

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 380

SPONSOR: Senator Webster

SUBJECT: Municipal Firefighters' and Police Officers' Pension Trust Funds

DATE: February 15, 1999

REVISED: 2/18/99 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/7 amendments</u>
2.	<u>Hendon\Hayes</u>	<u>Hadi</u>	<u>FP</u>	<u>Fav/3 amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill substantially revises the administration of local pension plans for firefighters (chapter 175, F.S.) and police officers (chapter 185, F.S.) to standardize benefit administration for plans enacted by local ordinance and special act of the Legislature, and to clarify the responsibilities of the Division of Retirement in its oversight role on such plans as required by part VII of chapter 112, F.S., in accordance with 1996 revisions to the Administrative Procedures Act, chapter 120, F.S.

This bill substantially amends chapters 175 and 185, Florida Statutes.

II. Present Situation:

While the multi-public employer Florida Retirement System (FRS) is ranked among the top five pension plans in the country in terms of size, there are a number of separately constituted public retirement programs which have been crafted for local governments which exist on a much smaller scale. The 1939 Legislature authorized the enactment of the first of these with the passage of ch. 175, F.S., creating pension programs for local government firefighters. Thirteen years later ch. 185, F.S., was enacted covering municipal police officers. These "chapter" plans were similarly constituted for each group and permitted local governments invoking their authority to participate in the insurance premium tax, a shared revenue source which funds portions of the benefits provided to the employees. In addition, the Legislature would authorize from time-to-time the creation of special acts ("local law plans") which would create distinct pension plans for units of local government. As of September 30, 1997, there were 21 cities with chapter plans for firefighters and 16 with plans for police recognized under ch. 185, F.S. Local law plans have a larger representation: there are 164 cities with firefighter plans and 164 cities with police plans.

The base pension systems are *defined benefit plans* in which the employer assures the beneficiary of a fixed benefit at retirement usually expressed as the product of average final compensation multiplied by years of service times a set accrual rate for each creditable service year. Both types of plans provide annuitized payment provisions, vest operational control in a locally-appointed

plan board of trustees, and, like all other public sector pension plans, are subject to state regulatory oversight. The Division of Retirement within the Department of Management Services, conducts periodic plan reviews to determine the sufficiency of the revenues collected relative to benefits paid. This authority flows from part VII, ch. 112, F.S., and is derived from the provisions of Art. X, s. 14, State Constitution, which requires funding of publicly supported pension systems on an actuarially sound basis. By action of the 1995 Legislature, financial and program oversight was centralized in the Division of Retirement, eliminating the role of the Department of Insurance. Where the multiple plan types differ are the minimum standards to be applied as established by chs. 175 and 185, F.S., disability benefits, and in the compensation base used for computation of the retirement benefit.

Firefighter plans are supported by a 1.85 percent levy upon property insurers, while police plans levy a 0.85 percent charge upon the premiums of casualty insurers. This assessment constitutes only one of several revenue sources which are available to the plans. The others are employee contributions, ranging from a statutory minimum of 1 percent to individually determined higher amounts; city payments which include employer contributions; and the proceeds from investment earnings, gifts, or employee fines. Not all municipalities have separately constituted police and retirement pension plans but they still receive the proceeds from the insurance premium taxes. General employee plans may not share in any of the insurance premium tax revenues. Units of local government not headed by constitutional officers which have elected membership in the FRS do not participate in the proceeds of the insurance premium tax and are not governed by chs. 175 or 185, F.S.

In 1986 the Legislature enacted a substantial revision to both chapters in an attempt to standardize many of the dissimilar provisions found in the plans. While the statute withstood a constitutional challenge mounted shortly after its passage, *City of Orlando v. State of Florida*, 528 So.2d 468 (Fla. 1st DCA 1988), the same could not be said for the rules promulgated by the Department of Insurance. An appellate court found the legislation ambiguous in its precise application to local law plans and could not sustain the validity of the rules promulgated, *Florida League of Cities and City of St. Petersburg v. Department of Insurance and Treasurer, et. al.*, 540 So.2d 850 (Fla. 1st DCA 1989). The application of uneven standards within the multiple plan types continues to this day. In its October 1994 review of these issues, *State-Subsidized Police & Fire Pension Plans*, the House Committee on Employee and Management Relations suggested there were five principal areas where change would be warranted:

- ▶ The specification of normal retirement age and service requirements;
- ▶ Calculation of disability benefits;
- ▶ The apportionment of insurance premium tax monies among the differently constituted plans;
- ▶ Benefit caps; and
- ▶ Age thresholds affecting additional retirement credit.

The issue has been subject to recurring comments by the Division of Retirement in its annual report on local retirement systems. In two recent reports, *Florida Local Government Retirement Systems as of December 31, 1994* and *1995 Florida Local Government Retirement Systems Annual Report*, the division recommended legislative changes to bring some of the dissimilar provisions of these plans together. The division's 1996 annual report similarly noted these disparate provisions and recommended legislative changes to bring them into alignment. By way

of example, chs. 175 and 185, F.S., still recognize limitations on benefits as a function of age which may be violative of federal age discrimination statutes.

III. Effect of Proposed Changes:

The bill makes additional changes to chs. 175 and 185, F.S., local government firefighter and police retirement plans, following the 1986 legislative amendments, in an attempt to standardize minimum benefits among the various plan types. The changes reflected in this bill are nearly identical to those enacted in HB 3075 by the 1998 Legislature but vetoed by the Governor. Since many of the provisions in each chapter are the same, the analysis groups like sections in each chapter:

LEGISLATIVE INTENT. Sections 1 (175.021) and 41 (185.01) - The bill provides a declaration of an important state interest as required by Art. VII, s. 18, State Constitution, regarding legislative enactments which may have an effect upon local government finances. It further specifies that the amendments to chs. 175 and 185, F.S., establishing minimum benefit levels, may not be diminished by any other governmental enactment or offset by any other local, state, or federal law, except as may be required by s. 112.65, F.S., which preclude normal, non-supplemental benefits in excess of 100% of average final compensation, except for Social Security and other federal exclusions.

DEFINITIONS. Sections 2 (175.032) and 42 (185.02) - Various definitions contained in the respective chapters are changed. Of principal note are deletion of the current definition of "aggregate number of years of service"; the application of all definitions to chapter and local law plans; inclusion of the term "compensation" as an additional modifier of salary; recognition of reemployment rights granted firefighters and police under federal law when separation is conditioned upon military service; and the definition of chapter, local law, supplemental plans, and supplemental plan municipality. The bill also defines for the first time "deferred retirement option plans," or DROP, as a local law retirement plan option in which a firefighter or police officer may elect to retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account while continuing in employment. Employees entering a DROP, and who are otherwise eligible, may not be prohibited from participating in an existing or subsequently created supplemental plan. "Retiree" is defined to include a firefighter or police officer who enters a DROP, and the date on which a firefighter or police officer enters a DROP is included within the definition of "retirement." The term "compensation" or "salary" is defined to include only the fixed remuneration paid on a monthly basis to a firefighter or police officer inclusive of any additional amounts contributed to a tax-sheltered retirement plan. The definitions also require that all plans must recognize Internal Revenue Service salary limitations for highly compensated individuals. A plan may provide an option for the fire or police chief's participation in it. The definition of "compensation" is modified from the 1997 bill [SB 524] to authorize a firefighters' or police officer's retirement trust fund or plan to otherwise define salary, but only if the monthly retirement income payable to the firefighter or police officer using that definition equals or exceeds the monthly retirement payable using this definition. Further, the definition prohibits the reduction or diminishment of the monthly retirement income payable under any trust fund or plan which currently or hereafter meets the requirements of chs. 175 or 185, F.S.

EMPLOYEE BENEFIT PROVISIONS; CREATION OF PENSION TRUST.

Sections 3 (175.041) and 43 (185.03) - The referenced sections formally recognize the existence of separate trust funds for the respective chapter and local law firefighter and police retirement funds. Benefits enjoyed by members of the respective plans must be on a nondiscriminatory basis. The sections also distinguish the application of chapter 175/185 provisions from those affecting members of the Florida Retirement System. The following standard introductory language is used for subsequent sections in each chapter, as respectively appropriate: *“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.”*

ACTUARIAL DEFICITS NOT STATE OBLIGATIONS. Sections 4 (175.051) and 44

(185.04) - These sections provide that actuarial deficits of these local law plans and chapter plans are not obligations of the State of Florida.

GOVERNANCE STRUCTURES OF BOARDS OF TRUSTEES. Sections 5 (175.061) and

45 (185.05) - These sections make the following changes with regard to the structure of the Boards of Trustees of respective fire and police pension plans: provides for the membership to reflect active firefighter or police officers; extends the application of the statutes to all constituted local or chapter plans; provides for at least quarterly meetings of the board; that each governing structure is a legal entity with the power to sue and make contracts; and that prevailing parties' attorneys fees shall attach in any judicial or administrative proceeding brought under ch. 120, F.S. Retired firefighters or police officers permitted on January 1, 1997, to vote on plan matters may continue to do so, except that active member police officers may revoke that authority for their plan(s) by majority vote. These sections are also amended to move to 1999 from 1998 the requirement for enactment of an ordinance altering the membership combination of joint or separate plans including general employees.

ANNUITY CONTRACTS. Sections 6 (175.081) and 46 (185.061) - These sections are amended only to apply these provisions to chapter and local law plans alike.

CONTRIBUTIONS TO PENSION FUNDS. Sections 7 (175.091) and 47 (185.07) - The amendments provide standard nomenclature changes to recognize each of the plan types and further provide that individual plan members may increase contributions to produce greater benefits; repeal the offset provided in current law which sets an upper 3 percent limit on members' contributions when participating in the Social Security program; permit funding of any actuarial deficiency over a period other than the currently provided 40-year term as recognized under part VII of ch. 112, F.S.; and change from 1 percent to .05 percent the minimum amount members may be required to contribute. Member contributions to provide greater benefits may not exceed 5% of salary as may be contractually negotiated by members or their collective bargaining representative.

PROPERTY/CASUALTY INSURANCE PREMIUM TAX. Sections 8 (175.101) and 48

(185.08) - These amendments provide standard nomenclature changes and extend the assessment provisions of the insurance premium tax to all insurers doing business in the state.

REPORT OF PREMIUM TAX COLLECTIONS. Sections 9 (175.111) and 49 (185.09) - In addition to standard nomenclature changes, the reporting period is changed from the 12 months ending March 1 to the end of a calendar year.

DEPOSIT AND DISBURSEMENT ACCOUNTING BY STATE AGENCIES. Sections 10, 11, 12 (175.121, 175.122, 175.131) and 50, 51 (185.10, 185.11) - The amended sections provide standard nomenclature changes and provide for immediate deposit of employee contributions after each pay period and at least quarterly employer deposits. The amendments also authorize the direct payment of the premium tax funds from the department to the trustees of the pension or retirement fund and requires the trustees to deposit those funds in the appropriate trust fund within 5 days of receipt.

EXCISE TAX CREDIT. Sections 13 (175.141) and 52 (185.12) - Conforming changes to recognize an administration shift from the Insurance Commissioner and Treasurer to the Department of Revenue.

INSURER NONCOMPLIANCE. Sections 14 (175.151) and 53 (185.13) - Noncompliance notifications are to be directed to the Department of Insurance by the Division of Retirement.

CONTRIBUTIONS REQUIREMENTS. Sections 15 (175.152) and 54, 55 (185.14, 185.15) - These sections are repealed and replaced by other changes in the bill.

RETIREMENT REQUIREMENTS. Sections 16 (175.162) and 56 (185.16) - In addition to conforming changes referencing all legally constituted chapter and local law plans, this section standardizes age and service credit terms [25 years of service at 2 percent accrual rate] for normal retirement benefits. Further, the bill deletes current language reducing the amount of retirement income for moneys received under the disability provisions of this chapter, and removes a provision of current law which provides a lower service credit for firefighters who have been contributing 3 percent of their pay. Any local plan may by local action provide benefits greater than the 2 percent accrual rate set as a floor in this section.

Section 185.16(3), F.S., is further altered to remove from current law a provision now existing for firefighters that the proceeds of death benefits accrue to the surviving spouse, descendants, and legal heirs; the effect is to have the proceeds go to the estate of the deceased police officer.

OPTIONAL RETIREMENT INCOME. Sections 17 (175.171) and 57 (185.161) - In addition to standard conforming changes, this section deletes a requirement that a joint pensioner be a dependent and permits another structured payment option of 75 percent of monthly retirement income to the joint survivor in addition to the designated levels of 100 percent, 66 2/3 percent, and 50 percent. This section also deletes a requirement that an applicant for an optional form of retirement submit evidence of good health to the board of trustees, provided that the benefit sought is equivalent in actuarial value.

BENEFICIARIES. Sections 18 (175.181) and 58 (185.162) - This section provides the standard conforming language applying the provisions to all plan types, and further makes the following changes to the designation of surviving beneficiaries: provides for the sequential designation of beneficiaries by the firefighter/police officer for payment to the estate of the

deceased member in the absence of a named beneficiary, and for full discharge of plan obligations to the member upon a payment of terminal benefits.

DISABILITY RETIREMENT. Sections 19 (175.191) and 59 (185.18) - In addition to standard conforming amendments, changes in these sections recognize disability retirement eligibility when a firefighter/police officer accrues 10 years of service, whether or not continuous, and becomes totally and permanently disabled. Eliminated from current law is the contingency that member eligibilities occur prior to the beginning of the normal retirement date, in order to address potential federal age discrimination statutes. Finally, this section permits a member to elect a structured payment option provided in s. 175.171, F.S., above.

