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DATE: February 8, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 975

RELATING TO: West Palm Beach Firefighters Pension

SPONSOR(S): Representative Atwater

TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC)
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
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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 Firefighter 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 Sponsor intends to offer a strike all amendment. **(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 Chapter 175, F.S., was originally enacted in 1939 to provide an incentive—access to premium tax revenues—to Florida cities to encourage them to establish retirement plans for firefighters.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 chapters 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 Firefighter 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 five times since; chs. 95-476, 96-527, 97-327, 99-456, and 2000-409, Laws of Florida.

C. EFFECT OF PROPOSED CHANGES:

This bill amends ch 24981, Laws of Florida, and chs. 95-476, 96-527, 97-327, 99-456, and 2000-409, Laws of Florida.

The bill provides grammatical and clarifying language changes and accomplishes the following substantive changes:

- Section (1)(a)16. is amended to provide that the definition of "salary" is changed to list all of the components of salary that are included in the Plan.
- Section (3)(b), is amended to indicate that employee contributions increased on October 1, 2001, to pay for firefighter benefit changes as provided for in the collective bargaining agreement. The section also provides for a contribution increase of one percent on October 1, 2002, and again on October 1, 2003.
- Section (4), is amended to provide for the deposit of employee contributions immediately in accordance with State law.
- Section (5)(a)1., is amended to provide that the Normal Retirement age is expanded to include retirement at 25 years of service regardless of age.
- Section (5)(c), is amended to provide that the early retirement reduction is set at three percent.
- Section (5)(d)3., is amended to clarify that the Supplemental Pension Distribution is payable to a retiree's estate only for the year following death.
- Section (5)(j)2., is amended to clarify that each member receives a pro rata share of the ch. 175, F.S. funds.
- Section (5)(j)6., is amended to permit the payment of share account benefits in annuity format.
- Section (5)(j)7, is amended to clarify who the share balance is paid to in the event of the death of the member when there is no beneficiary.
- Section (5)(k)2.b., is amended to provide for the use of the Fund's Investment Monitor report for the payment of interest to DROP accounts.
- Section (6)(f), is amended to clarify that certain exclusions from disability benefit are applicable only to disability retirements.
- Section (6)(g)2. and 3., is amended to change the word "nonmarried" to "unmarried."
- Section (6)(h), is amended to provide the Board with discretion not to require re-examination if a disabled firefighter loses his state firefighter certification.
- Section (11), is amended to change a statutory reference to reflect a new section.
- Section (16), is amended to delete the provision for monthly payments of small income benefits and to rely only on the single sum value.
- Section (22)(b)2., 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 (24), is amended to permit firefighters to purchase firefighter service rendered in this or another municipal or state fire department or district.

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.
 - (1)(a) Provides definitions.
 - (1)(b) Provides for clarification of number and gender.
 - (1)(c) 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; Board membership; that Board members shall not receive compensation but may be reimbursed for expenses and per diem.
- (2) Provides authority to contract for the services of a pension administrator, legal counsel; an actuary; a certified public accountant, and other professional, technical, and other service providers.
- (3) Provides for sources of revenue.
- (4) Provides for Fund custodian, purpose and duties.
- (5) Provides for service pension; vested deferred retirement; early retirement; supplemental pension distribution; payment of benefits; normal form of retirement income; optional forms of retirement income; lifetime option; joint survivor option; designation of beneficiary; refund of contributions; ch. 175, F.S., share accounts; and Deferred Retirement Option Plan (DROP).
- (6) Provides for disability pensions, medical examinations, and return to work.
- (7) Provides for beneficiary benefits.
- (8) Provides that an acceptance of pension is not a bar to subsequent work.
- (9) Provides that a pension is not assignable or subject to garnishment.
- (10) Provides for transfer of funds from the predecessor fund to the present Fund.
- (11) Provides for the applicability of ordinances applicable to ch 175, F.S.; and provides that no proposed change or amendment to this act shall be adopted without approval required by s. 175.351(2), F.S.
- (12) Provides that existing benefits continue.
- (13) Provides that pension benefits shall not be offset by workers' compensation benefits payable on account of the disability or death of a member except to the extent that the workers' compensation and pension benefits exceed the member's monthly average wage.
- (14) Provides for actuarial valuations.
- (15) Provides for review procedures.
- (16) Provides for Lump sum payment of small retirement income.
- (17) Provides for pickup of employee contributions.
- (18) Provides for limitations in accordance with the Internal Revenue Code.
- (19) Provides for required distributions.
- (20) Provides miscellaneous requirements.
- (21) Provides for rollover distributions.
- (22) Provides for rollovers from qualified plans.
- (23) Provides for actuarial assumptions.
- (24) Provides for prior firefighter service.

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 Jensen, Esq., Counsel to 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:

The Sponsor intends to offer an amendment that provides corrections to the initial draft of this bill and provides the following substantive changes:

- Section (1)(a)16 is amended to change the names of the components of compensation that are included in the pension to reflect common names rather than payroll names.
- Section (1)(d) is amended to indicate that if there is a vacancy on the board of trustees within 90 days of the term expiration then the person is elected for the new term.
- Section (3)(b) is amended to amend the beginning date of increased contributions from October 1, 2001, to the first full payroll period after January 1, 2002; and adds language to specify that increased contributions are to be used for eligibility for post retirement health insurance benefits.
- Section (5)(a)1 is amended to set the effective date of January 20, 2002 for 25 years of service regardless of age of Normal Retirement Benefit.
- Section (5)(a) is amended to clarify that the provision applies to the entire subparagraph (5)(a).
- Section (5)(j)6 is amended to change the language regarding distributions to mirror the language used for DROP account distributions.
- Section (18)(a) is amended to change the dollar amount to reflect current Internal Revenue Code limits.
- Section (22)(a) is amended to allow the Plan to receive rollovers from Internal Revenue Code s. 457 plans.
- Section (22)(b)1 is amended to eliminate options for disbursements and to require transferred amounts to remain in DROP or Share Accounts.
- Section (22)(b)2 is amended to eliminate references to the election deleted in s. (22)(b)1.
- Section (22)(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.
- Section (24)(a) is amended to remove language which restricted interim crediting of purchased past service credits.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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