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DATE: February 4, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: CS/HB 261

RELATING TO: Police and Fire Pension Plans under Chapters 175 and 185, F.S.

SPONSOR(S): Committee on Governmental Operations, Representatives Pruitt, Fasano and others

COMPANION BILL(S): SB 380

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS YEAS 6 NAYS 0
- (2) FINANCE AND TAXATION YEAS 15 NAYS 0
- (3)
- (4)
- (5)

I. SUMMARY:

CS/HB 261 revises Chapters 175 and 185, F.S., relating to fire and police pension plans, to apply minimum benefits and standards to all plans funded under the chapters. This bill also modifies current law to:

- ◆ Allow members to retire after 25 years service and reaching age 52; allow up to the current 5 years credit for a military leave of absence; specify that employers can set a benefit factor above 2 percent; and clarify provisions on refund of contributions.
- ◆ Modify provisions related to funding, contributions, and other fiscal matters to lower the minimum employee contribution to 0.5 percent; provide time frames for deposit of contributions; retain the provision allowing employers to delay meeting minimum standards until state funding is available; and define the term "extra benefits."
- ◆ Define terms and clarify provisions to assure parity between firefighters and police; remove discriminatory provisions; and update references to the Florida Retirement System (FRS) in response to a 1995 law that allowed cities and special districts to withdraw from the FRS and establish a local plan (which may be a 175/185 plan).
- ◆ Clarify provisions related to pension boards to eliminate combined plans which include general employees; provide for board representation in combined police and firefighter plans; specify voting requirements; and authorize boards to hire or use independent consultants, legal counsel, actuaries, and other technical advisors.
- ◆ Modify provisions related to plan administration to increase the asset level at which annual audits are required; provide for three-year valuation schedules; and streamline reporting requirements.
- ◆ Establish a 75-percent joint-and-survivor payment option; clarify beneficiary provisions; allow disabled retirees to elect regular benefit payment options; increase the threshold for lump-sum payments; and clarify plan termination requirements.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Background on Pension Plans Receiving Funding
under Chapters 175 and 185, F.S.**

Chapters 175 and 185, F.S., provide funding for municipal and special district firefighters' and police officers' pension plans. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive -- access to premium tax revenues -- to Florida cities to encourage them to establish retirement plans for firefighters. Fourteen years later, in 1953, the Legislature followed suit with Chapter 185, F.S., which sets up a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under Chapter 175 in 1993. Both chapters set up a "uniform retirement system" providing defined benefit retirement plans for firefighters/police officers and setting standards for operation and funding of these pension systems.

Plan funding comes from four sources: Net proceeds from an excise tax levied by the city upon property and casualty insurance companies (known as the "premium tax," this revenue source generated \$65 million for 175/185 plans in 1996); employee contributions; other revenue sources; and mandatory payments by the city of any extra amount needed to keep the plan solvent. To qualify for premium tax dollars, plans must meet requirements found in the chapters. Responsibility for overseeing and monitoring these plans lies with the Division of Retirement, but day-to-day operational control rests with local boards of trustees.

Most Florida firefighters and local law enforcement officers participate in these plans. Statewide, about 24 cities have chapter plans and 147 cities have local law plans for firefighters under Chapter 175, F.S., and 16 cities have chapter plans and 164 cities have local law plans for police under Chapter 185, F.S. Also, about 49 cities have chosen to withdraw from the FRS and set up new pension plans under Chapters 175 and/or 185, F.S.

Two types of plans operate under these chapters: Chapter plans (plans that meet the minimum provisions of the chapter) and local law plans (plans created by special act or local ordinance that may or may not be required to meet the minimum standards set forth in the chapter). **Cities, plan boards, and affected employees disagree strongly as to which minimum standards apply to local law plans.**

1986 legislation.--In 1986 the Legislature completely revised Chapters 175 and 185, F.S., in Chapters 86-41 and 86-42, Laws of Florida. In revising both chapters, the Legislature attempted to clarify its intent to protect pension funds and to establish minimum standards for operation and funding of plans by adding a legislative declaration of intent in s. 175.021, F.S. Similar language was added to s. 185.02, F.S., relating to police plans.

Legal challenges.--In a legal challenge to the constitutionality of the 1986 acts (The City of Orlando v. State of Florida, Case Nos. 86-3269 and 86-3270), the Circuit Court of the Second Judicial Circuit (Leon County) found in favor of the State of Florida, holding that both acts were constitutional. On appeal, the First District Court of Appeal upheld the trial court's decision, also ruling that the 1986 amendments to Chapters 175 and 185 were constitutional and applied to all plans. [The City of Orlando, et al., appellant(s) v. State of Florida, Dept. of Insurance, et al., appellee(s), Case No. 87-01409, August 10, 1988] The Florida Supreme Court ultimately let this decision stand by denying the appellants' motion for certiorari.

Judge Barfield wrote the appellate court opinion, published August 10, 1988. While disagreeing with the Circuit Court's opinion that the 1986 acts precluded city officials from serving on pension boards, the appellate court affirmed the trial court's determination that both acts were constitutional, finding:

Chapters 175 and 185 create a purely voluntary program whereby municipalities may receive state-collected taxes, imposed on property and casualty insurance premiums, with which to fund retirement programs for local police and firefighters. In exchange for receipt of these funds, the legislature has established certain criteria under which the funds must be operated and managed. The cities may opt into or out of such plans at their discretion. As the program is not mandatory as to any city's participation, we find nothing that renders the amended statutes to be facially unconstitutional.

