

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 5 Firefighters and Municipal Police Officers  
**SPONSOR(S):** Governmental Affairs Policy Committee, Hooper and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 538

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Governmental Affairs Policy Committee	11 Y, 0 N, As CS	Haug	Williamson
2)	Economic Development & Community Affairs Policy Council	14 Y, 0 N	Haug	Tinker
3)	Finance & Tax Council		Wilson	Langston
4)	Government Operations Appropriations Committee			
5)	Full Appropriations Council on General Government & Health Care			

### SUMMARY ANALYSIS

The Legislature found and declared that it was a proper and legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, and that in implementing the provisions of s. 14, Art. X of the Florida Constitution, such retirement systems or plans be managed, administered, operated and funded in such a way as to maximize the protection of firefighters' and police officers' retirement trust funds.

The bill revises provisions relating to firefighter and municipal police pensions for purposes of determining prior service credit and revises terms of office for members of both pension plan boards. Both boards are authorized to increase plan asset investments in foreign securities. The bill clarifies the boundaries of special fire control districts that have been annexed for purposes of assessments and the imposition of excise taxes on insurance premiums. Revisions are made to audit and compliance requirements and plan beneficiaries are authorized to change the designated joint annuitant or beneficiary up to two times without approval of the board. The bill clarifies plan termination provisions to provide that accrued benefits are nonforfeitable.

The bill also authorizes a municipality to receive another municipality's state premium tax (excise tax) moneys if there is an interlocal agreement in place regarding the provision of police protection services. The municipality receiving the police protection services may enact an ordinance levying an excise tax on casualty insurance premiums covering property within its corporate limits. Upon receipt of a copy of the ordinance and the interlocal agreement, the Division of Retirement of the Department of Management Services may distribute the excise taxes collected by the municipality receiving police protection services to the municipality that provided the services during the term of the interlocal agreement.

The 2009 Consensus Revenue Estimating Conference (REC) has not evaluated this bill. However, on April 6, 2007, the REC evaluated provisions in HB 769 identical to those in this bill authorizing a municipality to receive another municipality's state premium tax (excise tax) moneys if there is an interlocal agreement in place regarding the provision of police protection services. The FY 2009-10 impacts estimated at the time were - \$1.3 million for General Revenue and \$1.3 million for local governments. The net revenue impact for state and local governments combined was expected to be zero.

The act has an effective date of July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

In establishing chapters 175 and 185, F.S., the Legislature found and declared that it was a proper and legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, and that in implementing the provisions of s. 14, Art. X of the Florida Constitution, such retirement systems or plans be managed, administered, operated and funded in such a way as to maximize the protection of firefighters' and police officers' retirement trust funds.<sup>1</sup> The Municipal Police Officers' Retirement Trust Fund (PORTF) and the Firefighters' Pension Trust Fund (FPTF) are housed within the Division of Retirement in the Department of Management Services, which is the state agency responsible for administrative oversight of the funds, including monitoring for actuarial soundness.

The FPTF is funded through an excise tax on property insurance policies. Up to 1.85 percent of the gross amount of receipts on premiums for policies issued within the city boundary or the legally defined boundary of a special fire control district is collected by the Department of Revenue and transferred to the appropriate fund at the Division of Retirement. In 2007, premium tax distributions to cities and special fire control districts from the FPTF amounted to \$70 million.<sup>2</sup>

The PORTF is funded through an excise tax on casualty insurance policies. Up to .85 percent of the gross amount of receipts on premiums for policies issued within the city boundary is collected by the Department of Revenue and transferred to the appropriate fund at the Division of Retirement. In 2007, premium tax distributions to cities from the PORTF amounted to \$65.3 million.<sup>3</sup>

The premium excise taxes paid by insurance companies to fund both the FPTF and PORTF are allowed as a credit against the state insurance premium tax levied pursuant to s. 624.5092. Consequently, when a local government chooses to levy the excise tax, the state insurance premiums tax is reduced by like amount.

