

STORAGE NAME: h3075a.leps
DATE: February 10, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3075

RELATING TO: Police and Fire Pension Plans under Chapters 175 and 185, F.S.

SPONSOR(S): Committee on Law Enforcement and Public Safety and Representative(s) Futch, K. Pruitt and Others

COMPANION BILL(S): SB 266, SB 270 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 5 NAYS 2
- (2) GOVERNMENTAL OPERATIONS
- (3) FINANCE AND TAXATION
- (4)
- (5)

I. SUMMARY:

Committee Substitute for House Bill 3075 revises Chapters 175 and 185, F.S., relating to fire and police pension plans, to apply minimum benefits and standards to all plans funded under the chapters. The bill also modifies current law to:

- ◆ Allow members to retire after 25 years service and reaching age 52, and allow up to the current 5 years credit for a military leave of absence, specify that employers can set a benefit factor above 2 percent, and clarify provisions on refund of contributions.
- ◆ Modify provisions related to funding, contributions, and other fiscal matters to lower the minimum employee contribution to 0.5 percent, provide time frames for deposit of contributions, retain the provision allowing employers to delay meeting minimum standards until state funding is available, and define the term "extra benefits."
- ◆ Define terms and clarify provisions to assure parity between firefighters and police, remove discriminatory provisions, and update references to the Florida Retirement System (FRS) in response to a 1995 law that allowed cities and special districts to withdraw from the FRS and establish a local plan (which may be a 175/185 plan).
- ◆ Clarify provisions related to pension boards to: Eliminate combined plans which include general employees, provide for board representation in combined police and fire plans, specify voting requirements, and authorize boards to hire or use independent consultants, legal counsel, actuaries, and other technical advisors.
- ◆ Modify provisions related to plan administration to update and clarify deposit requirements, permit greater investment in equities, provide for limited foreign investment, increase the asset level at which annual audits are required, provide for three-year valuation schedules, and streamline reporting requirements.
- ◆ Establish a 75-percent joint-and-survivor payment option, clarify beneficiary provisions, allow disabled retirees to elect regular benefit payment options, increase the threshold for lump-sum payments, and clarify plan termination requirements.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

**Background on Pension Plans Receiving Funding
under Chapters 175 and 185, F.S.**

Chapters 175 and 185, F.S., provide funding for municipal and special district firefighters' and police officers' pension plans. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive -- access to premium tax revenues -- to Florida cities to encourage them to establish retirement plans for firefighters. Fourteen years later, in 1953, the Legislature followed suit with Chapter 185, F.S., which sets up a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under Chapter 175 in 1993. Both chapters set up a "uniform retirement system" providing defined benefit retirement plans for firefighters/police officers and setting standards for operation and funding of these pension systems.

Plan funding comes from four sources: Net proceeds from an excise tax levied by the city upon property and casualty insurance companies (known as the "premium tax," this revenue source generated \$65 million for 175/185 plans in 1996); employee contributions; other revenue sources; and mandatory payments by the city of any extra amount needed to keep the plan solvent. To qualify for premium tax dollars, plans must meet applicable requirements found in the chapters. Responsibility for overseeing and monitoring these plans lies with the Division of Retirement, but day-to-day operational control rests with local boards of trustees.

Most Florida firefighters and local law enforcement officers participate in these plans. Statewide, about 24 cities have chapter plans and 147 cities have local law plans for firefighters under Chapter 175, F.S., and 16 cities have chapter plans and 164 cities have local law plans for police under Chapter 185, F.S. Also, about 49 cities have chosen to withdraw from the FRS and set up new pension plans under Chapters 175 and/or 185, F.S.

Two types of plans operate under these chapters: Chapter plans (plans that meet the minimum provisions of the chapter) and local law plans (plans created by special act or local ordinance that may or may not be required to meet the minimum standards set forth in the chapter). **Cities, plan boards, and affected employees disagree strongly as to which minimum standards apply to local law plans.**

1986 legislation.--In 1986 the Legislature completely revised Chapters 175 and 185, F.S., in Chapters 86-41 and 86-42, Laws of Florida. In completely revising both chapters, the Legislature attempted to clarify its intent to protect pension funds and to establish minimum standards for operation and funding of plans by adding a legislative declaration of intent at s. 175.021, F.S. Similar language was added to s. 185.02, F.S., relating to police plans.

Legal challenges.--In a legal challenge to the constitutionality of the 1986 acts (The City of Orlando v. State of Florida, Case Nos. 86-3269 and 86-3270), the Circuit Court of the Second Judicial Circuit (Leon County) found in favor of the State of Florida, holding that both acts were constitutional. On appeal, the First District Court of Appeal upheld the trial court's decision, also ruling that the 1986 amendments to Chapters 175 and 185 were constitutional and applied to all plans. [The City of Orlando, et al., appellant(s) v. State of Florida, Dept. of

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Insurance, et al., appellee(s), Case No. 87-01409, August 10, 1988] The Florida Supreme Court ultimately let this decision stand by denying the appellants' motion for certiorari.

