

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

The bill permits increased terms of office, increases authorized investments in foreign securities, and authorizes additional signatories for drafts issued upon firefighters' and police officers' pension trust funds.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Firefighter and Police Officer Pension Plans

Chapters 175 and 185, F.S., establish a "uniform retirement system" providing defined benefit retirement plans for firefighters¹ and police officers² employed by Florida municipalities and special fire control districts, and standards for the operation and funding of these pension systems. Pension plan funding comes from a number of sources: net proceeds from an excise tax levied by upon property and casualty insurance companies (known as the "premium tax"); employee contributions; fines and forfeitures; mandatory payments of any extra amount needed to keep a plan solvent; gifts and bequests; and other revenues.³ To qualify for premium tax dollars, plans must meet the requirements found in chs. 175 and 185, F.S.

There are two types of plans that operate under these statutes: Chapter Plans (plans that adopt the chapter by reference) and Local Law Plans (plans that are created by a special act, local ordinance or resolution that meet the minimum benefits and standards set forth in chs. 175 and 185, F.S.⁴). Responsibility for overseeing and monitoring these plans is assigned to the Department of Management Services' Division of Retirement, but day-to-day operational control rests with local boards of trustees.

Terms of Office

The local pension boards consist of five members: two members who are legal residents of the municipality or special fire control district 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 the plan; and a fifth member who is chosen by a majority of the other four members. Each member serves a two-year term, and may be re-elected indefinitely.⁵

Fiduciary Standards

¹ Pursuant to s. 175.041(1) and (2), F.S., such firefighters must work for municipalities or special fire control districts that have a constituted fire department or authorized volunteer fire department 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 Pursuant to s. 185.03(1), F.S., such police officers must work for a regularly organized municipal 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.

³ Sections 175.091 and 185.07, F.S.

⁴ Sections 175.351 and 185.35, F.S.

⁵ Sections 175.061(1), and 185.05(1), F.S.

Chapters 175 and 185, F.S., currently do not contain references to the fiduciary standards found in ch. 112, F.S., and s. 518.11, F.S., or the Code of Ethics for Public Officers and Employees. Nonetheless, all local pension boards are required to adhere to these general law provisions.

Part VII of ch. 112, F.S., “Actuarial Soundness of Retirement Systems,” provides, in part, at s. 122.656, F.S., that a fiduciary shall discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan. Section 112.661, F.S., requires that an investment policy describe the level of prudence and ethical standards to be followed by the board in carrying out its investment activities with respect to funds. The board is required to comply with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C) in performing its investment duties. Additionally, ch. 518, F.S., “Investment of Fiduciary Funds,” provides standards for investments for fiduciaries and the “prudent investor rule.”

The Code of Ethics, part III of ch. 112, F.S., provides ethical standards that apply to public officials and employees in the state of Florida.

Board Investments/Foreign Securities

The local boards of trustees have the power to: invest and reinvest the assets of pension funds in certain authorized investments,⁶ issue drafts, keep required records, retain a qualified independent consultant at least once every three years, and employ legal counsel, independent actuaries and other advisors. Sections 175.071 and 185.06, F.S., provide investment standards for the boards to follow; however, those sections also allow a municipality or fire control district to vary from these constraints by means of a local ordinance, legislative act or resolution—except for a 10 percent restriction on investment in foreign securities.

Pension Fund Drafts

Under ss. 175.071(1)(c) and 185.06(1)(c), F.S., pension fund drafts must be signed by the board chair and secretary. This provision requires a board to maintain strict control and direction of all pension fund disbursements, but allows the board, once the draft has been authorized by the chair and secretary, to direct a custodian to make disbursements.

Premium Taxes

Sections 175.101 and 185.08, F.S., provide the authority for municipalities and special fire control districts to assess premium taxes when they have established a firefighters' pension trust fund providing pension benefits to firefighters, and/or a police officers' retirement trust fund providing pension benefits to police officers. The amount of premium taxes collected under ch. 175, F.S., is equal to 1.85 percent of all property insurance policies written within the city limits or boundaries (in the case of fire districts) of the participating plan. Chapter 185, F.S., levies a 0.85 percent tax on all casualty insurance premiums written within the city limits of the participating plan. These amounts are collected by the Department of Revenue, and transferred to the Police Officers' and Firefighters' Premium Tax Trust Fund at the Department of Management Services' Division of Retirement. The funds are available for distribution on or before July 1 to participating pension plans on an annual basis, once a plan has been determined to be in compliance with all applicable statutory requirements.

