

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 1325 New Smyrna Beach Police Officers and Firefighters Pension Plans
SPONSOR(S): Kosmos
TIED BILLS: **IDEN./SIM. BILLS:** 2318

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Affairs (Sub)</u>	_____	<u>Nelson</u>	<u>Cutchins</u>
2) <u>Local Government & Veterans' Affairs</u>	_____	_____	_____
3) <u>State Administration</u>	_____	_____	_____
4) <u>Finance & Tax</u>	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Currently, s. 175.101, F.S., authorizes a state excise tax on property insurance premiums. Section 175.351, F.S., provides that if a municipality has its own pension plan for firefighters (which in the opinion of the Division meets the minimum benefits and minimum standards set forth in ch.175, F.S.), the board of trustees of the pension plan, as approved by a majority of firefighters of the municipality, may:

- place the income from the premium tax in such pension plan for the sole and exclusive use of its firefighters, where it shall become an integral part of that pension plan and shall be used to pay extra benefits to the firefighters included in that pension plan; or
 - place the income from the premium tax in a separate supplemental plan to pay extra benefits to firefighters.
- This provision also states that the premium tax provided by ch. 175, F.S., shall in all cases be used in its entirety to provide extra benefits to firefighters.

Local law plans in effect on October 1, 1998, are required to comply with the minimum benefit provisions of ch. 175, F.S., only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 175.162(2)(a), F.S. When a plan is in compliance with minimum benefit provisions, as subsequent additional premium tax revenues become available, they are to be used to provide extra benefits. For the purpose of this chapter, "additional premium tax revenues" means revenues received by a municipality that exceed the amount received for calendar year 1997, and the term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality. Chapter 185, F.S., contains similar provisions relating to the use of the premium tax to fund extra benefits for police officers.

This bill authorizes the City of New Smyrna Beach to "prefund" extra pension benefits to firefighters and police officers and to be reimbursed for such prefunding from future premium tax receipts. Similar legislation (HB 1245) was vetoed by the Governor last year. (See, COMMENTS section of this analysis).

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to create such an exemption.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a “no” above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Background

State Constitution

Article X, s. 14, of the State Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.

Chapter 112, F.S.

Part VII, ch. 112, F. S., the “Florida Protection of Public Employee Retirement Benefits Act,” was adopted by the Legislature to implement the provisions of art. X, s. 14 of the State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. The act is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

Section 112.63, F.S., provides that no unit of local government shall agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the Division of Retirement, Department of Management Services. Such statement also is required to indicate whether the proposed changes are in compliance with art. X, s. 14 of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Section 112.67, F.S., prohibits special laws in conflict with the requirements of the act, pursuant to art. III, s. 11(a)(21) of the State Constitution¹.

Chapters 175 and 185, F.S.

Chapters 175 and 185, F. S., respectively, provide the statutory authority for municipal and special fire control district firefighter pensions, and municipal police pensions. These acts were established by the

¹ This provision in the constitution provides there shall be no special law pertaining to any subject when prohibited by general law passed by a three-fifths vote of the membership of each house. Such law may be amended or repealed by like vote.

Legislature to provide a “uniform retirement system” providing defined benefit plans for firefighters and police officers, and setting standards for operation and funding of these systems. Retirement systems or plans are to be managed, administered, operated and funded in such a manner as to maximize the protection of the retirement trust funds.

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 enacted ch. 185, F.S., which set up a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.

Pension plan funding comes from four sources: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “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 is assigned to the Division of Retirement of the Department of Management Services (DMS), but day-to-day operational control rests with local boards of trustees. Most Florida firefighters and municipal law enforcement officers participate in these plans.

The Premium Tax

Section 175.101, F.S.,² authorizes a state excise tax on property insurance premiums. Section 175.351, F.S., provides that if a municipality has its own pension plan for firefighters (which in the opinion of the Division meets the minimum benefits and minimum standards set forth in ch.175, F.S.), the board of trustees of the pension plan, as approved by a majority of firefighters of the municipality, may:

- place the income from the premium tax in such pension plan for the sole and exclusive use of its firefighters, where it shall become an integral part of that pension plan and shall be used to pay extra benefits to the firefighters included in that pension plan; or
- place the income from the premium tax in a separate supplemental plan to pay extra benefits to firefighters.

This provision also states that the premium tax provided by ch. 175, F.S., shall in all cases be used in its entirety to provide extra benefits to firefighters.

Local law plans in effect on October 1, 1998, are required to comply with the minimum benefit provisions of ch. 175, F.S., only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 175.162(2)(a), F.S.³ When a plan is in compliance with minimum benefit provisions, as subsequent additional premium tax revenues become available, they are to be used to provide extra benefits. For the purpose of this chapter, “additional premium tax revenues” means revenues received by a municipality that exceed the amount received for calendar year 1997, and the term “extra benefits” means benefits in addition to or greater than those provided to general employees of the municipality. Chapter 185, F.S., contains similar provisions relating to the use of the premium tax to fund extra benefits for police officers.

² Section 185.08, F.S., provides similar language.

³ This section provides that the amount of monthly retirement income payable to a full-time firefighter who retires on or after his or her normal retirement date shall be an amount equal to the number of his or her years of credited service multiplied by two percent of his or her average final compensation. If current state contributions are not adequate to fund additional benefits to meet the minimum requirements of ch. 175, F.S., only such incremental increases shall be required as state moneys are adequate to provide.

HB 1325

The City of New Smyrna Beach has indicated that it is proposing to increase the multiplier used to calculate retirement benefits for all active and future employees of its fire department from two percent to three percent for all years of service. This represents a 50 percent increase in an employee's pension benefit. For example, an employee with 30 years of service and an average final salary of \$50,000 would have a pension benefit of \$2,500 per month at a two percent multiplier. Changing the multiplier to three percent results in a monthly pension benefit of \$3,750. The actuarial costs to the city for this "extra benefit" would be approximately \$395,740 annually.