Additional revenues for both funds come from employee contributions through salary, employer contributions, fines for employees violating board rules and regulations, and other sources.

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<sup>1</sup> Sections 175.021 (1) and 185.01(1), F.S.

<sup>2</sup> [http://www.rol.frs.state.fl.us/forms/Fire\\_2007.pdf](http://www.rol.frs.state.fl.us/forms/Fire_2007.pdf)

<sup>3</sup> [http://www.rol.frs.state.fl.us/forms/Police\\_2007.pdf](http://www.rol.frs.state.fl.us/forms/Police_2007.pdf)

Two types of plans operate under chapters 175 and 185, F.S.: Chapter Plans which adopt the provisions of the appropriate chapter by reference, and Local Law Plans which are created by a special act, local ordinance, or resolution that must meet certain statutory minimum standards. As of August 22, 2008, 21 special fire control districts and 154 cities participate in the FPTF, and 178 cities participate in the PORTF. Of the 216 participating cities, 137 cities participate in both plans. Of the 353 plans, 20 are chapter plans and the rest are local law plans. The Division of Retirement reports that more than 47,000 active and retired police officers and firefighters are plan participants.<sup>4</sup>

On a day-to-day basis, the funds in participating cities and special fire control districts are operated by a governing board of trustees created at the local level and consisting of two residents, two police officers or firefighters selected through the active membership, and one member selected by the other four who is approved by the appropriate governing body pro forma. Board members serve 2-year terms and may succeed themselves in office. By majority vote, the trustees must elect a chair and a secretary, and must at least hold quarterly meetings.<sup>5</sup> The Division of Retirement has regulatory oversight over the boards.

General powers and duties of the boards of trustees include investing and reinvesting assets in:

- Annuities and life insurance contracts;
- Time or savings accounts of specified banks and financial institutions;
- Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States;
- Bonds issued by the State of Israel;
- Bonds (which must hold a rating in one of the three highest classifications by a major rating service), stocks, and other indebtedness issued or guaranteed by a United States corporation; and
- Foreign securities not to exceed 10 percent of plan assets.

### **Public Officers and Employees – Actuarial Soundness of Retirement Systems**

Chapter 112, Part VII, F.S., expresses the Legislature's intent that in implementing s. 14, Art. X of the Florida Constitution, relating to governmental retirement systems, such retirement systems or plans be managed, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits. The provisions of Part VII are applicable to any and all units, agencies, branches, departments, boards, and institutions of state, county, special district, and municipal governments that participate in, operate, or administer a retirement system or plan for public employees that are funded in whole or in part by public funds.

Section 112.661, F.S., establishes investment policies for local retirement systems or plans, and provides that written policies governing the investment of plan assets be structured to maximize financial return to the retirement system or plan consistent with the risk of the investments, and be structured to establish and maintain an appropriate diversification of the retirement system or plan's assets. Investment policies must describe investment objects and the level of prudence and ethical standards to be followed when carrying out investment activities, specify performance measures, list authorized investments, provide maturity and liquidity requirements, establish portfolio composition guidelines, and provide for appropriate diversification, as well as meet additional criteria.<sup>6</sup>

Section 112.656, F.S., requires that, in the discharge of duties with respect to a retirement plan, a fiduciary act solely for the purpose of providing plan participant benefits and defraying the

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<sup>4</sup> [http://www.rol.frs.state.fl.us/forms/Participating\\_Cities.pdf](http://www.rol.frs.state.fl.us/forms/Participating_Cities.pdf)

<sup>5</sup> Sections 175.061(1) and 185.05(1), F.S.

<sup>6</sup> 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.

administrative costs of administering the plan. Section 518.11, F.S., governs investments by fiduciaries and provides that a fiduciary has a duty to invest and manage assets the same as a prudent investor.