⁶ Sections 175.071(1) and 185.06(1), F.S., authorize the following investments and reinvestments: (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; and (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.

Independent Special Districts: Annexation

Section 171.093, F.S., provides a framework for an orderly transition of special district service responsibilities in an annexed area from an independent special district which levies ad valorem taxes to a municipality following annexation of property located within the jurisdictional boundaries of an independent special district.

If the municipality elects to assume the district's responsibilities, the municipality and the district may enter into an interlocal agreement addressing the orderly transfer of service responsibilities, real assets, equipment and personnel to the municipality. The agreement must address allocation of responsibility for special district services, avoidance of double taxation of property owners for services in the area of overlapping jurisdiction, prevention of loss of any revenues which may be detrimental to the continued operations of the district, avoidance of impairment of existing district contracts, disposition of property and equipment of the district and any assumption of indebtedness for it, the status and employee rights of any adversely affected district employees, and any other matter reasonably related to the transfer of responsibilities.

If the municipality and the district are unable to enter into an interlocal agreement, the district remains the service provider in the annexed area for a period of four years. During this four-year period, the municipality is required to pay the district an amount equal to the ad valorem taxes or assessments that would have been collected had the property remained in the district.

At the end of the four-year period, or any extension mutually agreed upon by the district and the municipality, the municipality and the district are required to enter into an agreement that identifies the existing district property located in the municipality or primarily serving the municipality that will be assumed by the municipality, the fair market value of such property, and the manner of transfer of such property and any associated indebtedness. If the municipality and district are unable to agree to an equitable distribution of the district's property and indebtedness, the matter proceeds to circuit court.

If the municipality elects not to assume the district's responsibilities, the district remains the service provider in the annexed area, the geographical boundaries of the district continue to include the annexed area, and the district may continue to levy ad valorem taxes and assessments on the real property located within the annexed area. *If the municipality elects to assume the district's responsibilities*, the district's boundaries contract to exclude the annexed area at the time and in the manner provided in the agreement.

If the municipality elects to assume the district's responsibilities and the municipality and the district are unable to enter into an interlocal agreement, and the district continues to remain the service provider in the annexed area, the geographical boundaries of the district contract to exclude the annexed area on the effective date of the beginning of the four-year period. The district may not levy ad valorem taxes or assessments on the annexed property in the calendar year in which its boundaries contract and subsequent years, but it may continue to collect and use all ad valorem taxes and assessments levied in prior years. The district may assess user charges and impact fees within the annexed area while it remains the service provider.

Effect of Proposed Changes

Section 1: This section amends s. 175.032(4)(c), F.S., regarding the definition of "creditable service," to provide that firefighters may purchase retirement credit⁷ for federal, other state, or county service, as long as the prior firefighter service is recognized by the Division of State Fire Marshal as provided in ch. 633, F.S. The firefighter is required to provide proof to the board of trustees that such service is equivalent to the definition of "firefighter" provided in the act.

⁷ Municipalities and special fire control districts are not required to provide for the purchase of retirement credit for prior service. Municipalities may provide for such by local ordinance, and special fire control districts may do so by resolution.

Chapter 633, F.S., does not appear to address the recognition of prior firefighter service by the Division of State Fire Marshal. Presumably, the intent of this proposal is to rely on the definition of firefighter provided by s. 633.30(1), F.S., which provides that: “[f]irefighter” means any person initially employed as a full-time professional firefighter by any employing agency, as defined herein, whose primary responsibility is the prevention and extinguishment of fires, the protection and saving of life and property, and the enforcement of municipal, county, and state fire prevention codes, as well as of any law pertaining to the prevention and control of fires.”

The bill does not designate what is required to verify prior service, so apparently this determination will be left to local boards.

The bill further amends the s. 175.032(8)(a), F.S., definition of “firefighter” to include a specific reference to certified supervisory and command personnel. This language serves to clarify that supervisory and command employees are covered by the firefighter pension plans, is similar to that contained in the s. 185.02(11), F.S., definition of “police officer,” and will have no effect.

