

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government

The bill permits increased terms of office, increases authorized investments in foreign securities, and authorizes additional signatories for drafts issued upon pension trust funds.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapters 175 and 185, F.S., establish a "uniform retirement system" providing defined benefit retirement plans for firefighters¹ and police officers² employed by Florida municipalities and special fire control districts, and standards for the operation and funding of these pension systems. Pension plan funding comes from a number of sources: net proceeds from an excise tax levied by upon property and casualty insurance companies (known as the "premium tax"); employee contributions; fines and forfeitures; mandatory payments of any extra amount needed to keep a plan solvent; gifts and bequests; and other revenues.³ To qualify for premium tax dollars, plans must meet requirements found in chs. 175 and 185, F.S.

There are two types of plans that operate under these statutes: Chapter Plans (plans that adopt the chapter by reference) and Local Law Plans (plans that are created by a special act, local ordinance or resolution that meet minimum standards set forth in ss. 175.351 and 185.35, F.S.). Responsibility for overseeing and monitoring these plans is assigned to the Department of Management Services' Division of Retirement, but day-to-day operational control rests with local boards of trustees.

The local boards consist of five members: two members who are legal residents of the municipality or special fire control district and are appointed by its legislative body; two members who are full-time firefighters or police officers elected by a majority of the active firefighters or police officers who are members of such plan; and a fifth member who is chosen by a majority of the other four members. Each member serves a two-year term, and may succeed himself or herself.⁴ The boards must meet at least quarterly.⁵

These boards of trustees have the power to: invest and reinvest the assets of pension funds in certain authorized investments,⁶ issue drafts, keep required records, retain a qualified independent consultant

¹ Pursuant to ss. 175.041(1) and (2), F.S., such firefighters must work for municipalities or special fire control districts that have a constituted fire department or authorized volunteer fire department which owns and uses equipment for fighting fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase.

² Pursuant to s. 185.03(1), F.S., such police officers must work for a regularly organized municipal police department which uses equipment in serviceable condition with a value exceeding \$500 for the prevention of crime and for the preservation of life and property.

³ Sections 175.091 and 185.07, F.S.

⁴ Sections 175.061(1), and 185.05(1), F.S.

⁵ Sections 175.061(3) and 185.05(3), F.S.

⁶ Sections 175.071(1) and 185.06(1), F.S., authorize the following investments and reinvestments: (1) time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund; (2) obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States; (3) bonds issued by the State of Israel; and (4) bonds, stocks or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.

at least once every three years, and employ legal counsel, independent actuaries and other advisors. Sections 175.071 and 185.06, F.S., provide investment standards for the boards to follow; however, those sections also allow a municipality or fire control district to vary from these constraints by means of a local ordinance, legislative act or resolution—except for a 10 percent restriction on investment in foreign securities.

Under ss. 175.071(1)(c) and 185.06(1)(c), F.S., pension fund drafts must be consecutively numbered and signed by the board chair and secretary, and state the purpose of the draft. This provision requires a board to maintain strict control and direction of all pension fund disbursements.

Effect of Proposed Changes

Section 1: Amends the s. 175.032(8)(a), F.S., definition of “firefighter” to include a specific reference to certified supervisory and command personnel. This new language is similar to that contained in the s. 185.02(11), F.S., definition of “police officer,” and serves to clarify that supervisory and command employees are covered by the firefighter pension plans. The current definition simply states that fire chiefs have the “option to participate... [in a] plan.”

This section also emulates language found in s. 185.02(11), F.S., to clarify that part-time and auxiliary employees are not included in these pension plans. Currently, there are several references to “full-time” firefighters in ch. 175, F.S., which contemplate full-time employment within the definition of “average final compensation”⁷ and with regard to “requirements for retirement.”⁸

Section 2: Amends s. 175.061(1)(a), F.S., to allow for the extension (by municipal ordinance, special act of the legislature, or resolution of the governing body of a special fire control district) of the terms of office for firefighters’ pension board members from the current two years to four years, and specifies that the terms of office shall be the same for all board members. This language will enable board members with conceivably long learning curves and complex duties to continue serving in their positions without seeking election, selection or appointment every two years.

Section 3: Amends s. 175.071(1) F.S., pertaining to the general powers and duties of firefighters’ pension board members, to add specific references to certain sections of the statutes with regard to fiduciary standards and the Code of Ethics for Public Officers and Employees. Board members currently are subject to these standards under Florida law, so this language merely serves to reiterate that fact.