In the meantime, in November 1986, the Department of Insurance -- the agency then charged with administering Chapters 175 and 185, F.S. -- published new rules to interpret the statutes affected by the 1986 legislation. The approximately two dozen rules essentially applied all minimum requirements set out in Chapters 175 and 185 to both chapter plans and local law plans. The validity of these rules was also challenged. The hearing officer for the Division of Administrative Hearings (DOAH) found "no merit in appellants' allegations that the proposed rules were arbitrary and constituted an invalid exercise of delegated legislative authority" and upheld the validity of all but two of the proposed rules.

The DOAH decision was also appealed. This time the outcome was different. The First District Court of Appeal filed an opinion on February 28, 1989, in Florida League of Cities, Inc., and City of St. Petersburg, Appellants, v. Department of Insurance and Treasurer and Florida State Lodge, Fraternal Order of Police, Appellees, Case Nos. BS-373 and BS-397, finding many of the rules invalid. While the court agreed that the language added to the legislative intent section of each chapter could be construed to apply **ALL** minimum standards to **ALL** plans, the court found contrary evidence more compelling.

The basis of the appellate court's ruling was that, apparent legislative intent notwithstanding, there was no express statutory provision applying each section to local law plans:

In general, these amendments made significant changes in various requirements applicable to firefighter and police pension and retirement plans. Some requirements in these chapters are expressly applicable to both types of plans, while others are expressly applicable only to one or the other type of plan. Many of the sections of these chapters are silent as to their applicability to local law plans.

All parties agreed that, before enactment of the 1986 acts, some provisions of each chapter applied to chapter plans alone, some provisions applied solely to local law plans, and some provisions applied to both types of plans. However, the court reasoned:

After the 1986 amendments, the Department took a different view regarding the applicability of all minimum standard provisions ... to local law plans, primarily based on the added language of legislative intent in section 175.021... [and] promulgated the proposed rules to implement this new construction....

Before enactment of the 1986 legislation, the Legislature had expressly stated which provisions in the chapters applied to chapter plans and which to local law plans. In amending the chapters in 1986, the Legislature continued to identify with specificity certain provisions of the chapter which would be applicable to local law plans. Consequently, the court felt that:

Had the Legislature intended that all minimum standards and procedures set forth in Chapter 175, including those silent as to local law plans, be applied to such local plans, it most assuredly would have expressly said so.

Agency administration of Chs. 175/185.--As a result of the confusion caused by these court decisions, the bureau within the Department of Insurance which handled the day-to-day administration of matters relevant to Chapters 175 and 185, F.S., could not enforce the application of the new minimum benefit provisions to local law plans, despite the bureau's understanding that the Legislature had intended that it do so.

As the current administrator of this program, the Division of Retirement needs the Legislature to clarify the law as to the applicability of the various sections of the 175 and 185 chapters to the two types of plans.

CS/HB 261, if enacted, would establish minimum standards and benefits for ALL plans receiving funding under Chapters 175 or 185, F.S.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 261 will revise Chapter 175, F.S., relating to municipal and special district firefighters' pension funds, and Chapter 185, F.S., relating to municipal police officers' pension funds. The primary purpose of the revision seeks to **provide for uniform application of minimum standards and benefits to all plans receiving funding under the chapters** -- both "chapter plans" and "local law plans." In addition to general clarification and reorganization of chapter provisions, for plans under both chapters, HB 261 will modify current law to:

- ① With respect to **technical and legal matters**: Define "chapter plan," "local law plan," and other terms to provide for application of various provisions throughout the chapters; technically clarify provisions, providing parity where it is reasonable to do so; clarify that 175/185 provisions do not apply to FRS employees of a city or special district that sets up a Chapter 175/185 plan after withdrawing from the FRS, for as long as these employees remain in the FRS; eliminate language which could violate federal law under the Age Discrimination in Employment Act; and prohibit the making of false, misleading, or fraudulent statements to obtain benefits and provide criminal and administrative penalties for violation.
- ② With respect to **pension boards** (membership, general powers and duties, meetings, and related matters): provide that firefighter or police officer board members must be elected by a majority of the active members of the plan; provide an exception with respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters or police officers to vote in such elections by providing that retirees may continue to vote in such elections; remove provisions authorizing combination plans that include general employees and provide for

transition; clarify membership provisions that apply whenever a local law plan is a combined plan for firefighters and police officers; specify that it takes a majority vote rather than "at least three members" to take formal action (since not all pension boards are comprised of five members); revise provisions related to the hiring of an independent consultant "qualified to evaluate the performance of any existing professional money manager"; specify that special meeting notices may be given in the same manner as for any meeting of the board; and clarify provisions authorizing the board to hire outside legal counsel, actuaries, and other advisors, or to use legal counsel, actuaries, or technical advisors employed by the plan sponsor, in the board's discretion.

