
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: March 31, 1998 Revised: _____

Subject: Municipal Firefighters' and Police Officers' Pension Trust Funds

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Schmith</u>	<u>Yeatman</u>	<u>CA</u>	<u>Favorable/CS</u>
2.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

The bill substantially revises the administration of local pension plans for firefighters (chapter 175, F.S.) and police officers (chapter 185, F.S.) to standardize benefit administration for plans enacted by local ordinance and special act of the Legislature, and to clarify the responsibilities of the Division of Retirement in its oversight role on such plans as required by part VII of chapter 112, F.S., in accordance with 1996 revisions to the Administrative Procedures Act, chapter 120, F.S.

This bill substantially amends chapters 175 and 185 of the Florida Statutes.

II. Present Situation:

While the multi-public employer Florida Retirement System is ranked among the top five pension plans in the country in terms of size, there are a number of separately constituted public retirement programs which have been crafted for local governments which exist on a much smaller scale. The 1939 Legislature authorized the enactment of the first of these with the passage of chapter 175, F.S., creating pension programs for local government firefighters. Thirteen years later chapter 185, F.S., was enacted covering municipal police officers. These "chapter" plans were similarly constituted for each group and permitted local governments invoking their authority to participate in the insurance premium tax, a shared revenue source which funds portions of the benefits provided to the employees. In addition, the Legislature would authorize from time-to-time the creation of special acts ("local law plans") which would create distinct pension plans for units of local government. As of September 30, 1997, there were 21 cities with chapter plans for firefighters and 16 with plans for police recognized under chapter 185, F.S.. Local law plans have a larger representation, with 164 cities firefighter plans and 164 with police plans.

Both types of plans specify annuity provisions, vest operational control in a locally-appointed plan board of trustees, and are subject to the regulatory control of the Division of Retirement, Department of Management Services, which conducts periodic plan reviews to determine the sufficiency of the revenues collected relative to benefits paid. This authority flows from part VII, chapter 112, F.S., and is derived from the provisions of Art. X, s. 14, State Constitution, which requires funding of publicly supported pension systems on an actuarially sound basis. By action of the 1995 Legislature, financial and program oversight was centralized in the Division of Retirement, eliminating the role of the Department of Insurance. Where the plans differ among themselves are the minimum standards to be applied as established by chapters 175 and 185, disability benefits, and in the compensation base used for computation of the retirement benefit.

Firefighter plans are supported by a 1.85 percent levy upon property insurers, while police plans levy a 0.85 percent charge upon the premiums of casualty insurers. This constitutes only one of several revenue sources which are available to the plans. The others are employee contributions, ranging from a statutory minimum of 1 percent to individually determined higher amounts; city payments which include employer contributions; and the proceeds from investment earnings, gifts, or employee fines. Not all municipalities have separately constituted police and retirement pension plans but they still receive the proceeds from the insurance premium taxes. General employee plans may not share in any of the insurance premium tax revenues.

In 1986 the Legislature enacted a substantial revision to both chapters in an attempt to standardize many of the dissimilar provisions found in the plans. While the statute withstood a constitutional challenge mounted shortly after its passage, *City of Orlando v. State of Florida*, 528 So.2d 468 (Fla. 1st DCA 1988), the same could not be said for the rules promulgated by the Department of Insurance. An appellate court found the legislation ambiguous in its precise application to local law plans and could not sustain the validity of the rules promulgated, *Florida League of Cities and City of St. Petersburg v. Department of Insurance and Treasurer, et. al.*, 540 So.2d 850 (Fla. 1st DCA 1989). The application of uneven standards within the multiple plan types continues to this day. In its October 1994 review of these issues, *State-Subsidized Police & Fire Pension Plans*, the House Committee on Employee and Management Relations suggested there were five principal areas where change would be warranted:

- ▶ The specification of normal retirement age and service requirements;
- ▶ Calculation of disability benefits;
- ▶ The apportionment of insurance premium tax monies among the differently constituted plans;
- ▶ Benefit caps; and
- ▶ Age thresholds affecting additional retirement credit.

