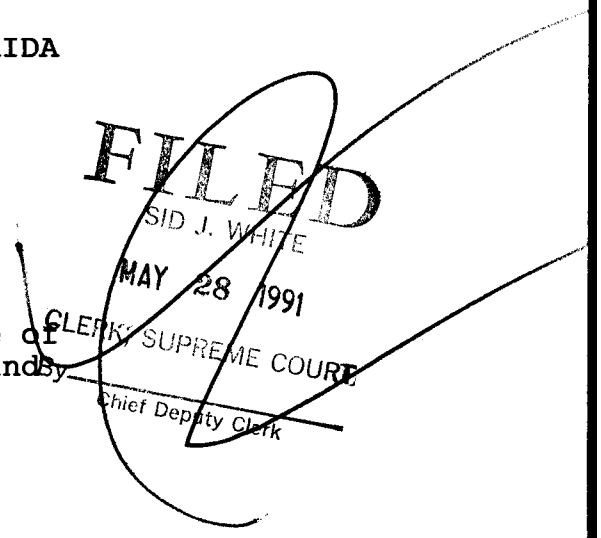
IN THE SUPREME COURT OF FLORIDA

CASE NO. 77,850



FLORIDA ASSOCIATION OF COUNTIES, INC., a non-profit Florida corporation; FLORIDA LEAGUE OF CITIES, INC., a non-profit Florida corporation; and SANDRA GLENN and ROBERT ANDERSON, citizens and taxpayers of the State of Florida and respectively of Seminole County and Sarasota County, Florida,

Plaintiffs/Petitioners,

v.

DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT, an agency of the State of Florida; PROFESSIONAL FIRE FIGHTERS OF FLORIDA, a labor organization; and the FLORIDA POLICE BENEVOLENT ASSOCIATION, a labor organization,

Defendant/Intervenors/Respondents.

_____/

ANSWER BRIEF ON JURISDICTION OF RESPONDENT FLORIDA POLICE BENEVOLENT ASSOCIATION

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SUMMARY OF THE ARGUMENT

The Court should decline to exercise its discretionary jurisdiction over this case because Petitioner's challenge to Chapter 88-238, Laws of Florida, presents an issue of policy rather than of constitutional law. It is undisputed that the statute provides sufficient funding to meet the increased pension benefit obligations as and when they mature. Under these circumstances, the Legislature's decision to fund the increased benefits with a non-level contribution schedule versus a level contribution method is a policy decision. The constitution's requirement that increases in benefits be funded on a sound actuarial basis does not require that this burden be met with a level funding method.

The sufficiency of the Legislature's pre-enactment study of the sufficiency of the funding methodology is likewise a policy issue and not one of constitutional law; there is no constitutional standard for the courts to review the sufficiency of legislative studies as a grounds for invalidating statutes.

STATEMENT OF THE CASE AND FACTS

Chapter 88-238, Laws of Florida, was the product of a hotly contested legislative battle between "special risk" employees (including law enforcement officers and firefighters) who sought increased retirement benefits, and local government employers (counties and cities) which opposed increased benefits. The

Legislature enacted Chapter 88-238 which provided for a gradual increase in benefits to special risk members; the increase in benefits was phased-in over five years, and a coordinated gradual increase in employer contributions to fund the increase in benefits was phased-in over the same period.

The issue presented is whether the constitutional requirement for funding an increase in retirement benefits on a sound actuarial basis requires a single-step or level contribution rate increase, and thereby prohibits a multi-step or phased-in contribution rate increase (similar to Chapter 88-238), which is coordinated with the multi-step benefit rate increase. The trial court concluded that the constitutional provision means that any increase in benefits must be funded in such a way that the retirement fund is able to meet its obligations, as and when they mature. (T. 590, R. 108). It also concluded that the retirement system's ability to meet the increased benefit obligations would not be adversely affected by whether the contribution rate was increased by a single-step or multi-step increase, and that the allocation of the contribution burden in such circumstances is a policy decision for the Legislature.