Additionally, this section amends s. 175.071(1)(b), F.S., to expand a board’s authority to invest a plan’s assets in foreign securities from 10 to 20 percent. Ostensibly, the current limitation was set by the Legislature in order to establish parameters for local boards with potentially minimal investment expertise with regard to higher risk foreign ventures.

This section also amends s. 175.071(1)(c), F.S., to allow a board the ability to designate two individuals (other than the currently-required chair and secretary) who are subject to the same fiduciary standards as board members to sign trust fund drafts. The sole and exclusive administration of, and the responsibility for, the proper operation of the pension trust funds are vested in the board. This language will allow a board flexibility with regard to signatures on drafts while providing a protective fiduciary requirement.

Section 4: Amends s. 185.05(1)(a), F.S., to allow for the extension (by municipal ordinance or special act off the Legislature) of the terms of office for police officers’ pension board members from the current two years to four years, and specifies that the terms of office shall be the same for all board members. As in Section 3 of the bill, this language will enable board members with conceivably long learning

⁷ Section 175.032(1)(a), F.S.

⁸ Section 175.162(2)(a), F.S.

curves and complex duties to continue serving in their positions without seeking election, selection or appointment every two years.

Section 5: Amends s. 185.06(1), F.S., pertaining to the general powers and duties of police officers' pension board members to add specific references to certain sections of the statutes with regard to fiduciary standards and the Code of Ethics for Public Officers and Employees. Board members currently are subject to these standards under Florida law, so this language merely serves to reiterate that fact.

Additionally, this section amends s. 185.061(1)(b), F.S., to expand a board's authority to invest a plan's assets in foreign securities from 10 to 20 percent. As was noted in Section 3, above, this limitation ostensibly was set by the Legislature in order to establish parameters for local boards with potentially minimal investment expertise with regard to higher risk foreign ventures.

It also amends s. 185.06(1)(c), F.S., to allow a board the ability to designate two individuals (other than the currently-required chair and secretary), who are subject to the same fiduciary standards as board members, to sign trust fund drafts. The sole and exclusive administration of, and the responsibility for, the proper operation of the pension trust funds are vested in the board. This language will allow a board flexibility with regard to signatures on drafts while providing a protective fiduciary requirement.

Section 6: Provides that if any provision of the act or its application is held invalid, such invalidity does not affect other provisions or applications.

Section 7: Provides that the act shall take effect upon becoming law.

C. SECTION DIRECTORY:

Section 1: Amends the s. 175.032(8)(a), F.S., definition of "firefighter."

Section 2: Amends s. 175.061(1)(a) F.S., to allow for extending board member terms of office.

Section 3: Amends s.175.071(1), F.S., to add references to statutory fiduciary standards and the Code of Ethics, expand a board's authority to invest in foreign securities, and allow for the designation of additional signatories.

Section 4: Amends s. 185.05(1)(a), F.S., to allow for extending board member terms of office.

Section 5: Amends s. 185.06(1), F.S., to add references to statutory fiduciary standards and the Code of Ethics, expand a board's authority to invest in foreign securities, and allow for the designation of additional signatories.

Section 6: Provides a severability clause.

Section 7: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The expanded investment authority of the pension boards may positively impact the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

While Section 1 of the bill amends s. 175.032(8)(a), F.S., to refer to the supervision, training, guidance and management of auxiliary firefighters and specifically excludes "auxiliary" firefighters from the definition of firefighter, this term is not defined or otherwise used in that chapter. The s. 185.02(11), F.S., definition of "police officer" makes reference to a definition of "auxiliary police officer" which is contained in s. 943.10(8), F.S.

Sections 3 and 5 allow for a board to designate two additional individuals who are subject to the same fiduciary standards as board members to sign trust fund drafts, but do not provide additional criteria for the selection of these individuals.

Other Comments

Actuarial Statement of Fiscal Soundness:

The Actuarial Statement of Fiscal Soundness for HB 3 provided by the Division of Retirement⁹ provides the following:

⁹ Charles Slavin, Enrolled Actuary, #05-1591, January 3, 2007.

- a. This bill affects neither the Florida Retirement System nor the System's Trust Fund.
- b. This bill is neither affected by the requirements of s. 14, art. X, of the State Constitution nor by the provisions of part VII of ch. 112, F.S.
- c. Explanation: N/A.
- d. Fiscal Note: None. There are no actuarial or benefit issues associated with this bill.

D. STATEMENT OF THE SPONSOR:

This bill will put the police and fire pension funds across the state of Florida on an equal footing with the members of the FL Retirement System.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES