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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-359, Laws of Florida

HOUSE OF REPRESENTATIVES

**LOCAL GOVERNMENT & VETERANS AFFAIRS
FINAL ANALYSIS— LOCAL LEGISLATION**

BILL #: HB 973, 1ST ENG
RELATING TO: City of West Palm Beach
SPONSOR(S): Representative Atwater

TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT (W/D)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

The bill is a compilation of numerous special acts relating to the City of West Palm Beach Police Pension Fund.

The bill amends previous special acts to update a statutory reference and to require members to transfer accumulated leave into the pension plan up to the defined contribution limits under the Internal Revenue Code.

The Committee on Local Government & Veterans Affairs adopted one amendment at its meeting on February 21, 2002. The "strike all" amendment made grammatical, clarifying and substantive changes. The House subsequently adopted the amendment on March 14, 2002. (See Section V. "AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES")

According to the Economic Impact Statement, the bill does not appear to have an economic impact on State or local budgets.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Police and Firefighter Pension Plans

Chapter 185, Florida Statutes, contains provisions for the establishment and maintenance of pension funds for firefighters and police officers, respectively. 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 ch. 185, F.S., which sets up a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under ch. 175, F.S., 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 “premium tax”); 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 chs. 175 and 185, F.S. Responsibility for overseeing and monitoring these plans lies with the Division of Retirement of the Department of Management Services, but the day-to-day operational control rests with local boards of trustees.

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).

Most Florida firefighters and municipal law enforcement officers participate in these plans. Statewide, about 11 cities have chapter plans and 171 cities have local law plans for firefighters under ch. 175, F.S., and 12 cities have chapter plans and 176 cities have local law plans for police under ch. 185, F.S.

In 1986, the Legislature completely revised chs. 175 and 185, F.S. in chs. 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. A state court found that since this “program is not mandatory as to any city’s participation,” the amended statutes are not facially unconstitutional. *City of Orlando v. State Department of Insurance*, 528 So.2d 468, 469 (Fla. 1st DCA 1988).

In 1999, the Legislature again revised chs 175 and 185, F.S., in chapter 99-01, Laws of Florida, to apply minimum benefits and standards to all plans funded under these chapters. Sections 5 and 45 of the law amended ss. 175.061 and 185.05, F.S., respectively, to address membership of the boards of trustees. Sections 37 and 77 of the law amended ss. 175.371 and 185.38, F.S., respectively, to define the term "fully funded" as used to determine when a plan, out of which members have transferred, will be terminated.

City of West Palm Beach Police Pension Plan

Chapter 24981, Laws of Florida, first created the City of West Palm Beach Police Pension Plan (Plan). The Plan was last codified by ch. 93-373, Laws of Florida, and has been amended six times since; chs. 96-526, 97-336, 99-483, 2000-410, and 2001-312, Laws of Florida.

C. EFFECT OF PROPOSED CHANGES:

This bill amends ch. 24981, Laws of Florida, 1947; and chs. 93-373, 96-526, 97-336, 99-483, 2000-410, and 2001-312, Laws of Florida; to accomplish the following:

- Section (3)(b), is amended to provide that in the event of a vacancy in the Board of Trustees within 90 days of the term expiration, the individual elected into the position serves for the duration of the new term.
- Section (21)(b)3 is amended to limit investments to the top four grades of bonds.
- Section (25) is amended to update and correct statutory citation.
- Section (25)(b) is amended to update a statutory reference to s. 112.3173, F.S.
- Section (29)(a) is amended to change the dollar amount to \$120,000 to conform with s. 415(d) of the Internal Revenue Code.
- Section (31)(a) is amended to allow the Plan to receive rollovers from Internal Revenue Code s. 457 plans.
- Section (31)(b) is amended to require members to transfer accumulated leave into the pension plan up to the defined contribution limits under the Internal Revenue Code.
- Section (31)(b)1 is amended to eliminate options for disbursements and require transferred amounts to remain in the DROP or share account.
- Section (31)(b)2 is amended to eliminate references to election which was deleted from s. (31)(b)1.
- Section (31)(b)4 is amended to require amounts transferred into the Plan from accumulated leave balances to remain in the Plan for at least one year.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends and readopts as amended section 16, chapter 24981, Laws of Florida, as follows:

Section 16 provides for the West Palm Beach Police Pension Fund (Fund).