### **Detailed Analysis of Bill by Section**

Section 1 amends s. 175.032, F.S., to clarify the definition of "creditable service" or "credited service." It provides that a city or fire control district may allow the purchase of prior service as a firefighter for federal, other state, or county service if such prior service is recognized by the Division of State Fire Marshal as provided under chapter 633, F.S. The definition of "firefighter" is revised to include all certified supervisory and command personnel whose duties include the supervision, training, guidance and management responsibilities of full-time firefighters, and to exclude part-time or auxiliary firefighters.

Section 2 amends s. 175.061, F.S., to provide that the term of office for appointed or elected members of a firefighter pension plan board of trustees can be extended from 2 to 4 years through enactment of a city ordinance, a special act of the Legislature, or a resolution adopted by the governing body of a special fire control district. It specifies that the length of the terms of office must be the same for all members of the board. The bill also expands the ability of the pension plan board to withhold from retirement payments those funds necessary to pay premiums for accident, health, and long-term care insurance for retirees, their spouses and dependents, in accordance with a retiree request.

Section 3 amends s. 175.071, F.S., to provide that drafts upon the firefighters' pension trust fund can be signed by two individuals designated by the board of trustees who are subject to the same fiduciary standards as required for board members. The bill authorizes the board of trustees to invest up to 25 percent of plan assets in foreign securities. In addition, the board must identify and publicly report any direct or indirect holdings it may have in any scrutinized company as defined in s. 215.473, F.S.<sup>7</sup>

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<sup>7</sup> Section 215.437(1)(t), F.S., defines "scrutinized company" to mean any company that meets any of the following criteria:

1. The company has business operations that involve contracts with or provision of supplies or services to the government of Sudan, companies in which the government of Sudan has any direct or indirect equity share, consortiums or projects commissioned by the government of Sudan, or companies involved in consortiums or projects commissioned by the government of Sudan, and:
  - a. More than 10 percent of the company's revenues or assets linked to Sudan involve oil-related activities or mineral-extraction activities; less than 75 percent of the company's revenues or assets linked to Sudan involve contracts with or provision of oil-related or mineral-extracting products or services to the regional government of southern Sudan or a project or consortium created exclusively by that regional government; and the company has failed to take substantial action; or
  - b. More than 10 percent of the company's revenues or assets linked to Sudan involve power-production activities; less than 75 percent of the company's power-production activities include projects whose intent is to provide power or electricity to the marginalized populations of Sudan; and the company has failed to take substantial action.
2. The company is complicit in the Darfur genocide.
3. The company supplies military equipment within Sudan, unless it clearly shows that the military equipment cannot be used to facilitate offensive military actions in Sudan or the company implements rigorous and verifiable safeguards to prevent use of that equipment by forces actively participating in armed conflict. Examples of safeguards include post-sale tracking of such equipment by the company, certification from a reputable and objective third party that such equipment is not being used by a party participating in armed conflict in Sudan, or sale of such equipment solely to the regional government of southern Sudan or any internationally recognized peacekeeping force or humanitarian organization.
4. The company has business operations that involve contracts with or provision of supplies or services to the government of Iran, companies in which the government of Iran has any direct or indirect equity share, consortiums, or projects commissioned by the government of Iran, or companies involved in consortiums or projects commissioned by the government of Iran and:
  - a. More than 10 percent of the company's total revenues or assets are linked to Iran and involve oil-related activities or mineral-extraction activities; and the company has failed to take substantial action; or
  - b. The company has, with actual knowledge, on or after August 5, 1996, made an investment of \$20 million or more, or any combination of investments of at least \$10 million each, which in the aggregate equals or exceeds \$20 million in any 12-month period, and which directly or significantly contributes to the enhancement of Iran's ability to develop the petroleum resources of Iran.

Beginning January 1, 2010, it must sell, redeem, divest, or withdraw all publicly trade securities it may have in such companies. Divestiture must be completed no later than March 1, 2010.

Section 4 amends s. 175.101, F.S., to allow a special fire control district to continue to receive state excise tax revenues on property insurance premiums once a portion of the district has been annexed until the completion of the 4-year period provided in s. 171.093(4), F.S., or until the completion of an agreed upon extension, or until the termination of an interlocal agreement executed pursuant to s. 171.093(3), F.S.