Judge Barfield wrote the appellate court opinion, published August 10, 1988. While disagreeing with the Circuit Court's opinion that the 1986 acts precluded city officials from serving on pension boards, the appellate court affirmed the trial court's determination that both acts were constitutional, finding:

Chapters 175 and 185 create a purely voluntary program whereby municipalities may receive state-collected taxes, imposed on property and casualty insurance premiums, with which to fund retirement programs for local police and firefighters. In exchange for receipt of these funds, the legislature has established certain criteria under which the funds must be operated and managed. The cities may opt into or out of such plans at their discretion. As the program is not mandatory as to any city's participation, we find nothing that renders the amended statutes to be facially unconstitutional.

In the meantime, in November 1986, the Department of Insurance -- the agency then charged with administering Chapters 175 and 185, F.S. -- published new rules to interpret the statutes affected by the 1986 legislation. The approximately two dozen rules essentially applied all minimum requirements set out in Chapters 175 and 185 to both chapter plans and local law plans. The validity of these rules was also challenged. The hearing officer for the Division of Administrative Hearings (DOAH) found "no merit in appellants' allegations that the proposed rules were arbitrary and constituted an invalid exercise of delegated legislative authority" and upheld the validity of all but two of the proposed rules.

The DOAH decision was also appealed. This time the outcome was different. The First District Court of Appeal filed an opinion on February 28, 1989, in Florida League of Cities, Inc., and City of St. Petersburg, Appellants, v. Department of Insurance and Treasurer and Florida State Lodge, Fraternal Order of Police, Appellees, Case Nos. BS-373 and BS-397, finding many of the rules invalid. While the court agreed that the language added to the legislative intent section of each chapter could be construed to apply **ALL** minimum standards to **ALL** plans, the court found contrary evidence more compelling.

The basis of the appellate court's ruling was that, apparent legislative intent notwithstanding, there was no express statutory provision applying each section to local law plans:

In general, these amendments made significant changes in various requirements applicable to firefighter and police pension and retirement plans. Some requirements in these chapters are expressly applicable to both types of plans, while others are expressly applicable only to one or the other type of plan. Many of the sections of these chapters are silent as to their applicability to local law plans.

All parties agreed that, before enactment of the 1986 acts, some provisions of each chapter applied to chapter plans alone, some provisions applied solely to local law plans, and some provisions applied to both types of plans. However, the court reasoned:

After the 1986 amendments, the Department took a different view regarding the applicability of all minimum standard provisions ... to local law plans,

primarily based on the added language of legislative intent in section 175.021... [and] promulgated the proposed rules to implement this new construction....

Before enactment of the 1986 legislation, the Legislature had expressly stated which provisions in the chapters applied to chapter plans and which to local law plans. In amending the chapters in 1986, the Legislature continued to identify with specificity certain provisions of the chapter which would be applicable to local law plans. Consequently, the court felt that:

Had the Legislature intended that all minimum standards and procedures set forth in Chapter 175, including those silent as to local law plans, be applied to such local plans, it most assuredly would have expressly said so.

Agency administration of chs. 175/185.--As a result of the confusion caused by these court decisions, the bureau within the Department of Insurance which handled the day-to-day administration of matters relevant to Chapters 175 and 185, F.S., could not enforce the application of the new minimum benefit provisions to local law plans, despite the bureau's understanding that the Legislature had intended that it do so.

As the current administrator of this program, the Division of Retirement needs the Legislature to clarify the law as to the applicability of the various sections of the 175 and 185 chapters to the two types of plans.

Committee Substitute for House Bill 3075, if enacted, would establish minimum standards and benefits for ALL plans receiving funding under Chapter 175 or 185, F.S.

B. EFFECT OF PROPOSED CHANGES:

Committee Substitute for House Bill 3075 will revise Chapter 175, F.S., relating to municipal and special district firefighters' pension funds, and Chapter 185, F.S., relating to municipal police officers' pension funds. The primary purpose of the revision seeks to **provide for uniform application of minimum standards and benefits to all plans receiving funding under the chapters** -- both "chapter plans" and "local law plans." In addition to general clarification and reorganization of chapter provisions, for plans under both chapters, HB 3075 will modify current law to:

- ① With respect to **technical and legal matters**: Define "chapter plan," "local law plan," and other terms to provide for application of various provisions throughout the chapters; technically clarify provisions, providing parity where it is reasonable to do so; clarify that 175/185 provisions do not apply to FRS employees of a city or special district that sets up a Chapter 175/185 plan after withdrawing from the FRS, for as long as these employees remain in the FRS; eliminate language which could violate federal law under the Age Discrimination in Employment Act; and prohibit the making of false, misleading, or fraudulent statements to obtain benefits and provide criminal and administrative penalties for violation.
- ② With respect to **pension boards** (membership, general powers and duties, meetings, and related matters): Provide that firefighter or police officer board members must be elected by a majority of the active members of the plan, however,

with respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters or police officers to vote in such elections, retirees may continue to vote in such elections; remove provisions authorizing combination plans that include general employees and provide for transition; clarify membership provisions that apply whenever a local law plan is a combined plan for firefighters and police officers; specify that it takes a majority vote rather than "at least three members" to take formal action (since not all pension boards are comprised of five members); revise provisions related to the hiring of an independent consultant "qualified to evaluate the performance of any existing professional money manager"; specify that special meeting notices may be given in the same manner as for any meeting of the board; and clarify provisions authorizing the board to hire outside legal counsel, actuaries, and other advisors, or to use legal counsel, actuaries, or technical advisors employed by the plan sponsor, in the board's discretion.

