

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Firefighter Pension Plans/Ch. 175, F.S.

Chapter 175, F.S., establishes a “uniform retirement system” providing defined benefit retirement plans for firefighters¹ 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 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.² To qualify for premium tax dollars, plans must meet requirements found in ch. 175, 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 s. 175.351, 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.

City of Orlando’s Firefighter Pension Fund

Plan History and Description

A 1945 special act of the Legislature created the authority for the City of Orlando’s Firefighter Pension Fund. Chapter 175, F.S., defines standards for the organizational, operational and actuarial structure of the plan.

There have been numerous revisions to the special act, including amendments that have reduced the retirement age and increased maximum pension benefits. The original mandatory retirement age was 60 with a maximum monthly pension benefit of \$125. Currently, normal retirement can be at any age with a minimum of 20 years continuous service.

Retirees today receive a normal benefit of 60 percent (three percent per year of service) of their average monthly salary for their last three years of service. An additional four percent of average monthly salary (times credited service) is available to retirees with 21-25 years of continuous service. The maximum retirement benefit for 25 years of credited service is 80 percent. There is no Social Security “carve out” provision.

Additionally, today’s plan provides a spousal benefit and a cost of living adjustment (COLA). There is no actuarial adjustment to a retiree’s benefit for the 75 percent spousal benefit. The triennial five percent COLA, which was established in September 1988 (for retirements thereafter), ceases when a retiree reaches 65. For all members retiring after October 1, 2000, the COLA was replaced with an enhanced structure that provides for triennial increases of five percent starting three years after retirement for all retirees with 20 or more years of active service.

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 Section 175.091, F.S.

In October 2000, a Deferred Retirement Option Provision (DROP) was incorporated as an enhanced benefit for participants. The DROP allows any member who has elected to participate to receive a lump sum payment for a portion of their accumulated benefit at the time that they terminate employment. To be eligible, the member must have completed at least 20 years of service, and meet various other criteria. An employee may elect to forward DROP for up to 60 months or back DROP for up to 36 months. Forward DROP participants are subject to certain employment restrictions which modify other benefits, such as reduced ability to claim a disability pension, less vacation accruals, etc.

Plan Administration

The City of Orlando's Firefighter Pension Fund is a single employer defined benefit plan covering all full-time city firefighters. Administration and responsibility for the plan is vested with the board of trustees. Chapter 175, F.S., requires that the board be comprised of five trustees serving concurrent two-year terms. By majority vote, trustees elect from among themselves a chairman, vice-chairman and secretary. Composition of the board is specified in ch. 175, F.S., as follows:

- two city residents appointed by the city council;
- two city firefighters elected by a majority of the actively employed plan participants; and,
- one member chosen by a majority of the other four members and ministerially appointed by the city council.

Three individuals serve the board in staff positions, primarily as a function of their normal position with the city. Included in this group are the Chief Financial Officer, City Treasurer and Pension Coordinator. Funding of the latter position is shared with the Police Pension Fund and General Employees' Defined Benefit Pension Fund. The board retains an outside attorney for primary legal counsel, and relies on the City Office of Legal Affairs for additional legal support. The board has a fiduciary responsibility to the plan and its participants and, as such, must exercise prudent judgment in its oversight and administration of the trust fund.

The board meets at least quarterly with its Performance Measurement Consultant to review the performance of each manager, asset class and the fund investments in aggregate. When necessary, the Board directs the Consultant to conduct an asset allocation study (typically every three to five years) and reallocations of assets are implemented, if appropriate.

The board reviews its asset allocation model on an annual basis. The board also evaluates disability retirement applications and conducts public hearings to determine if a permanent disability exists, if the disability is a line of duty or non-line of duty disability, and whether the disability prohibits the participant from performing the necessary duties of the position within certain parameters and conditions of the plan.

Additionally, the board employs an enrolled Actuarial Consultant to perform an annual valuation of the plan to determine the funded status, current funding requirements and to monitor trends related to assumptions, expectations and actual results. The Consultant and the Actuary services are reviewed periodically and requests for proposals issued at least every five years.