The section additionally provides language which is patterned after s. 185.02(11), F.S., to clarify that part-time and auxiliary employees are not included in these pension plans. This language also will have no effect. Currently, there are several references to “full-time” firefighters in ch. 175, F.S., which contemplate only full-time employment within the definition of “average final compensation”⁸ and with regard to “requirements for retirement.”⁹

Section 2: This section amends s. 175.061(1)(a), F.S., to allow for the extension (by municipal ordinance, special act of the Legislature, or resolution of the governing body of a special fire control district) of the terms of office for firefighters’ pension board members from the current two years to four years, and specifies that the terms of office shall be the same for all board members. This change in the law will enable board members with conceivably long learning curves and complex duties to continue serving in their positions without seeking re-election, selection or appointment every two years.

The section also amends s. 175.061(7), F.S., to provide that local board of trustees may, upon written request of a retiree, authorize a plan administrator to withhold funds from retirement payments to pay accident, health and long-term care insurance premiums for the retiree and his/her spouse and dependents. Retired public safety officers can elect to exclude from their income for federal tax purposes such distributions up to \$3,000 made from eligible retirement plans.¹⁰

Currently, s. 175.061(7), F.S., allows for the withholding of other payments, such as amounts to cover the benefits received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make payments for child support or alimony.

The bill proposes that a retirement plan does not incur liability for participation in this program if its actions are taken in good faith. While there would be administrative costs associated with this proposal, participation by a board is not mandatory.

Section 3: This section amends s. 175.071(1) F.S., pertaining to the powers and duties of firefighters’ pension board members, to add specific references to certain sections of the statutes with regard to fiduciary standards and the Code of Ethics for Public Officers and Employees. Board members currently are subject to these standards under Florida law, so this language merely serves to reiterate that fact.

Additionally, this section amends s. 175.071(1), F.S., to expand a board’s authority to invest a plan’s assets in foreign securities from 10 to 20 percent. Presumably, the current limitation was set by the

⁸ Section 175.032(1)(a), F.S.

⁹ Section 175.162(2)(a), F.S.

¹⁰ <http://www.irs.gov/publications/p575/ar02.html#d0e741>.

Legislature in order to establish parameters for local boards with potentially minimal investment expertise with regard to higher risk foreign ventures.

The section adds another provision which allows the board the option to utilize the investment policy guidelines provided in s. 112.661(5), F.S.¹¹ The Department of Management Services has noted a number of concerns with regard to this language, which are listed under the “**III. Comments, C. Drafting Issues and Other Comments**” portion of this analysis.

This section also amends s. 175.071(1)(c), F.S., to allow a board the ability to designate two individuals (other than the currently-authorized chair and secretary), who are subject to the same fiduciary standards as board members, to sign trust fund drafts. This language will provide a board with administrative flexibility with regard to signatures on drafts while requiring a protective fiduciary component.

Section 4: This section amends s. 175.091(2)(b), F.S., to require that increases in firefighters’ contributions to the fund not exceed the percent of payroll increase identified in the actuarial impact statement provided in conjunction with a pension benefit improvement as required under s. 112.63, F.S.¹² The intent of this language is to clarify that employee contributions may be increased only to provide greater pension benefits.

Section 5: This section amends s. 175.101(1) F.S., to provide that for purposes of s. 175.101, F.S., relating to the state excise tax on property insurance premiums, the boundaries of a fire district are deemed to include an area that has been annexed by a municipality until the completion of the four-year period provided for in s. 171.093(4), F.S., or other agreed-upon extension, or termination of an interlocal agreement executed pursuant to s. 171.093(3), F.S.

The four-year period provided for in s. 171.093(4), F.S., is triggered when a municipality annexes land within a fire district, elects to assume the district’s responsibilities, and the municipality and district are unable to enter into an interlocal agreement. The district remains the service provider in the annexed area for four years, or a mutually agreed upon extension, but the geographical boundaries of the district contract to exclude the annexed area on the effective date of the beginning of the four-year period, allowing the municipality to collect the premium taxes. The bill would provide for the district to continue to receive premium taxes while it serves the area.

If a municipality annexes land within a fire district, elects to assume the district responsibilities, and an interlocal agreement is executed, service responsibilities are transferred pursuant to that agreement at some point, and not according to a statutory deadline. Thus, the proposed language could result in a fire control district receiving premium tax dollars when it was no longer providing services, or cause premium tax dollars to be diverted to a fire control district no longer providing services but a party to an existing interlocal agreement.