The Circuit Court's judgment (App. 1) and the District Court of Appeals' opinion (App. 2) summarize the case and evidence presented. Petitioners' statement of the case and facts distorts the record by presenting only selected excerpts which the lower courts found unpersuasive. Petitioners' focus on the facts acknowledges the fact-intensive nature of the actuarial issues

presented. In order to present a more fair and complete picture of the record, Respondent submits its statement of the case and facts to supplement that provided by the lower courts' rulings.

***

Five actuaries testified at the trial. The critical evidence showed that the multi-step or non-level contribution rate increases adopted by the Legislature in Chapter 88-238 would produce the same or greater funding to cover the scheduled benefit increases as the single-step or level increase preferred by the State's consulting actuary. (T. 304, 442, 483-93). The Circuit Court found that the multi-step funding schedule in Chapter 88-238 was sufficient to enable the system to meet its increased obligations, on a continuing basis, as and when they mature. The Court ruled it had heard "no evidence of a significant character" to the contrary. (T. 585, R. 108).

The gist of the Petitioners' challenge was that the non-level funding schedule allocated the burden of funding in favor of current taxpayers and against future taxpayers, and that this allocation did not result in funding the increased benefits on a sound actuarial basis.

Petitioners' actuarial witness declined to calculate the sufficiency of the statutory funding schedule to determine if the allocation would meet the system's increased benefit obligations (T. 379-80). In his view a non-level contribution rate increase was actuarially unsound regardless of whether the multi-step contributions were sufficient to meet the increased benefit

obligations of the system. Upon inquiry from the Court, however, he acknowledged that the allocation of the tax burden is "a political problem more than an actuarial problem". (T. 361-62).

Although the State Retirement Director was philosophically opposed to Chapter 88-238 and to its non-level funding feature on policy grounds, he and the state actuary testified that a level funding method is not required for the increase to be funded on a sound actuarial basis. (T. 179, 261) Respondents presented actuarial testimony that the non-level or multi-step increase in contribution rates, which was coordinated with the phased-in increase in benefits, was a more fair allocation of the burden than the single-step increase would have been because the allocation avoided overpayment by current taxpayers. (T. 442, 480-491). The Circuit Court found the statutory allocation of the burden did not result in any unfair or discriminatory treatment to current or future taxpayers. (T. 585-86; R. 108-09).

Petitioners' Brief contains a misleading reference to a $4 (four) billion increase in "unfunded liability" between 1987 and 1989, as if Chapter 88-238 caused this increase. Actually the statute results in a $250 million increase in "unfunded liability". (T. 159). This is about <u>six percent</u> of the increase in "unfunded liability" created during this two year period, and <u>one and one half percent</u> of the system's total "unfunded

liability" in 1989 (T. 157).[1]

Petitioners' Brief also suggests that funding the benefit increases in Chapter 88-238 has caused financial hardship. There was no question presented at trial as to Petitioners' members' ability to pay their contributions. On the contrary, they acknowledged before trial that ability to pay was not an issue. (T. 9-10). They acknowledged that the required contributions have all been made (T. 50, 58, 67). The State Retirement Director and actuaries testified that the employers' fiscal hardship is not a factor used in determining whether a plan is funded on a sound actuarial basis. (T. 194, 199, 256).

Petitioners' Brief suggests that the lower courts considered Chapter 88-238 to be "unwise and imprudent." The District Court of Appeal simply observed as follows:

> Although the trial court orally indicated a belief that the statutory plan may be "an unwise or imprudent basis" for departing from the ...(level cost method).... (e.s.)

Slip Opinion at 8. This comment was not the ruling of the Circuit Court, and was not adopted by the District Court of Appeal as reflecting its own views. Rather, it was nothing more than a reminder that the judiciary cannot speculate on, much less judicially review, the wisdom of legislative funding schemes under established separation-of-powers principles.

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[1]"Unfunded liability" results from the accounting system used which recognizes liability for benefits whenever a new employee is hired. (T. 298-99). The "unfunded liability" does not render the system actuarially unsound because not all employees become entitled to retirement benefits.

