

RETIREMENT/EMPLOYEE BENEFITS

CS/HB 683 — Municipal Police/Firefighter Pension Plans

by Smarter Government Council and Rep. Mack and others (CS/SB 666 by Governmental Oversight & Productivity Committee and Senator Sanderson)

The bill amends various provisions in chs. 175 and 185, F.S., as they affect the governance of local government police and firefighter pension plans. Each of these plans, whether constituted by a special act of the Legislature or by ordinance of the local government itself, is headed by a board of trustees. A prior enactment of the Legislature in 1999 significantly upgraded the minimum benefits to be provided to employees in such plans. The bill extends those changes by permitting qualifying police and firefighter pension plans to have an extended time period for the recognition of the receipt of insurance premium tax distributions they are qualified to receive. The effect is to release funds held in escrow by the Division of Retirement to the few plans that were constructed in a non-qualifying manner. The bill also defines the circumstances under which alternate appointees can be made to a plan's board of trustees when the active membership falls below a certain size.

If approved by the Governor, these provisions take effect October 1, 2002.

Vote: Senate 36-0; House 115-0

CS/HB 807 — Florida Retirement System/Pension Choice Compliance

by Fiscal Responsibility Council and Rep. Fasano and others (CS/SB 2132 and CS/SB 1102 by Governmental Oversight & Productivity Committee and Senator Sanderson)

The bill provides required benefit administration, investment management, and federal agency compliance for the implementation of the Public Employees Optional Retirement Program (PEORP) in the Florida Retirement System (FRS). It also provides additional service upgrades to several enumerated classes of officers and employees.

The bill gives the State Board of Administration the legal authority to transfer participant account funds and to interrupt that transfer in the event of a major disruption in financial markets. It provides that employer payrolls are to be received by the fifth day of the succeeding month without the imposition of late charges. Such charges may be waived in the event of extenuating circumstances. Contributions to PEORP accounts are to be made in compliance with requirements of the Internal Revenue Code and subject to board rule. Interest earned on account balances of terminated and unvested participants will be based on actual earnings rather than 3.0 percent. If a participant designates a beneficiary who is not the spouse, spousal notification is required, unless the designation is a contingent beneficiary. The PEORP participants who are

retired state employees or officers are entitled to receive health insurance coverage under s. 110.123, F.S.

The bill provides a number of service upgrades to designated officers and employees, as follows: county health department directors and administrators in the Department of Health are transferred from the Selected Exempt Service to the Senior Management Service; the sheriff and clerk of the circuit court in a consolidated government with countywide jurisdiction are permitted to enroll in the Elected Officers' Class of the FRS; the chief deputy court administrator is permitted to enroll in the Senior Management Service Class; and creditable service funded for fire prevention and training personnel shall be recognized in the Special Risk Retirement Class, the cost of which is funded from excess actuarial assets.

The committee substitute provides to university members who have enrolled in the higher education optional annuity program the same account distribution options afforded PEORP participants, namely, full or partial distribution or roll-over to a qualified successor retirement plan.

For purposes of the calculation of the present value of a member's accumulated benefit obligation prior to the transfer to PEORP, year 2002 estimates will be set at midnight on June 30, September 30, and December 31, respectively, for state, education, and local government employees. The bill continues the policy of enrolling a participant in the defined benefit program by default in the event no affirmative, timely enrollment materials are received by the plan administrator. The bill creates s. 121.591, F.S., to establish a procedure for the payment of benefits under the PEORP. A participant, generally, must have terminated employment and notified the plan administrator of the desire to receive benefit payments from the account. Disability income benefits in lieu of a normal benefit are also provided with the same definition of disabling condition and reexamination as is now provided members of the FRS defined benefit plan: inability to render useful and efficient service as an officer or employee. The Department of Management Services (DMS) is authorized to contract with a private sector company for the administration of the disability benefits program and may provide a system for the commercial insurance coverage and administration of the disability benefits program. The DMS is directed also to seek a private letter ruling from the Internal Revenue Service on the steps necessary to maintain the tax qualified status of the disability benefits program in PEORP and in the defined benefit plan of the FRS.

