

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the General Government Appropriations Committee

**BILL:** CS/SB 538

**INTRODUCER:** General Government Appropriations Committee and Senator Baker

**SUBJECT:** Firefighter and Municipal Police Pensions

**DATE:** April 15, 2009                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Molloy</u>	<u>Yeatman</u>	<u>CA</u>	<b>Fav/6 amendments</b>
2.	<u>Wilson</u>	<u>Wilson</u>	<u>GO</u>	<b>Fav/3 amendments</b>
3.	<u>McVaney/Pigott</u>	<u>DeLoach</u>	<u>GA</u>	<b>Fav/CS</b>
4.	_____	_____	<u>WPSC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill amends various provisions relating to publicly funded retirement programs and requires the Trustees of the State Board of Administration to identify and offer at least one terror-free investment product to the Public Employee Optional Retirement Program by March 1, 2010

This bill revises provisions relating to firefighter and municipal police pensions for purposes of determining prior service credit and terms of office for members of both pension plan boards. Both boards are authorized to increase plan asset investments in foreign securities on a market-value basis, and the bill clarifies the boundaries of special fire control districts which 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 pension plan board. The bill clarifies plan termination provisions to provide that accrued benefits are nonforfeitable.

This bill substantially amends the following sections of the Florida Statutes: 121.4501, 121.591, 173.032, 175.061, 175.071, 175.101, 175.171, 175.361, 185.02, 185.05, 185.06, 185.161, and 185.37.

## II. Present Situation:

### “Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts”

In establishing chs. 175 and 185, F.S., the Legislature found and declared that it as 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 Art. X, s. 14 of the State 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 and the Firefighters’ Pension Trust Fund are housed within the Division of Retirement within the Department of Management Services, which is the state agency responsible for administrative oversight of the funds, including monitoring for actuarial soundness.

#### Firefighters’ Pension Trust Fund (FPTF)

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 municipality 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>

#### Municipal Police Officers’ Retirement Trust Fund (PORTF)

The PORTF is funded through an excise tax on casualty insurance policies. Up to 0.85 percent of the gross amount of receipts on premiums for policies issued within the municipality 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 municipalities from the PORTF amounted to \$65.3 million.<sup>3</sup>

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

#### Insurance Premium Tax

Section 624.509, F.S., provides that each insurer must annually pay a tax on specified insurance premiums received during the preceding calendar year. An amount equal to 1.75 percent of the gross amount of receipts on the specified policies must be submitted to the Department of Revenue for distribution to the General Revenue Fund. The insurer is allowed to take credits for the municipal taxes imposed on property and casualty insurance policies used to fund the firefighter and police pension funds. Each time a municipality that is currently not imposing the tax enacts an ordinance to impose the tax, a credit is taken by the insurer against the tax paid to the department for deposit into the General Revenue Fund.

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<sup>1</sup> Fla. Stat. 175.01(1), 185.01(1) (2006)

<sup>2</sup> [https://www.rol.frs.state.fl.us/forms/Fire\\_2007.pdf](https://www.rol.frs.state.fl.us/forms/Fire_2007.pdf) (February 2009)

<sup>3</sup> [https://www.rol.frs.state.fl.us/forms/Police\\_2007.pdf](https://www.rol.frs.state.fl.us/forms/Police_2007.pdf) (February 2009)

## **Board of Trustees**

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 two-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. 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.
- Foreign securities not to exceed ten percent of plan assets.

### **Board of Trustees of the Town of Lake Park Firefighters' Pension Plan v Town of Lake Park, Florida (966 So.2d 448)**

In 2002, the Town of Lake Park and Palm Beach County entered into a local agreement for fire protection. As part of the agreement, the county agreed to provide fire and emergency medical services to the Town of Lake Park, and also agreed to hire all of the town's firefighters as county employees. On the effective date of the interlocal agreement, all of the firefighters became mandatory members of the Florida Retirement System. The Town of Lake Park Firefighters' Pension Plan was terminated, all contributions to the plan stopped, and the pension plan's board of trustees decided that accrued benefits should be paid to the plan members in the form of lump sum distributions. The plan's actuary determined that the plan asset value was less than the value of the accrued benefits, and the board of trustees asked the Town of Lake Park to pay the \$2 million difference. The Town of Lake Park disagreed and filed a complaint for declaratory relief. The board of trustees responded with a countersuit claiming that the town violated Florida Statutes, and violated the interlocal agreement.

The trial court found in favor of the Town of Lake Park and declared that the town had no obligation to fund the plan's actuarial shortfall because the statute provided for less than full payment to certain plan members. The board of trustees appealed to the Fourth District Court of Appeals which overturned the lower court ruling and declared that the board of trustees had the sole authority to choose the method of distributing the plan assets, and the board followed the proper statutory procedure for distributing the assets available at the time of termination. In addition, the statute provides that benefits accrued to the date of termination cannot be forfeited.<sup>4</sup>

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<sup>4</sup> s. 175.361, F.S.