ARGUMENT

THE SUPREME COURT SHOULD DENY JURISDICTION TO REVIEW THE DISTRICT COURT OF APPEAL'S DECISION.

I. The actuarial soundness of the funding provisions in Chapter 88-238, Laws of Florida, presents primarily fact and policy issues as the lower courts decided, and not any important issue of constitutional law.

Petitioners do not challenge the sufficiency of the contributions to pay for the increased benefits. They challenge only the allocation of the burden as unequal between present and future taxpayers.

Once the issue is recognized as one of allocating the burdens of funding, and not the sufficiency of the funding, the lower courts' deference to the Legislature's policy choice becomes a familiar concept. In similar situations involving administration of specific state funds, this Court has deferred to the policy decisions of the Legislature or of an administrative agency acting under legislatively delegated authority. See cases cited by District Court of Appeal, Slip Opinion, nn. 5 and 6.[2]

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[2]By analogy, see generally cases rejecting equal protection-based challenges to the allocation of burdens of supporting general government operations and public utility operations, e.g., Belcher Oil Co. v. Dade County, 271 So. 2d 118 (Fla. 1972), and Just Valuation & Taxation League v. Simpson, 209 So. 2d 229 (Fla. 1968) (taxation issues); and Int'l Min. & Chem. Co. v. Mayo, 336 So. 2d 548 (Fla. 1976) (upholding Public Service Commission's determination of rate structure in public utility rate making).

The constitutionality of single versus multi-step contributions is more an issue of form than of substance. The Legislature could have met Petitioners' objection by enacting five consecutive laws, each providing for a single-step increase in the contributions and benefits for that particular year, equalizing the contribution burden within each act. The Legislature's consolidation of five coordinated contribution/benefit increases in one act, rather than five acts, should not make the enactment invalid. In any event, the allocation of the funding burden is not really an actuarial issue but a political one, as Petitioners' actuarial witness conceded.

Petitioners' argument that the case involves high financial stakes appears to be based upon the hope that if they prevail, the Court will invalidate Chapter 88-238 in its entirety and return to the prior law. A challenge based on misallocation of the burdens does not logically lead to such drastic relief.[3]

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[3] The law's benefit provisions are unchallenged. To invalidate the benefits provisions would impair vested rights of special risk employees who have made irreversible career and financial decisions in reliance on the increased pension benefits. The more appropriate remedy, if Petitioners should prevail, is to order prospective equalization of the burdens to satisfy any actuarial requirements that may be unmet. Such a remedy would not relieve Petitioners of any ultimate financial obligations. For example, if the Social Security system were challenged based on an unequal allocation of the burdens of supporting the system, the remedy would not be to relieve the employers of all liability for future contributions, but to prospectively equalize the contribution burden so as to insure that guaranteed benefits continue to be paid. By analogy, where past inequities in tax burdens are drawn to this Court's attention, it normally does not invalidate the tax ab initio or eliminate the programs in place funded by revenue from the tax, but rather allows the political branches a good faith opportunity to fashion a prospective equalization remedy. See, e.g., Division of Alcoholic Beverages v. McKesson Corp., 574 So. 2d 114 (Fla. 1991).

Petitioners also exaggerate the precedential effect of the decision below, which does not bind other courts that may consider the statute or the constitutional issue:

> Under the new provision, of course, the supreme court's denial of review where a statute is upheld does not foreclose other challenges to the same statute in the same or in other appellate districts. Declining to review a validity case, therefore, does not preclude a subsequent declaration of invalidity which the court would be required to take, another declaration of validity which might persuade the court to grant a request for review, or a later certification of the issue. In other words, by exercising its discretionary review with care, the supreme court can avoid using its limited resources to analyze and write concerning a state statute which does not immediately appear to be controversial or of current importance, safe in the knowledge that a decision not to review will not forever insulate the legal issue from supreme court consideration.

England et al., Constitutional Jurisdiction of the Supreme Court: 1980 Reform, 32 U.F.L. Rev. 147, 183-84 (1980) (footnote omitted). The District Court of Appeal's interpretation of "sound actuarial basis" likewise does not foreclose this Court's consideration of the issue after further interpretive developments in the lower courts.