The issue has been subject to recurring comments by the Division of Retirement in its annual report on local retirement systems. In two recent reports, *Florida Local Government Retirement Systems as of December 31, 1994* and *1995 Florida Local Government Retirement Systems Annual Report*, the division recommended legislative changes to bring some of the dissimilar provisions of these plans together. The division's 1996 annual report similarly noted these disparate provisions and recommended legislative changes to bring them into alignment. By way

of example, chapters 175 and 185, F.S., still recognize limitations on benefits as a function of age which may be violative of federal age discrimination statutes.

III. Effect of Proposed Changes:

The bill makes additional changes to chapters 175 and 185, F.S., local government firefighter and police retirement plans, following the 1986 legislative amendments, in an attempt to standardize minimum benefits among the various plan types. Since many of the provisions in each chapter are the same, the subsequent analysis groups like sections in each chapter:

LEGISLATIVE INTENT. Sections 1 (175.021) and 43 (185.01) - The bill provides a declaration of an important state interest as required by Art. VII, s. 18, State Constitution, regarding legislative enactments which may have an effect upon local government finances. It further specifies that the amendments to chapters 175 and 185, F.S., establishing minimum benefit levels may not be diminished by any other governmental enactment or offset by any other local, state, or federal law.

DEFINITIONS. Sections 2 (175.032) and 44 (185.02) - Various definitions contained in the respective chapters are changed. Of principal note are deletion of the current definition of “aggregate number of years of service”; the application of all definitions to chapter and local law plans; inclusion of the term “compensation” as an additional modifier of salary; recognition of reemployment rights granted firefighters and police under federal law when separation is conditioned upon military service; and the definition of chapter, local law, supplemental plans, and supplemental plan municipality. The bill also defines for the first time “deferred retirement option plans,” or DROP, as a local law retirement plan option in which a firefighter or police officer may elect to retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account while continuing in employment. Employees entering a DROP, and who are otherwise eligible, may not be prohibited from participating in an existing or subsequently created supplemental plan. “Retiree” is defined to include a firefighter or police officer who enters a DROP, and the date on which a firefighter or police officer enters a DROP is included within the definition of “retirement.” The term “compensation” or “salary” is defined to include only the fixed remuneration paid on a monthly basis to a firefighter or police officer inclusive of any additional amounts contributed to a tax-sheltered retirement plan. The definitions also require that all plans must recognize Internal Revenue Service salary limitations for highly compensated individuals. A plan may provide an option for the fire or police chief’s participation in it. The definition of “compensation” is modified from the 1997 bill [SB 524] to authorize a firefighters’ or police officer’s retirement trust fund or plan to otherwise define salary, but only if the monthly retirement income payable to the firefighter or police officer using that definition equals or exceeds the monthly retirement payable using this definition. Further, the definition prohibits the reduction or diminishment of the monthly retirement income payable under any trust fund or plan which currently or hereafter meets the requirements of chapters 175 or 185.

EMPLOYEE BENEFIT PROVISIONS; CREATION OF PENSION TRUST.

Sections 3 (175.041) **and 45** (185.03) - The referenced sections formally recognize the existence of separate trust funds for the respective chapter and local law firefighter and police retirement funds. Benefits enjoyed by members of the respective plans must be on a nondiscriminatory basis. The sections also distinguish the application of chapter 175/185 provisions from those affecting members of the Florida Retirement System. The following standard introductory language is used for subsequent sections in each chapter, as respectively appropriate: *“For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter.”*

ACTUARIAL DEFICITS NOT STATE OBLIGATIONS. Sections 4 (175.051) **and 46** (185.04) - These sections provide that actuarial deficits of these local law plans and chapter plans are not obligations of the State of Florida.

GOVERNANCE STRUCTURES OF BOARDS OF TRUSTEES. Sections 5 (175.061) **and 47** (185.05) - Makes the following changes with regard to the structure of the Boards of Trustees of respective fire and police pension plans: provides for the membership to reflect active firefighter or police officers; extends the application of the statutes to all constituted local or chapter plans; provides for at least quarterly meetings of the board; that each governing structure is a legal entity with the power to sue and make contracts; and that prevailing parties' attorneys fees shall attach in any judicial or administrative proceeding brought under chapter 120, F.S.. Retired firefighters or police officers permitted on January 1, 1997 to vote on plan matters may continue to do so, except that active member police officers may revoke that authority for their plan(s) by majority vote.