Section 5 amends s. 175.171, F.S., to clarify that a retired firefighter may change a designation of joint annuitant or beneficiary up to two times without the approval of the board of trustees or the prior joint annuitant or beneficiary. The retiree does not have to provide proof of good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary does not have to be living.

Section 6 amends s. 175.361, F.S., to eliminate apportionment provisions relating to assets to be distributed and requires the board of trustees to determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after accounting for expenses. The board must inform the city or special fire district if additional assets are required. If additional assets are required, the city or special fire district must continue to financially support the plan until all nonforfeitable benefits have been funded. The actuarial single-sum value of a retirement income may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

Section 7 amends s. 185.02, F.S., to clarify the definition of "creditable service" or "credited service." It provides that a city may allow the purchase of prior service as a police officer for federal, other state, or county service if the prior service is recognized by the Criminal Justice Standards and Training Commission with the Department of Law Enforcement. The member must provide proof of equivalent service.

Section 8 amends s. 185.03, F.S., to allow a municipality to receive another municipality's state premium tax moneys if there is an interlocal agreement in place to provide police protection services for a period of 12 months or more. A municipality receiving police protection services from another municipality is authorized to enact an ordinance levying an excise tax as provided in s. 185.08, F.S. The municipality providing the police protection services must notify DMS that it has entered into the interlocal agreement. Upon receipt of a copy of the ordinance and the interlocal agreement, DMS is authorized to distribute premium taxes reported for the municipality receiving the police protection services to the municipality providing those services.

Section 9 amends s. 185.05, F.S., to provide that the terms of office of appointed and elected members of the board of trustees of the municipal police officers' retirement trust fund can be extended from 2 to 4 years through enactment of a city ordinance or by special act of the Legislature. Additionally, it specifies that the length of the terms of office must be the same for all board members. The plan trustees also may authorize payroll deduction privileges for the provision of post-retirement supplemental insurance products for retirees, their spouses and dependents, in accordance with a retiree request.

Section 10 amends s. 185.06, F.S., to allow the board of trustees to invest up to 25 percent of plan assets in foreign securities. In addition, the board must identify and publicly report any direct or indirect holdings it may have in any scrutinized company as defined in s. 215.473, F.S. Beginning January 1, 2010, it must sell, redeem, divest, or withdraw all publicly trade securities it may have in such companies. Divestiture must be completed no later than March 1, 2010. Drafts upon the Police Officers' Retirement Trust Fund can be signed two individuals designated by the board, in addition to the board's chair and secretary. The two individuals are subject to the same fiduciary standards as the board of trustees members.

Section 11 amends s. 185.08, F.S., to conform this section to the changes made by the bill to s. 185.03, F.S.

Section 12 amends s. 185.161, F.S., to clarify that a retired police officer may change a designation of joint annuitant or beneficiary up to two times without the approval of the board of trustees or the prior joint annuitant or beneficiary. The retiree does not have to provide proof of good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary does not have to be living.

Section 13 amends s. 185.37, F.S., to eliminate apportionment provisions relating to assets to be distributed, and requires the board of trustees to determine the date of distribution and the asset value required to fund all the nonforfeitable benefits, after accounting for expenses. The board must inform the city if additional assets are required. If additional assets are required, the city must continue to financially support the plan until all nonforfeitable benefits have been funded. The actuarial single-sum value of a retirement income may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

Section 14 provides that the act shall take effect July 1, 2009.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 175.032, F.S., revising definitions.

**Section 2.** Amends s. 175.061, F.S., relating to the terms of office for board members and relating to authorization to withhold funds from retirement payments.

**Section 3.** Amends s. 175.071, F.S., pertaining to the powers and duties of firefighters' pension board members and the divestment of funds from scrutinized companies.

