

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 666

SPONSOR: Governmental Oversight and Productivity Committee and Senator Sanderson

SUBJECT: Firefighter and Police Pensions

DATE: February 5, 2002 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CA	Favorable
2.	Wilson	Wilson	GO	Favorable/CS
3.			AGG	
4.			AP	
5.				
6.				

I. Summary:

This bill provides that an active-member position on the board of trustees of a closed chapter or local law plan for firefighters' or police officers' pensions may be held by a retired member of the plan if the active membership of the plan meets certain numerical limits under designated conditions. The bill also provides that, when all active firefighter or police officer members of a chapter or local law pension plan have transferred to another state retirement system, the plan is to be terminated once the final benefit payment has been made to the last participant or beneficiary, rather than when the last active participant terminates employment.

The bill also permits a retroactive qualification for supplemental benefit plan eligibility for the receipt of monies held in escrow by the Division of Retirement for the City of Tallahassee police and fire plan.

This bill amends the following sections of the Florida Statutes: ss. 175.032, 175.061, 175.371, 185.02, 185.05, and 185.38.

II. Present Situation:

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 Chapter 175, F.S., was originally enacted in 1939 to provide an incentive -- access to premium tax revenues -- to Florida cities to encourage them to establish retirement plans for firefighters.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 ch. 185, F.S., which sets up a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under ch. 175, F.S., 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”); 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 requirements found in chs. 175 and 185, F.S. Responsibility for overseeing and monitoring these plans lies with the Division of Retirement of the Department of Management Services, but day-to-day operational control rests with local boards of trustees.

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).

Most Florida firefighters and municipal law enforcement officers participate in these plans. Statewide, about 11 cities have chapter plans and 171 cities have local law plans for firefighters under ch. 175, F.S., and 12 cities have chapter plans and 176 cities have local law plans for police under ch 185, F.S.

In 1986, the Legislature completely revised chs. 175 and 185, F.S., in chs 86-41 and 86-42, Laws of Florida. In 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 in s. 175.021, F.S. Similar language was added to s. 185.02, F.S., relating to police plans. The constitutionality of these revisions were challenged and upheld by the state courts.

In 1999, the Legislature again revised chs. 175 and 185, F.S., in ch. 99-01, L.O.F., to apply minimum benefits and standards to all plans funded under these chapters. Sections 5 and 45 of the law amended ss. 175.061 and 185.05, F.S., respectively, to address membership of the boards of trustees. Sections 37 and 77 of the law amended ss. 175.371 and 185.38, F.S., respectively, to define the term “fully funded” as used to determine when a plan out of which members have transferred will be terminated.

Firefighter Pension Plans

Currently, s. 175.061, F.S., provides for the membership and terms of office for the board of trustees of chapter or local law municipal and special fire control district firefighter pension plans. Paragraph (1)(a) provides that boards of *chapter plans* must consist of five members, two of whom are legal residents of the municipality or district, who are appointed by the governing body of the municipality or special fire control district, and two of whom are full-time firefighters elected by a majority of the active firefighters who are members of the plan. Chapter or local law plans that, on January 1, 1997, allowed retired firefighters to vote in board elections may continue to allow retirees to vote in such elections. The fifth member of the board is to be chosen by a majority of the previous four members. Each member serves for a period of two years, unless replaced by the governing body at whose pleasure he or she serves, and may succeed himself or herself as a trustee. Each firefighter member may serve as trustee for a period of two years, unless he or she leaves the employment of the municipality or special fire control

district as a firefighter, whereupon a successor is chosen in the same manner as an original appointment. Each firefighter may succeed himself or herself in office.

Paragraph (1)(b) provides for the membership and terms of office for the board of trustees of local *law* municipal and special fire control district firefighter pension plans. Boards of trustees for local law plans are as follows:

- If a municipality or special fire control district has a pension plan for firefighters only, the provisions of relating to chapter plans apply.
- If a municipality has a pension plan for firefighters and police officers, the provisions of relating to “chapter” plans apply, except that one member of the board be a firefighter and one member be a police officer, each elected by a majority of the active firefighters or police officers who are members of the plan.

Section 175.371, F.S., provides for the transfer to another state retirement system. When every active participant in any pension plan created under this chapter elects to transfer to another state retirement system, the pension plan is terminated and the assets distributed in accordance with s. 175.361, F.S. If some participants elect to transfer to another state retirement system and other participants elect to remain, the plan becomes “closed” but remains in effect until the last active participant has terminated employment.

Police Officer Pension Plans

Section 185.05, F.S., provides for the membership and terms of office for the board of trustees of chapter or local law municipal police officer pension plans. Paragraph (1)(a) provides that boards of chapter plans must consist of five members, two of whom are legal residents of the municipality or district, who are appointed by the governing body of the municipality, and two of whom are full-time police officers elected by a majority of the active police officers who are members of the plan. Chapter or local law plans that, on January 1, 1997, allowed retired police officers to vote in board elections may continue to allow retirees to vote in such elections. The fifth member of the board is to be chosen by a majority of the previous four members. Each member serves for a period of 2 years, unless replaced by the governing body at whose pleasure he or she serves, and may succeed himself or herself as a trustee. Each police officer member may serve as trustee for a period of 2 years, unless he or she leaves the employment of the municipality as a police officer, whereupon a successor is chosen in the same manner as an original appointment. Each police officer may succeed himself or herself in office.