Section 6: This section amends s. 175.1015(1), F.S., to require the review for compliance with provisions relating to determination of local premium tax situs, and the assessment of fines and penalties, to be performed by the Office of Insurance Regulation of the Financial Services Commission, and for the Department of Revenue to assist by notifying the Office of Insurance Regulation of a

¹¹ This section provides for an investment policy to list investments authorized by the board. Investments not listed in the investment policy are prohibited. Unless otherwise authorized by law or ordinance, the investment of the assets of a local retirement system or plan covered by the part are subject to the limitations and conditions set forth in s. 215.47(1)-(8), (10), and (16). If a local retirement system or plan has investments that, on October 1, 2000, either exceed the applicable limit or do not satisfy the applicable investment standard, such excess or investment not in compliance with the policy may be continued until such time as it is economically feasible to dispose of such investment. However, no additional investment may be made in the investment category which exceeds the applicable limit, unless authorized by law or ordinance.

¹² Section 112.3, F.S., requires plans to have regularly scheduled actuarial reports prepared and certified by an enrolled actuary. No unit of local government can agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and furnished a copy of the statement to the Division of Retirement.

company's failure to report or provide an adequate response to significant variances on the DR-908, Schedules XII and XIII.¹³ For a discussion of the potential fiscal impact of this provision, see II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT, A. FISCAL IMPACT ON STATE GOVERNMENT.

Section 7: This section amends s. 175.151, F.S., to designate the Department of Revenue as responsible for notifying the Office of Insurance Regulation and the Division of Retirement regarding the failure of insurers to comply with ch. 175, F.S. For a discussion of the potential fiscal impact of this provision, see II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT, A. FISCAL IMPACT ON STATE GOVERNMENT.

Section 8: Amends 175.171, F.S., to allow a retired firefighter to change his or her designation of a joint annuitant or beneficiary up to two times as provided in s. 175.333, F.S.,¹⁴ without the approval of the board of trustees or the prior joint annuitant or beneficiary. The retiree does not have to provide proof of good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary does not have to be living. This language is to clarify the operation of s. 175.171, F.S., with regard to the language later added in s. 175.333, F.S., to allow a retire two discretionary joint annuitant or beneficiary changes, with any additional changes requiring board approval.

Section 9: Amends s. 175.361, F.S., regarding the termination of a plan and distribution of the fund, to clarify that upon a pension plan's termination, all accrued benefits become nonforfeitable, regardless of employee length of service. This proposal is in response to recent litigation.¹⁵ The proposed language eliminates apportionment provisions in the law and requires the board to determine the date of the distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of the distribution. It further requires the board to inform the municipality or special fire control district if additional assets are required, in which event such employer must continue to financially support the plan until all nonforfeitable benefits have been funded.

Section 10: Amends s. 185.02(5)(c), F.S., regarding the definition of "creditable service," to provide that credit may be given for federal, other state, or county service, as long as the prior police service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement as provided by ch. 943, F.S. This provision may be referring to language in s. 943.13, F.S, which provides an exemption from training when an officer has completed a comparable program in another state and has "[s]erved as a full-time sworn officer in another state or for the Federal Government for at least 1 year provided there is no more than an 8-year break in employment...."

The bill does not designate what is required to verify prior service, so apparently this determination will be left to local boards.

Section 11: Amends s. 185.05(1)(a), F.S., to provide for successors of municipal board members to be chosen in the same manner as original appointments. Currently, this provision provides for the legislative body of the municipality to choose successors. According to the Division of Retirement, this provision was intended to read the same as s.175.061, F.S., and the current language should have been deleted in the 1999 revision to ch. 175, F.S.

This section also allows for the extension (by municipal ordinance or special act of the Legislature) of the terms of office for police officers' pension board members from the current two years to four years, and specifies that the terms of office shall be the same for all board members. As in Section 2 of the

¹³ This is the Department of Revenue's insurance premium tax form.

¹⁴ Section 175.333, F.S., provides, in relevant part: —For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter: (2)(a) If a plan offers a joint annuitant option and the member selects such option, or if a plan specifies that the member's spouse is to receive the benefits that continue to be payable upon the death of the member, then, in both of these cases, after retirement benefits have commenced, a retired member may change his or her designation of joint annuitant or beneficiary twice.

¹⁵ Board of Trustees of the Town of Lake Park Firefighters' Pension Plan v. Town of Lake Park, 966 So.2d 488 (2007).

bill, this language will enable board members with conceivably long learning curves and complex duties to continue serving in their positions without seeking election, selection or appointment every two years.