BOARDS OF TRUSTEES POWERS AND DUTIES. Sections 6 (175.071) **and 48** (185.06) - These sections provide the proper nomenclature changes of federal agencies which insure investments made in chartered savings institutions; increase from 30 to 50 percent the permissible equity investment of a fund without a required variance in the approved investment procedures; permits investment of plan assets in the stock of a corporation which does not hold a rating in one of the three highest classifications by a major rating service; permit up to a 10 percent investment of plan assets in foreign investments *without limitation*; change from an absolute majority of three members to a simple majority the required votes of board members on official business coming before it; provide record-keeping duties of the plan secretary; and provide experience and credential requirements of professional money managers who must be hired for a triennial evaluation of the fund. The board may elect to use its local government's legal counsel but only under terms and conditions acceptable to the board.

ANNUITY CONTRACTS. Sections 7 (175.081) **and 49** (185.061) - These sections are amended only to apply these provisions to chapter and local law plans alike.

CONTRIBUTIONS TO PENSION FUNDS. Sections 8 (175.091) **and 50** (185.07) - The amendments provide standard nomenclature changes to recognize each of the plan types and further provide that individual plan members may increase contributions to produce greater

benefits; repeal the offset provided in current law which sets an upper 3 percent limit on members' contributions when participating in the Social Security program; permit funding of any actuarial deficiency over a period other than the currently provided 40-year term as recognized under part VII of chapter 112, F.S.; and change from 1 percent to .05 percent the minimum amount members may be required to contribute.

PROPERTY/CASUALTY INSURANCE PREMIUM TAX. Sections 9 (175.101) and 51 (185.08) - These amendments provide standard nomenclature changes and extend the assessment provisions of the insurance premium tax to all insurers doing business in the state.

REPORT OF PREMIUM TAX COLLECTIONS. Sections 10 (175.111) and 52 (185.09) - In addition to standard nomenclature changes, the reporting period is changed from the 12 months ending March 1 to the end of a calendar year.

DEPOSIT AND DISBURSEMENT ACCOUNTING BY STATE AGENCIES. Sections 11, 12, 13 (175.121, 175.122, 175.131) and 53, 54 (185.10, 185.11) - Standard nomenclature changes and to provide for immediate deposit of employee contributions after each pay period and at least quarterly employer deposits. The amendments also authorize the direct payment of the premium tax funds from the department to the trustees of the pension or retirement fund and requires the trustees to deposit those funds to the appropriate trust fund within 5 days of receipt.

EXCISE TAX CREDIT. Sections 14 (175.141) and 55 (185.12) - Conforming changes to recognize an administration shift from the Insurance Commissioner and Treasurer to the Department of Revenue.

INSURER NONCOMPLIANCE. Sections 15 (175.151) and 56 (185.13) - Noncompliance notifications are to be directed to the Department of Insurance by the Division of Retirement.

CONTRIBUTIONS REQUIREMENTS. Sections 16 (175.152) and 57, 58 (185.14, 185.15) - Repealed and replaced by other changes in the bill.

RETIREMENT REQUIREMENTS. Sections 17 (175.162) and 59 (185.16) - In addition to conforming changes referencing all legally constituted chapter and local law plans, this section standardizes age and service credit terms [25 years of service at 2 percent accrual rate] for normal retirement benefits. Further, the bill deletes current language reducing the amount of retirement income for moneys received under the disability provisions of this chapter, and removes a provision of current law which provides a lower service credit for firefighters who have been contributing 3 percent of their pay. Any local plan may by local action provide benefits greater than the 2 percent accrual rate set as a floor in this section.

Section 185.16(3), F.S., is further altered to remove from current law a provision now existing for firefighters that the proceeds of death benefits accrue to the surviving spouse, descendants, and legal heirs; the effect is to have the proceeds go to the estate of the deceased police officer.

OPTIONAL RETIREMENT INCOME. Sections 18 (175.171) and 60 (185.161) - In addition to standard conforming changes, this section deletes a requirement that a joint pensioner be a dependent and permits another structured payment option of 75 percent of monthly retirement income to the joint survivor in addition to the designated levels of 100 percent, 66 2/3 percent, and 50 percent. This section also deletes a requirement that an applicant for an optional form of retirement submit evidence of good health to the board of trustees.

