H.B. 303 would amend Section 121.0515, Florida Statutes, to allow FRS members to purchase past special risk service at the 3% special risk rate. Contributions for upgrading the first 2% of the member’s average monthly compensation would be less expensive and calculated differently than the cost of upgrading at the maximum 3% multiplier rate. The 3% rate would be actuarially determined in an account representing the actuarial accrued liability. The cost must be paid by the member or employer immediately upon notification by FRS.

Amendments to Chapters 175 and 185

- Legislative declaration in Chapters 175 and 185: Sections 5 and 20 of H.B. 303 would amend the legislative declaration provisions in Chapters 175 and 185, Sections 175.021 and 185.01, Florida Statutes. The amendment would remove the current legislative declaration that Chapters 175 and 185 are intended to operate as uniform retirement systems. The amendment would also strike the current legislative declaration that Chapters 175 and 185 are intended to establish “minimum benefits and minimum” standards, which may not be diminished by law.

- Base pay as compensation under Chapters 175 and 185: Sections 6 and 21 of H.B. 303 would amend Chapter 175 and 185's definitions of "compensation" in Sections 175.032(3) and 185.02(4), Florida Statutes. The amendment would exclude overtime, unused leave or any other form of compensation beyond "base hourly or annual salary" when calculating a member's pensionable compensation.
- Revised definitions of "local law" and "supplemental" plans: Sections 6 and 21 of H.B. 303 would amend Chapter 175 and 185's definitions of "local law plan" and "supplemental plan" in Sections 175.032(11) & (17) and 185.02(10) & (15), Florida Statutes. The amendment would remove the requirement that local law plans meet required "minimum benefits and minimum standards". Supplemental plans would no longer be required to pay "extra" benefits and could exist in conjunction with a defined benefit plan that does not meet minimum benefits and standards.
- Clarification of benefit limitation under Chapters 175 and 185: Sections 7 and 22 of H.B. 303 would create new Section 175.033 and 185.021, Florida Statutes, explicitly clarifying that the benefit limitations in Section 112.65, Florida Statutes, shall apply to Chapters 175 and 185. The amendment states that notwithstanding anything to the contrary, the benefit limitations in Section 112.65 shall apply to all of Chapters 175 and 185 and shall control over any conflicting provisions.
- Ability to create multiple public safety plans: Sections 8 and 23 of H.B. 303 would amend Sections 175.041 and 185.03, Florida Statutes, to remove the prohibition on establishing more than one public safety plan supported by premium tax revenue under Chapters 175 or 185. The amendment also includes various housekeeping changes, including cross references to new provisions in Chapters 175 and 185.
- Board composition: Sections 9 and 24 of H.B. 303 would amend Sections 175.061 and 185.05, Florida Statutes, to permit cities to change the municipal representation on the board of trustees of a local law plan if the change does not reduce the membership percentage of firefighters or police officers below that percentage on June 30, 1986. A majority of the members of a board of trustees would be prohibited from being members or retirees of the plan. Current provisions allowing retirees to serve in the active member seats for closed plans with less than 10 active member would be deleted.
- Detailed accounting report and administrative expense budget: Sections 9 and 24 of H.B. 303 would amend Sections 175.061 and 185.05, Florida Statutes, to require detailed accounting reports of expenses which shall be made available to every member of the plan. The expense report must include all administrative expenses, including legal counsel, actuary, plan administrator, other consultants, and travel expenses. Boards of trustees would also be required to submit proposed administrative expense budgets to the plan sponsor at least 120 days before the beginning of the fiscal year. The administrative expense budget would not be effective until approved by the plan sponsor, and could not be amended without prior approval by the plan sponsor.