This section also amends s. 185.05(6), F.S., to provide that local board of trustees may, upon written request of a retiree, authorize a plan administrator to withhold from retirement payments funds to pay accident, health and long-term care insurance premiums for the retiree and his/her spouse and dependents.

Currently, s. 185.05(6), F.S., allows for the withholding of other payments, such as amounts to cover the benefits received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make payments for child support or alimony.

A retirement plan does not incur liability for participation in this program if its actions are taken in good faith. While there would be administrative costs associated with this proposal, participation by a board is not mandatory.

Section 12: Amends s. 185.06(1), F.S., pertaining to the powers and duties of police officers' pension board members to add specific references to certain sections of the statutes with regard to fiduciary standards and the Code of Ethics for Public Officers and Employees. Board members currently are subject to these standards under Florida law, so this language merely serves to reiterate that fact.

The section adds another provision which allows the board the option to utilize the investment policy guidelines provided in s. 112.661(5), F.S. The Department of Management Services has noted a number of concerns with regard to this language, which are listed under the "**III. Comments, C. Drafting Issues and Other Comments**" portion of this analysis.

Additionally, this section amends s. 185.061(1)(b), F.S., to expand a board's authority to invest a plan's assets in foreign securities from 10 to 20 percent. As was noted in Section 3, above, this limitation ostensibly was set by the Legislature in order to establish parameters for local boards with potentially minimal investment expertise with regard to higher risk foreign ventures.

It also amends s. 185.06(1)(c), F.S., to allow a board the ability to designate two individuals (other than the currently-authorized chair and secretary), who are subject to the same fiduciary standards as board members, to sign trust fund drafts. This language will provide a board flexibility with regard to signatures on drafts while providing a protective fiduciary requirement.

Section 13: Amends s. 185.07(2)(b), F.S., to require that increases in police officers' contributions to the fund may not exceed the percent of payroll increase identified in the actuarial impact statement provided in conjunction with a pension benefit improvement. The intent of this language is to clarify that employee contributions may be increased only to provide greater pension benefits.

Section 14: Amends s. 185.085(1)(a), F.S., to require the review for compliance with provisions relating to determination of local premium tax situs, and the assessment of fines and penalties, to be performed by the Office of Insurance Regulation of the Financial Services Commission. The Department of Revenue is required to assist by notifying the Office of Insurance Regulation of a company's failure to report or provide an adequate response to significant variances on the DR-908, Schedules XII and XIII. For a discussion of the potential fiscal impact of this provision, see II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT, A. FISCAL IMPACT ON STATE GOVERNMENT.

Section 15: Amends 185.13, F.S., to require the Department of Revenue to be responsible for notifying the Office of Insurance Regulation and the Division of Retirement regarding the failure of insurers to comply with ch. 185, F.S. For a discussion of the potential fiscal impact of this provision, see II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT, A. FISCAL IMPACT ON STATE GOVERNMENT.

Section 16: Amends s. 185.161(1)(c), F.S., to allow a retired police officer to change his or her designation of a joint annuitant or beneficiary up to two times as provided in s. 185.341, F.S.,¹⁶ without the approval of the board of trustees or the prior joint annuitant or beneficiary. The retiree does not have to provide proof of good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary does not have to be living. This language is to clarify the operation of s. 185.161, F.S., with regard to the language later added in s. 185.341, F.S.

Section 17: Amends 185.37, F.S., regarding the termination of a plan and distribution of the fund to clarify that upon a pension plan's termination, all accrued benefits become nonforfeitable, regardless of employee length of service. This proposal is in response to recent litigation over conflicting statutory provisions. The proposed language eliminates apportionment provisions in the law and requires the board to determine the date of the distribution and the asset value required to fund all the nonforfeitable benefits, after taking into account the expenses of the distribution. It further requires the board to inform the municipality or special fire control district if additional assets are required, in which event such employer must continue to financially support the plan until all nonforfeitable benefits have been funded.

Section 18: Provides that the act shall be effective on July 1, 2008.

C. SECTION DIRECTORY:

Section 1: Amends ss. 175.032(4)(c), F.S., relating to the definition of "creditable service," and amends the s. 175.032(8)(a), F.S., definition of "firefighter."