- ③ With respect to **plan administration** (fiduciary and money-handling responsibilities of pension boards, reporting requirements, and other administrative matters): increase, from \$100,000, to \$250,000, the threshold asset level at which the board must hire a CPA to do an annual audit of plan assets, income, disbursements, and valuation methods; delete the requirement that securities must be placed in a qualified public depository; provide for plan valuations on a 3-year schedule, rather than a 5-year schedule; and clarify provisions relating to submission of insurer reports accounting for premiums received, to specify that taxes are payable for policies written during the calendar year, but the tax report is due on March 1 of each year.
- ④ With respect to **funding, contributions, and other fiscal matters**: retain the current definition of "compensation" or "salary" for firefighters' pension purposes to mean the fixed monthly remuneration paid for work performed; clarify the current definition of "compensation" or "salary" for police officers' pension purposes to mean the total cash remuneration including overtime paid by the primary employer for work performed; implement the federally required compensation cap pursuant to section 401(a)(17) of the Internal Revenue Code; reduce the minimum employee contribution by half, lowering the "floor" from 1 percent to 0.5 percent of pay, while clarifying that higher existing rates need no adjustment; clarify that members may vote to increase their own contributions to provide greater benefits; remove provisions permitting employees to electively reduce their contributions/benefits; clarify that the employer may elect to pick up employee contributions above 0.5 percent; specify time frames within which contributions must be deposited; retain language authorizing a plan sponsor to implement required benefit enhancements by "incremental increases ... as state moneys become available"; clarify provisions allowing a local law plan pension board, with member approval, to earmark premium tax moneys for the "sole and exclusive use" of firefighters and/or police officers to pay for "extra benefits," or to place premium tax income into a separate supplemental pension plan to pay for "extra benefits"; and define extra benefits as "benefits in addition to or greater than those provided to general employees" of the plan sponsor.
- ⑤ With respect to **requirements for retirement**: retain existing age and service requirements to allow retirement after 25 years of service and age 52 for normal retirement benefits; provide credit for up to 5 years of military service; specify that a plan sponsor may establish a benefit accrual rate that is higher than the 2 percent minimum rate established by the chapter; and clarify that a vested member who separates from service and leaves his/her contributions on deposit may elect to retire under normal provisions or early retirement provisions.

- ⑥ With respect to **payment of benefits**: provide a joint-and-survivor payment option that would continue benefits to the joint pensioner at an amount equal to 75 percent of the member's initial benefit; clarify provisions related to beneficiary designation; clarify provisions related to payment of death benefits to beneficiaries to provide for payment to the member's estate if no properly designated beneficiary survives him/her; provide that a disabled member may choose to receive his/her disability benefit in accordance with any payment option available at normal retirement, rather than the sole payment option currently available of "life and 10 years certain"; increase the accrued benefit level below which lump sum payments may be made to allow boards to pay small benefit amounts (under \$100/mo., or less than a single-sum value of \$5,000), in the form of a lump sum payout; and clarify provisions relating to nonforfeitable benefits payable upon plan termination.

HB 261 provides certain exceptions to the minimum benefits and minimum standards included in the revision of chapters 175 and 185 relating to municipal and special district firefighters' and municipal police officers' pension funds:

1. Notwithstanding any other provision, only those local law plans created by Special Act of legislation prior to May 23, 1939, shall be deemed to meet the minimum benefits and minimum standards only in these chapters.
2. Notwithstanding any other provision, with respect to any supplemental plan municipality:
 - (a) Sections 175.032(3)(a), and 185.02(4)(a), F.S., shall not apply, and a local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on the effective date of this act.
 - (b) Sections 175.061(1)(b), and 185.05(1)(b), F.S., shall not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on January 1, 1997.
 - (c) The election set forth in paragraph (1)(b) shall be deemed to have been made.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

CS/HB 261 will provide that Chs. 175 and 185, F.S., apply to any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under these chapters. This will allow the Division of Retirement to develop appropriate rules, without excessive litigation, to oversee and administer these Chapter 175/185 plans for which they have responsibility.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Plan sponsors and boards of trustees of Chapter 175 and 185 pension plans will have to provide for uniform application to all plans funded under these chapters.

- (3) any entitlement to a government service or benefit?

CS/HB 261 will provide for uniform application of minimum benefits and standards, established under these chapters, to all plans, whether chapter plans or local law plans.

- b. If an agency or program is eliminated or reduced:

This bill does not eliminate or reduce an agency or program.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Currently, employees make a minimum contribution to the funding of these local pension plans.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

It increases the options of pension trustees to manage and administer their pension plan.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

CS/HB 261 provides for the uniform application of minimum benefits and minimum standards to all chapter plans and local law plans. Currently, local law plans, lawfully, may or may not meet all minimum standards.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapters 175 and 185, F.S. (all sections)

E. SECTION-BY-SECTION ANALYSIS:

Chapter 175: Pension Plans for Firefighters

Section 1. Amends s. 175.021, F.S., providing a declaration of legislative intent; declaring that the act fulfills an important state interest; providing for uniform application of the minimum benefits and standards established under the chapter to all plans, whether chapter plans or local law plans; and providing that minimum benefits and standards may not be diminished, nor may they be reduced or offset, except as provided in s. 112.65, F.S.

Section 2. Amends s. 175.032, F.S., providing definitions; and defining the following terms as used in Chapter 175, F.S.: average final compensation (for full-time and volunteer firefighters); chapter plan; compensation or salary; creditable or credited service; Deferred Retirement Option Plan or "DROP"; division; enrolled actuary; firefighter; volunteer firefighter; Firefighter's Pension Trust Fund; local law municipality; local law plan; local law special fire control district; property insurance; retiree or retired firefighter; retirement; special fire control district; supplemental plan; and supplemental plan municipality.

Section 3. Amends s. 175.041, F.S., relating to creation of the pension trust fund and applicability of chapter provisions; providing for uniform and nondiscriminatory application to all plans receiving funding under the chapter; providing the chapter does not apply to any governmental entity whose employees are eligible to participate in the Florida Retirement System; and changing the qualifications of fire department or volunteer fire department to be any department that shall own and use apparatus for the purpose of fighting fires that was in compliance with the National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase.