**Section 4.** Amends s. 175.101, F.S., relating to the state excise tax on property insurance premiums.

**Section 5.** Amends 175.171, F.S., relating to optional forms of retirement income.

**Section 6.** Amends s. 175.361, F.S., relating to termination of a plan and distribution of funds.

**Section 7.** Amends s. 185.02, F.S., revising the definition of "creditable service."

**Section 8.** Amends s. 185.03, F.S., relating to the transfer of a municipalities state premium tax.

**Section 9.** Amends s. 185.05, F.S., relating to the terms of office for board members.

**Section 10.** Amends s. 185.06, F.S., pertaining to the powers and duties of police officers' pension board members and the divestment of funds from scrutinized companies.

**Section 11.** Amends s. 185.08, F.S., relating to the transfer of a municipalities state premium tax.

**Section 12.** Amends s. 185.161, F.S., relating to optional forms of retirement income.

**Section 13.** Amends s. 185.37, F.S., relating to termination of a plan and distribution of funds.

**Section 14.** Provides an effective date of July 1, 2009.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The Department of Management Services offered the following fiscal note:

Unknown amount – There would be a reduction to State General Revenue of the casualty premium tax moneys payable under Chapter 185 to municipalities that have interlocal agreements, however, this may apply only to a small number of municipalities. The only ones that we are aware of are the City of Jacksonville, which provides law enforcement services to the City of Baldwin, and two cities in Palm Beach County. Those are the City of Boynton Beach, which provides law enforcement services to Briny Breezes and the City of Lantana, which provides law enforcement services to Hypoluxo.<sup>8</sup>

The 2009 REC has not evaluated this bill. On April 6, 2007, the REC evaluated provisions in HB 769 identical to those found in this bill authorizing a municipality to receive another municipality's state premium tax moneys if there is an interlocal agreement in place regarding the provision of police protection services. The FY 2009-10 impact was estimated at -\$1.3 million to State Government General Revenue.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Department of Management Services offered the following fiscal note:

Unknown amount – There will an increase in the Chapter 185 moneys payable to any municipality that has an interlocal agreement to provide law enforcement services to a neighboring incorporated municipality. The only ones that we are aware of are the City of Jacksonville, which provides law enforcement services to the City of Baldwin, and two cities in Palm Beach County. Those are the City of Boynton Beach, which provides law enforcement services to Briny Breezes and the City of Lantana, which provides law enforcement services to Hypoluxo.<sup>9</sup>

On April 6, 2007, the REC evaluated provisions in HB 769 identical to those found in this bill authorizing a municipality to receive another municipality's state premium tax moneys if there is an interlocal agreement in place regarding the provision of police protection services. The FY 2009-10 impact was estimated at \$1.3 million to Local Government.

2. Expenditures:

There may be unknown costs associated with certain permissive provisions of the bill which would cause local governments to assume greater administrative duties.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Based on the 2007 REC evaluation of provisions in HB 769, that are identical to those found in this bill, the net revenue impact for state and local governments combined was expected to be zero.

### III. COMMENTS

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<sup>8</sup> Department of Management Services HB 5 (2009) Substantive Bill Analysis (Jan. 26, 2009) at 5 (on file with the Governmental Affairs Policy Committee).

<sup>9</sup> *Id.*

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because the 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 shared state tax or premium sales tax received by cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Drafting Issues**

Section 1 of the bill amends s. 175.032(8)(a), F.S., included in which is the term "auxiliary firefighters" which is not defined or otherwise used in that chapter. In contrast, s. 185.02(11), F.S., definition of "police officer" makes reference to a definition of "auxiliary police officer" which is found in s. 943.10(8), F.S.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

The Governmental Affairs Policy Committee met on March 11, 2009, and adopted four amendments. Two of the amendments provide flexibility in changing joint annuitants by allowing retired police officers and firefighters to twice change their designation of joint annuitant without action by the board of trustees or proof of good health of the existing joint annuitant or beneficiary. The other two amendments provide a 25 percent cap on foreign investments that can only be changed by general law. These amendments further provided that boards of trustees must report and then divest from "scrutinized companies" as defined in s. 215.473, F.S.

The bill was reported favorably as a Committee Substitute.