Section 2: Amends s. 175.061(1)(a), F.S., relating to the terms of office for board members, and amends s. 175.061(7), F.S., relating to authorization to withhold funds from retirement payments.

Section 3: Amends s. 175.071(1) F.S., pertaining to the powers and duties of firefighters' pension board members.

Section 4: Amends s. 175.091(2)(b), F.S., relating to the adjustment of member contribution rates.

Section 5: Amends s. 175.101(1) F.S., relating to the state excise tax on property insurance premiums.

Section 6: Amends s. 175.1015(1), F.S., relating to the determination of local premium tax situs.

Section 7: Amends s. 175.151, F.S., relating to the penalty for failure of insurers to comply with ch. 175, F.S.

Section 8: Amends 175.171, F.S., relating to optional forms of retirement income.

Section 9: Amends s. 175.361, F.S., relating to termination of a plan and distribution of funds.

Section 10: Amends 185.02(5)(c), F.S., relating to the definition of "creditable service."

Section 11: Amends s. 185.05(1)(a), F.S., relating to the terms of office for board members.

Section 12: Amends s. 185.06(1), F.S., pertaining to the powers and duties of police officers' pension board members.

Section 13: Amends s. 185.07(2)(b), F.S., relating to the adjustment of member contribution rates.

¹⁶ Section 185.341, F.S., provides, in relevant part: —For any municipality, chapter plan, local law municipality, or local law plan under this chapter: (2)(a) If a plan offers a joint annuitant option and the member selects such option, or if a plan specifies that the member's spouse is to receive the benefits that continue to be payable upon the death of the member, then, in both of these cases, after retirement benefits have commenced, a retired member may change his or her designation of joint annuitant or beneficiary only twice.

Section 14: Amends s. 185.085(1)(a), F.S., relating to determination of local premium tax situs.

Section 15: Amends 185.13, F.S., relating to the penalty for failure of insurers to comply with ch. 185, F.S.

Section 16: Amends s. 185.161(1)(c), F.S., relating to optional forms of retirement income.

Section 17: Amends s. 185.37, F.S., relating to termination of a plan and distribution of funds.

Section 18: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department of Revenue has indicated that the bill appears to add a new audit function with annual recurring costs of \$435,360. The Office of Insurance Regulation also has indicated that the bill will create additional expenditures for agency operations, although it has not submitted figures detailing such as of the date of this analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

There may be unknown costs associated with certain permissive provisions of the bill which would cause local governments to assume greater administrative duties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

While Section 1 of the bill amends s. 175.032(8)(a), F.S., to refer to the supervision, training, guidance and management of auxiliary firefighters and specifically excludes “auxiliary” firefighters from the definition of firefighter, this term is not defined or otherwise used in that chapter. The s. 185.02(11), F.S., definition of “police officer” makes reference to a definition of “auxiliary police officer” which is contained in s. 943.10(8), F.S.

Other Comments

The Florida League of Cities

The Florida League of Cities opposes the proposed language of the bill which eliminates apportionment provisions in the law with regard to termination of a pension plan.

Department of Management Services/Division of Retirement

The Department of Management Services, 2008 Substantive Bill Analysis for HB 171, dated January 7, 2008, provides:

Section 112.661, F.S., provides for the adoption of a written investment policy. The only investment parameters found in this section are found in paragraph (5)(a), which states that “[t]he investment policy shall list investments authorized by the board. Investments not listed in the investment policy are prohibited. Unless otherwise authorized by law or ordinance, the investment of the assets of any local retirement system or plan covered by this part shall be subject to the limitations and conditions set forth in s. 215.47(1)-(8), (10), and (16).”

Given the fact that current chps. 175 and 185, F.S., allows the adoption of more liberal investment standards that may match or exceed the standards in s. 215.47, F.S., with the exception of the 10 percent foreign restriction, it is suggested that the existing law simply be amended to change the 10 percent foreign restriction to 25 percent to match the standard in s. 215.47(5), F.S. In this manner, existing plan provisions that have been adopted by many of the local law cities/districts are not adversely affected and a foreign investment restriction is maintained that matches the restriction placed on the State Board of Administration in investing the Florida Retirement System assets.

Since, as explained above, amending the law to require the adoption of the investment standards found in s. 215.47, F.S., may adversely affect some municipalities and/or districts that have already adopted local ordinances with regard to investments, if the proposal is not amended as suggested, consideration should be given to including a grandfather provision to allow the maintenance of such existing local investment standards which may have been adopted by local ordinance/resolution.