Section 4. Amends s. 175.051, F.S., providing that actuarial deficits, if any, arising under this chapter, shall not be a state obligation.

Section 5. Amends s. 175.061, F.S., relating to the board of trustees; providing for uniform application to all plans funded under the chapter; clarifying that firefighter board members shall be elected by **active** members with an exception that any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote, may continue to allow retirees to vote in such elections; modifying membership requirements with respect to a board of trustees of any combined plan for both firefighters and police; providing

transitional procedures for any combined plan having general employee members; providing for recovery of legal costs and attorney's fees (see current s. 175.391, F.S.); and restricting municipalities and districts from altering the law.

- Section 6. Amends s. 175.081, F.S., relating to use of annuity or insurance policies; providing for uniform application to all plans funded under the chapter.
- Section 7. Amends s. 175.091, F.S., relating to creation and maintenance of the pension fund; providing for uniform application to all plans funded under the chapter; clarifying provisions related to employee contributions; lowering the mandatory minimum for employee contributions from 1 percent to 0.5 percent; and clarifying that higher existing contribution rates need not be adjusted.
- Section 8. Amends s. 175.101, F.S., relating to the state excise tax on property insurance and the procedure for obtaining funding for purposes of the chapter; providing for uniform application to all plans funded under the chapter; and generally clarifying the section.
- Section 9. Amends s. 175.111, F.S., relating to filing of an ordinance or resolution to establish a pension plan and annually report premiums; providing for uniform application to all plans funded under the chapter; and clarifying the time frame for insurance companies to submit certain reports accounting for premiums collected.
- Section 10. Amends s. 175.121, F.S., relating to responsibilities of the Division of Retirement and the Department of Revenue; providing for uniform application to all plans funded under the chapter; permitting Division, with authorization from the municipality or special fire control district, to make direct payments to the board of trustees.
- Section 11. Amends s. 175.122, F.S., relating to a limitation on disbursement of moneys produced by the excise tax; providing for uniform application to all plans funded under the chapter; and providing that payroll amounts of members included in the Florida Retirement System (FRS) shall not be included for funding purposes.
- Section 12. Amends s. 175.131, F.S., relating to deposit of funds; providing for uniform application to all plans funded under the chapter; and specifying time frames for deposit of employee and employer contributions.
- Section 13. Amends s. 175.141, F.S., relating to the credit provided against payment of the similar state excise or license tax; providing the tax shall be paid to the Department of Revenue.
- Section 14. Amends s. 175.151, F.S., relating to the penalty for noncompliance of insurers; specifying notification procedure.

- Section 15. Repeals s. 175.152, F.S., (see section 8, s. 175.091, F.S.), relating to employee contributions, which provisions are transferred to s. 175.091, F.S., and amended.
- Section 16. Amends s. 175.162, F.S., relating to requirements for retirement; providing for uniform application to all plans funded under the chapter; providing that a firefighter may retire after completing 25 years of service and attaining age 52; retaining the authority to incrementally fund the minimum 2-percent benefit accrual requirements of the chapter as state moneys become available; providing an alternative method of calculating retirement benefits for volunteer firefighters; deleting references to a reduced benefit; and authorizing plan sponsors to provide a benefit accrual rate higher than 2 percent (the minimum rate).
- Section 17. Amends s. 175.171, F.S., relating to optional forms of retirement income; providing for uniform application to all plans funded under the chapter; removing the requirement that evidence of good health must be provided for retirement; removing the requirement that a joint and survivor benefit must be paid to a dependent joint pensioner to overcome a conflict with s. 175.181, F.S.; and providing an additional option for payment of joint annuitant benefits at 75 percent of the initial benefit amount.
- Section 18. Amends s. 175.181, F.S., relating to beneficiaries; providing for uniform application to all plans receiving funding under the chapter; generally clarifying provisions of the section; removing a "laundry list" of beneficiaries that the board would pay if the member died with no properly designated living beneficiary; and replacing the statutory list with a requirement that benefits will be paid to the member's estate.
- Section 19. Amends s. 175.191, F.S., relating to disability retirement; providing for uniform application to all plans receiving funding under the chapter; generally clarifying the provisions of the section; removing provisions that conflict with laws prohibiting discrimination on the basis of age; and allowing members to select benefit payment options as provided for normal retirement under s. 175.171, F.S.
- Section 20. Creates s. 175.195, F.S., to prohibit the making of false, misleading, or fraudulent statements to obtain public retirement benefits; providing a criminal penalty (first degree misdemeanor punishable by fine or imprisonment) and an administrative penalty (forfeiture of benefits).
- Section 21. Amends s. 175.201, F.S., relating to death benefits; providing for uniform application to all plans receiving funding under the chapter; and generally clarifying the provisions of the section.
- Section 22. Amends s. 175.211, F.S., relating to refund of contributions; providing for uniform application to all plans receiving funding under the chapter; and generally clarifying the provisions of the section.
- Section 23. Amends s. 175.221, F.S., relating to lump sum payment of de minimis amounts; providing for uniform application to all plans receiving funding

under the chapter; and increasing the threshold below which the benefit amount may be paid in lump sum, rather than on a monthly basis, to avoid long-term payout of small benefit amounts.