FALSE STATEMENTS; PENALTIES. Sections 20 (175.195) and 60 (185.185) - The penalty of misdemeanor in the first degree attaches to any person making a false statement for the purpose of securing a retirement benefit. Additionally, the respective Boards of Trustees, in their discretion, may disqualify a convicted member's right to participate in the pension plan.

DEATH BENEFITS; REFUNDS. Sections 21 (175.201) and 63 (185.21) - This section provides standard nomenclature changes. Terminal benefit language is amended to change from contributing service to credited service the 10-year service requirement for death benefits. Insurance proceeds received under other provisions of law shall not be counted toward computation of a final benefit amount.

SEPARATION FROM SERVICE; REFUNDS. Sections 22 (175.211) and 61 (185.19) - The section eliminates the requirement that a member has contributed to a plan for 10 years, since some plans may be noncontributory. The changes also recognize age 55 as the retirement age.

LUMP SUM PAYMENT. Sections 23 (175.221) and 62 (185.191) - The section increases from a monthly amount of \$30 or a single-sum amount of \$750 to a monthly amount of \$100 or single-sum amount of \$5,000, the benefit amount which a plan may make a single, lump-sum payment to a member of a *de minimis* account.

DISEASE PRESUMPTION. Section 24 (175.231) - In addition to conforming language, this section provides that the presumption on disease shall extend to any firefighter participating in a chapter or local plan, not just those employed in Florida.

EXEMPTION FROM EXECUTION. Sections 25 (175.241) and 66 (185.25) - Standard nomenclature changes only.

EMPLOYMENT RECORDS. Sections 26 (175.251) and 67 (185.27) - The provisions of these sections regarding maintenance of employment records have been transferred to another location and the existing sections are repealed. See ss. 175.071 and 185.06, F.S., above.

ANNUAL STATE REPORTS. Sections 27 (175.261) and 64 (185.221) - Standard nomenclature changes are included in these revisions which also include amended reporting requirements for chapter and local plans. For chapter plans the amendments provide for an increase from \$100,000 to \$250,000 in the floor asset amount which triggers an annual report to

the Division of Retirement and a triennial actuarial plan valuation. For local law plans the amendments provide for an annual submission of formal contractual documents describing the plan; an independent audit for plans with assets in excess of \$250,000; a description of plan investments; a description of plan members by active and inactive status; a description of the actuarial methods used, along with a certified statement from an enrolled actuary; a statement of income sources derived from the parent local government; and a triennial actuarial valuation, the cost of which is to be assumed by the plan or the sponsoring local governing authority.

LEGAL REPRESENTATION. Sections 28 (175.291) and 68 (185.29) - Existing law provisions authorizing legal counsel to the plan are repealed and the authorization is transferred to ss. 175.071 and 185.06, F.S., above.

PENSION DEPOSITORY. Sections 29 (175.301) and 69 (185.30) - These sections contain the standard conforming language and also eliminate the requirement that securities be deposited with the plan treasurer.

INDEPENDENCE OF UNITS. Sections 30 (175.311) and 70 (185.31) - Conforming nomenclature changes only.

APPLICATION OF INSURANCE PREMIUM TAX. Section 31 (175.321) and 71 (185.32) - The application of the insurance premium tax is repealed, as its levy and administration are covered in the amended ss. 175.101 and 185.08, F.S., above.

DISABILITY IN THE LINE OF DUTY. Section 72 (185.34) - In addition to conforming language, this section provides that the disability in the line of duty provisions apply to any police officer participating in a chapter or local plan, not just those employed in Florida.

PRE-EXISTING RIGHTS. Sections 32 (175.331) and 75 (185.36) - The application of rights granted under former laws is repealed, as its effect has been covered in the amended ss. 175.041 and 185.03, F.S., above.

PROHIBITED BENEFIT DISCRIMINATION. Sections 33 (175.333) and 73 (185.341) - Provides the standard nomenclature, grammar, and syntax changes and clarifies that eligibility for retirement must be based upon length of service or attained age or both, and benefits must be determined by a nondiscriminatory formula based upon length of service and compensation, or length of service alone.

DUTIES OF DIVISION OF RETIREMENT. Section 34 (175.341) - Defines the duties of the Division of Retirement to apply to all local law or chapter plans.

LOCAL GOVERNMENTS WITH SEPARATE PENSION PLANS. Sections 35 (175.351) and 74 (185.35) - The revised section removes many of the individual standards for member eligibility and makes reference to the revised eligibility standards provided for plans contained in ss. 1, 2, and 3 of the bill, above. *This section is also revised to authorize local law plans to come into compliance with the minimum benefit provisions of the chapter **incrementally and only** as additional premium tax revenues become available, despite the requirement that premium tax*

funds be used to provide “extra benefits” to plan members. Calendar Year 1997 is established as the base year from which the determination of extra benefits may proceed and to which the collection of additional premium tax revenue shall apply. Adoption or revision of a local law plan shall provide for public notice, hearing and the submission of an actuarial impact statement sufficient to indicate compliance of the plan with Art. X, s. 14, State Constitution, which provides for prefunding of all public sector pension benefits. The revised definitions of compensation contained in the bill, and of local law plan or supplemental pension board composition on January 1, 1998, shall not apply.