- ③ With respect to **plan administration** (fiduciary and money-handling responsibilities of pension boards, reporting requirements, and other administrative matters): Update provisions regarding insured deposits; liberalize criteria for investment of plan assets to allow greater investment in equities and allow for limited investment in foreign securities; increase, from \$100,000, to \$250,000, the threshold asset level at which the board must hire a CPA to do an annual audit of plan assets, income, disbursements, and valuation methods; delete the requirement that securities must be placed in a qualified public depository; provide for plan valuations on a 3-year schedule, rather than a 5-year schedule; and clarify provisions relating to submission of insurer reports accounting for premiums received, to specify that taxes are payable for policies written during the calendar year, but the tax report is due on March 1 of each year.
- ④ With respect to **funding, contributions, and other fiscal matters**: Retain the current definition of "compensation" or "salary" for pension purposes to mean the fixed monthly remuneration paid for work performed; implement the federally required compensation cap pursuant to section 401(a)(17) of the Internal Revenue Code; reduce the minimum employee contribution by half, lowering the "floor" from 1 percent to 0.5 percent of pay, while clarifying that higher existing rates need no adjustment; clarify that members may vote to increase their own contributions to provide greater benefits; remove provisions permitting employees to electively reduce their contributions/benefits; clarify that the employer may elect to pick up employee contributions above 0.5 percent; specify time frames within which contributions must be deposited; retain language authorizing a plan sponsor to implement required benefit enhancements by "incremental increases ... as state moneys become available"; clarify provisions allowing a local law plan pension board, with member approval, to earmark premium tax moneys for the "sole and exclusive use" of firefighters and/or police officers to pay for "extra benefits," or to place premium tax income into a separate supplemental pension plan to pay for "extra benefits"; and define extra benefits as "benefits in addition to or greater than those provided to general employees" of the plan sponsor.
- ⑤ With respect to **requirements for retirement**: Retain existing age and service requirements to allow retirement after 25 years of service and age 52 for normal retirement benefits; provide credit for up to 5 years of military service; specify that a plan sponsor may establish a benefit accrual rate that is higher than the 2 percent minimum rate established by the chapter; and clarify that a vested member who

separates from service and leaves his/her contributions on deposit may elect to retire under normal provisions or early retirement provisions.

- ⑥ With respect to **payment of benefits**: Provide a joint-and-survivor payment option that would continue benefits to the joint pensioner at an amount equal to 75 percent of the member's initial benefit; clarify provisions related to beneficiary designation; clarify provisions related to payment of death benefits to beneficiaries to provide for payment to the member's estate if no properly designated beneficiary survives him/her; provide that a disabled member may choose to receive his/her disability benefit in accordance with any payment option available at normal retirement, rather than the sole payment option currently available of "life and 10 years certain"; increase the accrued benefit level below which lump sum payments may be made to allow boards to pay small benefit amounts (under \$100/mo., or less than a single-sum value of \$5,000), in the form of a lump sum payout; and clarify provisions relating to nonforfeitable benefits payable upon plan termination.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Committee Substitute for House Bill 3075 will provide that Chs. 175 and 185, F.S., apply to any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under these chapters. This will allow the Division of Retirement to develop appropriate rules, without excessive litigation, to oversee and administer these Chapter 175/185 plans for which they have responsibility.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Plan sponsors and boards of trustees of Chapter 175 and 185 pension plans will have to provide for uniform application to all plans funded under these chapters.

(3) any entitlement to a government service or benefit?

Committee Substitute for House Bill 3075 will provide for uniform application of minimum benefits and standards, established under these chapters, to all plans, whether chapter plans or local law plans.

- b. If an agency or program is eliminated or reduced:

This bill does not eliminate an agency or program.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. Currently, employees make a minimum contribution to the funding of these local pension plans.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

It increases the options of pension trustees to manage and administer their pension plan.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Committee Substitute for House Bill 3075 provides for the uniform application of minimum benefits and minimum standards to all chapter plans and local law plans. Currently, local law plans, lawfully, may or may not meet all minimum standards.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Chapters 175 and 185, F.S. (all sections)

E. SECTION-BY-SECTION RESEARCH:

Chapter 175: Pension Plans for Firefighters

Section 1. Amends s. 175.021, F.S., which provides a declaration of legislative intent, to declare that the act fulfills an important state interest, to provide for uniform application of the minimum benefits and standards established under the chapter to all plans, whether chapter plans or local law plans, and to provide that minimum benefits and standards may not be diminished, nor may they be reduced or offset, except as provided in s. 112.65, F.S.

Section 2. Amends s. 175.032, F.S., which provides definitions, to define the following terms as used in Chapter 175, F.S.: Average final compensation (for full-time and volunteer firefighters), chapter plan, compensation or salary, creditable or credited service, Deferred Retirement Option Plan or "DROP", division, enrolled actuary, firefighter, volunteer firefighter, Firefighter's Pension Trust Fund, local law municipality, local law plan, local law special

fire control district, property insurance, retiree or retired firefighter, retirement, special fire control district, and supplemental plan.