The lower courts' deference to the Legislature's policy choices in advocating the burden of the contributions breaks no new legal ground, and does not merit discretionary review. As this court has previously held, questions of wisdom, need or appropriateness are for the Legislature, not the courts. Cilento v. State of Florida, 377 So.2d 663 (Fla. 1979).

II. The adequacy of the Legislature's study of actuarial soundness before enacting the statute presents no justiciable issue of constitutional law.

The Legislature is clearly empowered to make factfinding investigations in support of its policymaking function. There is no constitutional standard in Article X, Section 14 or elsewhere that specifies a particular type of investigation must be undertaken, and the Legislature is free to investigate as much or as little as it wishes prior to enacting legislation. The proper depth of such an investigation is a political question.

Moreover, prior to passage of Chapter 88-238, there was an actuarial study done to determine the necessary contribution rate to fund an immediate increase in special risk benefits from two percent to three percent (T. 134, 135). The State's consulting actuaries recommended a level contribution rate of 7.64 percent of payroll to fund the single-step increase. When the Legislature decided to phase-in the increase in benefits over a five year period, it also phased-in the accompanying contribution rate increase.

Respondent's actuarial expert testified that dividing the increase in benefits and the increase in contributions into five equal parts is an appropriate way to calculate the required actuarial contribution rate. Thus, the Legislature did have actuarial data which was used to determine the appropriate contribution rates to fund the coordinated multi-step increase in benefits and contributions.

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

FLORIDA ASSOCIATION OF COUNTIES, INC., a non-profit Florida corporation,

Plaintiff,

vs. CASE NO. 89-27

DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT, ET AL.,

Defendants,

FLORIDA POLICE BENEVOLENT ASSOCIATION, INC., PROFESSIONAL FIRE FIGHTERS OF FLORIDA and DOMINICK BARBERA,

Defendants/Intervenors.
_____/

FLORIDA LEAGUE OF CITIES, INC., a non-profit Florida corporation,

Plaintiff,

vs. CASE NO. 89-144

DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT, ET AL.,

Defendants,

FLORIDA POLICE BENEVOLENT ASSOCIATION, INC., PROFESSIONAL FIRE FIGHTERS OF FLORIDA and DOMINICK BARBERA,

Defendants/Intervenors.
_____/

SANDRA GLENN and ROBERT ANDERSON, citizens and taxpayers of the State of Florida and respectively of Seminole County and Sarasota County, Florida,

Plaintiffs, CASE NO. 89-828

vs.

App. 1

DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT, an agency of the State of Florida; PROFESSIONAL FIRE FIGHTERS OF FLORIDA, a labor organization; and FLORIDA POLICE BENEVOLENT ASSOCIATION, a labor organization,

Defendant and Intervening Defendants.

FINAL JUDGMENT

This action was tried before the court. The Plaintiffs, Florida Association of Counties, Inc., Florida League of Cities, Inc., Sandra Glenn and Robert Anderson sued the Florida Department of Administration, Division of Retirement, challenging the enactment of Chapter 88-238 on the grounds that it violates the provisions of Article X, §14 of the Florida Constitution, or alternatively, seeking a declaration that Chapter 88-238 is in direct conflict with the intent and policy of Part VII, Chapter 112, Florida Statutes. The Florida Police Benevolent Association and the Professional Fire Fighters of Florida were granted leave to intervene as Defendants. After hearing the evidence and being otherwise duly advised in the premises, the court finds:

1. The Plaintiffs, Florida Association of Counties, Inc., Florida League of Cities, Inc., Sandra Glenn and Robert Anderson have standing to bring this lawsuit.

2. Because Florida's counties and cities opted to become members of the Florida Retirement System, they have acquiesced in

whatever methodology might be employed by the Legislature to alter funding or benefits in the system.

3. Section 112.63(1)(f), Florida Statutes, makes reference to the actuarial cost methods approved in the Employee Retirement Income Security Act of 1974 (ERISA). The Florida Legislature has made ERISA a standard that is applicable by reference and to that limited extent must be complied with, but the Legislature has not adopted ERISA in its entirety.