Paragraph (1)(b) provides for the membership and terms of office for the board of trustees of local law police officer pension plans. Boards of trustees for local law plans are as follows:

- If a municipality has a pension plan for police officer only, the provisions of relating to chapter plans apply.
- If a municipality has a pension plan for firefighters and police officers, the provisions of relating to chapter plans apply, except that one member of the board be a firefighter and one member be a police officer, each elected by a majority of the active firefighters or police officers who are members of the plan.

Section 185.38, F.S., provides for the transfer to another state retirement system. When every active participant in any pension plan created under this chapter elects to transfer to another state retirement system, the pension plan is terminated and the assets distributed in accordance with s. 185.37, F.S. If some participants elect to transfer to another state retirement system and other participants elect to remain, the plan becomes “closed” but remains in effect until the last active participant has terminated employment.

Closed Plans

“Closed” plans are firefighter or police chapter or local law pension plans that are closed to new members but continue to function for those active (employed) members electing to remain in the plan. Closed plans continue to receive funding, both from the employers and the state through the insurance premium tax proceeds, until the plan becomes “fully funded” or when the last active employee retires. If the plan is not “fully funded” upon retirement of the last employee, the government entity for whom the firefighters or police officers were employed must contribute to the fund until it is fully funded. (According to the Division of Retirement, “fully funded” means that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis.) The plan must be terminated once the last active participant terminates employment. Sections 175.361 and 185.37, F.S., require the board to determine how to distribute pension funds to retirees, either in lump sums, by purchase of an annuity, or by maintaining another or substituted trust fund.

The Division of Retirement reports that there are 11 "closed" plans in the state. Two plans have no active employees, while three other plans have less than 10 active participants. Additionally, of the closed plans, all have been questioned by the division concerning their "fully funded" status. Seven of the 11 are or are close to becoming fully funded. When the plans are "fully funded," state contributions will be suspended.

Municipality	Firefighter or Police Pension	# of Active Employees
Dania Beach	Police	5
Deerfield Beach	Police	49
Lake Park	Police	41
Lantana	Fire	30
North Miami Beach	Fire	0
North Miami	Fire	0
Oakland Park	Police	67
Pompano Beach	Police	140
Sarasota	Fire	88
Tamarac	Police	10
Vero Beach	Fire	5

Source: Division of Retirement, DMS, January, 2002.

III. Effect of Proposed Changes:

Sections 1 and 2 amend s. 175.032 and s. 185.02, F.S., respectively, to extend to December 1, 2000 from January 1, 1997, the period for eligibility for receipt of insurance premium tax monies for municipal and special district fire and police pension plans which use those monies for the support of supplemental benefits.

Section 3 amends s.175.061, F.S., to require that whenever the active membership of a closed firefighter pension plan falls below 10 members, an active member seat may be held by either a retired member or an active member of the plan who is elected by the active and retired members of the plan. Current law requires the seat to be held only by an active (employed) member. The remaining board members may elect an individual to serve in the absence of an active or retired firefighter. It shall be a ministerial duty of the local legislative body (municipality or special fire control district) to appoint such person to the board, provided the plan is in a closed status.

Section 4 amends s. 175.371, F.S., to require that chapter or local law firefighter pension plans must remain in effect until the final benefit payment has been made to the last plan participant or beneficiary, rather than until the last active participant has terminated their employment. This would allow continued receipt of insurance premium tax revenues, if necessary due to the closed plan's absence of full funding, until the final payment is made to the former employee.

Section 5 amends s. 185.05, F.S., to require that whenever the active membership of a closed police officer pension plan falls below 10 members, an active member seat may be held by either a retired member or an active member of the plan who is elected by the active and retired members of the plan. Current law requires the seat to be held only by an active (employed) member. The remaining board members may elect an active or retired member to serve in the absence of an active police officer. It shall be a ministerial duty of the municipal legislative body to appoint such person to the board, provided the plan maintains its closed status. This section also provides a similar procedure for closed plans with a membership of eleven or greater.

Section 6 amends s. 185.38, F.S., to require that "chapter" or "local law" police officer pension plans must remain in effect until the final benefit payment has been made to the last plan participant or beneficiary, if necessary, due to the closed plan's absence of full funding status, rather than until the last active participant terminates or beneficiary is eligible.

Section 7 provides that the bill becomes effective October 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The proposal would allow state contributions from the Insurance Premium Tax to continue to fund plans that are not fully funded even though the last active participant or beneficiary has terminated employment or eligibility. Cities may benefit because they will not be solely responsible for funding deficiencies if pension plans are not fully funded when the last active participant or beneficiary terminates employment or eligibility.

Extension of the eligibility date for qualification presumably affects only the City of Tallahassee. As of the report date of this bill from committee, February 5, 2002, the Division of Retirement was reviewing its records to determine if units of local government other than the City of Tallahassee would qualify for the disbursement of monies in escrow.

Slightly more than \$2 million is held in a non-interest bearing escrow account on behalf of the City of Tallahassee by the Division of Retirement. The method by which the city had constituted the governing structure of its police and fire plan caused it to be out of compliance with current law. City officials have represented that, when received, the funds in escrow will be used for the sole and exclusive purpose of providing supplemental benefits to the affected officers. The monies will not be used to supplant any other funds used by the city for its required participation in its ch.175/185 plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Division of Retirement notes that no provision is made for closed pension board membership when the remaining pension recipients are unable or incapable of serving on the board.

VIII. Amendments:

None.