PLAN TERMINATION. Sections 36 (175.361) and 76 (185.37) - The rights of members are deemed to be nonforfeitable upon the dissolution of a plan with distribution of their account proceeds to occur in the manner provided by current law.

BENEFITS UPON MEMBER TRANSFER. Sections 37 (175.371) and 77 (185.38) - Nomenclature changes and defines the term “fully funded” as used to determine when a plan out of which members have transferred will be terminated.

APPLICABILITY OF LAW. Sections 38 (175.381) and 78 (185.39) - The chapters’ amended provisions establish minimum benefit levels but shall not operate to adversely affect any benefits presently enjoyed by members. Existing plans must come into compliance with this act by December 31, 1998, except for plans established by special act of the Legislature, which date shall be July 1, 1999. The section disclaims any adverse effect of the act on any existing rights or benefits enjoyed by plan members.

COSTS; ATTORNEY’S FEES. Sections 39 (175.391) and 79 (185.40) - This section is repealed since the authority is consolidated in another section, above.

RETIREE HEALTH INSURANCE SUBSIDY. Sections 40 (175.401) and 80 (185.50) - The bill makes the following changes to the retiree health insurance subsidy: reduces from 1 percent to no less than 0.5 percent the minimum amount of salary contribution for participation and provides an audit requirement if plan assets are \$250,000 or greater rather than the current threshold of \$100,000.

LOCAL OPT-OUT PROVISION. Sections 81 (175.411) and 82 (185.60) - These newly created sections provide that a municipality or special fire control district, as applicable, may at its discretion opt into or out of a pension plan established pursuant to this chapter.

EFFECTIVE DATE. Section 83. Upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The recent and past history of this legislation has been characterized by widely varying and closely held positions about the impact of the bill on local law plan municipalities and special fire control districts. These impacts have themselves prompted invocations of the term “unfunded mandates” by the various parties associated with these effects.

Several issues were raised in the May 27, 1998 gubernatorial veto of HB 3075. *First*, the use of the term “extra benefits” in HB 3075 could not be clearly reconciled with other provisions of law affecting the revenues available to fund local plans, in particular the insurance premium tax. *Second*, the protracted litigation history of prior legislation lay open the question of whether the Division of Retirement had clear statutory authority to engage in rule-making under the revised definitions contained in HB 3075. This issue became particularly sensitive in light of the 1996 amendments to the Administrative Procedures Act which raised the statutory sufficiency threshold for agencies governed by that act in their promulgation of their interpretive rules. *Third*, sixteen units of local government were specifically exempted from application of the revised definitions of compensation, an aspect of the bill which diminished its stated goals of uniformity.

The most recent documents commissioned on the subject analyzed ss. 36 and 77 of last year’s HB 3075 and their potential effect upon unfunded mandates to the affected units of local government. In November 20, 1998 correspondence to its client, the Florida League of Cities, the accounting firm of PricewaterhouseCoopers suggested various potential cost impacts resulting from ambiguous provisions of the 1998 bill as they affected the definition of compensation and other financial variables. On the basis of what was believed to be plausible ranges of effects, its reporting actuary estimated a financial consequence of \$55.7 million to several municipal-sponsored plans. That analysis, however, avoided use of the term “unfunded mandate.” The League commissioned another policy review of the scope of pension benefits provided by selected southeastern states, the FRS and local law and chapter plans. That study, dated November 30, 1998, and undertaken by Florida State University’s Institute of Government, found general, but not uniform, support for the characterization that Florida local law pension plans provided more generous benefits than their selected peers. Again, like the PricewaterhouseCoopers study, the Institute report avoided use of the term “unfunded mandate” to describe benefits in excess of peer plans.

Most recently, the January-February 1999 *Journal of the James Madison Institute*, a Tallahassee-based independent research organization, reported the results of a survey it commissioned jointly with the Institute of Government. Some seventy percent of responding city and county managers reported unfunded mandates as their most pressing operational concern. The *Journal* then discussed the operation of HB 3075 relative to these survey findings and its own analysis. It frequently invoked the unfunded mandates term.