Beyond providing staff support, the city generally provides the following services on behalf of the board: pre-retirement counseling; timely processing of benefit claims; monthly processing and distribution of benefit checks; and accounting and financial reporting.³

Effect of Proposed Changes

³ City of Orlando, Florida Firefighter Pension Fund, Comprehensive Annual Financial Report for the years ended September 30, 2006 and 2005.

HB 1515 amends the special law relating to the City of Orlando Firefighter Pension Fund in Orange County.

Section 1 adds language which provides that, for purposes of the act, the terms "legal guardian" or "guardians of said issue" will include a court-appointed guardian of the property of said issue or a trustee of a trust of which said issue is a beneficiary. This language will assist in protecting the interests and facilitating payments to surviving children of firefighter pension fund members.

Section 2 amends language with regard to a permanent disability pensions. It provides that any active member of the fire department who becomes permanently and totally disabled in line of duty is entitled to a pension of a monthly sum of 80 percent of the member's average monthly salary. A member who has completed 40 years of credited service will receive an additional two percent for each year of credited service in excess of 40 years of credited service not to exceed 100 percent. According to the attorney for the pension plan, there is no fiscal associated with this proposal because the "80 percent" provision is equivalent to the language being deleted. This language⁴ bases the pension on years of service, thus preventing the disability payments from being tax exempt.⁵ This language also is included in Section 6 of Orlando Ordinance 0801141004 (enacted January 1, 2008), which Section 4 of this bill proposes to ratify, so its specific inclusion in this bill may not be essential.

In Section 3, the bill adds new language with regard to cost of living increases which provides that the beneficiary of a deceased firefighter who was eligible for cost of living increases also will receive these increases. The pension plan's attorney has indicated that this language reflects a long-term convention with regard to beneficiaries, but that the plan contains no authority for this practice.

Section 4 of the bill proposes to ratify City of Orlando Ordinance 33723 (enacted April 16, 2001) relating to tax qualification of the plan under the Internal Revenue Code, and City of Orlando Ordinance 33874, (enacted June 18, 2001) and City of Orlando Ordinance 0801141004 (enacted January 1, 2008) relating to minimum benefits and minimum standards. The bill provides that these ordinances are approved, ratified, validated, and confirmed, and are to be considered part of ch. 23444 L.O.F., 1945, as amended.⁶

Pursuant to ch. 2000-448, L.O.F., the legislative body of the City of Orlando is authorized to amend the pension plan to a limited extent:

Section 27. Tax Qualification and Statutory Minimums--

(a) The legislative body of the City of Orlando is authorized to amend the pension plan to the limited extent necessary to obtain tax qualification of the plan under the Internal Revenue Code, but must obtain prior agreement of the members and their collective bargaining agent, if any, should such required amendments change any plan benefits.

(b) The legislative body of the City of Orlando is authorized to amend the pension plan to the limited extent necessary to comply with the minimum standards and benefits levels required by

⁴ Presently, the act provides that a member is entitled to an amount equivalent to that sum of money which the member would have been entitled to elect as a monthly pension for 25 years of service. The mandatory minimum requirements contained in s. 175.191, F.S., provide that a firefighter who becomes totally and permanently disabled in the line of duty, regardless of length of service, may retire from the service of the municipality with a monthly benefit of not less than 42 percent of his or her average monthly salary at the time of disability.

⁵ March 17, 2008, telephone conversation with James Loper, attorney for the City of Orlando Firefighter Pension Fund.

⁶ As a general rule, the legislature may ratify, validate or confirm through a curative act anything that it could have authorized initially if the subsequent statute or other measure is itself a proper exercise of legislative power under the State Constitution. The Florida Supreme Court has upheld a variety of curative acts of the legislature, including curative acts ratifying or validating special assessments, certain tax levies, municipal contracts, county contracts, and bond issuances. However, the court has also invalidated a general law intended to ratify unspecified actions of municipalities and their officers performed under special and local laws. In support of its conclusion, the court stated that "[The statute] is too general to be effective. A curative Act contemplates that the legislature has been advised of the nature of the matters done and performed which it purports to validate, ratify or confirm and any law as general as the aforesaid section which attempts to validate any and all acts and doings of a class of officers or public corporations is too general to be effective as a valid exercise of legislative power." See, Charlotte Harbor & Ny. Co. v. Welles, 260 U.S. 8 (1922); State v. Sarasota County, 155 So. 2d 543 (Fla. 1963); State v. Haines City, 137 Fla. 616, 188 So. 831 (1939); Dover Drainage Dist. v. Pancoast, 102 Fla. 267, 135 So. 518 (1931); City of Winter Haven v. A. M. Klemm & Son, 132 Fla. 334, 181 So. 153 (1938), reh'g denied, 133 Fla. 525, 182 So. 841 (1938); Certain Lots Upon Which Taxes are Delinquent v. Town of Monticello, 31 So.2d 905 (Fla. 1947); and Sullivan v. Volusia County Canvassing Bd., 679 So.2d 1206 (Fla. 5th DCA 1996) (citing Certain Lots).

