

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill permits increased terms of office, increases authorized investments in foreign securities, and authorizes additional signatories for the boards of trustees of the pension trust funds.

B. EFFECT OF PROPOSED CHANGES:

Background on Municipal and Special District Firefighter Pensions

Firefighters working for municipalities or special districts that have a constituted fire department or an authorized volunteer fire department,¹ which owns and uses equipment for fighting fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase,² have pension plans pursuant to chapter 175, Florida Statutes. Chapter 175, Florida Statutes, is the Marvin B. Clayton Firefighters Pension Trust Fund Act (“Firefighters PTFA”).³ The Firefighters PTFA sets forth the minimum benefits and minimum standards for municipal and special district firefighter pension plans. There currently are 20 special fire control districts and 159 municipalities that have established plans pursuant to the Firefighters PTFA.⁴ These plans had revenues of approximately \$66,319,992 in 2004; \$5,096,380 of those revenues were generated by special fire control districts.⁵

Background on Municipal Police Officer Pensions

Police officers⁶ working for municipalities with a regularly organized police department, which uses equipment in serviceable condition with a value exceeding \$500 for the prevention of crime and for the preservation of life and property, have pension plans pursuant to chapter 185, Florida Statutes. Chapter 185, Florida Statutes is the Marvin B. Clayton Police Officers Pension Trust Fund Act (“Police Officer PTFA”). The Police Officer PTFA sets forth the minimum benefits and minimum standards for municipal police officer pension plans.

Similarities between the Acts

The Firefighter PTFA and the Police Officer PTFA have a number of provisions which mirror each other. For example, both the Firefighter PTFA and the Police Officer PTFA provide the following sources of funding for pension trust funds:

- Payment from the “premium tax” - the net proceeds of the excise tax upon insurance companies, insurance associations, or other property insurers on their gross receipts on premiums from holders of certain policies within the legal boundaries of the municipality or special district;
- Payment of a designated percentage deducted from the salary of each firefighter or police officer;
- Payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;

¹ Fla. Stat. § 175.041(1) (2005).

² Fla. Stat. § 175.041(2) (2005).

³ Fla. Stat. § 175.025 (2005).

⁴ Dep’t of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep’t).

⁵ *Id.*

⁶ Fla. Stat. § 185.02(11) (2005).

- Mandatory payment of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112, Florida Statutes;
- All gifts, bequests, and devises when donated;
- All increases in the fund by way of interest or dividends on bank deposits; and
- All other sources or income authorized by law for the augmentation of such pension trust funds.⁷

The Firefighter PTFA and the Police Officer PTFA also provide for governance by a board of trustees consisting of five members: two members who are legal residents of the special district or municipality and are appointed by its legislative body; two members who are full-time firefighters or police officers elected by a majority of the active firefighters or police officers who are members of such plan; a fifth member who must be chosen by a majority of the other four members.⁸ This board of trustees must meet quarterly.⁹

Among the powers of these board of trustees: invest and reinvest the assets of the firefighter pension fund in certain authorized investments, issue drafts, keep required records, retain a qualified independent consultant every three years, and employ legal counsel, independent actuaries, and other advisors.¹⁰

Both the Firefighter PTFA and the Police Officer PTFA provide requirements for the retirement,¹¹ disability,¹² death,¹³ and presumed injuries¹⁴ of firefighters and police officers under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter or police officer pension plan under the Firefighter PTFA and the Police Officer PTFA.¹⁵ Actuarial deficits are not, however, obligations of the State of Florida.¹⁶

Changes to Board of Trustee Terms

Currently each member of the board of trustee serves two years and may succeed himself or herself. This bill changes the period of the term to four years.

Express Fiduciary Responsibilities

As this is not explicitly stated within these chapters, this bill provides that boards of trustees under the Firefighter PTFA and the Police Officer PTFA are expressly subject to certain fiduciary standards¹⁷ in the exercise of their general powers and duties.

⁷ Fla. Stat. §§ 175.091 and 185.07 (2005).

⁸ Fla. Stat. § 175.061(1) (2005) (The membership of the board of trustees for a chapter plan shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality or special fire control district, who shall be appointed by the governing body of the municipality or special fire control district, and two of whom shall be full-time firefighters as defined in s. 175.032 who shall be elected by a majority of the active firefighters who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members as provided for herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district.). Fla. Stat. § 185.05 (2005).

⁹ Fla. Stat. §§ 175.061(3) and 185.05(3) (2005).

¹⁰ Fla. Stat. §§ 175.071 and 185.06 (2005).

¹¹ Fla. Stat. §§ 175.162 and 185.16 (2005).

¹² Fla. Stat. §§ 175.191 and 185.18 (2005).

¹³ Fla. Stat. §§ 175.201 and 185.21 (2005).

¹⁴ Fla. Stat. § 175.231 (2005) (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal); Fla. Stat. § 185.34 (2005).

¹⁵ Fla. Stat. §§ 175.341 and 185.23 (2005).

¹⁶ Fla. Stat. §§ 175.051 and 185.04 (2005).

¹⁷ Fla. Stat. §§ 112.656 (fiduciaries and retirement systems), 112.611 (requiring compliance with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974), 112.311 to 112.3187 (Code of Ethics), and 518.11 (prudent investor rule) (2005).

Changes to the Authorized Investments

The Firefighter PTFA and the Police Officer PTFA each provide five authorized investments and reinvestments:¹⁸

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.
2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.
3. Bonds issued by the State of Israel.
4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.¹⁹
5. Foreign securities not to exceed 10 percent of plan assets.