- Section 3. Amends s. 175.041, F.S., relating to creation of the pension trust fund and applicability of chapter provisions, to provide for uniform and nondiscriminatory application to all plans receiving funding under the chapter, and to provide the chapter does not apply to certain any governmental entity whose employees are eligible to participate in the Florida Retirement System.
- Section 4. Amends s. 175.051, F.S., to provide that any actuarial deficits, if any, arising under this chapter, shall not be a state obligation.
- Section 5. Amends s. 175.061, F.S., relating to the board of trustees, to provide for uniform application to all plans funded under the chapter, to clarify that firefighter board members shall be elected by **active** members with an exception that any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote, may continue to allow retirees to vote in such elections, to modify membership requirements with respect to a board of trustees of any combined plan for both firefighters and police, to provide transitional procedures for any combined plan having general employee members, to provide for recovery of legal costs and attorney's fees (see current s. 175.391, F.S.), and to restrict municipalities and districts from altering the law.
- Section 6. Amends s. 175.071, F.S., relating to board powers and duties, to provide for uniform application to all plans funded under the chapter, to clarify insurance requirements applicable to banks or other financial institutions investing and reinvesting plan assets, to allow equity investments of up to 50 percent of plan assets, provides that assets do not have to be arbitrarily liquidated if investment experience produces a market value exceeding the state limit, to permit investment of up to 10 percent of plan assets in foreign securities, subject to certain limitations, to require a majority vote to effectuate an act or decision of the board, to provide for the keeping of certain records on active and retired firefighters, to clarify provisions relating to the retention of an independent consultant, to define the term "professionally qualified independent consultant," and to authorize the board to employ independent legal counsel, an independent actuary, and other independent advisers and state that, while the board may choose to use the legal counsel, actuary, or other advisers of the plan sponsor (city or special district), such use must be under terms and conditions acceptable to the board (see s. 175.291, F.S.).
- Section 7. Amends s. 175.081, F.S., relating to use of annuity or insurance policies, to provide for uniform application to all plans funded under the chapter.
- Section 8. Amends s. 175.091, F.S., relating to creation and maintenance of the pension fund, to provide for uniform application to all plans funded under the chapter, to clarify provisions related to employee contributions, to provide for triennial actuarial valuations (not every 5 years), to lower the mandatory

minimum for employee contributions from 1 percent to 0.5 percent, and to clarify that higher existing contribution rates need not be adjusted.

- Section 9. Amends s. 175.101, F.S., relating to the state excise tax on property insurance and the procedure for obtaining funding for purposes of the chapter, to provide for uniform application to all plans funded under the chapter and generally clarify the section.
- Section 10. Amends s. 175.111, F.S., relating to filing of an ordinance or resolution to establish a pension plan and annual report of premiums, to provide for uniform application to all plans funded under the chapter and to clarify the time frame for insurance companies to submit certain reports accounting for premiums collected.
- Section 11. Amends s. 175.121, F.S., relating to responsibilities of the Division of Retirement and the Department of Revenue, to provide for uniform application to all plans funded under the chapter.
- Section 12. Amends s. 175.122, F.S., relating to a limitation on disbursement of moneys produced by the excise tax, to provide for uniform application to all plans funded under the chapter, and to provide that payroll amounts of members included in the Florida Retirement System (FRS) shall not be included for funding purposes.
- Section 13. Amends s. 175.131, F.S., relating to deposit of funds, to provide for uniform application to all plans funded under the chapter and to specify time frames for deposit of employee and employer contributions.
- Section 14. Amends s. 175.141, F.S., relating to the credit provided against payment of the similar state excise or license tax, to clarify the section.
- Section 15. Amends s. 175.151, F.S., relating to the penalty for noncompliance of insurers, to specify notification procedure.
- Section 16. Repeals s. 175.152, F.S., (see section 8, s. 175.091, F.S.), relating to employee contributions, which provisions are transferred to s. 175.091, F.S., and amended.
- Section 17. Amends s. 175.162, F.S., relating to requirements for retirement, to provide for uniform application to all plans funded under the chapter, to provide that a firefighter may retire after completing 25 years of service and attaining age 52, to retain the authority to incrementally fund the minimum 2-percent benefit accrual requirements of the chapter as state moneys become available, to provide an alternative method of calculating retirement benefits for volunteer firefighters, to delete references to a reduced benefit, and to authorize plan sponsors to provide a benefit accrual rate higher than 2 percent (the minimum rate).
- Section 18. Amends s. 175.171, F.S., relating to optional forms of retirement income, to provide for uniform application to all plans funded under the chapter, to remove the requirement that a joint and survivor benefit must be paid to a

dependent joint pensioner to overcome a conflict with s. 175.181, F.S., and to provide an additional option for payment of joint annuitant benefits at 75 percent of the initial benefit amount.