- (1) Creation of Fund. Creates a special pension fund for police officers of the City of West Palm Beach.
- (2) Provides definitions.
- (3) Provides for: the creation of the Board of Trustees for the Fund; Board vacancies; Board meetings, quorum, and procedures; a Board chair; a Board secretary; that Board members shall not receive compensation but may be reimbursed for expenses and per diem.
- (4) Provides authority to contract for the services of a pension administrator, a funds custodian, legal counsel, an actuary, a certified public accountant, and other professional, technical, and other service providers.
- (5) Provides for reports, experience tables and interest rates.
- (6) Provides for membership.
- (7) Provides for service credit.
- (8) Provides age and service requirements for retirement.
- (9) Provides for the calculation of retirement pension, payment of benefits, optional forms of retirement income, and designation of a beneficiary.
- (10) Provides for cost-of-living adjustments.
- (11) Provides for ch 185, F.S. share accounts.
- (12) Provides for supplemental pension distribution.
- (13) Provides for the DROP.
- (14) Provides for nonduty disability pension.
- (15) Provides for duty disability pension.
- (16) Provides for conditions applicable to all disability retirees.
- (17) Provides death benefits for nonduty death, duty death, and death after retirement.
- (18) Provides that pension benefits are not offset by workers' compensation benefits.
- (19) Provides for member contributions and refunds.
- (20) Provides for revenue sources.
- (21) Provides for investments limited to the top four grades of bonds.
- (22) Provides for the continuation of existing benefits for members who retired prior to October 1, 1987.
- (23) Provides that Fund benefits are not subject to execution, attachment or assignment.
- (24) Provides for subrogation to the benefit of the City against third parties causing an accident or injury that leads to the payment of benefits under the Fund.
- (25) Provides for the applicability of ordinances applicable to ch 185, F.S.; and provides that no person convicted of an offense as provided in s. 112.3173, F.S. is entitled to Fund benefits.
- (26) Provides for review procedures for benefit applicants who are denied benefits.
- (27) Provides for lump sum payment of small retirement income.
- (28) Provides for pickup of member contribution upon a favorable determination letter from the Internal Revenue Service.
- (29) Provides for recognition of certain Internal Revenue Code limitations.
- (30) Provides for required distributions in accordance with s. 401(a)(9) of the Internal Revenue Code.
- (31) Provides for rollovers from qualified plans as provided for by the Internal Revenue Code; eliminates options for disbursements and requires transferred amounts to remain in the DROP of share account; and requires amounts transferred into the Plan from accumulated leave balances to remain in the Plan for at least one year.
- (32) Provides for rollover distributions.
- (33) Provides for miscellaneous requirements.
- (34) Provides for actuarial assumptions.

Section 2. Provides a general repealer clause.

Section 3. Provides for an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

December 3, 2001

WHERE?

The Palm Beach Post, published in West Palm Beach.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Section 2. of the bill provides a **general repealing** clause. As opposed to a **specific repealing** clause that specifically identifies provisions or acts that are repealed, a **general repealing** clause "merely predicates a repeal upon the condition that a substantial conflict is found between the statutes." *Sutherland Stat. Const.* (5th Ed). *Sutherland* states, at s. 23.08, general repealing clauses that provide that "all inconsistent enactments are repealed, should legally be a nullity. Repeals must either be expressed or result by implication." In *Spooner v. Askew*, 345 So.2d 1055 (Fla. 1976), the Florida Supreme Court found that where a general repealing clause was utilized but the enactment's title neglected to mention the repeal, then the repealing clause had no effect. The current bill does mention repeal in its title; however, it appears that the better course of action may be to specifically, rather than generally, repeal provisions.

According to Bonni S. Jensen, Esq., Counsel to the City of West Palm Beach, the reason that previous provisions have not been specifically repealed is because the City has pension beneficiaries who are currently receiving benefits pursuant to various provisions contained in the older acts which have not been brought forward into a codification.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esq.

Joan Highsmith-Smith