Finally, on January 4, 1999, the Chief of the Local Retirement Systems Bureau in the Division of Retirement corresponded with a member of the Florida Legislature on the mandates issue. That letter took exception to assertions of unfunded mandates in general from HB 3075, and with the substance of the Pricewaterhouse Coopers study in particular. It further enclosed correspondence from a local government plan actuary which reconsidered its 1998 opinion on financial impact and disclaimed any financial impact of the 1999 legislation upon his municipal client.

An analysis of last year’s HB 3075 may have been interpreted to require that local law municipalities and special fire control districts meet all the minimum benefits and standards, regardless of the availability of state premium tax distributions. Consistent with that interpretation many local governments may have concluded they had to make expenditures in

order to raise the level of benefits in their plans to meet the minimum standards contained in the bill. It could then have been plausibly argued that the bill fell within the purview of s. 18(a), Art. VII, State Constitution. That section provides that cities and counties are not bound by general laws which require them to expend funds or take actions requiring an expenditure of funds, unless certain legislative actions are taken. The imprecision with which the issue of a funding source was determined in HB 3075 may have exacerbated the ambiguity of the impact which, in turn, led to the listing of exempted cities. While it seems clear that the bill in its present form obligates affected local governments to pay benefits at the minimum level, it simultaneously conditions further participation in extra benefits *only* upon the realization of additional revenues past the 1997 benchmark period. Thus a funding source has been identified.

The bill is not exempt under subsection (d) as having an insignificant fiscal impact [see Government Sector Impact], or as a law requiring the funding of pension benefits which existed on the effective date of this section (1990). Although chs. 175 and 185, F.S., existed on that date, this bill expands the benefits provided by those sections for members participating in local law plans.

Because SB 380 removes from its provisions the exceptions to its coverage provided the sixteen municipalities contained in HB 3075, it may well be argued also that it does apply to all similarly situated individuals. These individuals would constitute the universe of those plan members in all types of chapter 175 and 185 pension systems. Public safety employees performing essentially similar duties who are members of the FRS, and who enjoy dissimilar benefits, are inappropriate comparisons. Section 112.65(2), F.S., makes it clear that no employee may receive multiple pension credits for the same term of employment. Thus, these plans provide benefits which are statutorily mutually exclusive.

Both sections 1 and 41 provide a declaration of important state interest sufficient to remove the bill from the requirements of s. 18, Art. VII, State Constitution. In combination with a two-thirds or greater passage margin this may obviate the legal aspects of the mandates issues.

Accordingly, it appears that the bill falls within the coverage of the constitutional provision for analysis purposes but is drafted in such a manner as to avoid becoming a mandate without funding or a funding source. When properly enacted, it applies to all affected units of local government with ch. 175 or 185 pension plans.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill makes no change to the rate or the base of the Insurance Premium Tax. An analysis of historical revenues collected from 1980 through 1996 completed by the Division of Economic and Demographic Research indicates an average annual increase of 8.12 percent.

B. Private Sector Impact:

At the discretion of individual Boards of Trustees, individual member payroll contributions may be adjusted downward to a level not less than one-half of one percent. This will act as an increase in net salary to the individual firefighter/police officer. A collective bargaining agreement or consent by the affected members may also reduce member pay by 5% in order to accelerate benefits.

C. Government Sector Impact:

Local Governments

The impact of this bill on local government revenues has become less ambiguous although no less intricate. The bill contains several conflicting provisions. First, both chapters contain an applicability section which requires all municipalities, special fire control districts, chapter plans, local law municipalities, local law special fire control districts, or local law plans to comply with the provisions of the act by December 31, 1998. Yet, both chapters also contain a provision allowing municipalities to opt out of or into a pension plan established thereby at its discretion. It is unclear which provision takes precedence, and it may be up to the courts to decide. If it is determined that the bill mandates compliance with the minimum benefits by all local law plans, the fiscal impact remains the subject of debate. That resolution depends upon which interpretation of the bill is adopted.

Under the interpretation advanced by the Division of Retirement and the police officers' and firefighters' unions, the bill will not require additional expenditures by local governments. That interpretation is founded on the following existing language in ss. 175.162(2) and 185.16(2), F.S., and restated in the Division's January 4, 1999 correspondence. Therefore, no local law municipality or special fire district would have to make additional contributions to reach the minimum benefit levels of chapter law plans because such benefits will be provided only upon the availability of adequate insurance premium tax dollars. However, even under this interpretation, the several hundred local law plans may incur actuarial costs associated with examining their funding status as a result of adhering to the minimum benefit levels established in the bill. Some of these costs will be incidental to triennial actuarial reviews while others may require the completion of special studies. No uniform cost estimates are available for these impacts. That specific impact is speculative and variable but is believed below the customary threshold of ten cents per capita for purposes of establishing a statewide financial impact. This additional impact may well be offset by the change in plan valuation cycles which could defer costs. This item is discussed below.