Chapter 175, Florida Statutes, in order to allow the plan to receive funds from the Police and Firefighters' Premium Tax Trust Fund, but must obtain prior agreement of the members and their collective bargaining agent, if any, should such required amendments change any plan benefits. (Emphasis added.)

Thus, while the city may amend the pension plan, it is specifically restricted in its ability to do so.

City of Orlando Ordinance 33723 amended the pension plan in response to a favorable Determination Letter from the Internal Revenue Service dated February 26, 2001, which is "subject to adoption of certain amendments to the plan..." A review of the proposed amendments reflects the ordinance at issue. Accordingly, it does not appear that the city exceeded its authority by its enactment. The ordinance adds a new Section 28 entitled "Termination and Discontinuance of the Plan,"⁷ a new Section 29 entitled "Mandatory Commencement Requirements,"⁸ and a new Section 30 entitled "Exclusive Benefit of Employees."⁹

City of Orlando Ordinance 33874 has introductory language which states that the attorney who represents the pension board has opined that the changes included in the ordinance are necessary in order for the plan to comply with the minimum standards and benefits levels required by ch. 175, F.S. This ordinance amends the firefighter pension plan with regard to rehired employees, updates cites and definitions; authorizes the board to adopt certain rules; provides additional guidelines for computing average monthly salary; provides that a surviving spouse will not lose benefits upon remarriage; and provides for 100 percent return of payments to unvested employees who separate from service.

City of Orlando Ordinance 0801141004 also provides that the provisions of the ordinance are necessary in order for the pension plan to comply with the minimum benefits and standards required by ch. 175, F.S. The ordinance deletes language regarding contributions during military service, and language which provides that no member will be entitled to a disability pension because of the aggravation of a pre-existing condition. It also updates and renumbers sections, and amends various provisions relating to Permanent Disability Pension/Not in Line of Duty; Pension for Death in Line of Duty; Permanent Disability Pension/In Line of Duty; Pension for Death Not in Line of Duty; Service Requirement for Voluntary Retirement; Refund of Member's Contributions; Benefits Payable Upon Death of Member; Military Service After Employment; Definitions; Beneficiaries; Pre-Separation Death; Optional Forms of Retirement Income; and the 10-Year Certain Guarantee.

The Division of Retirement has indicated that they previously received copies of both the above-referenced ordinances and impact statements (as required in s. 175.351(2), F.S.), and has opined that the Orlando City Council does not appear to have exceeded its authority by adopting the ordinances.¹⁰

In Section 5 of the bill, a new section incorporates provisions of federal and state law by reference. The bill provides that applicable mandatory provisions of federal and state laws include, but are not limited to, the following:

⁷ Section 28 provides that it is the intent of the city that the retirement plan be permanent and remain in effect for an indefinite period. However, in the event that the retirement plan is discontinued or terminated, all participants immediately will become fully vested in their benefits. The discontinuance or termination is required to be carried out in conformance with applicable statute, rule or regulation of the federal government, the State of Florida, or any duly constituted agency thereof having jurisdiction.

