

## MINUTES

### GENERAL EMPLOYEES' RETIREMENT COMMITTEE MEETING WEDNESDAY - JUNE 12, 2013 - 3:00 PM

#### PRESENT

Vic Espinal  
Larry Gordon  
Councilwoman Barbara Kramer  
Councilman Frantz Pierre

#### ABSENT

Lori Helton – Chair

#### ALSO PRESENT

Charlie Mulfinger – Graystone Consulting  
Scott Owens – Graystone  
Larry Wilson, GRS  
Darcee Siegel, City Attorney  
Bob Sugarman – Sugarman & Susskind  
Martin Lebowitz – Pension Administrator

#### DEPARTMENT REPRESENTATIVES

Janice Coakley  
Laura Wozniak

Frantz Pierre called the meeting to order at 3:10 P.M., followed by a roll call of Trustees.

#### 1. GRAYSTONE CONSULTING – Q/E 3/31/2013

Charlie Mulfinger and Scott Owens presented the performance report, indicating a total portfolio market value on 3/31/2013 of \$69,408,034 (including accrued income). This represents a net increase in value from the previous quarter of \$3,667,096. **Please see attached Summary of Relevant Facts as of March 31, 2013.**

Charlie Mulfinger and Scott Owens handed out an Investment Consulting Education presentation of Asset Allocation Including Alternatives and discussed investment in hedge funds.

After the presentation Charlie Mulfinger recommended to have 3 Hedge Fund Managers to make a presentation to the board. The tentative date of their presentations is Friday July 19, 2013 at 9:00 a.m. This meeting would give each Investment Manager ½ hr. plus questions and answers to make their presentation.

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Trustee Gordon questions the fees that Buckhead charges. Charlie Mulfinger stated that Buckhead and Garcia Hamilton have agreed to lower their fees by 40% until they have a higher return than the benchmark.

Bob Sugarman informed the board of the following legal concerns about investing in Hedge Funds:

- Legal issues since they are not registered with or governed by the SEC and US Law. They are governed by the Cayman Island law. Bob Sugarman cannot represent the committee in Caymanian courts if there is any litigation.
- Fees will much higher than our investment managers fees.
- Public Opinion – hedge funds use or off-shore accounts to void federal unrelated business income tax.

The Board agreed to have the 3 hedge fund managers make their presentations along with the Police & Fire Board on July 19, 2013.

## **2. PENSION ATTORNEY'S REPORT**

Bob Sugarman informed the committee that Jayne Goldstein who worked for Shepherd, Finkelman, Miller & Shalh one of our monitoring security firms has left this firm and now is working for Pomerantz, Grossman, Hufford, Dahlstrom & Gross. Bob Sugarman asked the committee to approve Jayne Goldstein's firm to monitor our accounts a no cost. The committee agreed to have Bob Sugarman sign the monitoring agreement for Pomerantz, Grossman, Hufford, Dahlstrom & Gross.

Actuarial Equivalence proposed Ordinance 2012-31 – issue was adjustment to mortality table used to calculate optional forms of disability benefits. Bob Sugarman referred to his opinion letter of March 15, 2013 addressed to City Attorney Darcee Siegel. **Please see attached letter.**

Bob Sugarman informed the committee that we received a favorable Determination Letter from the IRS conditioned upon the adoption of an ordinance amending the pension plan. Bob Sugarman will draft a new ordinance adhering to this letter.

Can a Drop Member be allowed to be a trustee on the Committee? Bob Sugarman stated that the Plan Document was not clear on this issue so trustee interpretation is required. Bob Sugarman reviewed the Plan Document with the Committee.

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After discussion, motion by Trustee Larry Gordon, seconded by Trustee Frantz Pierre, pursuant to the trustees' authority under section 5.04 of the plan to interpret the plan, the term "employee" in section 5.01(a)(iii) of the plan in which a worker-elected trustee must be an "employee" to serve as a trustee is interpreted to include members in the DROP because section 6.14(4) states that a DROP member remains a city employee. Therefore, DROP members can serve as employee-elected Trustees on the Retirement Committee for General Employees Retirement Plan.

**Roll Call:**

Trustee Victor Espinal	Yes
Trustee Larry Gordon	Yes
Trustee Barbara Kramer	Yes
Trustee Frantz Pierre	Yes

Motion carried unanimously.