4. For purposes of this lawsuit, the pertinent language contained in Article X, §14 of the Florida Constitution concerns whether the increases in benefits are funded on a sound actuarial basis. The phrase "funded on a sound actuarial basis" has application within the field of actuarial science, but is not defined with specificity within the actuarial field. A consensus definition or understanding of the phrase is that a retirement program must be funded in such a way that the retirement fund is able to meet its continuing obligations as and when they mature.

5. No evidence of a significant character was presented to show that the funding method set out in Chapter 88-238, Laws of Florida, will cause the fund, as it relates to the increase in benefits, to be unable to meet its obligations on a continuing basis as and when they mature.

6. The phase-in of benefits and contributions set forth in Chapter 88-238, Laws of Florida, does not result in discriminatory treatment to taxpayers. The phase-in of the benefits in conjunction with the payment of contributions are

reasonably coordinated each with the other; there is no significant disparity between what today's taxpayers will pay or not pay after the phase-in is complete, nor is there significant disparity with what future taxpayers will pay after the phase-in is complete, when compared with what the present taxpayers are paying during the phase-in period.

7. The Florida Retirement System is based upon the entry age normal cost method. The funding method employed in Chapter 88-238 is a departure from that method.

8. The Legislature has the prerogative to depart from the entry age normal cost method and adopt another funding method, as long as it is not violative of the provisions of the Florida Constitution.

9. Chapter 88-238, Laws of Florida, is before the court with a presumption of constitutionality.

10. It is the duty of the court to uphold Chapter 88-238, Laws of Florida, unless convinced beyond a reasonable doubt that it contravenes the Constitution of the State of Florida.

11. It is not for the court to invade the prerogative of the Legislature but to construe the statute in such a way as to achieve the legislative intent, subject only to constitutional restrictions on the Legislature's authority. Questions of wisdom, need or appropriateness are for the Legislature, not the court.

It is therefore ORDERED AND ADJUDGED:

1. All Plaintiffs in the three consolidated cases have standing to bring their respective claims.

2. Plaintiffs have failed to meet the burden of proof imposed upon them by law.

3. The funding scheme employed by Chapter 88-238, Laws of Florida, does not violate the provisions of Article X, §14 of the Florida Constitution.

4. The methodology employed in Chapter 88-238, Laws of Florida, is consistent with the provisions of Article X, §14, of the Florida Constitution and results in the increases in benefits being funded on a sound actuarial basis.

5. Judgment is entered in favor of the Department of Administration, Division of Retirement, the Florida Police Benevolent Association and the Professional Fire Fighters of Florida.

6. The court reserves jurisdiction on the issue of costs.

DONE AND ORDERED this 7 day of June, 1990, in Chambers, Tallahassee, Leon County, Florida.

J. LEWIS HALL, JR.
CIRCUIT JUDGE

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IN THE DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

FLORIDA ASSOCIATION OF COUNTIES, INC., a non-profit Florida corporation; FLORIDA LEAGUE OF CITIES, INC., a non-profit Florida corporation; and SANDRA GLENN and ROBERT ANDERSON, citizens and taxpayers of State of Florida and respectively of Seminole County and Sarasota County, Florida,

Appellants/
Cross-appellees,

vs.

DEPARTMENT OF ADMINISTRATION, DIVISION OF RETIREMENT, an agency of the State of Florida; PROFESSIONAL FIRE FIGHTERS OF FLORIDA, a labor organization; and FLORIDA POLICE BENEVOLENT ASSOCIATION, a labor organization,

Appellees/
Cross-appellants.

* NOT FINAL UNTIL TIME EXPIRES TO
* FILE MOTION FOR REHEARING AND
* DISPOSITION THEREOF IF FILED.

* CASE NO. 90-2071

CORRECTED p. 1, 6, 8
FILED 4/10/91
BY JF

Opinion filed March 29, 1991.

Appeal from an Order of the Circuit Court for Leon County, J. Lewis Hall, Jr., Judge.