- Section 19. Amends s. 175.181, F.S., relating to beneficiaries, to provide for uniform application to all plans receiving funding under the chapter, to generally clarify provisions of the section, and to remove a "laundry list" of beneficiaries that the board would pay if the member died with no properly designated living beneficiary -- replacing the statutory list with a requirement that benefits will be paid to the member's estate.
- Section 20. Amends s. 175.191, F.S., relating to disability retirement, to provide for uniform application to all plans receiving funding under the chapter, to generally clarify the provisions of the section, to remove provisions that conflict with laws prohibiting discrimination on the basis of age, and to allow members to select benefit payment options as provided for normal retirement under s. 175.171, F.S.
- Section 21. Creates s. 175.195, F.S., to prohibit the making of false, misleading, or fraudulent statements to obtain public retirement benefits, and to provide a criminal penalty (first degree misdemeanor punishable by fine or imprisonment) and an administrative penalty (forfeiture of benefits).
- Section 22. Amends s. 175.201, F.S., relating to death benefits, to provide for uniform application to all plans receiving funding under the chapter and to generally clarify the provisions of the section.
- Section 23. Amends s. 175.211, F.S., relating to refund of contributions, to provide for uniform application to all plans receiving funding under the chapter and to generally clarify the provisions of the section.
- Section 24. Amends s. 175.221, F.S., relating to lump sum payment of de minimis amounts, to provide for uniform application to all plans receiving funding under the chapter and to increase the threshold below which the benefit amount may be paid in lump sum, rather than on a monthly basis, to avoid long-term payout of small benefit amounts.
- Section 25. Amends s. 175.231, F.S., relating to the line-of-duty disability presumption for firefighters disabled by tuberculosis, hypertension, or heart disease, to provide for uniform application to all plans receiving funding under the chapter.
- Section 26. Amends s. 175.241, F.S., relating to exemption of benefits from taxation, execution, or attachment, to provide for uniform application to all plans receiving funding under the chapter.
- Section 27. Repeals s. 175.251, F.S., relating to maintenance of employment records, the provisions of which are relocated to s. 175.071(4), F.S.
- Section 28. Amends s. 175.261, F.S., relating to annual reports and triennial actuarial valuations, to provide for uniform application to all plans receiving funding

under the chapter, to generally clarify the provisions of the section, to incorporate the reporting requirements for local law plans now under s. 175.351(12), F.S., and to increase the asset threshold from \$100,000 to \$250,000 (the level at which an annual independent audit by a certified public accountant is required).

Section 29. Repeals s. 175.291, F.S., relating to legal representation by the attorney for the plan sponsor or by independent counsel, provisions of which are superseded by s. 175.071(7).

Section 30. Amends s. 175.301, F.S., relating to the depository for pension funds, to provide for uniform application to all plans receiving funding under the chapter and to delete the requirement that securities must be placed in a qualified public depository.

Section 31. Amends s. 175.311, F.S., relating to independent status of pension boards and plan sponsors, to provide for uniform application to all plans receiving funding under the chapter.

Section 32. Repeals s. 175.321, F.S., relating to application and nonapplication of specified sections to all pension plans receiving funding under the chapter.

Section 33. Repeals s. 175.331, F.S., relating to rights of firefighters under former provisions of the chapter, which language is incorporated in s. 175.381, F.S.

Section 34. Amends s. 175.333, F.S., relating to the prohibition against discrimination in the benefit formula and restrictions on designation of joint annuitants and beneficiaries, to provide for uniform application to all plans receiving funding under the chapter and to generally clarify the provisions of the section.

Section 35. Amends s. 175.341, F.S., relating to duties of the Division of Retirement, to provide for uniform application to all plans receiving funding under the chapter.

Section 36. Substantially rewords s. 175.351, F.S., relating to local law plans, as follows: Maintains provisions to allow a plan sponsor to enact, by local ordinance, resolution, or special act of the Legislature, a local law plan for its firefighters or a combined plan for firefighters and police officers, but deletes references to pension plans which include general employees -- now found under subsection (15); removes all separate benefit and reporting requirements consolidated with chapter plan requirements under ss. 175.061(1)(b), 175.071, 175.162, 175.191, 175.201, 175.211, and 175.261(2), F.S.; technically restructures provisions of present subsection (13) -- renumbered as subsection (1) by the bill -- to permit the pension board, if approved by a majority of the plan members, to segregate the premium tax moneys collected under the plan for the "sole and exclusive use" of firefighters (or firefighters and police officers in a combined plan), to be used for the payment of extra benefits for firefighters (or for firefighters and police officers in a combined plan), and defines "extra benefits" to mean benefits in addition to or greater than those provided to general employees; renumbers present subsection (11), relating to adoption or revision of a local

law plan, as subsection (2); and renumbers subsection (14), relating to status of the plan as a public document, as subsection (3).

Section 37. Amends s. 175.361, F.S., relating to termination of a plan and distribution of the moneys in the fund, to provide for uniform application to all plans funded under the chapter, to generally clarify the provisions of the section, and to comply with federal law relating to the rights of employees to receive benefits accrued to the date of termination.

Section 38. Amends s. 175.371, F.S., relating to benefits payable upon transfer to another state retirement system, to provide for uniform application to all plans funded under the chapter.

Section 39. Substantially rewords s. 175.381, F.S., relating to applicability, to provide for uniform application to all plans receiving funding under the chapter -- requiring plans established by special act of the Legislature to comply by July 1, 1999, and other existing plans to comply by December 31, 1998.

Section 40. Repeals s. 175.391, F.S., relating to payment of attorney's fees and costs, the provisions of which are relocated to s. 175.061, F.S.

Section 41. Amends s. 175.401, F.S., relating to use of premium tax moneys to establish retiree health insurance subsidy programs, to provide for uniform application to all plans receiving funding under the chapter, to reduce the minimum employee contribution for such program from 1 percent to 0.5 percent, and to increase the asset threshold from \$100,000 to \$250,000 (the level at which an annual independent audit by a certified public accountant is required).