- Section 24. Amends s. 175.231, F.S., relating to the line-of-duty disability presumption for firefighters disabled by tuberculosis, hypertension, or heart disease; providing for uniform application to all plans receiving funding under the chapter.
- Section 25. Amends s. 175.241, F.S., relating to exemption of benefits from taxation, execution, or attachment; providing for uniform application to all plans receiving funding under the chapter.
- Section 26. Repeals s. 175.251, F.S., relating to maintenance of employment records, the provisions of which are relocated to s. 175.071(4), F.S.
- Section 27. Amends s. 175.261, F.S., relating to annual reports and triennial actuarial valuations; providing for uniform application to all plans receiving funding under the chapter; generally clarifying the provisions of the section; incorporating the reporting requirements for local law plans now under s. 175.351(12), F.S.; and increasing the asset threshold from \$100,000 to \$250,000 (the level at which an annual independent audit by a certified public accountant is required).
- Section 28. Repeals s. 175.291, F.S., relating to legal representation by the attorney for the plan sponsor or by independent counsel, provisions of which are superseded by s. 175.071(7).
- Section 29. Amends s. 175.301, F.S., relating to the depository for pension funds; providing for uniform application to all plans receiving funding under the chapter; and deleting the requirement that securities must be placed in a qualified public depository.
- Section 30. Amends s. 175.311, F.S., relating to independent status of pension boards and plan sponsors; providing for uniform application to all plans receiving funding under the chapter.
- Section 31. Repeals s. 175.321, F.S., relating to application and non-application of specified sections to all pension plans receiving funding under the chapter.
- Section 32. Repeals s. 175.331, F.S., relating to rights of firefighters under former provisions of the chapter, which language is incorporated in s. 175.381, F.S.
- Section 33. Amends s. 175.333, F.S., relating to the prohibition against discrimination in the benefit formula and restrictions on designation of joint annuitants and beneficiaries; providing for uniform application to all plans receiving funding under the chapter; and generally clarifying the provisions of the section.
- Section 34. Amends s. 175.341, F.S., relating to duties of the Division of Retirement; providing for uniform application to all plans receiving funding under the chapter.

Section 35. Substantially rewords s. 175.351, F.S., relating to local law plans, as follows: maintains provisions to allow a plan sponsor to enact, by local ordinance, resolution, or special act of the Legislature, a local law plan for its firefighters or a combined plan for firefighters and police officers; deletes references to pension plans which include general employees now found under subsection (15); removes all separate benefit and reporting requirements consolidated with chapter plan requirements under ss. 175.061(1)(b), 175.071, 175.162, 175.191, 175.201, 175.211, and 175.261(2), F.S.; technically restructures provisions of present subsection (13), renumbered as subsection (1) by the bill, permitting the pension board, if approved by a majority of the plan members, to segregate the premium tax moneys collected under the plan for the "sole and exclusive use" of firefighters (or firefighters and police officers in a combined plan), to be used for the payment of extra benefits for firefighters (or for firefighters and police officers in a combined plan); defines "extra benefits" to mean benefits in addition to or greater than those provided to general employees; renumbers present subsection (11), relating to adoption or revision of a local law plan, as subsection (2); renumbers subsection (14), relating to status of the plan as a public document, as subsection (3); provides language that clarifies that local law plans are only required to move toward compliance as additional premium tax revenues are made available; provides that notwithstanding any other provision, only those local law plans created by Special Act of legislation prior to May 23, 1939, shall be deemed to meet the minimum benefits and minimum standards only in this chapter; notwithstanding any other provision, with respect to any supplemental plan municipality: provides that s. 175.032(3)(a), F.S., shall not apply, and a local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on the effective date of this act; provides that s. 175.061(1)(b), F.S., shall not apply, and a local law plan and a supplemental plan may continue to be administered by a board of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on January 1, 1997; and provides that the election set forth in paragraph (1)(b) shall be deemed to have been made.

Section 36. Amends s. 175.361, F.S., relating to termination of a plan and distribution of the moneys in the fund; providing for uniform application to all plans funded under the chapter; generally clarifying the provisions of the section; and complying with federal law relating to the rights of employees to receive benefits accrued to the date of termination.

Section 37. Amends s. 175.371, F.S., relating to benefits payable upon transfer to another state retirement system; providing for uniform application to all plans funded under the chapter.

Section 38. Substantially rewords s. 175.381, F.S., relating to applicability; providing for uniform application to all plans receiving funding under the chapter; requiring plans established by special act of the Legislature to comply by July 1, 2000; and requiring other existing plans to comply by December 31, 1999.

Section 39. Repeals s. 175.391, F.S., relating to payment of attorney's fees and costs, the provisions of which are relocated to s. 175.061, F.S.

Section 40. Amends s. 175.401, F.S., relating to use of premium tax moneys to establish retiree health insurance subsidy programs; providing for uniform application to all plans receiving funding under the chapter; reducing the minimum employee contribution for such program from 1 percent to 0.5 percent; and increasing the asset threshold from \$100,000 to \$250,000 (the level at which an annual independent audit by a certified public accountant is required).

Chapter 185: Pension Plans for Police Officers

Section 41. Amends s. 185.01, F.S., providing a declaration of legislative intent; declaring that the act fulfills an important state interest; providing for uniform application of the minimum benefits and standards established under the chapter to all plans, whether chapter plans or local law plans.

Section 42. Substantially rewords s. 185.02, F.S., providing definitions; defining the following terms as used in Chapter 185, F.S.: average final compensation; casualty insurance and multiple peril; chapter plan; compensation or salary; creditable service or credited service; deferred retirement option plan or "DROP"; division; enrolled actuary; local law municipality; local law plan; police officer; police officers' retirement trust fund; retiree or retired police officer; retirement; supplemental plan; and supplemental plan municipality.