Over the past year, the city's contribution to the firefighters' pension plan has increased \$289,784 or 216 percent. The city has characterized this circumstance as "a significant additional financial burden." The plan's actuary has attributed this increase to the city providing salary increases to its firefighters in an amount greater than expected and interest earnings of the plan being less than expected. For the fiscal year ending on 9/30/2003, the city contributed \$249,221 to the plan; for the fiscal year ending 9/30/2004, it was required to contribute \$539,005. If the proposed benefit improvement is made, the city's total contribution to the plan will have increased in the amount of \$685,524 or 375 percent.

Likewise, the city is proposing to increase the multiplier for active and future employees of the police department to three percent for all years of service prior to October 1, 1996. The city's police officers currently have a three percent multiplier for service years subsequent to 1996, for which they pay an employee contribution of 8.1 percent of compensation. The actuarial cost to the city for this "extra benefit" is approximately \$105,000 annually. The combination of this extra benefit cost with the negative actuarial impact of the firefighters' plan for the past year increases the total city contribution to both plans by the amount of \$789,424. This would result in a total contribution of \$1,231,745 by the city to the police officers and firefighters for the year. According to the assistant city manager, "[to] place this burden on a city with a total general fund budget of approximately 19 million dollars is enormous."⁴ These proposed additional benefits are the subject of collective bargaining agreements between the city and the unions representing the firefighters and police officers, which are subject to funding availability.

This bill would authorize the City of New Smyrna Beach to "prefund" extra retirement benefits to firefighters and police officers and to be reimbursed for such prefunding from future premium tax receipts. It allows New Smyrna Beach to be reimbursed from future premium tax revenues to offset the city's costs for "prefunding" extra benefits. Such reimbursement costs would include both the city's contributions plus interest at a rate agreed to by the certified bargaining agent, where applicable, or a majority of the firefighters and/or police officers.

C. SECTION DIRECTORY:

Section 1. Authorizes the City of New Smyrna Beach to advance payment of any extra benefits enacted in the firefighters' pension plan until such time as the growth in the available additional premium tax revenues is sufficient to fund the costs of the extra benefits provided by the initial advance. At such time, all additional premium tax revenues in excess of the cost of the benefit improvements shall be credited against the city's required contributions until the funds credited to the city equal the funds advanced by the city to the plan with interest at a rate agreed to by the certified bargaining agent, where applicable, or a majority of firefighters in the pension plan.

Section 2. Allows the City of New Smyrna Beach to advance payment of any extra benefits enacted in the police officers' pension plan until such time as the growth in the available additional premium tax revenues is sufficient to fund the costs of the extra benefits provided by the initial advance. At such time, all additional premium tax revenues in excess of the cost of the benefit improvements shall be

⁴ John Hagood, Assistant City Manager for the City of New Smyrna Beach, memo of March 17, 2004.

credited against the city's required contributions until the funds credited to the city equal the funds advanced by the city to the plan with interest at a rate agreed to by the certified bargaining agent, where applicable, or a majority of the police officers in the pension plan.

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

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 4, 2003

WHERE? The *News-Journal*, a daily newspaper, published in Volusia County, Florida

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

According to the Economic Impact Statement, the estimated cost of administration, implementation and enforcement of the benefit improvements provided in this bill will be \$500,740 in FY 04-05 and \$500,740 in FY 05-06. The anticipated sources of funding are \$459,985 in local general fund revenues and \$40,755 in premium taxes over base for FY 04-05. In FY 05-06, those figures are estimated to be \$449,084 and \$51,656, respectively.

The Economic Impact Statement indicates that this bill will allow the City of New Smyrna Beach to prefund pension benefit improvements to its police officers and firefighters resulting in a 50 percent increase in their monthly pension payments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

House Rule 5.5(b) states that a local bill that provides an exemption from general law may not be placed on the Special Order Calendar in any section reserved for the expedited consideration of local bills. This bill appears to create such an exemption with regard to the premium tax provisions contained in chs. 175 and 185, F.S.

The Division of Retirement, Department of Management Services

The Division of Retirement has indicated proposed bill conflicts with the intent of legislative direction given in ch. 99-1, L.O.F., that the state premium tax revenue "shall in all cases be used in its entirety to provide extra benefits to firefighters, or to firefighters and police officers where included." The proposed local bill will allow the City of New Smyrna Beach to encumber future state premium tax revenues for the city's benefit instead of such future increases being used for the benefit of the firefighters and police officers. This is contrary to the manner in which every other city and district participating under chs. 175 and 185, F.S., is required to use the state premium tax moneys.

Similar legislation (HB 1245) was vetoed by the Governor last year. In his veto message the Governor stated, "...the bill authorizes the City of New Smyrna Beach to "pre-fund" extra benefits and be reimbursed from future premium tax receipts plus interest prior to the receipt of the premium tax receipts. I am reluctant to authorize a local government to redirect funds for extra benefits and encumber future premium tax revenues to pay interest on a local government's contributions for extra benefits."

The Actuarial Statement of Fiscal Soundness provided by the Division provides the following:

- a. This bill neither conflicts with the requirements of art. X, s. 14 of the State Constitution, nor with the provisions of ch. 112, part VII, F.S.
- b. The bill authorizes the City of New Smyrna Beach to "prefund" extra benefits to firefighters and police officers and to be reimbursed for such prefunding from future premium tax receipts.
- c. There are no actuarial or unfounded benefit issues associated with this bill.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Sponsor has indicated that she intends to submit an amendment which makes the act contingent on referendum.