Chapter 185: Pension Plans for Police Officers

Section 42. Amends s. 185.01, F.S., which provides a declaration of legislative intent, to declare that the act fulfills an important state interest, to provide for uniform application of the minimum benefits and standards established under the chapter to all plans, whether chapter plans or local law plans.

Section 43. Substantially rewords s. 185.02, F.S., which provides definitions, to define the following terms as used in Chapter 185, F.S.: Average final compensation, casualty insurance and multiple peril, chapter plan, compensation or salary, creditable service or credited service, deferred retirement option plan or "DROP", division, enrolled actuary, local law municipality, local law plan, police officer, police officers' retirement trust fund, retiree or retired police officer, retirement, and supplemental plan.

Section 44. Amends s. 185.03, F.S., relating to creation of the pension trust fund and applicability of chapter provisions, to provide for uniform and nondiscriminatory application to all plans funded under the chapter.

Section 45. Amends s. 185.04, F.S., relating to legislative intent that plan deficits, if any, will not be an obligation of the state, to provide for uniform application to all plans funded under the chapter.

- Section 46. Amends s. 185.05, F.S., relating to the board of trustees, to provide for uniform application to all plans funded under the chapter, to clarify that police officer board members shall be elected by **active** members (with an exception with respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired police officers to vote in such elections, retirees may continue to vote in such elections), to clarify membership requirements with respect to a board of trustees of any combined plan for both firefighters and police, to provide transitional procedures for any combined plan having general employee members, to provide for recovery of legal costs and attorney's fees, and to restrict municipalities and districts from altering the provisions of the section.
- Section 47. Amends s. 185.06, F.S., relating to board powers and duties, to provide for uniform application to all plans funded under the chapter, to clarify insurance requirements applicable to banks or other financial institutions investing and reinvesting plan assets, to allow equity investments of up to 50 percent of plan assets, provides that if authority exists, prior to the effective date of this act, to permit a greater than 50-percent equity investment, then, this authority prevails and assets do not have to be arbitrarily liquidated, to permit investment of up to 10 percent of plan assets in foreign securities, to require a majority vote to effectuate an act or decision of the board, to provide for keeping of certain records on active and retired police officers, to clarify provisions related to retention of an independent consultant, to define the term "professionally qualified independent consultant," and to authorize the board to employ independent legal counsel, an independent actuary, and other independent advisers and state that, while the board may choose to use the legal counsel, actuary, or other advisers of the plan sponsor (city), such use must be under terms and conditions acceptable to the board (see current s. 185.29, F.S.).
- Section 48. Amends s. 185.061, F.S., relating to use of annuity or insurance policies, to provide for uniform application to all plans funded under the chapter.
- Section 49. Amends s. 185.07, F.S., relating to creation and maintenance of the pension fund, to provide for uniform application to all plans funded under the chapter, to clarify provisions related to employee contributions, to provide for triennial actuarial valuations (not every 5 years), to lower the mandatory minimum for employee contributions from 1 percent to 0.5 percent, and to clarify that higher existing contribution rates need not be adjusted.
- Section 50. Amends s. 185.08, F.S., relating to the state excise tax on property insurance and the procedure for obtaining funding for purposes of the chapter, to provide for uniform application to all plans funded under the chapter and generally clarify the section.
- Section 51. Amends s. 185.09, F.S., relating to the filing of an ordinance or resolution to establish a pension plan and annual report of premiums, to provide for uniform application to all plans funded under the chapter, and to clarify the time frame for insurance companies to submit certain reports accounting for premiums collected.

- Section 52. Amends s. 185.10, F.S., relating to responsibilities of the Division of Retirement and the Department of Revenue, to provide for uniform application to all plans funded under the chapter.
- Section 53. Amends s. 185.11, F.S., relating to deposit of funds, to provide for uniform application to all plans funded under the chapter and to specify time frames for deposit of employee and employer contributions.
- Section 54. Amends s. 185.12, F.S., relating to the credit provided against payment of the similar state excise or license tax, to clarify.
- Section 55. Amends s. 185.13, F.S., relating to the penalty for noncompliance of insurers, to specify notification procedure.
- Section 56. Repeals s. 185.14, F.S., relating to employee contributions, which provisions are superseded by s. 185.07, F.S.
- Section 57. Repeals s. 185.15, F.S., relating to optional participation by employees hired after July 31, 1953, and refund of contributions thereto.
- Section 58. Amends s. 185.16, F.S., relating to requirements for retirement, to provide for uniform application to all plans funded under the chapter, to provide that a police officer may retire after 25 years of service, and attaining age 52, and may credit up to 5 years of military service toward the required 25 years of service, to retain authority to incrementally fund the minimum 2-percent benefit accrual requirements of the chapter as state moneys become available, to authorize plans sponsors to provide a benefit accrual rate higher than 2 percent (the minimum rate), and to clarify payout procedures when no beneficiary is designated.
- Section 59. Amends s. 185.161, F.S., relating to optional forms of retirement income, to provide for uniform application to all plans funded under the chapter and to provide an additional option for payment of survivor benefits at 75 percent of the joint benefit amount.
- Section 60. Amends s. 185.162, F.S., relating to beneficiaries, to provide for uniform application to all plans funded under the chapter, to generally clarify provisions of the section, and to remove a "laundry list" of beneficiaries that the board would pay if the member died with no properly designated living beneficiary -- replacing the statutory list with a requirement that benefits will be paid to the member's estate.
- Section 61. Amends s. 185.18, F.S., relating to disability retirement, to provide for uniform application to all plans funded under the chapter, to generally clarify the provisions of the section, to remove provisions that conflict with laws prohibiting discrimination on the basis of age, and to allow members to select benefit payment options as provided for normal retirement under s. 185.161, F.S.
- Section 62. Creates s. 185.185, F.S., to prohibit the making of false, misleading, or fraudulent statements to obtain public retirement benefits, and to provide a

criminal penalty (first degree misdemeanor punishable by fine or imprisonment) and an administrative penalty (forfeiture of benefits).