**Legislative Update – please see attached letter from Bob Sugarman with proposed changes to the state law.**

Bob Sugarman reminded the Trustee to file their Financial Disclosures on time. Make sure they have proof that it was mailed by either sending returned receipt requested or have the City Clerk mail it for you. Also, please send a copy to Martin Lebowitz of proof of mailing.

Bob Sugarman discussed that the State has requested to have a time during our meeting for public comments and the trustees decided to follow the city's practice of allowing 3 minutes per person. All future agendas will have public comments as an item for each meeting.

**3. PENSION ADMINISTRATOR CONTRACT**

This item tabled until next meeting. Also, the pension administrator contract will be discussed at a joint meeting with the Police & Fire Retirement Committee following the 7/19/2013 meeting with Hedge Fund Managers.

**4. APPROVAL OF MINUTES – 3/4/2013**

Motion by Trustee Barbara Kramer, seconded by Trustee Victor Espinal, to accept the March 4, 2013 minutes for the General Employees' Retirement Plan Committee.

Motion carried unanimously.

**5. APPROVAL OF INVOICES**

Motion by Trustee Larry Gordon, seconded by Trustee Barbara Kramer, to approve payment of the following invoices except for Garcia Hamilton Equity in the amount of \$16,275.66 . Also, request Garcia Hamilton to reduce their fees 40% for the March 31, 2013 invoice,

Motion carried unanimously.

Garcia Hamilton – Equity Quarterly Mgt. Fees	16,275.66
Garcia Hamilton – Fixed Quarterly Mgt. Fees	13,434.64
Buckhead Capital - Quarterly Management Fees	19,216.48
Morgan Stanley Smith Barney – Qtly. Consulting Fees	6,875.00
GW Capital - Quarterly Management Fees	7,215.54
Harding Loevner – Quarterly Management Fees	6,804.00
Thornburg Management – Quarterly Management Fees	4,924.59
MDT - Quarterly Management Fees	7,953.27
GRS – Actuaries Fees	13,512.00
Sugarman & Susskind – Legal Fees	6,600.00
Salem Trust – Custodial Fees	8,107.43
	<u>\$110,918.61</u>

The next scheduled meeting for August 15, 2013 . Meeting was adjourned at 5:47 p.m.

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**Martin Lebowitz, Pension Administrator**

**SUMMARY OF RELEVANT FACTS**  
**City of North Miami Beach General Employees' Retirement Plan**  
**As of March 31, 2013**

<b>Distribution of Assets:</b>	
Equity	
- Large Cap. Value	\$14,369,180
- Large Cap. Growth	\$14,071,816
- Small Cap. Value	\$4,012,437
- Mid Cap Growth	\$3,976,842
- International Value	\$3,064,018
- International Growth	\$3,413,211
Total Equity	\$42,907,503
Fixed Income	\$21,556,417
Core Private Real Estate	\$4,297,496
Cash (R&D/Residuals)	\$646,618
Total Portfolio	\$69,408,034

<b>Other Important Facts:</b>	
Total Portfolio	\$69,408,034
Total Gain or (Loss) (Gross-of-Fees)	\$3,751,543
Total Gain or (Loss) (Net-of-Fees)	\$3,667,096
Total Fees	(\$84,446)
<b>Buckhead (Large Cap Value)</b>	
Total Assets	100.00%
Equity	97.90%
Cash	2.10%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	
<b>Garcia Hamilton (Large Cap Growth)</b>	
Total Assets	100.00%
Equity	97.97%
Cash	2.03%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	

<b>Distribution by Percentages:</b>		
Equity Breakdown	Policy	Current
- Large Cap. Value	20.00%	20.70%
- Large Cap. Growth	20.00%	20.27%
- Small Cap. Value	5.00%	5.78%
- Mid Cap Growth	5.00%	5.73%
- International Value	5.00%	4.41%
- International Growth	5.00%	4.92%
Total Equity	60.00%	61.82%
Fixed Income	32.50%	31.06%
Core Private Real Estate	7.50%	6.19%
Cash (R&D/Residuals)	0.00%	0.93%
Total Portfolio	100.00%	100.00%