Section 43. Amends s. 185.03, F.S., relating to creation of the pension trust fund and applicability of chapter provisions; providing for uniform and nondiscriminatory application to all plans funded under the chapter.

Section 44. Amends s. 185.04, F.S., relating to legislative intent that plan deficits, if any, will not be an obligation of the state; providing for uniform application to all plans funded under the chapter.

Section 45. Amends s. 185.05, F.S., relating to the board of trustees; providing for uniform application to all plans funded under the chapter; clarifying that police officer board members shall be elected by **active** members (with an exception with respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired police officers to vote in such elections, retirees may continue to vote in such elections); clarifying membership requirements with respect to a board of trustees of any combined plan for both firefighters and police; providing transitional procedures for any combined plan having general employee members; providing for recovery of legal costs and attorney's fees; and restricting municipalities and districts from altering the provisions of the section.

Section 46. Amends s. 185.061, F.S., relating to use of annuity or insurance policies; providing for uniform application to all plans funded under the chapter.

Section 47. Amends s. 185.07, F.S., relating to creation and maintenance of the pension fund; providing for uniform application to all plans funded under the chapter;

clarifying provisions related to employee contributions; lowering the mandatory minimum for employee contributions from 1 percent to 0.5 percent; and clarifying that higher existing contribution rates need not be adjusted.

- Section 48. Amends s. 185.08, F.S., relating to the state excise tax on property insurance and the procedure for obtaining funding for purposes of the chapter; providing for uniform application to all plans funded under the chapter; and generally clarifying the section.
- Section 49. Amends s. 185.09, F.S., relating to the filing of an ordinance or resolution to establish a pension plan and annually report premiums; providing for uniform application to all plans funded under the chapter; and clarifying the time frame for insurance companies to submit certain reports accounting for premiums collected.
- Section 50. Amends s. 185.10, F.S., relating to responsibilities of the Division of Retirement and the Department of Revenue; providing for uniform application to all plans funded under the chapter.
- Section 51. Amends s. 185.11, F.S., relating to deposit of funds; providing for uniform application to all plans funded under the chapter; and specifying time frames for deposit of employee and employer contributions.
- Section 52. Amends s. 185.12, F.S., relating to the credit provided against payment of the similar state excise or license tax; clarifying this section.
- Section 53. Amends s. 185.13, F.S., relating to the penalty for noncompliance of insurers; specifying notification procedure.
- Section 54. Repeals s. 185.14, F.S., relating to employee contributions, which provisions are superseded by s. 185.07, F.S.
- Section 55. Repeals s. 185.15, F.S., relating to optional participation by employees hired after July 31, 1953, refund of contributions thereto.
- Section 56. Amends s. 185.16, F.S., relating to requirements for retirement; providing for uniform application to all plans funded under the chapter; providing that a police officer may retire after 25 years of service, and attaining age 52, and may credit up to 5 years of military service toward the required 25 years of service; retaining authority to incrementally fund the minimum 2-percent benefit accrual requirements of the chapter as state moneys become available; authorizing plan sponsors to provide a benefit accrual rate higher than 2 percent (the minimum rate); and clarifying payout procedures when no beneficiary is designated.
- Section 57. Amends s. 185.161, F.S., relating to optional forms of retirement income; providing for uniform application to all plans funded under the chapter; and providing an additional option for payment of survivor benefits at 75 percent of the joint benefit amount.

- Section 58. Amends s. 185.162, F.S., relating to beneficiaries; providing for uniform application to all plans funded under the chapter; generally clarifying provisions of the section; removing a "laundry list" of beneficiaries that the board would pay if the member died with no properly designated living beneficiary; and replacing the statutory list with a requirement that benefits will be paid to the member's estate.
- Section 59. Amends s. 185.18, F.S., relating to disability retirement; providing for uniform application to all plans funded under the chapter; generally clarifying the provisions of the section; removing provisions that conflict with laws prohibiting discrimination on the basis of age; and allowing members to select benefit payment options as provided for normal retirement under s. 185.161, F.S.
- Section 60. Creates s. 185.185, F.S., prohibiting the making of false, misleading, or fraudulent statements to obtain public retirement benefits; providing a criminal penalty (first degree misdemeanor punishable by fine or imprisonment) and an administrative penalty (forfeiture of benefits).
- Section 61. Amends s. 185.19, F.S., relating to refund of contributions; providing for uniform application to all plans funded under the chapter; and generally clarifying the provisions of the section.
- Section 62. Amends s. 185.191, F.S., relating to lump sum payment of de minimis amounts; providing for uniform application to all plans funded under the chapter and increasing the threshold below which the benefit amount may be paid in lump sum, rather than on a monthly basis, to avoid long-term payout of small benefit amounts.
- Section 63. Amends s. 185.21, F.S., relating to death benefits; providing for uniform application to all plans funded under the chapter; and generally clarifying the provisions of the section.
- Section 64. Amends s. 185.221, F.S., relating to annual reports and triennial actuarial valuations; providing for uniform application to all plans funded under the chapter; generally clarifying the provisions of the section; incorporating the reporting requirements for local law plans; and increasing the asset threshold from \$100,000 to \$250,000 (the level at which an annual independent audit by a certified public accountant is required).
- Section 65. Amends s. 185.23(1), F.S., relating to duties of the Division of Retirement; providing for uniform application to all plans funded under the chapter.
- Section 66. Amends s. 185.25, F.S., relating to exemption of benefits from taxation, execution, or attachment; providing for uniform application to all plans funded under the chapter.
- Section 67. Repeals s. 185.27, F.S., relating to maintenance of employment records, the provisions of which are relocated by s. 185.06(3), F.S.