- Section 63. Amends s. 185.19, F.S., relating to refund of contributions, to provide for uniform application to all plans funded under the chapter and to generally clarify the provisions of the section.
- Section 64. Amends s. 185.191, F.S., relating to lump sum payment of de minimis amounts, to provide for uniform application to all plans funded under the chapter and to increase the threshold below which the benefit amount may be paid in lump sum, rather than on a monthly basis, to avoid long-term payout of small benefit amounts.
- Section 65. Amends s. 185.21, F.S., relating to death benefits, to provide for uniform application to all plans funded under the chapter and to generally clarify the provisions of the section.
- Section 66. Amends s. 185.221, F.S., relating to annual reports and triennial actuarial valuations, to provide for uniform application to all plans funded under the chapter, to generally clarify the provisions of the section, to incorporate the reporting requirements for local law plans, to increase the asset threshold from \$100,000 to \$250,000 (the level at which an annual independent audit by a certified public accountant is required).
- Section 67. Amends s. 185.23(1), F.S., relating to duties of the Division of Retirement, to provide for uniform application to all plans funded under the chapter.
- Section 68. Amends s. 185.25, F.S., relating to exemption of benefits from taxation, execution, or attachment, to provide for uniform application to all plans funded under the chapter.
- Section 69. Repeals s. 185.27, F.S., relating to maintenance of employment records, the provisions of which are relocated by s. 185.06(3), F.S.
- Section 70. Repeals s. 185.29, F.S., relating to legal representation by the attorney for the plan sponsor or by independent counsel, the provisions of which are superseded by s. 185.06(6), F.S.
- Section 71. Amends s. 185.30, F.S., relating to the depository for pension funds, to provide for uniform application to all plans funded under the chapter and to delete the requirement that securities must be placed in a qualified public depository.
- Section 72. Amends s. 185.31, F.S., relating to independent status of pension boards and plan sponsors, to provide for uniform application to all plans funded under the chapter.
- Section 73. Repeals s. 185.32, F.S., relating to exemptions from the chapter.
- Section 74. Amends s. 185.34, F.S., relating to the line-of-duty disability presumption for police officers disabled by tuberculosis, hypertension, heart disease, or

hardening of the arteries, to provide for uniform application to all plans funded under the chapter.

Section 75. Amends s. 185.341, F.S., relating to the prohibition against discrimination in the benefit formula and restrictions on designation of joint annuitants and beneficiaries, to provide for uniform application to all plans funded under the chapter and to generally clarify the provisions of the section.

Section 76. Substantially rewords s. 185.35, F.S., relating to local law plans, as follows: Maintains provisions to allow a plan sponsor to enact, by local ordinance, resolution, or special act of the Legislature, a local law plan for its police officers or a combined plan for police officers and firefighters, but deletes references to pension plans which include general employees -- now found under subsection (4); removes all separate benefit and reporting requirements consolidated with chapter plan requirements under ss. 185.01(b), 185.06, 185.16, 185.18, 185.19, 185.21, 185.221(2), F.S.; technically restructures provisions of present subsection (2) -- renumbered as subsection (1) by the bill -- to permit the pension board, if approved by a majority of the plan members, to segregate the premium tax moneys collected under the plan for the "sole and exclusive use" of police officers (or police officers and firefighters in a combined plan), to be used for the payment of extra benefits for police officers (or for police officers and firefighters in a combined plan), and defines "extra benefits" to mean benefits in addition to or greater than those provided to general employees; renumbers present paragraph (1)(j), relating to adoption or revision of a local law plan, as subsection (2); and maintains subsection (3), relating to status of the plan as a public document, as subsection (3).

Section 77. Repeals s. 185.36, F.S., relating to rights of police officers under former provisions of the chapter, which language is transferred to s. 185.39, F.S.

Section 78. Amends s. 185.37, F.S., relating to termination of a plan and distribution of the moneys in the fund, to provide for uniform application to all plans funded under the chapter, to generally clarify the provisions of the section, and to comply with federal law relating to the rights of employees to receive benefits accrued to the date of termination.

Section 79. Amends s. 185.38, F.S., relating to benefits payable upon transfer to another state retirement system, to provide for uniform application to all plans funded under the chapter.

Section 80. Substantially rewords s. 185.39, F.S., relating to applicability, to provide for uniform application to all plans funded under the chapter -- requiring plans established by special act of the Legislature to comply by July 1, 1999, and other existing plans to comply by December 31, 1998.

Section 81. Repeals s. 185.40, F.S., relating to recovery of legal costs and attorney's fees, provisions of which are incorporated in s. 185.05(5), F.S.