The committee substitute amends year 2001 provisions governing the participation of elected officers in the Deferred Retirement Option Program (DROP). It repeals language enacted in that year and replaces it with provisions permitting elected officers to continue in that program for sixty months after which no further contributions, except interest, shall be paid. Elected officers in DROP do not have to terminate their office until the completion of the current term or another elective office eligible for coverage under the FRS. An affected officer may terminate office at any time but with the exception of those officers affected by Chapter 2001-135, L.O.F., may not receive a benefit payment and accrue active service credit simultaneously.

An FRS participating employer may reemploy after retirement, for up to 780 hours annually, a retired firefighter or paramedic without invoking the suspension of retirement benefits penalty imposed during the first twelve months of retirement. Benefits received in excess of this 780-hour level must be reimbursed to the FRS and future benefits will be suspended if violation of the employment limitation is evidenced.

The bill permits a one-time transfer to the defined benefit program of the FRS of participants in the Senior Management Optional Annuity Program. Participants must elect this transfer between July 1 and September 30, 2002, and agree to pay for the transfer out of their liquidated accounts balances, or such other funds should those amounts prove insufficient.

The bill provides for retirement service credit recognition of salary supplements paid to instructional personnel under ss. 231.700 and 236.08136, F.S., for mentoring or merit-based achievement.

If approved by the Governor, these provisions take effect June 1, 2002.

Vote: Senate 39-0; House 117-0

HB 935 — Florida Retirement System, Public Records

by Rep. Rubio (CS/SB 1886 by Governmental Oversight & Productivity Committee and Senator Sanderson)

This bill amends s. 121.4501, F.S., to provide an exemption from public records for the personally identifying financial information maintained by the State Board of Administration and the Department of Management Services on behalf of participants in the Public Employees Optional Retirement Program. The bill declares it to be a public necessity to avoid inundating participants with information from unapproved provider companies offering non-qualified investment products. The exemption is subject to the review cycle for public records exemptions provided by law.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 33-2; House 106-3

HB 1575 — Florida Retirement System

by Rep. Fasano (CS/SB 2134 by Governmental Oversight & Productivity Committee and Senator Sanderson)

In order to provide federal tax compliance for the separation of employee retirement funds, HB 1575 creates s. 121.4503, F.S., to establish a distinct Florida Retirement System Contributions Clearing Trust Fund. This non-expiring trust account will receive employer retirement contributions prior to their transfer to individual defined contribution employee

accounts, or to the defined benefit program of the Florida Retirement System. These accounts are themselves being established as public employees choose to initiate or transfer their membership to the new alternative pension plan established in 2000, the Public Employees Optional Retirement Program, and made operational this year. The trust account is made exempt from the service charges to the General Revenue Fund imposed under s. 215.20, F.S.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 35-0; House 118-0

CS/HB 1673 — Public Records Exemption for Social Security Numbers
by Smarter Government Council; State Administration Committee; and Rep. Brummer and others (CS/CS/SB 1588 by Judiciary Committee; Governmental Oversight & Productivity Committee; and Senators Burt and Cowin)

Effective October 1, 2002, this bill makes confidential and exempt social security numbers held by an agency or its employees, agents or contractors. The exemption is retroactive in effect. Exceptions to the exemption are provided by the act. An agency may share a social security number with another governmental entity, its employees, agents, or contractors if disclosure is necessary to perform its duties and responsibilities, but the receiving entity must maintain the confidential and exempt status of the social security number. Additionally, an agency may not deny a commercial entity access to social security numbers provided that the numbers will be used in the normal course of business for legitimate business purposes. The bill defines “legitimate business purpose” to include verification of the accuracy of certain information, use in a civil, administrative or criminal proceeding, use for insurance purposes, use in law enforcement and for the investigation of crimes, use in identifying and preventing fraud, use in matching, verifying or retrieving information, or use in research. The bill explicitly excludes the bulk sale of social security numbers to the public or distribution to any customer that is not identifiable to the business entity. A business entity must make a written request for the information which contains contact information for the business entity and it must state the purpose for which the information is to be used. A violation of the act may be a felony of the third degree.