- Section 68. Repeals s. 185.29, F.S., relating to legal representation by the attorney for the plan sponsor or by independent counsel, the provisions of which are superseded by s. 185.06(6), F.S.
- Section 69. Amends s. 185.30, F.S., relating to the depository for pension funds; providing for uniform application to all plans funded under the chapter; and deleting the requirement that securities must be placed in a qualified public depository.
- Section 70. Amends s. 185.31, F.S., relating to independent status of pension boards and plan sponsors; providing for uniform application to all plans funded under the chapter.
- Section 71. Repeals s. 185.32, F.S., relating to exemptions from the chapter.
- Section 72. Amends s. 185.34, F.S., relating to the line-of-duty disability presumption for police officers disabled by tuberculosis, hypertension, heart disease, or hardening of the arteries; providing for uniform application to all plans funded under the chapter.
- Section 73. Amends s. 185.341, F.S., relating to the prohibition against discrimination in the benefit formula and restrictions on designation of joint annuitants and beneficiaries; providing for uniform application to all plans funded under the chapter; and generally clarifying the provisions of the section.
- Section 74. Substantially rewords s. 185.35, F.S., relating to local law plans, as follows: maintains provisions to allow a plan sponsor to enact, by local ordinance, resolution, or special act of the Legislature, a local law plan for its police officers or a combined plan for police officers and firefighters; deletes references to pension plans which include general employees now found under subsection (4); removes all separate benefit and reporting requirements consolidated with chapter plan requirements under ss. 185.01(b), 185.06, 185.16, 185.18, 185.19, 185.21, 185.221(2), F.S.; technically restructures provisions of present subsection (2), renumbered as subsection (1) by the bill, permitting the pension board, if approved by a majority of the plan members, to segregate the premium tax moneys collected under the plan for the "sole and exclusive use" of police officers (or police officers and firefighters in a combined plan), to be used for the payment of extra benefits for police officers (or for police officers and firefighters in a combined plan); defines "extra benefits" to mean benefits in addition to or greater than those provided to general employees; renumbers present paragraph (1)(j), relating to adoption or revision of a local law plan, as subsection (2); maintains subsection (3), relating to status of the plan as a public document, as subsection (3); provides language that clarifies that local law plans are only required to move toward compliance as additional premium tax revenues are made available; provides that notwithstanding any other provision, only those local law plans created by Special Act of legislation prior to May 23, 1939, shall be deemed to meet the minimum benefits and minimum standards only in this chapter; notwithstanding any other provision, with respect to any supplemental plan municipality: provides that s. 185.02(4)(a), F.S., shall not apply, and a local law plan and a

supplemental plan may continue to use their definition of compensation or salary in existence on the effective date of this act; provides that s. 185.05(1)(b), F.S., shall not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards were numbered, constituted, and selected on January 1, 1997; and provides that the election set forth in paragraphs (1)(b) shall be deemed to have been made.

- Section 75. Repeals s. 185.36, F.S., relating to rights of police officers under former provisions of the chapter, which language is transferred to s. 185.39, F.S.
- Section 76. Amends s. 185.37, F.S., relating to termination of a plan and distribution of the moneys in the fund; providing for uniform application to all plans funded under the chapter; generally clarifying the provisions of the section; and complying with federal law relating to the rights of employees to receive benefits accrued to the date of termination.
- Section 77. Amends s. 185.38, F.S., relating to benefits payable upon transfer to another state retirement system; providing for uniform application to all plans funded under the chapter.
- Section 78. Substantially rewords s. 185.39, F.S., relating to applicability; providing for uniform application to all plans funded under the chapter; requiring plans established by special act of the Legislature to comply by July 1, 2000, and other existing plans to comply by December 31, 1999.
- Section 79. Repeals s. 185.40, F.S., relating to recovery of legal costs and attorney's fees, provisions of which are incorporated in s. 185.05(5), F.S.
- Section 80. Amends s. 185.50, F.S., relating to use of premium tax moneys to establish retiree health insurance subsidy programs; providing for uniform application to all plans funded under the chapter; reducing the minimum employee contribution for such a program from 1 percent to 0.5 percent; and increasing the asset threshold from \$100,000 to \$250,000 (the level at which an annual independent audit by a certified public accountant is required).
- Section 81. Creates s. 175.411, F.S., providing that a municipality or special fire control district may revoke its participation under this chapter by rescinding the legislative act, ordinance, or resolution which assesses and imposes the taxes authorized in s. 175.101, and by furnishing a certified copy of such legislative act ordinance, or resolution to the Division of Retirement. Thereafter, the municipality or special fire control district shall be prohibited from participating under this chapter, and shall not be eligible for future premium tax moneys. Certain requirements are established regarding premium tax moneys previously received in the event participation is revoked and the plan is terminated.
- Section 82. Creates s. 185.60, F.S., providing that a municipality may revoke its participation under this chapter by rescinding the legislative act, or

ordinance which assesses and imposes taxes authorized in s. 185.08, and by furnishing a certified copy of such legislative act or ordinance to the Division of Retirement. Thereafter, the municipality shall be prohibited from participating under this chapter and shall not be eligible for future premium tax moneys. Certain requirements are established regarding premium tax moneys previously received in the event participation is revoked and the plan is terminated.