<b>GW Capital (Small Cap Value)</b>	
Total Assets	100.00%
Equity	95.09%
Cash	4.91%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	
<b>Thornburg (Int'l Value)</b>	
Total Assets	100.00%
Equity	94.50%
Cash	5.50%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	
<b>Harding Loevner (Int'l Growth)</b>	
Total Assets	100.00%
Equity	95.60%
Cash	4.40%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	
<b>MDT (Mid Cap Growth)</b>	
Total Assets	100.00%
Equity	98.74%
Cash	1.26%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	

<b>Garcia Hamilton (Fixed Income)</b>	
Total Assets	100.00%
Fixed Income	99.69%
Cash	0.31%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	
<b>UBS (Core Private Real Estate)</b>	
Total Assets	100.00%
Private Real Estate	100.00%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	

<b>Receipts &amp; Disbursements Acc't</b>	
Total Assets	\$21,556,417
Fixed Income	\$21,490,477
Cash	\$65,940
Fees	(\$13,435)
Gain or (Loss) - Gross	\$167,079
Gain or (Loss) - Net	\$153,644
<b>Receipts &amp; Disbursements Acc't</b>	
Total Assets	100.00%
Fixed Income	0.00%
Cash	100.00%
Fees	
Gain or (Loss) - Gross	
Gain or (Loss) - Net	

The prices, quotes or statistics contained herein have been obtained from sources believed reliable, however, the accuracy cannot be guaranteed. Past performance is not a guarantee of future results.

**Breakdown of Returns**  
**City of North Miami Beach General Employees' Retirement Plan**  
**As of March 31, 2013**

<b>Buckhead</b>							
<b>Large Cap. Value</b>		<b>Your Returns</b>		<b>Your Returns</b>			
		<b>Cross-of-Fees</b>	<b>Net-of-Fees</b>	<b>Russ 1000 Value</b>	<b>PSN Money Mgrs</b>	<b>S&amp;P 500</b>	
	Quarter	10.65	10.51	12.31	11.78	10.61	
	Fiscal YTD	9.89	9.61	14.03	12.62	10.19	
	1 year	11.84	11.24	18.76	16.38	13.96	
	3 year	9.28	8.70	12.74	12.88	12.67	
	5 year	5.67	5.10	4.85	6.26	5.81	
	Since 9/30/2006	3.81	3.25	3.46	5.08	4.75	
<b>Garcia Hamilton &amp; Associates</b>							
<b>Large Cap. Growth</b>				<b>Russ 1000 Growth</b>	<b>PSN Money Mgrs</b>		
	Quarter	7.95	7.83	9.54	9.55		
	Fiscal YTD	6.16	5.91	8.09	9.23		
	1 year	6.48	5.97	10.08	10.79		
	3 year	11.62	11.07	13.06	12.33		
	5 year	5.96	5.43	7.30	6.58		
	Since 9/30/2006	6.00	5.51	6.58	6.25		
<b>GW Capital</b>							
<b>Small Cap. Value</b>				<b>Russ 2000 Value</b>	<b>PSN Money Mgrs</b>		
	Quarter	14.91	14.72	11.63	11.52		
	Fiscal YTD	21.61	21.19	15.23	15.33		
	1 year	27.60	26.69	18.09	15.72		
	3 year	15.36	14.52	12.11	14.67		
	Since 2/28/2009	28.00	27.12	25.56	NA		
<b>MDT Advisers</b>							
<b>Mid Cap. Growth</b>				<b>Russ Mid Growth</b>	<b>PSN Money Mgrs</b>		
	Quarter	11.68	11.48	11.52	11.41		
	Fiscal YTD	13.47	13.04	13.40	13.21		
	1 year	16.15	15.24	12.77	13.86		
	3 year	20.93	20.00	14.24	13.40		
	Since 5/31/2009	25.56	24.63	20.18	NA		
<b>Thornburg</b>							
<b>International Value</b>				<b>MSCI AC Wrld x US</b>			
	Quarter	2.49	2.33	3.17			
	Fiscal YTD	9.69	9.36	9.22			
	1 year	5.97	5.30	8.38			
	3 year	5.85	5.18	4.41			
	Since 9/30/2009	6.90	6.25	5.33			
<b>Harding Loevner</b>							
<b>International Growth</b>				<b>MSCI AC Wrld x US</b>			
	Quarter	2.53	2.34	3.17			
	Fiscal YTD	9.39	8.98	9.22			
	1 year	9.56	8.70	8.38			
	3 year	7.57	6.73	4.41			
	Since 3/31/2009	17.18	16.32	16.34			
<b>Garcia Hamilton &amp; Associates</b>							
<b>Fixed Income</b>				<b>BC Int. Gov/Credit</b>	<b>BC Int. Aggregate</b>	<b>90-Day T-Bill</b>	
	Quarter	0.78	0.72	0.26	0.15	0.02	
	Fiscal YTD	1.88	1.75	0.61	0.33	0.04	
	1 year	7.22	6.94	3.53	3.03	0.08	
	3 year	6.49	6.22	4.75	4.64	0.09	
	Since 2/28/2009	7.95	7.69	5.42	5.56	0.10	
<b>UBS Trumbull Property Fund</b>							
<b>Core Private Real Estate</b>				<b>NCREIF</b>	<b>ODCE</b>		
	Quarter	1.65	1.35	2.57	2.68		
	Fiscal YTD	3.62	3.01	5.18	5.09		
	Since 7/31/2012	6.24	5.60	7.64	8.00		