BENEFICIARIES. Sections 19 (175.181) and 61 (185.162) - This section provides the standard conforming language applying the provisions to all plan types, and further makes the following changes to the designation of surviving beneficiaries: provides for the sequential designation of beneficiaries by the firefighter/police officer for payment to the estate of the deceased member in the absence of a named beneficiary, and for full discharge of plan obligations to the member upon a payment of terminal benefits.

DISABILITY RETIREMENT. Sections 20 (175.191) and 62 (185.18) - In addition to standard conforming amendments, changes in these sections recognize disability retirement eligibility when a firefighter/police officer accrues 10 years of service, whether or not continuous, and becomes totally and permanently disabled. Eliminated from current law is the contingency that member eligibilities occur prior to the beginning of the normal retirement date, in order to address potential federal age discrimination statutes. Finally, this section permits a member to elect a structured payment option provided in s. 175.171, F.S., above.

FALSE STATEMENTS; PENALTIES. Sections 21 (175.195) and 63 (185.185) - The penalty of misdemeanor in the first degree attaches to any person making a false statement for the purpose of securing a retirement benefit. Additionally, the respective Boards of Trustees, in their discretion, may disqualify a convicted member's right to participate in the pension plan.

DEATH BENEFITS; REFUNDS. Sections 22 (175.201) and 66 (185.21) - This section provides standard nomenclature changes. Terminal benefit language is amended to change from contributing service to credited service the 10-year service requirement for death benefits. Insurance proceeds received under other provisions of law shall not be counted toward computation of a final benefit amount.

SEPARATION FROM SERVICE; REFUNDS. Sections 23 (175.211) and 64 (185.19) - The section eliminates the requirement that a member have contributed to a plan for 10 years, since some plans may be noncontributory. The changes also recognize age 55 as the retirement age.

LUMP SUM PAYMENT. Sections 24 (175.221) and 65 (185.191) - The section increases from a monthly amount of \$30 or a single-sum amount of \$750 to a monthly amount of \$100 or single-sum amount of \$5,000, the benefit amount which a plan may make a single, lump-sum payment to a member of a *de minimis* account.

DISEASE PRESUMPTION. Section 25 (175.231) - In addition to conforming language this section provides that the presumption on disease shall extend to any firefighter participating in a chapter or local plan, not just those employed in Florida.

EXEMPTION FROM EXECUTION. Sections 26 (175.241) **and 69** (185.25) - Nomenclature changes only.

EMPLOYMENT RECORDS. Sections 27 (175.251) **and 70** (185.27) - The provisions of these sections regarding maintenance of employment records have been transferred to another location and the existing sections are repealed. See ss. 175.071 and 185.06, F.S., above.

ANNUAL STATE REPORTS. Sections 28 (175.261) **and 67** (185.221) - Standard nomenclature changes are included in these revisions which also include amended reporting requirements for chapter and local plans. For chapter plans the amendments provide: for an increase from \$100,000 to \$250,000 in the floor asset amount which triggers an annual report to the Division of Retirement and a triennial actuarial plan valuation. For local law plans the amendments provide: for an annual submission of formal contractual documents describing the plan; an independent audit for plans with assets in excess of \$250,000; a description of plan investments; a description of plan members by active and inactive status; a description of the actuarial methods used along with a certified statement from an enrolled actuary; a statement of income sources derived from the parent local government; a triennial actuarial valuation; and the cost of which is to be assumed by the plan or the parent local governing authority.

LEGAL REPRESENTATION. Sections 29 (175.291) **and 71** (185.29) - Existing law provisions authorizing legal counsel to the plan are repealed and the authorization is transferred to ss. 175.071 and 185.06, F.S., above.

PENSION DEPOSITORY. Sections 30 (175.301) **and 72** (185.30) - These sections contain the standard conforming language and also eliminate the requirement that securities be deposited with the plan treasurer.

INDEPENDENCE OF UNITS. Sections 31 (175.311) **and 73** (185.31) - Conforming nomenclature changes only.