Representatives of the local law plans countered this argument in 1998 by highlighting the following new language the bill adds to both ss. 175.351 and 185.35, F.S.: “The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to firefighters (police officers), or to firefighters and police officers where included. For purposes of this chapter, the term ‘extra benefits’ means benefits in addition to or greater than those provided to general employees of the municipality.” The argument is that this language supersedes the language quoted above, thereby limiting the expenditure of premium tax proceeds only for “extra benefits,” specifically excluding the use of those revenues to meet the minimum benefits of these chapters. Depending upon the municipality, meeting the minimum standards of these chapters may or may not mean providing benefits which are in addition to or greater than those provided to general employees. This countervailing argument may prove to be a distinction with no difference since language incorporated into ss. 35 and 74 of SB 380 explicitly conditions the provision of extra benefits upon the satisfaction of minimum benefit levels which require the receipt of additional premium tax monies.

The bill changes the normal plan valuation from a biennium to a triennium. For some plans this will defer expenses associated with the review depending upon the date of their last valuation.

There still exist hybrid plans which group together firefighters, police, and general government employees. Such an arrangement poses unique administration problems since the insurance premium tax revenues *cannot* be applied to general employees. The amendments to such sections provide for segregation of the dedicated tax revenues for the *sole and exclusive use* of the firefighter and police employees. Remaining plan members must have their employer or themselves fund the benefit costs. Plan governance is related to this issue; a plan which covers general employees must have board of trustee representation reflecting employees other than firefighters and police.

The bill standardizes the definition of compensation to reference only the fixed amount declared as salary. For plans above the 2 percent accrual rate level this should pose no concern. For plans below this level, however, this will exempt from current calculations such compensable items as overtime, bonuses, supplemental pay, and the cash equivalent of fringe benefits.

Additional Comments by Fiscal Policy Committee Staff:

Local governments’ local law firefighter and police pensions that are not otherwise exempted for the provisions of this bill will be impacted if they:

- 1) Have plans with benefits below the minimum established under Chapters 175 and 185, F.S. for age and service requirements, disability benefits, and benefit accrual rate, and
- 2) If after meeting the minimum benefits established under Chapters 175 and 185, F.S., provide retirement benefits for police and firefighters that are the same or below those retirement benefits provided to the respective local governments’ general employees.

For the first test, the local law plans would be compared to the minimums established in Chapters 175 and 185, F.S. According to the Division of Retirement, as of January 1999, there were 288 local law plans operated by 206 cities. Of these 288 local law plans, 111 plans have age and service requirements that are below the minimum provided for in this bill. Eighty-one plans have disability benefits below the minimum provided for in this bill. Five plans have a benefit accrual rate below the minimum. As of January 1999, a total of 104 of the 206 cities with local law plans have one or more plans that are below at least one of three minimum benefits cited above. Such cities would have to improve the benefits of their plans under the bill. Improvements are to be made incrementally based on the increases in state premium tax receipts beyond the amount received in 1997. Improvements to the plans would be made proportionate to the amount of the increase in the premium taxes. The improvements would need to continue over time until the benefits met the minimums required under this bill.

Affected cities would be fiscally impacted to the extent that they have not used state premium tax receipts for extra benefits in the past. Such cities must devote future increases in the state premium tax receipts to pay for extra benefits rather than to continue to use the increase in revenues to support plans not meeting the minimum benefits established in Chapters 175 and 185, F.S. Cities are allowed, however, to continue to use an amount of the state premium taxes equal to the base year of 1997 to pay for benefits that would not have been considered as extra under this bill.

Some cities have established plans in addition to local law pension plans referred to as "supplemental benefit plans". These supplemental plans would be considered in combination with the other pension plans operated by the city in order to satisfy the requirement of minimum benefits established in Chapters 175 and 185, F.S.

For the second test, local law plans that meet the minimums established under Chapters 175 and 185, F.S. would be compared by an actuary to the pension benefits provided by the city to its general employees. If the local law plan benefits are not in addition to or greater than those provided to the general employees, the local government will be required to devote subsequent increases in the state premium taxes to improve the local law plans. As is the case with the first test, these improvements are to be made incrementally based on the increases in state premium tax receipts until the benefits under the local law plan exceed those provided to the general employees.

State Government

The Division of Retirement reports a one-time expenditure of \$300 will be needed to provide an actuarial study of the two chapter law plans which do not comply with the existing statutory provisions.

VI. Technical Deficiencies:

Several technical and clarifying amendments are required to properly align several of the different effective dates used in the bill in light of its 1999 enactment and use of Calendar Year 1997 as a benchmark year for insurance premium tax calculation. In addition, a title amendment is required

to delete reference to material on foreign investment authority given plans in separate legislation last year.