Section 82. Amends s. 185.50, F.S., relating to use of premium tax moneys to establish retiree health insurance subsidy programs, to provide for uniform application

to all plans funded under the chapter, to reduce the minimum employee contribution for such a program from 1 percent to 0.5 percent, and to increase the asset threshold from \$100,000 to \$250,000 (the level at which an annual independent audit by a certified public accountant is required).

Section 83. Provides an effective date of October 1, of the year in which it is enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

For plans that do not currently meet the minimum benefit requirements of Chapters 175 and 185, it will require a one-time actuarial impact study to be completed as well as any cost associated with drafting a proposed document to make the necessary changes in their plans.

Actuarial impact statements will be required for the two "chapter" plans that do not meet the existing statutory minimums (Milton and South Pasadena, which have not implemented the 5 year Average Final Compensation (AFC) provision). Based on the provisions of the Division of Retirement's actuarial contract with Foster & Foster, Inc., cost is estimated as follows: 2 plans x \$150 = \$300.

Sections 175.341 and 185.10, F.S., state that the funds necessary to pay expenses for the administration of this program shall be annually appropriated from the interest and investment income earned on moneys deposited in the Police and Firefighters' Premium Tax Trust Fund.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

Enactment of CS/HB 3075 will enable the Division of Retirement to promulgate rules for the proper administration of Chapters 175 and 185 pension plans, clarifying a number of provisions in both chapters which should lessen litigation and administrative problems.

4. Total Revenues and Expenditures:

See non-recurring effects above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

For any plans that do not currently meet the minimum benefit requirements of Chapters 175 and/or 185, F.S., it will require a one-time actuarial impact study to be completed as well as any cost associated with drafting a proposed document to make the necessary changes in their plan.

2. Recurring Effects:

Article X, Section 14, of the Florida Constitution, as well as Chapters 112, 175 and 185, F.S., require any benefit improvements to be funded on an actuarially sound basis. Any plan whose benefits do not meet the minimums in Chapters 175 and/or 185, F.S., as amended by the bill, will incur the costs of providing the required benefit improvements. These costs may be amortized and paid over a 30-year period as provided in s. 112.64, F.S. The bill also provides that any city or district whose retirement benefits do not meet the minimums as provided in ss. 175.162, and 185.16, will **only be required to make incremental improvements as state moneys become available**. The plan's actuarial valuations will reflect increases in state contributions and the costs of the incremental improvements. These two provisions should virtually eliminate any costs to the cities or districts.

However, there is a theory or concern that the statutory language may not be sufficient to ensure that some cities or districts will have to fund any minimum benefits extended by this bill. The critical language currently appears in four separate locations in Chapters 175 and 185-- in sections 175.162(2)(a), 175.351, 185.16(2), and 185.15(1)(d), F.S., and provides as follows:

“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.”

The theory or concern is that since some cities or districts have dedicated all or part of their premium revenues to specific uses (other than minimum benefits), that this would act to preclude using increases in premium revenues to fund any new minimum benefits required by the bill. There is, however, no court decision construing current law in this manner, or directing any city or district to make up the state revenues for any expanded minimum benefits.

The current benefits for the existing thirty-seven “chapter” plans are not affected by the proposed legislation. However, two of these plans do not currently satisfy the minimum benefit requirements as they have not implemented the 5 year Average Final Compensation (AFC) provision (incremental benefit improvements have occurred since the 1986 legislative changes to Chapters 175 and 185, F.S.). There is no immediate financial impact, however, since once again, these improvements are required to be implemented only as increases in the state premium tax moneys become available.

Of the 344 "local law" plans, a cost estimate was prepared for 88 of such plans by Foster & Foster, Inc. Of these, 70 had no cost impact and 18, or 20.4 percent, will require improvements to meet the minimum requirements. Similarly, there will be no immediate cost impact to these plans since implementation of improvements is contingent on future increases in state premium tax moneys.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Actuaries will be engaged to prepare impact statements and/or redesign pension plans; and there will be increased employment opportunity for independent consultants, legal counsel, and technical advisors.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

Approximately \$65 million in premium taxes was distributed, during 1997, to sponsors of Chapter 175/185 plans to help municipalities and special districts fund these plans. It is estimated that this amount will increase to a total of \$70 - \$75 million over the next two years.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill may require cities and districts to spend funds or take action(s) requiring the expenditure of funds. Costs in each case will depend upon the provisions and features unique to each pension plan. If a plan provision is found to be out of compliance with the law, a special actuarial study will be required to calculate the added amount needed to bring that plan into compliance. Any costs may be amortized over a period of 30 years. The total statewide fiscal impact is unknown. However, considerable state revenue is provided to subsidize the funding of these plans and this revenue is expected to increase significantly in the next few years. The bill also provides that compliance with minimum benefit requirements may be on an incremental basis as state premium taxes become available. This provision may suffice to make the bill exempt from subsection (a) of Art. VII, Sec. 18, Florida Constitution, which provides that cities and counties are not bound by general laws requiring them to spend funds or to take an

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action which requires the expenditure of funds unless certain specified conditions are met.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 3, 1998, the Committee on Law Enforcement and Public Safety met and adopted a strike-everything amendment, incorporating numerous technical changes which essentially conformed to the Senate version of the bill. An amendment to the amendment was also adopted, which reinstated the definition of "compensation" or "salary" set forth in the original house version of s. 185.02(4), F.S.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

Kurt E. Ahrendt

Kurt E. Ahrendt