Section 83. Provides an effective date of upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

For plans that do not currently meet the minimum benefit requirements of Chapters 175 and 185, it will require a one-time actuarial impact study to be completed as well as any cost associated with drafting a proposed document to make the necessary changes in their plans.

Actuarial impact statements will be required for the two "chapter" plans that do not meet the existing statutory minimums (Milton and South Pasadena, which have not implemented the 5 year Average Final Compensation (A.C.) provision). Based on the provisions of the Division of Retirement's actuarial contract with Foster & Foster, Inc., cost is estimated as follows: 2 plans x \$150 = \$300.

Sections 175.341 and 185.10, F.S., state that the funds necessary to pay expenses for the administration of this program shall be annually appropriated from the interest and investment income earned on moneys deposited in the Police and Firefighters' Premium Tax Trust Fund.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

Enactment of HB 261 will enable the Division of Retirement to promulgate rules for the proper administration of Chapters 175 and 185 pension plans, clarifying a number of provisions in both chapters which should lessen litigation and administrative problems.

4. Total Revenues and Expenditures:

See non-recurring effects above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

For any plans that do not currently meet the minimum benefit requirements of Chapters 175 and/or 185, F.S., it will require a one-time actuarial impact study to be completed as well as any cost associated with drafting a proposed document to make the necessary changes in their plan.

2. Recurring Effects:

Article X, Section 14, of the Florida Constitution, as well as Chapters 112, 175 and 185, F.S., require any benefit improvements to be funded on an actuarially sound basis. Any plan whose benefits do not meet the minimums in Chapters 175 and/or 185, F.S., as amended by the bill, will incur the costs of providing the required benefit improvements. These costs may be amortized and paid over a 30-year period as provided in s. 112.64, F.S. The bill also provides that any city or district whose retirement benefits do not meet the minimums as provided in ss. 175.162, and 185.16, will **only be required to make incremental improvements as state moneys become available**. The plan's actuarial valuations will reflect increases in state contributions and the costs of the incremental improvements. These two provisions should virtually eliminate any costs to the cities or districts.

There is concern that the statutory language may be insufficient to ensure that some cities or districts will not have to fund any minimum benefits extended by this bill. However, the critical statutory language, currently appearing in four separate locations in Chapters 175 and 185-- ss. 175.162(2)(a), 175.351(1)(b), 185.16(2), and 185.15(1)(d), F.S., provides as follows:

However, if current state contributions pursuant to this chapter are not adequate to fund the additional benefits to meet the minimum requirements in this chapter, only such incremental increases shall be required as **state moneys** are adequate to provide. Such increments shall be provided as **state moneys** become available.

The current benefits for the existing thirty-seven "chapter" plans are not affected by the proposed legislation. However, two of these plans do not currently satisfy the minimum benefit requirements as they have not implemented the 5 year Average Final Compensation (AFC) provision (incremental benefit improvements have occurred since the 1986 legislative changes to Chapters 175 and 185, F.S.). There is no immediate financial impact, however, since once again, these improvements are required to be implemented only as increases in the state premium tax moneys become available.

Of the 344 "local law" plans, a cost estimate was prepared for 88 of such plans by Foster & Foster, Inc. Of these, 70 had no cost impact and 18, or 20.4 percent, will require improvements to meet the minimum requirements. Similarly, there will be no immediate cost impact to these plans since implementation of improvements is contingent on future increases in state premium tax moneys.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Actuaries will be engaged to prepare impact statements and/or redesign pension plans; and there will be increased employment opportunity for independent consultants, legal counsel, and technical advisors.

3. Effects on Competition, Private Enterprise and Employment Markets:

Article 1, Section 6 of the Florida Constitution protects the right of employees, by and through a labor organization, to bargain collectively. Opponents of the bill hold that this bill violates the collective bargaining process by mandating benefits. Proponents of the bill argue that this bill merely establishes a uniform policy of minimum standards for state funds, allowing benefits above the minimums to be bargained collectively.

D. **FISCAL COMMENTS:**

Approximately \$65 million in premium taxes was distributed, during 1997, to sponsors of Chapter 175/185 plans to help municipalities and special districts fund these plans. In FY 97-98, \$67.9 million was distributed to the municipalities and special districts from total collections of \$80.4 million. It is estimated that total collections will be \$84.9 million for FY 98-99 and \$88.4 million for FY 99-00.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill may require cities and districts to spend funds or take action(s) requiring the expenditure of funds. Costs in each case will depend upon the provisions and features unique to each pension plan. If a plan provision is found to be out of compliance with the law, a special actuarial study will be required to calculate the added amount needed to bring that plan into compliance. Any costs may be amortized over a period of 30 years. State revenue is provided to subsidize the funding of these plans and this revenue is expected to increase significantly in the next few years. Sections 175.351 and 185.35, F.S., provide that for a municipality or special district to receive funds from

the insurance premium tax, they must meet the minimum requirements laid out in ss. 175.351 and 185.35, F.S. The bill also provides that compliance with minimum benefit requirements may be on an incremental basis as state premium taxes become available. This provision may suffice to fulfill the requirements of subsection (a) of Art. VII, Sec. 18, Florida Constitution, which provides that cities and counties are not bound by general laws requiring them to spend funds or to take an action which requires the expenditure of funds unless certain specified conditions are met.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Staff Director:

Jimmy O. Helms

Jimmy O. Helms

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

George T. Levesque

Alan Johansen