Additionally, the bill prohibits on or after October 1, 2002, inclusion of a social security number in any document to be recorded in the official records of the county recorder, unless otherwise provided by law. The bill requires posting of notice on the Internet and in a newspaper of general circulation that social security numbers in previously filed documents can be redacted upon request in writing. A request must identify the page number where the information is located. A fee for redaction is expressly disallowed.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 33-1; House 110-0

HB 1973 — Florida Retirement System

by Fiscal Responsibility Council and Rep. Lacasa (CS/SB 590 by Governmental Oversight & Productivity Committee)

This bill introduces a new funding methodology for the setting of payroll contribution rates to be charged to member employers in the Florida Retirement System (FRS). With the adoption of the Public Employees Optional Retirement Program (PEORP) in 2000, the Legislature provided a choice in the type of retirement coverage employees could select. The bill develops what is termed a “blended” rate structure. In such a form, the statutory employer payroll contribution rates are adjusted to reflect the estimated 150,000 public employees who will choose the new retirement plan as their exclusive choice. This blending takes into account the attrition of employees by employer group over the next year and the delayed effect of the enrollment period. For current employees choosing to transfer their account balances from the legacy pension plan into the new investment plan, the rate also takes into account two additional factors: the recognition of their asset transfer, and the simultaneous loss of their payment liability.

The cumulative effect of the legislation is to reduce employer payroll costs to the defined benefit plan by about 4.50 percent overall due also to the additional recognition of the rate equivalent of some \$1.24 billion in available pension surplus. For the first time, the surplus is used to reduce employer costs for the Deferred Retirement Option Program (DRO). Rates for the alternative investment plan are set at normal cost and provide the participant with a full equity contribution after satisfaction of the one-year vesting period. The bill also sets the individual retirement class rates for the disability income and death benefit for the PEORP participants which is otherwise incorporated within the overall rate design of the FRS defined benefit plan. A five basis point increase (.0005) is provided to fund the information and education program to be delivered to all employers and employees. The rates charged the employers with members in the defined benefit plan are set for one year only; they revert to normal, unsubsidized costs on July 1, 2003. The bill also provides for transmission of employer retirement contributions to the FRS by the fifth day of the succeeding month, unless extraordinary hardship circumstances are evidenced, before imposition of penalties on the employer.

The bill permits a one-time transfer to the FRS defined benefit plan of members of the Senior Management Optional Annuity Program. Such members must elect this transfer between July 1 and September 30, 2002, and agree to pay for the transfer out of their liquidated account proceeds or such other higher amount if that balance proves insufficient. The bill also permits an upgrade in service credit for elected state attorneys and public defenders that have prior service as assistant state attorneys or public defenders.

If approved by the Governor, these provisions take effect June 1, 2002.

Vote: Senate 34-0; House 119-0

PUBLIC RECORDS

CS/HB 735 — Public Records Exemption for Certain Building Plans

by Smarter Government Council; Select Committee on Security; and Rep. Gelber and others (CS/SB 982 by Governmental Oversight & Productivity Committee and Senators Brown-Waite and Crist)

The bill creates an exemption from public records requirements for building plans, blueprints, schematic drawings, and diagrams which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency. The bill is retroactive in effect. This information may be disclosed to another governmental entity if necessary to perform its duties, to a licensed architect, engineer, or contractor who is performing work on the structure, or upon good cause shown to a court of competent jurisdiction. Any person or entity receiving this information must maintain its status.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 33-4; House 101-14

