

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families

This bill may allow for enhanced pension fund benefits for members and surviving spouses.

B. EFFECT OF PROPOSED CHANGES:

Section 14, Art. X, State Constitution/Public Retirement and Pensions

Section 14, art. X 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.

Part VII, Ch. 112, F.S./Actuarial Soundness of Retirement Systems

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 s. 14, art. X, 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 s. 14, art. X, State Constitution, and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Chapter 175, F.S./Firefighter Pensions

Chapter 175, F. S., provides the statutory authority for firefighter pensions. This act was established by the Legislature to provide a uniform retirement system for the benefit of firefighters. Retirement systems or plans are to be managed, administered, operated and funded in such a manner as to maximize the protection of the firefighters' retirement trust funds.

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 ch. 175, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division of Retirement of the Department of Management Services, but day-to-day operational control rests with local boards of trustees. Most Florida firefighters participate in these plans.

HB 777

The City of West Palm Beach provides retirement benefits to its firefighters through a local pension plan pursuant to the provisions of ch. 175, F.S. The West Palm Beach Firefighters Pension Fund was created as part of ch. 24981 (1947), L.O.F., the reestablishment charter for the City of West Palm Beach. This bill amends s. 17 of ch. 24981, L.O.F., as amended.

The pension plan is being modified as the result of a collective bargaining agreement between the city and the West Palm Beach Firefighters, Local 727 of the International Association of Firefighters. The bill revises provisions relating to the plan as follows:

Section 17 (1)(a)7.: Amends the definition of "final average salary" to provide a clarification regarding "replacement salary." Current law provides that no salary amounts paid prior to October 1, 2000,¹ are used in the calculation of "final average salary." Employees whose final average salary would normally include amounts paid prior to October 1, 2000, are required to use salary amounts paid during the period from October 1, 2000, through September 30, 2001, to replace any salary amounts paid prior to October 1, 2000.

The bill provides that the replacement salary may range between two and 104 weeks, but may only be enough salary as is sufficient to replace the salary paid prior to October 1, 2000. The replacement salary amounts will be prorated based upon annual salary.

Section 17 (4)(b): Adds paragraphs 6-8 to include real estate investments up to 15 percent of the fund's market value, derivative investments and futures up to 10 percent of the fund's market value and any investments permitted by ss. 112.661 and 215.47(1)-(8), (10), and (16), F.S., up to the limits stated therein. Also, adds paragraph 9 to allow up to 20 percent foreign investment.² That paragraph also adds a provision stating that, at a minimum, 80 percent of bonds purchased for the fund portfolio must hold a ranking in one of the four highest classifications of a major rating service.

Section 17 (5)(a)2.b. (II): Amends the BackDROP (Backwards Deferred Retirement Option Plan)³ conversion to delete an incorrect provision which would have allowed members to select zero years of BackDROP participation.

Section 17(5)(g)2.b. : Provides a grammatical correction.

Section 17(5)(k)3.f.: Provides grammatical corrections.

Section 17(5)(l)1.: Adds paragraph f. to clarify that any member who terminates employment by any means, including death, prior to attaining age 53 with 18 or more years of service or age 58 with 13 or more years of service or by acquiring 26 years of service is not eligible to participate in the BackDROP.

Section 17(5)(l)2.: Amends paragraph a. to allow members to participate in the BackDROP for between 36 to 60 months instead of whole years.

Section 17(5)(l)4.a.: Provides for loans from Backdrop to members after termination of employment, provided that the member has participated in Backdrop for a period of at least 12

¹ October 1, 2000, is the effective date of a "significant" salary increase.

² See, Comments section.

³ Last year, HB 1633 replaced the DROP (Deferred Retirement Option Program) benefit with a BackDROP benefit. Under the DROP program, a member "retires" from the pension plan, and continues to work while pension benefits are accounted for in an individual account within the pension plan. Under BackDROP, a member does not retire from the plan until they are ready to terminate employment. The member makes contributions for the entire term of their employment. The BackDROP account is created by a mathematical calculation at the time of retirement. The member's benefit is credited with 8.25 percent interest, compounded annually, less administrative expenses.

months. Loans may only be made from a member's account, and may be for up to 50 percent of the account balance. The minimum amount of a loan is \$5,000 and the maximum amount is \$50,000. A loan must be for at least one year, but no longer than five years. A participant may not have more than one loan at a time. The interest rate for the loans is equal to the lowest prime rate published by the Wall Street Journal on the last day of each calendar quarter preceding the date of the loan application. Provisions for loan default are provided, as are other miscellaneous provisions regarding the loans including a provision which provides that a member's spouse must consent in writing to the loan. After-tax contributions are allowable to the BackDROP.

Section 17(7)(b)1.: Amends paragraphs a and b to provide that a surviving spouse will receive the greater of 66 2/3 percent of the member's highest 12 months' salary or top step firefighter pay, whichever is greater, or the surviving spouse's share of the member's accrued benefit.

C. SECTION DIRECTORY:

Section 1: Amends s. 17 of ch. 24981 (1947), L.O.F., as amended by chs. 2002-360, 2003-347 and 2004-462, L.O.F.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 6, 2004

WHERE? *The Palm Beach Post*, a newspaper published in Palm Beach County.

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

See, Drafting Issues or Other Comments, below.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

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 may create an exemption to s. 175.071, F.S., as noted on comments provided by the Division of Retirement:

The amendment in paragraph 9 will place the plan in “non-compliance” with the statutory limitation found in s. 175.071, F.S., limiting foreign investments to 10 percent and, therefore, jeopardize future state premium tax distributions. The provisions found in s. 112.661(5), F.S., provide that, “[u]nless otherwise authorized by law or ordinance, the investment of the assets of any local retirement system or plan covered by this part shall be subject to the limitations and conditions set forth in s. 215.47(1)-(8), (10), and (16).” This section provides that local retirement plans whose investment provisions are not provided in the law or by local ordinance shall be bound by the investment parameters established in s. 215.47, F.S. However, plans participating under chs. 175 and 185, F.S., have investment parameters that are prescribed by law (See, ss. 175.071 and 185.06, F.S.) and many have adopted local ordinance provisions that have expanded their board’s investment authority beyond that found in s. 215.47, F.S. The only restriction found in ss. 175.071 and 185.06, F.S., that may not be amended by local ordinance is the 10 percent restriction on foreign investments; otherwise, a Chapter 175 or 185 plan may provide the board with blanket investment authority. Therefore, to imply that s. 112.661(5) is applicable to Chapters 175 and 185 plans would serve to negate the statutory provisions found in ss. 175.071 and 185.06, F.S., providing cities the authority to establish their own investment parameters, and would expand from 10 percent to 20 percent the Legislative restriction that was placed on investments for Chapters 175 and 185 plans.

Other Comments

The Actuarial Statement of Fiscal Soundness prepared by the Department of Management Services provides:

1. This bill affects neither the Florida Retirement System nor the System’s Trust Fund.
2. The requirements of s. 14, art. X of the State Constitution and the provisions of part VII, ch.112, F. S., are satisfied.
3. Explanation: revises definition of “final average salary”; provisions regarding the permissible investments; provisions regarding the BackDROP, and loans therefrom; and clarifies the benefits payable to the surviving spouse of a member who dies in the line-of-duty.
4. Fiscal Note: We agree with the plan actuary’s 11/16/04 impact statement that the bill’s effect on contribution requirements is de minimus.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.