- Board’s power to retain independent advisors is subject to plan sponsor approval: Sections 10 and 25 of H.B. 303 would amend Sections 175.071 and 185.06, Florida Statutes, to clarify that the power of the pension board to hire independent legal counsel, independent actuaries and other professionals is subject to the new budgeting and plan sponsor approval provisions described above, in Sections 175.061 and 185.05.
- Removal of ability to provide greater benefits with increased member contributions: Sections 11 and 26 of H.B. 303 would amend Sections 175.091 and 185.07, Florida Statutes, to delete existing language permitting the membership to vote to provide “greater benefits” funded with additional member contributions.
- Lower normal retirement age: Sections 12 and 27 of H.B. 303 would amend Sections 175.162 and 185.16, Florida Statutes, to delete provisions permitting normal retirement at age 52 with 25 or more years of credited service. It is unclear whether this provision intends to deny “local law plans” the ability to use different retirement ages for normal retirement eligibility. The amendment also contains various housekeeping provisions, which delete references to “minimum” benefit requirements.
- Less generous early retirement reduction factor: Sections 12 and 27 of H.B. 303 would amend Sections 175.162 and 185.16, Florida Statutes, to remove the minimum standard that early retirement reduction factors shall not exceed 3%. The new actuarial reduction factor would be 5%, making early retirement less attractive for members. It is unclear whether this amendment intends to apply to “local law plan” or only “chapter plans”.
- Employer participation in disability determinations : Sections 13 and 28 of H.B. 303 would amend Sections 175.191 and 185.18, Florida Statutes, to require the pension board and the employer to both agree that the member satisfies disability criteria. Likewise, the employer would need to consent to the particular doctor selected for purposes of the disability examination or reexamination. The employer would also be given the authority to discontinue benefits for retirees that the employer determines have recovered from their disability.
- Heightened disability standard: Sections 13 and 28 of H.B. 303 would amend Sections 175.191 and 185.18, Florida Statutes, to revise the job specific criteria to be considered totally disabled. Under current law, disability criteria is based on the inability to render useful and efficient service as a firefighter/police officer. The proposed amendment would tighten the disability standard to require that the member be unable to render useful and efficient service as “an employee”.
- Removal of disability presumptions: Sections 14 and 29 of H.B. 303 would delete Sections 175.231 and 185.34, Florida Statutes, setting forth disability presumptions for heart disease and tuberculosis for public safety officers.
- Deletion of “extra benefits” frees up “additional premium tax revenue”: Sections 15 and 30 of H.B. 303 would amend Sections 175.351 and 185.35, Florida Statutes, to delete the

current requirement that “additional premium tax revenue” be used to fund “extra benefits”. The amendment would also remove the current requirement that premium tax revenue be used to meet minimum benefits and standards. Rather than being required to provide benefits *greater than* those provided to general employees, premium tax revenue could be used to fund all existing benefits, which need only be *equal* to those for general employees. The 1997 base year requirement for calculating “additional premium tax revenue” would become obsolete.

- Use of premium taxes for benefits that “in the aggregate” exceed “minimum benefits”: Sections 15 and 30 of H.B. 303 would amend Sections 175.351 and 185.35, Florida Statutes, to allow local law plans to use premium tax revenue to comply with the minimum benefit provisions of Chapters 175 and 185 by providing benefits that “in the aggregate” exceed minimum benefits. In other words, local law plans would no longer be required to incrementally adopt all minimum benefits, as long as aggregate plan benefits exceed chapter minimums. Various other housekeeping amendments are also included.
- Ability to unilaterally establish one or more plans with different benefit levels: Sections 15 and 30 of H.B. 303 would create new Sections 175.351(5) and 185.35(5), Florida Statutes, permitting municipalities to unilaterally establish one or more plans, or benefit levels within a plan. Different benefit levels would be based on the member’s date of hire. Municipalities would also have the unilateral authority to maintain an existing plan and join FRS for employees hired after a specified date. Premium tax revenue could be used to cover existing benefits or to pay contributions to FRS.
- Control of plan termination by the municipality: Sections 16 and 31 of H.B. 303 would amend Sections 175.361 and 185.37, Florida Statutes, to substitute the municipality for the pension board, in the role of administering plan terminations. For example, the municipality rather than the board, would determine the date of distribution of assets and the method of distribution of asset values.
- Repeal of existing limitations on transfers to FRS: Sections 17 and 32 of H.B. 303 would repeal existing limitations in Sections 175.371 and 185.38, Florida Statutes, restricting transfers to FRS. New Sections 175.372 and 185.381, Florida Statutes, discussed below, would replace Sections 175.371 and 185.38.
- Continued receipt of premium taxes after establishment of a DC plan or transfer to FRS: Sections 18 and 33 of H.B. 303 would create new Sections 175.372 and 185.381, Florida Statutes, permitting municipalities to unilaterally create or transfer to another retirement system, including a defined contribution plan or FRS. Premium tax revenue would continue to be paid to the municipality as long as the revenue is used to fund the preexisting Chapter 175 or 185 plan, or to reduce required contributions to the new retirement system. Any new retirement plan shall be required to provide line of duty disability benefits, as determined by the employer. Disability benefits shall be based on the accrued retirement benefit, but not less than 42% of average monthly compensation. New Sections 175.372 and 185.381 would replace former Sections 175.371 and 185.38.

- Repeal of protections for existing rights in Sections 175.381 and 185.39: Sections 19 and 34 of H.B. 303 would repeal language in Sections 175.381 and 185.39, Florida Statutes, preventing the reduction of existing rights or benefits.