⁸ Section 29 provides that benefit payments will commence no later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70.5 or the calendar year in which the participant's employment with the city terminates. Benefits are to be paid over the lifetime of the participant or over the lifetimes of the participant and the designated beneficiary at the day of death. In the event benefit payments have begun to a participant and the participant dies before his entire interest has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distribution in effect prior to the death. In the event a participant dies prior to the commencement of distribution of benefits, the participant's entire benefit will be distributed within five years of death, or if payment is to be made to the participant's designated beneficiary, will commence within one year of death and will be distributed over the beneficiary's lifetime; or if payments are to be made to the participant's spouse, will commence at a date elected by the spouse which will be no later than the date the participant would have attained age 70.5 and will be distributed over a period not exceeding the spouse's lifetime.

⁹ Section 30 provides that all assets of the pension plan will be held and invested for the sole purpose of meeting the legitimate obligations of the pension plan and will be used for no other purposes other than for the exclusive benefit of members and beneficiaries prior to satisfaction of all pension plan obligations.

¹⁰ Patricia F. Shoemaker, Benefits Administrator, Municipal Police Officers' and Firefighters' Retirement Trust Funds, in an e-mail dated March 19, 2008.

- (a) Applicable provisions of the Internal Revenue Code, including, but not limited to, ss. 401(a)(17) and 415 of the Internal Revenue Code.
- (b) The Uniformed Services Employment and Reemployment Rights Act, ch. 43 of Title 38 U.S.C., relating to military service.
- (c) Chapter 61, F.S., including, but not limited to, income deduction orders.
- (d) Section 112.18, F.S., concerning presumptions for certain conditions relative to disability.
- (e) Section 112.181, F.S., relating to special provisions relative to certain communicable diseases.
- (f) Section 112.3173, F.S., relating to forfeiture of retirement benefits.
- (g) Part III of ch. 112, F.S., relating to the Code of Ethics for Public Officers and Employees.
- (h) Part VII of ch. 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act.
- (i) Section 112.661, F.S., relating to investment policies.
- (j) Chapter 119, F.S., relating to public records.
- (k) Section 175.071, F.S., relating to the general powers and duties of the board of trustees.
- (l) Section 175.195, F.S., relating to false, misleading or fraudulent statements made to obtain public retirement benefits.
- (m) Section 175.221, F.S., relating to lump-sum payment of small retirement income.
- (n) Section 175.231, F.S., relating to the presumption that certain diseases of firefighters were suffered in the line of duty.
- (o) Section 175.241, F.S., relating to exemption from tax and execution.
- (p) Subsections 215.47(1)-(8), (10), and (16), F.S., concerning authorized investments.
- (q) Section 286.0105, F.S., relating to notices of meetings and hearings.
- (r) Section 286.011, F.S., relating to public meetings.
- (s) Section 286.012, F.S., relating to voting requirements.

The bill also authorizes the board of trustees to adopt written rules setting forth the specifics of applicable mandatory provisions of federal and state laws. The consulting actuary has indicated that this section “avoids the need to amend the plan every time applicable mandatory federal or state law changes, which reduces administrative and legal costs.” See, III. COMMENTS, C. DRAFTING ISSUES OR OTHER COMMENTS, for a discussion of this provision.

Additionally, the bill also attempts to provide the pension fund board of trustees the authority to adopt changes to its special act by rule:

To the extent that any provisions of ch. 23444, L.O.F., 1945, as amended, conflict with ss. 112.60-112.67, F.S.,¹¹ or to the extent that any provision of ch. 23444, L.O.F., 1945, as amended, would result in the loss of tax exempt status of the City of Orlando Firefighter Pension Fund, the Board of Trustees is hereby delegated the authority to adopt by rule changes to ch.

¹¹ Part VII of ch. 112, F.S., ss. 112.60-112.67 is known as the “Florida Protection of Public Employee Retirement Benefits Act.” The act establishes minimum standards for the operation and funding of public employee retirement systems and plans. In implementing the provisions of s. 14, Art. X of the State Constitution, it is the intent of the act to prohibit the use of any procedure, methodology or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

23444, L.O.F., 1945, as amended, in order to comply with said laws, which rules shall have the force of law and shall be considered part of ch. 23444, L.O.F., 1945, as amended.

See, **III. COMMENTS**, C. DRAFTING ISSUES OR OTHER COMMENTS, for a discussion of this provision.

Section 6 provides that the act is an enabling act and is contingent upon contractual agreement through the collective bargaining process between the City of Orlando and the respective certified bargaining agent for firefighters employed by the City of Orlando.