**TOTAL RETURN****Time-Weighted Return (TWR)**

			Policy Index	Composite Index
Quarter	5.71	5.58	6.06	6.17
Fiscal YTD	6.79	6.52	7.31	7.38
1 year	9.48	8.95	10.28	10.02
3 year	9.44	8.93	9.38	9.46
5 year	6.45	6.02	5.76	6.42
Since 9/30/2006	6.17	5.80	5.53	6.15

**Dollar-Weighted Net (IRR)**

			Actuarial Rate	CPI + 4
Quarter		5.65	1.88	1.48
Fiscal YTD		6.53	3.75	2.48
1 year		8.91	7.50	5.55
3 year		8.90	7.50	6.18
5 year		5.96	7.50	5.67
Since 9/30/2006		5.74	7.50	6.11

**Policy Index Composition**

- 20% Russ 1000 Value / 20% Russ 1000 Growth / 5% Russ 2000 Value / 5% Russ Mid Growth / 10% MSCI AC Wd x US (net) / 32.5% BC Int G/C / 7.5% NCREIF for periods since 6/30/2012
- 20% Russ 1000 Value / 20% Russ 1000 Growth / 5% Russ 2000 Value / 5% Russ Mid Growth / 10% MSCI AC Wd x US (net) / 40% BC Int G/C for periods from 9/30/2009 to 6/30/2012
- 20% Russ 1000 Value / 20% Russ 1000 Growth / 5% Russ 2000 Value / 5% Russ Mid Growth / 5% MSCI EAFE (net) / 5% MSCI AC Wd x US (net) / 40% BC Int G/C for periods from 5/31/2009 to 9/30/2009
- 20% Russ 1000 Value / 20% Russ 1000 Growth / 5% Russ 2000 Value / 5% Russ 2000 Growth / 10% MSCI EAFE (net) / 40% BC Int G/C for periods from 2/28/2009 to 5/31/2009
- 12.5% Russ 1000 Value / 27.5% Russ 1000 Growth / 5% Russ Mid Value / 5% Russ 2000 Growth / 10% MSCI EAFE (net) / 20% BC Int G/C / 20% BC Agg for periods prior to 2/28/2009

# COMPLIANCE CHECKLIST

## City of North Miami Beach General Employees' Retirement Plan

As of March 31, 2013

<b>GUIDELINES</b>	<b>In Compliance</b>	
<b>Equity Portfolio</b>		
Listed on recognized exchange	Yes	
Single issue not to exceed 10% at market value for each equity in each separately managed portfolio	Yes	
Total equity portfolio < 62.5% & > 57.5% of total fund at market	Yes	
Single issue not to exceed 5% at market value for the total portfolio	Yes	
Foreign equities < 25% of total portfolio at market	Yes	

<b>OBJECTIVES</b>	<b>In Compliance</b>	
<b>Total Portfolio</b>		
Exceed Target Index	3 years Yes	Since Inception Yes
Exceed actuarial assumption (7.5%) *	Yes	No
Exceed CPI + 4% *	Yes	No
* Measured using Net Dollar-Weighted Rate of Return		