VII. Related Issues:

While combined plan assets exceeded \$8.3 billion for Calendar Year 1996 the vast majority of police and firefighter pension systems are small capitalized plans. Many can be measured in the hundreds of thousands of dollars and only a few have total assets in the hundreds of millions. Few of the plans carry the burden of an unfunded liability and some are over-funded.

It has been the past practice of the Division of Retirement to adjust required contribution rates for participating employers as a function of whether they are members of the FRS or have created their own police and fire pension plans. This issue poses some significance inasmuch as cities or special districts which have opted into the FRS progressively lose their eligibility for insurance premium tax matching contributions as eligible members depart from the local plans and they are replaced by members mandatorily eligible under FRS. Such is the case for the closed plans of North Miami and North Miami Beach. The reverse is also true: governments exiting the FRS, as was the case for some four dozen local governments in 1995, have their insurance premium tax wage base progressively increase as existing FRS members leave, retire, or voluntarily choose to switch plans. A January 31, 1996, internal memorandum from the Division of Retirement memorializes this agency practice. Plan members cannot be counted for eligibility twice for the same period of employment due to provisions in the chapters prohibiting that, as well as concurrent provisions in ch. 112, part VII, F.S., which requires compliance with the Internal Revenue Code and its preclusion of dual benefit eligibility under federal law, except for benefits received under the Social Security Act.

Sections 20 and 60 of the bill permit the disqualification of a chapter 175 or 185 plan member by a board of trustees upon conviction of a fraudulent benefit claim. The fraudulent act is made a misdemeanor in the bill. Section 112.3173, F.S., requires, pursuant to Art. II, s. 8(d), State Constitution, the forfeiture of retirement benefits in all public retirement systems for a breach of the public trust upon conviction of a specified offense. Among the specified offenses are embezzlement, theft, bribery, felonious violation of ch. 838 except for ss. 838.015 and 838.016, F.S., an impeachable offense, or any other felony involving the defrauding of the public or of the public employer. Factual circumstances will determine whether this additional language will accrue to the advantage of the prosecution or defense. Florida law provides no specific penalty for pension plan theft or fraud. Instead, individual criminal statutes are used when such illegal behavior is alleged. Such statutes contain dollar thresholds which index the amount illegally taken with an appropriate penalty class. Generally, theft amounts over \$300 are considered felonies of the third degree. Attempted felonies are prosecutable at the next lower penalty class level. The new language in these two sections will give the state attorney an additional choice in its discretionary decision to prosecute. Plan trustees may also be able to partially or fully disqualify a member for misdemeanor violations now punishable only as felonies. It will give the accused party an additional advantage as well, in that a prosecution *solely* referencing these respective sections in the charging instrument will eliminate the possibility that a conviction can result in the automatic felony disqualification from pension benefits. The penalty will be a misdemeanor, regardless of the amount taken. Subsection (2) of these respective sections leaves it to the discretion of the local plan board of trustees what disqualification or reduction in pension benefits should occur.

VIII. Amendments:

#1 by Governmental Oversight and Productivity:

Changes the effective date for recognition of supplemental plans from January 1, 1998 to January 1, 1997.

#2 by Governmental Oversight and Productivity:

Changes the effective date for recognition of local law and supplemental plans on the inapplicability of s. 175.061 (1)(b), F.S., from January 1, 1998 to January 1, 1997.

#3 by Governmental Oversight and Productivity:

Provides a December 31, 1999 rather than a July 1, 1999 compliance period for ch. 175 pension plans.

Governmental Oversight and Productivity:

Changes from July 1, 1998 to July 1, 1999 the time period within which local boards of pension trustees must decide if combined or separate ch. 175 plans should exist.

#5 by Governmental Oversight and Productivity:

Moves the date for enactment of an ordinance implementing amendment #4 from July 1, 1999 to October 1, 1999.

#6 by Governmental Oversight and Productivity:

Provides a date change for plan compliance from April 1, 1999 to December 31, 1999.

7 Governmental Oversight and Productivity:

Deletes a title reference to a provision no longer in the bill. (WITH TITLE AMENDMENT)

#1 by Fiscal Policy:

Deletes a provision intended to clarify existing authority for the Department of Revenue to apply the state excise tax on property insurance companies to surplus lines insurance companies.

#2 by Fiscal Policy:

Deletes a provision intended to clarify existing authority for the Department of Revenue to apply the state excise tax on casualty insurance companies to surplus lines insurance companies.

#3 by Fiscal Policy:

Provides for an actuarial study by the Division of Retirement of the financial impact of the legislation on municipalities and special districts with a report to the Legislature by March 1, 2000. (WITH TITLE AMENDMENT)