PURCHASING/INFRASTRUCTURE MANAGEMENT

CS/HB 1407 — Public Buildings and Security/Capitol Complex

by Smarter Government Council; State Administration Committee; and Reps. Brummer and Cantens (CS/CS/SB 1144 by Criminal Justice Committee; Governmental Oversight & Productivity Committee; and Senators Garcia and Crist)

This bill represents a complete revision in the organization and operation of the security apparatus for buildings in the State of Florida Capitol Complex. It provides for the intergovernmental transfer of the Division of Capitol Police from the Department of Management Services (DMS) to the Florida Department of Law Enforcement (FDLE) where it will retain its separate identity. The committee substitute enlarges the scope of security coverage for buildings within the state capitol area and further adds the Capital Circle Office Complex of state buildings to the security inventory. The FDLE may contract with the DMS for the provision of security services in buildings not otherwise specifically designated, but which house state employees.

A major feature of the bill is its restatement of the prerogatives of the Legislative Branch to maintain its independence of action and assembly. The presiding officers of the respective houses may also establish enhanced security plans to meet their own unique needs.

The Capitol Police division is required to provide security within the named complex of buildings and to the public officials heading the resident state agencies or offices. It will also

provide protection to other officials, employees, and visitors who occupy or visit the buildings. Other law enforcement responsibilities shall be considered secondary to the above. Its budget may not be reduced except in the manner provided in ch. 216, F.S. The Director of the Capitol Police is appointed by and serves at the pleasure of the Executive Director of the Florida Department of Law Enforcement. The Director of Capitol Police is subject to approval by the Governor, the House of Representatives, and the Senate no later than 30 days after adjournment of the next regular or special legislative session. The manner of approval by the House and Senate is to be determined by each presiding officer unless the approval process is included in the rules of the respective house.

For purposes of funding Capitol Police after its organizational change, the Department of Management Services is directed to transfer funds on a calendar quarter basis to the Department of Law Enforcement from the office space rental assessment made of tenant agencies occupying buildings in the bonded Florida Facilities Pool.

Lastly, the bill provides that the Office of Legislative Services is to commission a security inventory of facilities and personnel by an outside vendor, but makes the inventory's completion contingent upon specific appropriation.

If approved by the Governor, these provisions take effect upon becoming law.

Vote: Senate 34-0; House 115-0

HB 1977 — State Procurement

by Fiscal Policy & Resources Committee and Rep. Wallace (CS/SB 1132 by Governmental Oversight & Productivity Committee and Senator Garcia)

During the 2001 interim, the Governmental Oversight and Productivity Committee reviewed two new methods of procurement, i.e., Invitations to Negotiate (ITNs) and Request for Quotes (RFQs), that were enacted by the 2001 Legislature, and considered whether clarifying changes for the statutory sections governing these methods were warranted. *See* Interim Project Report 2002-133, "Chapter 287: Competitive Procurement Process for Acquisition of Property and Services." This report recommended several changes to the statutes creating ITNs and RFQs and, additionally, provided recommendations for other ch. 287, F.S., improvements that were suggested during the project's review. These recommendations were the basis for House Bill 1977 as explained below.

Invitations to Negotiate

The bill sets forth new requirements and accountability measures for agency use of ITNs. Under the bill, an ITN may not be used unless the agency first explains in writing why negotiation is necessary for the state to achieve the best value. The bill also requires an ITN to be made available to all vendors simultaneously and to include a statement of: (a) the commodities or

contractual services sought; (b) the time and date for receipt and opening of replies; (c) all terms and conditions applicable to the procurement, including the criteria to be used during selection; and (d) whether the agency contemplates renewal. Replies submitted by vendors in response to an ITN are to be ranked by the agency; based on this ranking, the agency may select one or more vendors for negotiations.

The bill requires agencies to award contracts in ITN procurements to the vendor that it determines will provide the best value to the state. The agency must document the basis for vendor selection and explain how the vendor's deliverables and price will provide the state with the best value. The agency's determination of best value must be based on objective factors that may include, but are not limited to, price, quality, design, and workmanship.