Tom R. Moore, of Roberts & Egan, Tallahassee, for appellants/cross-appellees Florida Association of Counties and individual taxpayers; Kraig A. Conn, Assistant General Counsel, Tallahassee, for appellant/cross-appellee Florida League of Cities, Inc.

Robert A. Butterworth, Attorney General; George L. Waas, Assistant Attorney General, for appellee/cross-appellant Department of Administration, Division of Retirement; Kelly Overstreet Johnson of Broad & Cassel, Tallahassee, for appellee/cross-appellant Florida Police Benevolent Association; Richard A. Sicking, Miami, for appellee/cross-appellant ~~Police Benevolent Association.~~ Professional Fire Fighters of Florida

WENTWORTH, Senior Judge.

This is an appeal from a final judgment holding that chapter 88-238, Laws of Florida, which funded increases in retirement benefits of special risk members of the Florida Retirement System (FRS), does not violate article X, section 14 of the Florida Constitution.[1] Appellants sought a declaration that would hold chapter 88-238 to be an improper exercise of the state's taxing and spending authority because it funded the costs of increased benefits to special risk members, composed of fire fighters and law enforcement officers, by assertedly shifting the burdens from current to future taxpayers in violation of article X, section 14 of the state constitution. They named the Department of Administration, Division of Retirement (DOA), as defendant. The Florida Police Benevolent Association (PBA) and Professional Fire Fighters of Florida (PFF) intervened as defendants, and cross appealed, raising issues of hearsay and standing. We affirm.

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[1] That section provides:

> 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.

Art. X, §14, Fla. Const.

Chapter 88-238 amended various sections of the Florida Retirement System Act[2] by increasing the retirement benefit of special risk members from two to three percent of average monthly compensation, and increasing the corresponding employer contribution effective January 1, 1989. The act provides for a phase-in of contributions and benefits over a five-year period as follows:

Period	% Increase in Contributions[3]	% Increase in Benefits[4]
1989	1.6	2.2
1990	3.2	2.4
1991	4.8	2.6
1992	6.4	2.8
1993+	8.0	3.0

Appellants contend that the legislative scheme facially places on future taxpayers a discriminatory and inequitable burden to pay the cost of increased benefits that assertedly should be borne by current taxpayers. They argue, for example, that the taxpayers in 1993, and after, must pay five times the rate of 1989 taxpayers, thus violating article X, section 14, which requires that benefit increases must be funded "on a sound actuarial basis." Although the standard has significance in contexts not relevant here,[5] few courts have addressed Article X, section 14,[6]

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[2] Ch. 121, Fla. Stat. (Supp. 1988).

[3] Ch. 88-238, § 1, Laws of Fla. (codified at § 121.071(2)(a), Fla. Stat. (Supp. 1988)).

[4] Ch. 88-238, § 2, Laws of Fla. (codified at § 121.091(1)(a), Fla. Stat. (Supp. 1988)).

[5] See, e.g., Department of Ins. v. Southeast Volusia Hosp. Dist., 438 So.2d 815, 819 (Fla. 1983), appeal dismissed, 466 U.S. 901 (1984).

and we find no opinion which has definitively considered the meaning of the phrase "sound actuarial basis."

The diversity of expert opinions at trial would indicate that the phrase "sound actuarial basis" is not precisely defined in actuarial science. In one instance, actuarial soundness of a plan to increase benefits of a particular class may require the plan to prefund benefits of the class such that the assets on hand are sufficient to meet current obligations. In another, a plan to increase benefits of a particular class must first provide for the funding of the unfunded liability of the entire system. An intermediate position would permit a phase-in plan that funds the normal cost and amortizes past liability over a reasonable period, and funds each benefit increase as it becomes due rather than when it is enacted.