Conversely, many of our municipalities and fire control districts take comfort in the comparatively conservative investment parameters established under chs. 175 and 185, F.S. Since the municipalities and the districts are ultimately responsible for the proper funding of the pension plans, they enjoy the legislative control that they have over granting more liberal investment parameters.

Clearly, the investment parameters found in s. 215.47, F.S., are more liberal than those found in ss. 175.071 and 185.06, F. S. The investments found in s. 215.47, F.S., are intended to apply to the investment of the assets of the FRS by the State Board of Administration (the Governor, the Chief Financial Officer and the Attorney General). As such, the SBA’s investments are subject

to review and recommendations from the six-member Investment Advisory Council. This level of expertise and review is certainly greater than that available to many of the Chapter 175 and 185 pension plans.

Further, while s. 215.47(5), F.S., includes a 25 percent foreign investment restriction, s. 112.661(5)(a), provides that, "**Unless otherwise authorized by law or ordinance**, the investment of the assets of any local retirement system or plan covered by this part shall be subject to the limitations and conditions set forth in s. 215.47(1)-(8), (10), and (16)." (Emphasis added). With the permissive option found in s. 112.661(5)(a), F.S., consideration should be given to whether it is the Legislature's intent to allow a municipality or district to amend the investment standards found in s. 215.47, F.S., by local ordinance to allow an unlimited investment in foreign securities. Will municipalities and districts continue to have the legislative authority granted under s. 112.661(5)(a), F.S., to locally amend the investment parameters, or will they be restricted totally to the parameters set forth in s. 215.47(5), F.S. Clarification is needed.

Additionally, the proposed amendment includes sections of 215.47 that include references or language that is only applicable to the SBA. Such references and language would not be applicable to the Chapters 175 and 185 plans and would create problems with regard to the enforcement of the statutory provisions. For example: s. 215.47(2)(h), F.S., allows the investment of the plan's assets in "Obligations of agencies of the government of the United States, provided such obligations have been included in **and authorized by the Florida Retirement System Defined Benefit Plan Investment Policy Statement established in s. 215.475.**" (Emphasis added). Section 215.47(3)(c), F.S., allows the investment of the plan's assets in "Not more than 75 percent of the fund may be **in internally managed common stock.**" (Emphasis added). The SBA has internal investment managers, the Chapters 175/185 plans do not. Section 215.47(6), F.S., states that the board shall present to the "Investment Advisory Council" a proposed plan for such investment." Further, it states that, "The Investment Advisory Council may obtain independent investment counsel to provide expert advice with regard to such proposed investment activity by the board, and the board shall defray such costs." Is it the intention of this legislation to require the Chapters 175/185 boards to submit their proposed investment plans for review and approval by the Investment Advisory Council and that this Council may charge the Chapters 175/185 boards for advice they receive from their legal counsel? Clarification is needed.

Actuarial Statement of Fiscal Soundness:

The Actuarial Statement of Fiscal Soundness for HB 171 provided by the Division of Retirement provides the following:

- a. This bill affects neither the Florida Retirement System nor the System's Trust Fund.
- b. This bill is not affected by the requirements of s. 14, Art. X, of the State Constitution.
- c. This bill is not affected by the provisions of ch.112, Part VII, F.S.
- d. Explanation: See item III (not included).
- e. Fiscal Note: None, there are no changes/additions to existing benefit provisions.

D. STATEMENT OF THE SPONSOR

The changes requested in HB171 address statutory and fiduciary responsibilities of the board of trustees of local pension plans. It permits increases to foreign investments to the level now allowed by FRS and the SBA. The remaining provisions have been recommended and requested by the Division of Retirement's Police and Firefighter Pension Office. All fiscal issues have been amended out of the bill by way of the strike all amendment.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its meeting on March 19, 2008, the Committee on Urban and Local Affairs adopted a strike all amendment. This amendment:

- removes new language which would have authorized the use of additional investment policy guidelines;
- expands the ability of the board to invest assets in foreign securities from 10 to 25 percent (equivalent to the limit imposed on the State Board of Administration);
- clarifies that a special fire control district will receive premium tax distributions only when it is providing services within land annexed by a municipality;
- removes language providing for review by the Office of Insurance Regulation and the Department of Revenue, thus eliminating a fiscal impact to the State; and
- makes technical changes.