Requests for Quotes

The bill places limits on the use of a request for quote, so that this tool may not be used by agencies to obviate competitive procurement requirements. It provides that agencies and eligible users may only use a request for quote to obtain written pricing or services information from a state term contract vendor for commodities or contractual services available on a state term contract from that vendor. The stated purpose of a request for quote is to determine whether a price, term, or condition more favorable to the agency or eligible user than that provided in the state term contract is available. The bill specifies that a request for quote is not subject to protest under s. 120.57(3), F.S.

Notice of Procurement Decisions and Protests

The bill creates a new system for agency notice of procurement decisions. It revises current law that permits a variety of noticing methods, including mail, hand delivery, and posting at the place where bids were opened, to require all procurement decisions to be posted on a centralized website that is to be maintained by the Department of Management Services (DMS). This change is expected to lower current costs associated with procurement noticing due to the elimination of delivery fees, and to provide greater public notice with its requirement of uniform agency notice that may be easily accessed through the Internet.

Further, the bill clarifies the time for filing a notice of protest. It provides that the posting of notice on the Internet triggers the 72-hour time frame for filing a notice of protest to a procurement decision; whereas, under current law, either posting or receipt of notice, depending upon the method of notice selected by the agency, triggers this time frame. Current law's provisions can result in several different 72-hour windows for the same procurement decision; however, under the bill, only one 72-hour window will be available.

The bill also provides that the amount of the bond to be filed by a protestor is one percent, rather than current law's requirement of one percent or \$5,000, whichever is less. The amount of the bond is to be determined by the agency based on the contract price submitted by the protestor, or

if no price was submitted, based on the price of previous or existing contracts for similar purchases, the amount appropriated for the purchase, or the fair market value of similar purchases. The agency must provide the amount to the protestor within 72 hours after the notice of protest is filed.

Exceptional Purchases

The bill enhances requirements for agency use of sole source and emergency purchase exceptions. Under the bill, an agency must electronically post a description of the desired commodity or contractual service on the DMS purchasing website for at least seven days whenever the agency believes that the purchase is only available from a single source. Current law requires only that an agency document its determination that only a single source is available. Further, the bill requires agencies to obtain pricing information from at least two vendors prior to making a non-competitive emergency purchase, unless doing so will increase the immediate danger to the state. Current law requires only that an agency make an emergency purchase with such competition as is practicable.

These new exceptional purchase requirements are in response to an Auditor General report which faulted agencies for failing to: (a) document their decisions to use the single source exception; (b) provide documentation that supported the assertion that the vendor was the single source available; and (c) demonstrate the impracticability of competition during an emergency procurement. See “Single Source and Emergency Procurement, Selected State Agencies and the Department of Management Services Operational Audit,” Auditor General, September 2001.

Other Chapter 287, F.S., Changes

The bill revises numerous other provisions in ch. 287, F.S., that include: (a) clarifying that state term contracts must be competitively procured; (b) clarifying that agency contracts may only be renewed if competitively procured and for a period no longer than three years or the original term of the contract, whichever is greater; (c) permitting “eligible users,” as defined by DMS rule, to participate in state term contracts and the online procurement system so that greater economies of scale may be achieved in state purchasing; (d) clarifying that information technology must be competitively procured in the same manner as commodities; (e) creating a request for an information tool that allows agencies to make a written request to vendors for information about available commodities or services; (f) providing RESPECT, a nonprofit agency for the blind and other severely handicapped, with the same purchasing preferences statutorily accorded to PRIDE, a nonprofit corporation for correctional work programs; (g) requiring that persons selected to negotiate contracts in ITN procurements have prior negotiation experience; (h) alphabetizing the definition section; (i) defining new terms for purposes of clarity and consistency of use; and (j) striking duplicative and outdated provisions.

If approved by the Governor, these provisions take effect July 1, 2002.

Vote: Senate 31-7; House 115-0