Boards of trustees may, however, request a variance from these authorized investments through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district. In addition, where a special act, or a municipal ordinance, adopted prior to July 1, 1998, permits greater than a 50-percent equity investment, these municipalities are not required to comply with the aggregate equity investment provisions.

This bill increases the percentage of plan assets that the boards of trustees may invest in foreign securities to the same level as the State Board of Administration.²⁰

Changes to Draft Authority

Currently, in order to issue drafts upon the pension trust funds, the drafts must be consecutively numbered, signed by the chair and secretary, and state the purpose for the drafts. This bill will allow two individuals who are subject to the same fiduciary standards as required for the boards of trustees and who designated by the board to sign drafts.

Changes Affecting Only the Firefighter PTFA

Section 175.032, Florida Statutes, provides the definitions for the Firefighters PTFA, including a definition for "firefighter." This bill expands the definition of firefighter to include all certified supervisory and command personnel whose duties include the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters, but does not include part-time firefighters or auxiliary firefighters. This is similar to a provision in the Police Officers PTFA in section 185.02(11), Florida Statutes.

¹⁸ Fla. Stat. §§ 175.071 and 185.06 (2005).

¹⁹ *Id.* (The corporation must be listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service. These investments may not exceed more than five percent of the assets of the board of trustees in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.).

²⁰ Fla. Stat. § 215.47(5) (2005) (currently sets this level at 20 percent); *but see* HB 7155 (2005) (which increases this percentage to 25 percent). The bill has a contingent effective date to permit the percentage to be set at 25 percent should HB 7155 become law. HB 1251 CS (2005), § 9.

C. SECTION DIRECTORY:

- Section 1: Amends section 175.032, Florida Statutes, to expand the definition of firefighter.
- Section 2: Amends section 175.061, Florida Statutes, to provide the option to change the terms of office for the boards of trustees.
- Section 3: Amends section 175.071, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 25 percent, and drafting authority.
- Section 4: Amends section 175.071, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 20 percent, and drafting authority.
- Section 5: Amends section 185.05, Florida Statutes, to provide the option to change the terms of office for the boards of trustees.
- Section 6: Amends section 185.06, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 25 percent, and drafting authority.
- Section 7: Amends section 185.06, Florida Statutes, to contingently expand the fiduciary standards, percent of plan assets in foreign securities to 20 percent, and drafting authority.
- Section 8: Sets forth a severability clause.
- Section 9: Provides an effective date of July 1, 2006 for sections 1, 2, 5, and 8; provides a contingent effective date of July 1, 2006, for either sections 3 and 6 or 4 and 7.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There does not appear to be a fiscal impact on state government revenues.

2. Expenditures:

There does not appear to be a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There does not appear to be a fiscal impact on local government revenues.

2. Expenditures:

There does not appear to be fiscal impact on local government expenditures. The bill, however, may create some compliance costs for the municipal and special district pension boards.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The expanded investment authority of the municipal and special district pension boards may have a positive, direct impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services provided a fiscal note from the enrolled actuary regarding this bill: "There are no actuarial or benefit issues associated with this bill."²¹

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with municipalities or counties. This bill does not appear to reduce the authority that municipalities or counties have to raise revenue.

2. Other:

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis. Since this bill does not directly increase benefits, this constitutional requirement does not apply. The Department of Management Services reached the same conclusion.²²

B. RULE-MAKING AUTHORITY:

Although this bill does not appear to specifically create, modify, or eliminate rulemaking authority, the bill will require changes in the rules, regulations, resolutions, and ordinances which govern police officer and firefighter pension boards for local governments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Two Designated Signatories for Drafts

The Division of Retirement within the Department of Management Services, which is responsible for the daily oversight and monitoring for actuarial soundness, made the following comments on the provision allowing the board to designate two individuals to sign disbursements from the trust fund:

The proposal appears to erode the responsibility and direction of the board of trustees. No criteria are established for the selection of these two individuals and no fiduciary designation is required. While it is not clear why this amendment is needed, if it is maintained in the proposal, it is suggested that additional language be added to require the designated individuals to be considered 'fiduciaries' to the plan.²³

While the committee substitute does subject these two designated individuals to the same fiduciary standard as required for the board of trustees, the other comments still appear to raise valid issues which the sponsor of the bill may wish to address.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2006, the Governmental Operations Committee adopted a "strike-everything" amendment and reported the bill favorably with committee substitute:

²¹ Fla. Dep't of Mgmt. Serv., HB 1251 (2006) Substantive Bill Analysis (Mar. 24, 2006) (on file with dep't).

²² *Id.*

²³ *Id.* at 6.

- Increases, from two years to four years, the terms of office for members of the boards of trustees if provided by municipal ordinance, special act of the Legislature, or resolution of the special fire control district;
- Expands the specific fiduciary standards for executing the general powers and duties of the board of trustees;
- Removes the provisions that would have mirrored the investment authority of the State Board of Administration and instead only increases from 10 percent to 20 or 25 percent, depending on other legislation being considered by the Legislature, the amount of plan assets which boards of trustees may invest in foreign securities;
- Continues to allow boards of trustees to designate two individuals, other than the chair and the secretary, to sign drafts on accounts, but subjects them to the same fiduciary standards as the boards of trustees; and
- Removes provisions that would have allowed boards of trustees to establish a maximum entrance age.