Faced with the absence of clear agreement among the experts who testified at trial on the meaning of "sound actuarial basis," the trial court accepted a "consensus" definition, and held that "a retirement program must be funded in such a way that the retirement fund is able to meet its continuing obligations as and when they mature." The trial court found that the phase-in of benefits and contributions is reasonably coordinated, producing no significant disparity between the obligations of current and

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[6] See, e.g., City of Tallahassee v. Public Employees Relations Comm'n, 410 So.2d 487, 491 (Fla. 1981); State ex rel. Watson v. Lee, 157 Fla. 62, ___, 24 So.2d 798, 800 (1946); Florida League of Cities, Inc. v. Department of Ins. and Treasurer, 540 So.2d 850, 853 (Fla. 1st DCA 1989), review denied, 545 So.2d 1367 (Fla. 1989); Young v. Department of Admin., Div. of Retirement, 524 So.2d 1071, 1076 (Fla. 1st DCA 1988); Turlington v. Department of Admin., Div. of Retirement, 462 So.2d 65, 67 (Fla. 1st DCA 1984).

future taxpayers. The court concluded that the funding scheme used in chapter 88-238 is consistent with article X, section 14.[7]

Appellants maintain that the legislature has determined the controlling meaning of article X, section 14 in chapter 83-37, Laws of Florida. The legislature there declared that liabilities required to fund public retirement system benefits must be funded equitably by current and future taxpayers alike, and expressly prohibited the "transfer to future taxpayers [of] any portion of the costs which may reasonably have been expected to be paid by the current taxpayers."[8] Appellants rely on Brown v. Firestone,

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[7] The phase-in scheme selected by the legislature to fund the benefit increases provided in chapter 88-238 is a clear departure from the plans used to fund benefit increases in the past. Customarily, the state has paid for increases in FRS benefits by amortizing the associated costs at a single rate over a thirty-year period. Appellants concede that article X, section 14 of the Florida Constitution does not dictate such a plan.

[8] The section provides:

> Legislative intent.--It is the intent of the Legislature in implementing the provisions of s. 14 of Art. X of the State Constitution, relating to governmental retirement systems, that such retirement systems or plans be managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits. Inherent in this intent is the recognition that the pension liabilities attributable to the benefits promised public employees be fairly, orderly, and equitably funded by the current, as well as future, taxpayers. Accordingly, except as herein provided, it is the intent of this act 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 taxpayers. This act hereby establishes minimum standards for the operation and funding of public employee retirement systems

382 So.2d 654 (Fla. 1980), claiming that the legislative interpretation in chapter 83-37 is entitled to a presumption of correctness. We conclude that chapter 83-37 is not entitled to such presumptive weight under the circumstances.[9]

There is clear record support for the trial court's decision. A state retirement actuary testified that the legislative plan was actuarially sound because the costs paid by the employers into the system would eventually cover liabilities. DOA's actuarial consultants determined that the contribution rate required to fund the cost of benefits over a thirty-year amortization period was 7.04%, and a consulting actuary fully anticipated that the 7.04% in contributions would exceed current obligations in 1993, after

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and plans.

Ch. 83-37, § 1, Laws of Fla. (codified at § 112.61, Fla. Stat. (1983)).

[9] Brown v. Firestone, 382 So.2d 654 (Fla. 1980), expresses the principle that "[a] relatively contemporaneous construction of the constitution by the legislature is strongly presumed to be correct." Id. at 671 (citing Greater Loretta Improvement Ass'n v. State ex rel. Boone, 234 So.2d 665 (Fla. 1970)). Article X, section 14, was adopted in 1976. Neither Brown nor Greater Loretta requires the court to look to the 1983 version of section 112.61, Florida Statutes, but instead would require the court to look at its original version, which the legislature passed in 1978. See Chapter 78-170, § 1, Laws of Fla. The earlier version merely required that governmental retirement systems or plans "be managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits." Not until 1983 did the legislature express its intent in implementing the provisions of Article X, section 14, to require that a plan be "equitably funded by the current, as well as future, taxpayers." Chapter 78-170 has greater contemporaneity with the constitutional provision than does Chapter ~~88-37~~ 83-37. We note that chapter ~~88-37~~ 83-37 offers no support for the appellants' position, for their theory of the case does not turn on whether public employee retirement benefits are protected, but whether future taxpayers are burdened disproportionately.

the plan's fourth year. Also, a pension actuary for DOA explained that "more money is going to be paid by this non-level method the Legislature adopted because [it] deferred some of the funding."