Finally, because the Town of Lake Park decided to enter into the interlocal agreement with Palm Beach County which resulted in the pension plan being terminated, there could be no impairment or reduction in benefits or other pension rights accruing to any firefighter who was a plan member.<sup>5</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 121.4501, F.S., to provide that by March 1, 2010 the board shall identify and offer at least one terror-free investment product that allocates its funds among securities not subject to divestiture as provided in s. 215.473. It disallows civil, criminal, or administrative action as a result of such offering.

**Section 2** amends s. 121.591, F.S., to make technical and clarifying changes to the benefits payable section under the Public Employee Optional Retirement Program.

**Section 3** amends s. 175.032, F.S., to clarify the definition of “creditable service” or “credited service” to provide that a municipality or a 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 Marshall as provided under chapter 633, or if the firefighter provides proof to the local pension plan board of trustees that such service is equal to the service required under the statutory definition of a “firefighter.”

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, part-time, or auxiliary firefighters. Part-time firefighters and auxiliary firefighters are excluded.

**Section 4** amends s. 175.061, F.S., to provide that the term of office for appointed or elected members of each firefighter pension board can be extended from 2 to 4 years through enactment of a municipality ordinance, a special act of the Legislature, or a resolution adopted by the governing board of a special fire control district. This section specifies that the length of the terms of office must be the same for all members of the board. Additionally, this section 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.

**Section 5** amends s. 175.071, F.S., to provide that drafts upon the pension trust fund can be signed by two individuals designated by the firefighter pension board who are subject to the same fiduciary standards as required for board members. This section authorizes the pension board to invest up to 25 percent of plan assets in foreign securities on a market-value basis.

The board of trustees is required to identify and report any direct or indirect holdings it may have in any scrutinized company and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010 and ending September 30, 2010.

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<sup>5</sup> s. 112.0501, F.S.

**Section 6** amends s. 175.101, F.S., to provide that when a portion of a special fire control district is annexed, the district may continue to receive state excise tax revenues on property insurance premiums 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 execution of an interlocal agreement pursuant to s. 171.093(3), F.S.

**Section 7** 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 pension board or without the approval of the prior joint annuitant or beneficiary. The retiree may not be required to provide proof of good health of the annuitant or beneficiary being removed, and the annuitant or beneficiary being removed need not be living.

**Section 8** amends s. 175.361, F.S., to repeal apportionment provisions relating to assets distributed upon plan termination, and to codify in statute the ruling of the District Court of Appeals, 4th District, in *Board of Trustees of the Town of Lake Park Firefighters Pension Plan v Town of Lake Park*.<sup>6</sup> The pension board must 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 municipality or special fire district if additional assets are required, and if so, the municipality or district must continue to financially support the plan until all nonforfeitable benefits have been funded. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if the plan provides for interest, less the value of any plan benefits previously paid to the employee.

**Section 9** amends s. 185.02, F.S., to provide that a municipality 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, or if the member provides proof to the pension board that such past service is equal to the service required to meet the statutory definition of a "police officer."

**Section 10** amends s. 185.05, F.S., to provide that the terms of office of appointed and elected members of each police pension board can be extended from 2 to 4 years through enactment of a city ordinance or by special act of the Legislature. This section specifies that the length of the terms of office must be the same for all board members. The plan trustees may also authorize payroll deduction privileges for the provision of post-retirement supplemental insurance products for retirees, their spouses, and dependents.

**Section 11** amends s. 185.06, F.S., to allow a police pension board to invest up to 25 percent of plan assets in foreign securities on a market-value basis, and to allow the board to designate two individuals, in addition to the board's chair and secretary, to sign drafts drawn on the pension trust fund. The two individuals are subject to the same fiduciary standards as the pension board members.

The board of trustees is required to identify and report any direct or indirect holdings it may have in any scrutinized company and proceed to sell, redeem, divest, or withdraw all publicly traded

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<sup>6</sup> 966 So.2d 448

securities it may have in that company beginning January 1, 2010 and ending September 30, 2010.

**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 pension board members or the prior joint annuitant or beneficiary. The retiree may not be required to provide proof of good health or the annuitant or beneficiary being removed, and the removed annuitant or beneficiary need not be living.

**Section 13** amends s. 185.37, F.S., to repeal apportionment provisions relating to assets distributed upon plan termination, and to codify in statute the ruling of the District Court of Appeals, 4th District, in *Board of Trustees of the Town of Lake Park Firefighters Pension Plan v Town of Lake Park*.<sup>7</sup> The police pension board must 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 municipality if additional assets are required, and if so, the municipality must continue to financially support the plan until all nonforfeitable benefits have been funded. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if the plan provides for interest, less the value of any plan benefits previously paid to the employee.

**Section 14** provides that if enacted into law, the act shall take effect July 1, 2009.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

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<sup>7</sup> 966 So.2d 448

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill provides that firefighters and police officers may receive credit for prior service under certain conditions. One of the conditions is that the firefighter or officer may provide proof to the pension board that the service for which credit is being applied is equal to the service required by firefighters and police officers under Florida law. No guidelines are provided for what constitutes “proof” which may result in different requirements for “proof” being applied by the individual pension boards.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by General Government Appropriations on April 1, 2009:**

The committee substitute:

- Provides that the Trustees of the State Board of Administration identify and offer at lease one terror-free investment product to the Public Employee Optional Retirement Program by March 1, 2010

B. None.