<b>Buckhead</b>		
<b>Large Capitalization Value Equity Portfolio</b>		
Market Value < 22.5% & > 17.5% of total fund	Yes	
Performance (Inception 9/30/2006)	3 years No	Since Inception No
Rank in the Top 50% of manager universe	No	Yes
Return > Russell 1000 Value	No	Yes

<b>Thornburg</b>		
<b>International Value Equity Portfolio</b>		
Market Value < 7.5% & > 2.5% of total fund	Yes	
Performance (Inception 9/30/2009)	3 years Yes	Since Inception Yes
Return > MSCI EAFE (Net)	Yes	Yes

<b>Garcia Hamilton &amp; Associates</b>		
<b>Large Capitalization Growth Equity Portfolio</b>		
Market Value < 22.5% & > 17.5% of total fund	Yes	
Performance (Inception 9/30/2006)	3 years No	Since Inception No
Rank in the Top 50% of manager universe	No	No
Return > Russell 1000 Growth	No	No

<b>Harding Loevner</b>		
<b>International Growth Equity Portfolio</b>		
Market Value < 7.5% & > 2.5% of total fund	Yes	
Performance (Inception 3/31/2009)	3 years Yes	Since Inception Yes
Return > MSCI All Country World ex US	Yes	Yes

<b>GW Capital</b>		
<b>Small Capitalization Value Equity Portfolio</b>		
Market Value < 7.5% & > 2.5% of total fund	Yes	
Performance (Inception 2/28/2009)	3 years Yes	Since Inception Yes
Rank in the Top 50% of manager universe	Yes	Yes
Return > Russell 1000 Growth	Yes	Yes

<b>Garcia Hamilton &amp; Associates</b>		
<b>Fixed Income Portfolio</b>		
Market Value < 35.0% & > 30.0% of total fund	Yes	
Performance (Inception 2/28/2009)	3 years Yes	Since Inception Yes
Return > Barclays Cap Intern. Gov't/Credit	Yes	Yes
U.S. Government / Agency or U.S. Corporations	Yes	Yes
Bonds rated "A" or better	Yes	Yes
Single corporate issuer not exceed 10% of bond portfolio (except U.S. Government/Agency)	Yes	Yes

<b>MDT Advisers</b>		
<b>Mid Capitalization Growth Equity Portfolio</b>		
Market Value < 7.5% & > 2.5% of total fund	Yes	
Performance (Inception 5/31/2009)	3 years Yes	Since Inception Yes
Rank in the Top 50% of manager universe	Yes	Yes
Return > Russell 2000 Growth	Yes	Yes

<b>UBS</b>		
<b>Private Real Estate</b>		
Market Value < 12.5% & > 7.5% of total fund	Yes	
Performance (Inception 7/31/2012)	3 year N/A	Since Inception No
Performance > NCREIF Ppty Index	N/A	No
Performance > NCREIF ODCE	N/A	No

The information contained herein has been compiled from sources believed to be reliable, however, the accuracy or completeness cannot be guaranteed.

# SUGARMAN & SUSSKIND

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

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March 15, 2013

Darcee Siegel, City Attorney  
City of North Miami Beach  
17011 N.E. 19th Avenue  
North Miami Beach, FL 33162-3194

*Re: City of North Miami Beach General Employees Retirement System  
Adjustment to mortality table used to calculate optional forms of disability  
benefits*

Dear Darcee:

Chairman Helton has asked our opinion on whether the adjustment to the mortality table used to calculate optional forms of disability benefits that was recommended by the General Employees' Retirement Plan violates laws prohibiting disability discrimination.

We are reluctant to opine on this issue because such a mortality table adjustment would be made by our client, the Retirement Committee, only if it was permitted and required by an ordinance adopted by your client, the City. It would thus be your client, and not ours, that would be subject to a charge of employment discrimination. It would be inappropriate for me to opine to my client whether your client would face such liability. I must and gladly defer to you.

I am satisfied, however, that our client, even if it was named in a disability discrimination action, could successfully defend such an action. The reasons for my opinion, below, might be useful to you or the City's labor lawyer in evaluating the City's liability for adopting the disability adjustment recommended by both my client and its actuary.