Section 7 of the bill provides for retroactive applicability of certain sections of the bill, stating that section 3 will be effective retroactive to July 1, 1988; and sections 2 and 4 will be effective retroactive to January 1, 2008. Section 1 will take effect July 1, 2008. Section 3 contains language which regards an on-going practice relating to cost of living increases for survivors. Sections 2 and 4 contain language from previously-passed ordinances and the retroactive application to January 1, 2008, will provide for effectiveness on a calendar year basis.

SECTION DIRECTORY:

Section 1: Amends s. 2 of ch. 23444, L.O.F., 1945, as amended by chs. 73-573 and 2000-448, L.O.F. and by City of Orlando Ordinance 33874, enacted June 18, 2001, relating to included employees.

Section 2: Amends s. 9 of ch. 23444, L.O.F., 1945, as amended by City of Orlando Ordinance 0801141004, enacted January 1, 2008, relating to permanent disability pension.

Section 3: Adds subsection (2) to s. 19 of ch. 23444, L.O.F., 1945, as amended by ch. 2000-448, L.O.F., relating to cost of living increases.

Section 4: Provides for ratification of ordinances.

Section 5: Adds section 26 to ch. 23444, L.O.F., 1945, as amended, incorporating applicable federal and state laws by reference.

Section 6: Provides for collective bargaining.

Section 7: Provides effective dates for act.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? February 5, 2008

WHERE? The *Orlando Sentinel*, a daily newspaper of general circulation published in Orange 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 [x] No []

The Economic Impact Statement provides that section 1 of the bill allows for potential savings in avoiding court guardianship. Section 5 avoids the need to amend the plan every time applicable mandatory federal or state law changes, which reduces administrative and legal costs.

While the statement does not describe a fiscal impact, it provides that “[a]ny significant costs are expected to be covered by past and future Chapter 175 distributions.”

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

Section 14, Art. X of the State Constitution, provides:

State retirement systems benefit changes.—A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

The Consulting Actuary for the plan submitted an Actuarial Impact Statement, which states the following:

In our opinion, House Bill 1515 will have no additional actuarial impact over the costs disclosed in our December 20, 2007, actuarial impact statement for Chapter 99-1 minimum benefits.

B. RULE-MAKING AUTHORITY:

The bill attempts to give board of trustee members the ability to amend a special act by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

The Sponsor of the bill may want to consider deleting the first part of Section 5 of the bill, which creates a new Section 26 (1) of ch. 23444, L.O.F. While a special law may incorporate other laws by reference, this language attempts to include provisions which are not specified in the bill. Such language provides no guidance as to the parameters of what is being incorporated. Additionally, incorporating certain laws, and excluding others may lead to the assumption that a particular law is not relevant. Most of these provisions are state laws of general application that apply to all pension plans, and there is no reason to reference them in the special act. It would seem that incorporation by reference would only be constructive in this instance if there are federal provisions which are required to be restated in plan documents.¹² Also, this section authorizes the board of trustees to adopt written rules setting forth the specifics of applicable mandatory provisions of federal and state laws, an exercise which would appear to be unproductive.

Also, the language in the second portion of Section 5, which creates a new Section 26 (2), should be removed from the bill. Currently, the legislative body of the city has the ability to amend the plan by ordinance to the limited extent necessary to obtain the tax qualification of the plan, as well as to the extent necessary to comply with the ch. 175, F.S., minimum standards and benefits levels. If authority to amend a plan locally with regard to compliance with the Florida Protection of Public Employee

¹² The plan’s attorney, James B. Loper, indicated in an e-mail of March 24, 2008, that he is not aware of any federal laws that are required to be restated in a municipal firefighters’ pension plan.

Retirement Benefits Act is necessary, it would be appropriate to also afford the city that ability by ordinance. It would be improper to, in essence, delegate a local board the authority to amend the special act by rule.

D. STATEMENT OF THE SPONSOR

No Sponsor Statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

At its meeting on April 2, 2008, the Committee on Urban & Local Affairs adopted an amendment removing language which would have incorporated various laws by reference in the pension plan, as well as language that would have had the effect of authorizing the board to adopt changes to the special act by rule.