APPLICATION OF INSURANCE PREMIUM TAX. Section 32 (175.321) **and 74** (185.32)- The application of the insurance premium tax is repealed, as its levy and administration are covered in the amended 175.101 and 185.08, F.S., above.

DISABILITY IN THE LINE OF DUTY. Section 75 (185.34) - In addition to conforming language this section provides that the disability in the line of duty provisions apply to any police officer participating in a chapter or local plan, not just those employed in Florida.

PRE-EXISTING RIGHTS. Sections 33 (175.331) and 78 (185.36) - The application of rights granted under former laws is repealed, as its effect has been covered in the amended ss. 175.041/185.03, above.

PROHIBITED BENEFIT DISCRIMINATION. Sections 34 (175.333) and 76 (185.341) - provides the standard nomenclature, grammar, and syntax changes; and clarifies that eligibility for retirement must be based upon length of service or attained age or both, and benefits must be determined by a nondiscriminatory formula based upon: length of service and compensation, or length of service alone.

DUTIES OF DIVISION OF RETIREMENT. Section 35 (175.341) - Defines the duties of the Division of Retirement to apply to all local law or chapter plans.

LOCAL GOVERNMENTS WITH SEPARATE PENSION PLANS. Sections 36 (175.351) and 77 (185.35) - The revised section removes many of the individual standards for member eligibility and makes reference to the revised eligibility standards provided for plans contained in ss. 1, 2, and 3 of the bill, above. However, the bill adds language carving out the following exceptions for any supplemental plan municipality: any local law plan and supplemental plan may continue to use its definition of compensation or salary in existence on the effective date of this act, and may continue to be administered by a board or boards established on January 1, 1997. This section is also revised to authorize local law plans to come into compliance with the minimum benefit provisions of the chapter incrementally as additional premium tax revenues become available, despite the requirement that premium tax funds be used to provide “extra benefits” to plan members.

PLAN TERMINATION. Sections 37 (175.361) and 79 (185.37) - The rights of members are deemed to be nonforfeitable upon the dissolution of a plan with distribution of their account proceeds to occur in the manner provided by current law.

BENEFITS UPON MEMBER TRANSFER. Sections 38 (175.371) and 80 (185.38) - Nomenclature changes and defines the term “fully funded” as used to determine when a plan out of which members have transferred will be terminated.

APPLICABILITY OF LAW. Sections 39 (175.381) and 81 (185.39) - The chapters’ amended provisions establish minimum benefit levels but shall not operate to adversely affect any benefits presently enjoyed by members. Existing plans must come into compliance with this act by December 31, 1998, except for plans established by special act of the Legislature, which date shall be July 1, 1999. The section disclaims any adverse effect of the act on any existing rights or benefits enjoyed by plan members.

COSTS; ATTORNEY’S FEES. Sections 40 (175.391) and 82 (185.40) - This section is repealed since the authority is consolidated in another section, above.

RETIREE HEALTH INSURANCE SUBSIDY. Sections 41 (175.401) and 83 (185.50) - The bill makes the following changes to the retiree health insurance subsidy: reduces from 1 percent to no less than 0.5 percent the minimum amount of salary contribution for participation and provides an audit requirement if plan assets are \$250,000 or greater rather than the current threshold of \$100,000.

LOCAL OPT-OUT PROVISION. Sections 42 (175.411) and 84 (185.60) - These newly created sections provide that a municipality or special fire control district, as applicable, may at its discretion opt into or out of a pension plan established pursuant to this chapter.

EFFECTIVE DATE. Section 85. October 1 of the year in which enacted.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

There exist varying interpretations about the impact of the bill on local law plan municipalities and special fire control districts. There also exist contradictory provisions in the bill as to its applicability to these plans. See discussion at Section V.C., below.