The first concern is whether the disability adjustment violates the federal Americans with Disabilities Act (ADA). That federal law is administered and enforced by the Equal

Darcee Siegel, City Attorney  
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Employment Opportunities Commission, a federal agency whose interpretations of the ADA are given deference by the federal courts.

In its EEOC Compliance Manual issued October 3, 2000, [www.eeoc.gov/policy/docs/benefits.html](http://www.eeoc.gov/policy/docs/benefits.html), Chapter 3 titled "Employee Benefits", section III.B under the heading "ADA Issues", the EEOC addressed the issue of differences between disability benefits and service retirement benefits.

*However, the ADA does not require that service retirement and disability retirement plans provide the same level of benefits, because they are two separate benefits which serve two different purposes. As long as all employees may participate in the service retirement plan on the same terms, regardless of the existence of a disability, an employer will not violate the ADA if it provides lower levels of benefits in its disability than in its service retirement plans.*

*EXAMPLE - Employer Q's service retirement plan enables any employee with 20 or more years of service to retire with an annuity equal to 30% of the individual's highest annual compensation. Employer Q's disability retirement plan, payable when illness or injury prevent the individual from continuing work, provides an annuity equal only to 25% of the employee's highest annual compensation. This does not violate the ADA, as long as employees who are eligible for both have the right to choose between disability and service retirement programs.*

*EXAMPLE - Under Employer Q's service retirement plan, retirees receive periodic increases (e.g., based on inflation or an increased return on invested pension funds). Under the employer's disability retirement plan, disability retirees get fixed benefits. This is not unlawful.*

It is also relevant that the Retirement Committee, in approving and recommending the disability adjustment to the mortality table, acted upon the advice of its actuary, who told the trustees that the adjustment was based upon sound actuarial principles. In section 1 of the above-cited "ADA Issues" section, the EEOC stated:

*An employer may not discriminate against a qualified individual with a disability, on the basis of disability, with respect to fringe benefits.<sup>(71)</sup> Congress recognized, however, that some types of benefit plans rest on an assessment of the risks and costs associated with various health conditions in accordance with accepted principles of risk assessment.<sup>(72)</sup> As a result, the ADA permits employers to make disability-based distinctions in employee benefit plans where the*

*distinctions are based on sound actuarial principles or are related to actual or reasonably anticipated experience.*<sup>(73)</sup>

The second question is whether the disability adjustment violates the Florida Civil Rights Act, Chapter 760, F.S., that prohibits employment discrimination on the basis of handicap. Because the Retirement System is a bona fide employee benefit plan, section 760.10(8)(b) provides a defense to a charge of handicap discrimination. That subsection states that it is not an unlawful employment practice to

*Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality of production, which is not designed, intended, or used to evade the purposes of ss. 760.01-760.10.*

Since the Retirement System was enacted to provide benefits to, and not disadvantage, disabled workers, it falls within the definition of a “bona fide employee benefit plan.”

The EEOC in section IV under “ADA Issues” in the above-cited Compliance Manual has provided the following guidance on whether a pension plan is “bona fide” and not a “subterfuge” designed to evade the purposes of employment discrimination laws.

#### ***A. Bona fide plans***

*Under the first prong of the defense, an employer must demonstrate that its plan is either a bona fide insured plan that is not inconsistent with state law, or a bona fide self-insured plan.*<sup>(79)</sup> *To be bona fide, a plan must exist and pay benefits; in addition, the terms of the plan must have been accurately communicated to eligible employees. To determine whether a plan meets this standard, investigators typically need simply obtain a copy of the employer's plan documents and confirm that benefits have in fact been paid.*<sup>(80)</sup>

#### ***B. Subterfuge***

*The term "subterfuge" refers to disability-based disparate treatment in an employee benefit plan that is not justified by the risks or costs associated with the disability -- that is, to disability-based distinctions that are not "based on sound actuarial principles or related to actual or reasonably anticipated experience."*<sup>(81)</sup> *Whether a provision of a benefit plan is a subterfuge must be determined on a case-by-case basis.*

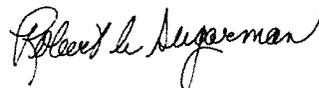
Darcee Siegel, City Attorney  
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Certainly, based upon our knowledge of the Retirement Plan, it is both bona fide and not a subterfuge, as so defined.