Appellants also assert that technical flaws in the original legislative bills, a lack of actuarial input concerning the final version as enacted, and the legislature's failure to inquire into employers' abilities to finance the increased contributions all render the plan unsound, and therefore constitutionally deficient. Assuming the validity of appellants' criticisms, the record does not convincingly support the conclusion that asserted defects, if corrected, are constitutionally mandated. Nor do the criticisms overcome the strong presumption of constitutionality accorded legislative enactments. Fulford v. Graham, 418 So.2d 1204, 1205 (Fla. 1st DCA 1982).

Finally, appellants advance a statutory argument that chapter 88-238 conflicts with the earlier-enacted chapter 83-37, and should yield to it. Appellants rely on Sharer v. Hotel Corp. of America, 144 So.2d 813 (Fla. 1962), which stated the general rule to be that in cases of conflicting statutory provisions, the latter expression will prevail over the former unless, as appellants suggest, a well-recognized exception applies. We find that the sounder position is to harmonize the legislature's intent for the amendment with its intent for the original law. Thus construed, chapter 83-37 does not prohibit taxing future taxpayers, but requires that whatever costs associated with chapter 88-238 are passed on to future taxpayers must be reasonable. A consulting actuary testified that the plan was

actuarially sound, appropriate, thoughtful, and sensible. He added that the plan assesses the cost to the appropriate generation of taxpayers, i.e., those who are being served by the generation of special risk members who are receiving the particular benefit.

Although the trial court orally indicated a belief that the statutory plan may be "an unwise and imprudent basis" for departing from the "entry age normal cost concept" (level cost method) customarily used to fund increases in FRS benefits, it deferred to the policy choices of the coordinate legislative branch as a means of accomplishing the legislative intent. Under the circumstances, the trial court acted properly. Fulford, 418 So.2d at 1205.

On cross-appeal PBA contends that the trial court erroneously admitted, under the business records exception to the hearsay rule, numerous copies of correspondence received by DOA. Each of the challenged items of correspondence was admissible under the admissions exception to the hearsay rule, as correspondence from DOA's consulting agents and from a legislator pertaining to activities of the legislature relative to DOA. § 90.803(18)(d), Fla. Stat. (1989). Also, the reports were submitted in connection with activity of DOA mandated by Florida law. § 121.031(3), Fla. Stat. (1989). They were therefore properly admitted under the business records exception. § 90.803(8), Fla. Stat. (1989).

On cross-appeal, ~~PBA~~ PFF challenges the Florida Association of Counties' and Florida League of Cities' standing to initiate the suit. That argument proceeds on the stated basis that none of the

governmental entities that the Association or League represent convened in formal session to authorize their participation in this suit, and that their participation violated the Sunshine Law. Even assuming this issue was preserved for appellate review, on the merits PFF's argument must fail. City of Lynn Haven v. Bay County Council of Registered Architects, Inc., 528 So.2d 1244, 1246 (Fla. 1st DCA 1988), holds that a nonprofit corporation of architects had standing to assert that City's actions invaded a statutorily-created interest in competitive negotiations, common to its members, but not shared by taxpayers generally. Here, a substantial number of the constituents comprising the Association and League have been substantially and adversely affected by Chapter 88-238, in that they have increased their FRS contributions. There is no requirement that those entities themselves must sustain special injury.

Both the Association and League are private, nonprofit corporations, and neither is a "board or commission" under section 268.011, Florida Statutes (1989). City of Miami Beach v. Berns, 245 So.2d 38, 40 (Fla. 1971)(on reh'g)("the Legislature intended to extend application of the 'open meeting' concept so as to bind every 'board or commission' of the state, or of any county or political subdivision over which it has dominion or control"). Neither the Association nor League is controlled by any of the constituent local governments.

For these reasons, we affirm the final judgment of the circuit court.

SMITH and WIGGINTON, JJ., CONCUR.