If the bill is interpreted to require that local law municipalities and special fire control districts meet all the minimum benefits and standards, regardless of the availability of state premium tax distributions, many local governments will have to make significant expenditures in order to raise the level of benefits in their plans to meet the minimum standards contained in the bill. Under that interpretation, the bill falls within the purview of s. 18(a), Art. VII, State Constitution. That section provides that cities and counties are not bound by general laws which require them to expend funds or take actions requiring an expenditure of funds, unless certain legislative actions are taken. The bill is not exempt under subsection (d) as having an insignificant fiscal impact [see Government Sector Impact], or as a law requiring the funding of pension benefits which existed on the effective date of this section (1990). Although chapters 175 and 185, F.S., existed on that date, this bill expands the benefits provided by those sections for members participating in local law plans. Further, this bill is not excepted as one which requires an expenditure to comply with a law that applies to all persons similarly situated, because the bill does not apply to state employees.

Therefore, the bill must contain a finding of important state interest, which is in section 1, and must be approved by a two thirds vote of each house of the Legislature in order to bind local governments.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill makes no change to the rate or the base of the Insurance Premium Tax. An analysis of historical revenues collected from 1980 through 1996 completed by the Division of Economic and Demographic Research indicates an average annual increase of 8.12 percent.

B. Private Sector Impact:

At the discretion of individual Boards of Trustees, individual member payroll contributions may be adjusted downward to a level not less than one-half of one percent. This will act as an increase in net salary to the individual firefighter/police officer.

C. Government Sector Impact:

Local Governments

The impact of this bill on local government revenues is somewhat ambiguous. The bill contains several conflicting provisions. First, both chapters contain an applicability section which requires all municipalities, special fire control districts, chapter plans, local law municipalities, local law special fire control districts, or local law plans to comply with the provisions of the act by December 31, 1998. Yet, both chapters also contain a provision allowing municipalities to opt out of or into a pension plan established thereby at its discretion. It is unclear which provision takes precedence, and it may be up to the courts to decide. If it is determined that the bill mandates compliance with the minimum benefits by all local law plans, the fiscal impact remains the subject of debate. That resolution depends upon which interpretation of the bill is adopted.

Under the interpretation advocated by the Division of Retirement and the police officer's and firefighters' unions, the bill will not require additional expenditures by local governments. That interpretation is founded on the following existing language in ss. 175.162(2) and 185.16(2), F.S.: "However, if current state contributions pursuant to this chapter are not adequate to fund the additional benefits to meet the minimum requirements in this chapter, only such incremental increases shall be required as state moneys are adequate to provide. Such increments shall be provided as state moneys become available." Therefore, no local law municipality or special fire district would have to make additional contributions to reach the minimum benefit levels of chapter law plans because such benefits will be provided only upon the availability of adequate insurance premium tax dollars. However, even under this

interpretation, the several hundred local law plans will incur actuarial costs associated with examining their funding status as a result of adhering to the minimum benefit levels established in the bill. Some of these costs will be incidental to triennial actuarial reviews while others may require the completion of special studies. No uniform cost estimates are available for these impacts.

Representatives of the local law plans counter this argument by highlighting the following new language the bill adds to both ss. 175.351 and 185.35, F.S.: “The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to firefighters (police officers), or to firefighters and police officers where included. For purposes of this chapter, the term ‘extra benefits’ means benefits in addition to or greater than those provided to general employees of the municipality.” The argument is that this language supersedes the language quoted above, thereby limiting the expenditure of premium tax proceeds only for “extra benefits,” specifically excluding the use of those revenues to meet the minimum benefits of these chapters. Depending upon the municipality, meeting the minimum standards of these chapters may or may not mean providing benefits which are in addition to or greater than those provided to general employees. Further support for this argument can be found in the definition of “supplemental plan” as provided in the bill. “Supplemental plan” means a plan to which deposits are made to provide **extra benefits** for firefighters, or for firefighters and police officers where included in this chapter. Such a plan is an element of a local law plan and exists **in conjunction with a defined benefit plan that meets the minimum benefits and minimum standards of this chapter.**” Within this definition, the concept of extra benefits contemplates benefits above or greater than the minimums provided for in statute. It is difficult to reconcile the two definitions of “extra benefits.”

Under this interpretation, the following local government entities report an estimated fiscal impact to comply with the definition of salary provided in the bill:

- ▶ City of Hialeah - \$473,331.73 for fiscal year 1998.
- ▶ South Trail Fire District (Fort Myers) - \$2,383.28 annual contribution increase.
- ▶ City of Orlando - \$3,400,000 annual contribution increase.
- ▶ St. Petersburg - \$2,420,000 (includes all changes in the bill).
- ▶ Tampa - \$474,000 (includes all changes in the bill).