For these reasons, it is our opinion that the Retirement Committee's administration mortality table adjustments to optional forms of benefits chosen by disability benefit recipients, as recommended and for the reasons stated by the Plan's actuary, does not violate the above employment discrimination laws.

I hope that you find this analysis useful in advising your client of its potential liability for adopting the mortality table adjustments on the same basis.

Yours truly,



ROBERT A. SUGARMAN  
Board Certified Labor & Employment Lawyer

RAS/jd

cc: Martin Lebowitz, Plan Administrator  
Lori Helton, Chairperson

# SUGARMAN & SUSSKIND

PROFESSIONAL ASSOCIATION  
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## MEMORANDUM

TO: Government Pension and Benefit Fund Clients

FROM: Sugarman & Susskind, P.A.

DATE: June 11, 2013

RE: Interim Legislative Update (awaiting governor's action on SB 50)

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### I. New § 112.664 Financial Reporting Requirements

On May 31, 2013, the governor signed SB 534, which creates Florida Statutes Section 112.664 and imposes new financial reporting requirements for local government pension plans. This law takes effect July 1, 2013.

The new financial reports require the following information:

- Annual financial reports in compliance with requirements found in Government Accounting Standards Board (GASB) Statement No. 67 and Statement No. 68 (summaries attached). These reports must use the RP-2000 Combined Healthy Participant Mortality Tables, by gender, with generational projection by scale AA;
- Annual financial reports similar to those prescribed above, but which use an assumed rate of return and assumed discount rate 2% less than a plan's assumed rate of return;
- Disclosure of the number of months or years for which the current market value of assets is adequate to sustain the payment of expected retirement benefits as determined in the plan's latest valuation.
- The recommended contribution to the plan based on the latest plan valuation stated as an annual dollar value and a percentage of valuation payroll.

The reports will be due, at the very earliest, sixty days after you receive the October 1, 2014 actuarial valuation.

Florida Statutes 112.664 also requires local government plans to post certain financial disclosures on the plan's website *if the plan already has a website*. The deadline for website posting is 60 days after receiving the October 1, 2014 actuarial valuation. There is no requirement to create a new website. Such website must contain the new Section 112.664 reports, as well as the plan's most recent actuarial valuation, a side-by-side comparison of the plan's assumed rate of return compared to the actual rate of return for the previous five years, and the percentages of cash, equity, bond, and alternative investments in the plan portfolio. Plan sponsors must also post this information on their websites in the same manner in which they are required to post tentative budget data. Retirement plans should be prepared provide plan sponsors with the documents they need to comply.

TO DO NOW: Evaluate the costs and benefits of the new disclosures and advise the city in case repeal is proposed during the 2014 legislative session. Advise the city of the costs associated with the new disclosure requirements. Add the requested disclosures to any fund website at the same time the new financial disclosures are due (60 days after receiving the October 1, 2014 actuarial valuation).

## II. New Fine Enforcement for Late Financial Disclosures.

On May 1, 2013, the governor signed SB 002, amending Florida Statutes Chapter 112 to change various ethics rules regarding the activities of public officers. SB 002 took immediate effect when the governor signed the bill on May 1, 2013. This bill created Section 112.31455, which creates a method to collect fines for failure to timely file disclosures of financial interests. Such methods include wage garnishment, court judgments, or referral to collection agencies. In other words, the fines for failure to comply with the disclosure requirements now have more "teeth." The law also requires the creation of an electronic disclosure filing system by the year 2015. We will share information on this new filing system once it is available.

TO DO NOW: Make sure your financial disclosure is filed by July 1, 2013. File with the supervisor of elections in the county where you reside and send certified, return receipt requested, and send a copy of the return receipt to the pension office.

## III. Required Public Comment Period at Meetings.

The governor has not yet signed SB 50. If SB 50 is presented to the governor and signed, the law will amend Florida Statutes Section 286.0114 which will require local government retirement

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plans to give members of the public a reasonable opportunity to be heard on propositions being discussed at plan meetings.

TO DO NOW: designate a specific period of time for public comment on regular meeting agendas. Agendas for city commission meetings usually provide three to five minutes for public comment. A similar allotment of time will suffice for retirement board meetings. This law, if signed, will take effect October 1, 2013.