The bill changes the normal plan valuation from a biennium to a triennium. For some plans this will defer expenses associated with the review depending upon the date of their last valuation.

There still exist hybrid plans which group together firefighters, police, and general government employees. Such an arrangement poses unique administration problems since the

insurance premium tax revenues *cannot* be applied to general employees. The amendments to such sections provide for segregation of the dedicated tax revenues for the *sole and exclusive use* of the firefighter and police employees. Remaining plan members must have their employer or themselves fund the benefit costs. Plan governance is related to this issue; a plan which covers general employees must have board of trustee representation reflecting employees other than firefighters and police.

The bill standardizes the definition of compensation to reference only the fixed amount declared as salary. For plans above the 2.0 percent accrual rate level this should pose no concern. For plans below this level, however, this will exempt from current calculations such compensable items as overtime, bonuses, supplemental pay, and the cash equivalent of fringe benefits.

State Government

The Division of Retirement reports a one-time expenditure of \$300 will be needed to provide an actuarial study of the two chapter law plans which do not comply with the existing statutory provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

HB 729, for which there is not yet a Senate companion, has unanimously passed the House and been referred to the Senate Community Affairs Committee. That bill, known as the “Taxpayer Protection Act,” requires that any general law enacted by the Legislature after January 1, 1998, which has the potential to increase the cost of municipal or county personnel salaries, wages, or benefits **must include an economic impact statement prepared by an enrolled actuary** which estimates the total cost to municipalities or counties to implement the legislation, and must provide a means to finance the requirements of the legislation. The bill specifies what must be included in the economic impact statement. Therefore, if enacted, HB 729 could adversely impact the effectiveness of this bill as it does not contain the required economic impact statement.

While combined plan assets exceeded \$8.3 billion for calendar year 1996 the vast majority of police and firefighter pension systems are small capitalized plans. Many can be measured in the hundreds of thousands of dollars and only a few have total assets in the hundreds of millions. Few of the plans carry the burden of an unfunded liability and some are over funded.

It has been the past practice of the Division of Retirement to adjust required contribution rates for participating employers as a function of whether they are members of the FRS or have created their own police and fire pension plans. This issue poses some significance in as much as cities or special districts which have opted into the FRS progressively lose their eligibility for insurance

premium tax matching contributions as eligible members depart from the local plans and they are replaced by members mandatorily eligible under FRS. Such is the case for the closed plans of North Miami and North Miami Beach. The reverse is also true: governments exiting the FRS, as was the case in 1995, have their insurance premium tax wage base progressively increase as existing FRS members leave, retire, or voluntarily choose to switch plans. A January 31, 1996 internal memorandum from the Division of Retirement memorializes this agency practice. Plan members cannot be counted for eligibility twice for the same period of employment due to provisions in the chapters prohibiting that, as well as concurrent provisions in chapter 112, part VII, F.S., which requires compliance with the Internal Revenue Code and its preclusion of dual benefit eligibility under federal law.

Expansion of investment authority to foreign securities is accompanied by inherent risks associated with unfamiliarity of the foreign jurisdiction, its currency volatility as well as the difficulty of securing precise knowledge of the business for which investment is being considered. The ability of an investment advisor and a Board of Trustees to reach a fully informed understanding of such markets and discharge their fiduciary responsibility will place added strains on their judgment. The bill provides that all plans, regardless of capitalization or sophistication, may commit up to 10 percent of plan assets to foreign security investments. They can range from reasonably safe foreign mutual funds investing in equities and passively traded in world-wide financial markets to more risky, actively traded ventures subject to volatile swings in gains and losses and traded in markets requiring specialized information.

The bill provides a section which permits, but does not mandate, the disqualification of a plan member by a Board of Trustees for a fraudulent benefit claim. The penalty is made a misdemeanor in the bill and is, therefore, *exempt* from the provisions of s. 112.3173, F.S., which requires, pursuant to Art. II, s. 8(d), State Constitution, the forfeiture of all retirement benefits for a breach of the public trust upon conviction of a felony for an enumerated offense.

VIII. Amendments:

None.