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****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2002-66, Laws of Florida*

HOUSE OF REPRESENTATIVES

LOCAL GOVERNMENT & VETERANS AFFAIRS
FINAL ANALYSIS

BILL #: CS/HB 683, 1ST ENG
RELATING TO: Firefighter & Police Pensions
SPONSOR(S): Council for Smarter Government, Representative Mack
TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 8 NAYS 0
 - (2) SMARTER GOVERNMENT COUNCIL YEAS 13 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

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 has fallen below 10. 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, rather than when the last active participant terminates employment.

The bill provides that a member seat may be held by either a retiree or an active police officer of the plan, for police pension chapter plans and local plans with an active membership of 10 or more, which are closed to new members.

The bill provides that when a police pension plan is fully funded at a particular valuation date and later not fully funded, then the plan shall resume receipt of state premium tax moneys until the plan is once again determined to be fully funded

This bill does not appear to have an impact on state revenues.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

Chapters 175 and 185, Florida Statutes, each contain provisions for the establishment and maintenance of pension funds for firefighters and police officers, respectively. 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 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 “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 the 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. A state court found that since this “program is not mandatory as to any city’s participation,” the amended statutes are not facially unconstitutional. *City of Orlando v. State Department of Insurance*, 528 So.2d 468, 469 (Fla. 1st DCA 1988).

In 1999, the Legislature again revised chapters 175 and 185, F.S., in chapter 99-01, Laws of Florida, 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 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 firefighter member may serve as trustee for a period of 2 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 relating to chapter plans apply.
- If a municipality has a pension plan for firefighters and police officers, the provisions relating to "chapter" plans apply, except that one member of the board shall be a firefighter and one member shall 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 are 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 relating to chapter plans apply.
- If a municipality has a pension plan for firefighters and police officers, the provisions relating to chapter plans apply, except that one member of the board shall be a firefighter and one member shall 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. Section 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, the division concerning their "fully funded" status has questioned all of the closed plans. Seven of the 11 are, or are close to becoming, fully funded. When the plans are "fully funded," state contributions will be suspended.

<u>Municipality</u>	<u>Firefighter or Police Pension</u>	<u># of Active Employees</u>
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.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that whenever the active membership, falls below 10 active members in either a closed plan or closed local law plan for a firefighters' or police pension fund, then an active member seat on the board of trustees may be held by either a retired or active member who is elected by the active and retired members of the plan.

The bill provides that a member seat may be held by either a retiree or an active police officer of the plan, for police pension chapter plans and local plans with an active membership of 10 or more, which are closed to new members.

The bill provides that when a police pension plan is fully funded at a particular valuation date and later not fully funded, then the plan shall resume receipt of state premium tax moneys until the plan is once again determined to be fully funded.

The bill also clarifies that, effective May 31, 1998, such firefighter and police pension plans will remain in effect until the final benefit payment has been made to the last participant.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends section 175.032(18), Florida Statutes, to change the effective date to December 1, 2000, for the definition of "supplemental plan municipality."

Section 2. Amends s. 185.02, F.S., to change the effective date to December 1, 2000, for the definition of "supplemental plan municipality."

Section 3. Creates subsection 175.061(1)(c), F.S., regarding firefighter pension plans, to provide that whenever the active membership of either a closed plan or closed local law plan falls below 10, then an active member seat may be held by either a retired or an active member who is elected by the active and retired members of the plan.

Section 4. Amends s. 175.351, F.S., to change the effective date to December 1, 2000, for an exemption to s. 175.06(1)(b), F.S.

Section 5. Amends s. 175.371(2), F.S., to provide that when a plan is fully funded at a particular valuation date and later not fully funded, then the plan shall resume receipt of state premium tax moneys until the plan is once again determined to be fully funded; and to clarify that, effective May

31, 1998, the police pension plan remains in effect until the final benefit payment has been made to the last participant or beneficiary.

Section 6. Creates s. 185.05(1)(c), F.S., regarding police pension plans, to provide that whenever the active membership of either a closed chapter plan or closed local law plan falls below 10, then an active member seat may be held by either a retired or an active member who is elected by the active and retired members of the plan. Also creates s. 185.05(1)(d), F.S., regarding chapter plans and local plans with an active membership of 10 or more and which are closed to new members, to provide that a member seat may be held by either a retiree or an active police officer of the plan.

Section 7. Amends s. 185.35(b), F.F., to change the effective date to December 1, 2000, from January 1, 1997, for the exemption from the effect of s. 185.05(1)(b), F.S.

Section 8. Amends s. 185.38(2), F.S., to provide that when a plan is fully funded at a particular valuation date and later not fully funded, then the plan shall resume receipt of state premium tax moneys until the plan is once again determined to be fully funded; and to clarify that, effective May 31, 1998, the police pension plan remains in effect until the final benefit payment has been made to the last participant or beneficiary.

Section 9. Provides an effective date of October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

According to the Department of Management Services' bill analysis to the bill as introduced, this bill appears to have a negligible impact on state revenues.

2. Expenditures:

According to the Department of Management Services' bill analysis to the bill as introduced, this bill appears to have a negligible impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to the Department of Management Services' bill analysis to the bill as introduced, this bill appears to have a negligible impact on local government revenues.

2. Expenditures:

The bill, as introduced, does not appear to require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill, as introduced, does not appear to have an impact on the private sector.

D. FISCAL COMMENTS:

According to the Department of Management Services' bill analysis to the bill as introduced, police and fire pension plans are currently funded in part by state contributions resulting from the taxes collected from property and casualty insurers pursuant to ss. 175.101 and 185.08, F. S. The proposal would allow those contributions to continue until the plan is determined to be fully funded. The difference between the current law and the proposal is that current law allows the plan to continue to receive the state premium tax moneys until the plan becomes fully funded or when the last active participant terminates employment (even though the plan may not be fully funded). The proposal allows the plan to continue to receive the state premium tax moneys until the plan is fully funded (even though the last active participant has terminated employment). The impact of the proposal is negligible since the actuary should be anticipating the retirement date of the last active participant and funding should be such that the plan is fully funded by the time the last active participant reaches his retirement date.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require the expenditure of funds by counties or municipalities.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not appear to have an impact on the revenue raising authority of counties or municipalities.

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

The bill does not appear to reduce state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

A representative of the Florida Professional Firefighters indicated support for this bill. No further comments were forthcoming after the bill was amended.

A representative of the Florida Police Benevolence Association indicated support for this bill. No further comments were forthcoming after the bill was amended.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The House of Representatives passed an amendment on February 27, 2002 (House Journal page 315) establishing an effective date of May 31, 1998, upon which date the plan would remain in effect until the final benefit payment has been made to the last participant or beneficiary.

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VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Joan Highsmith-Smith

AS REVISED BY THE SMARTER GOVERNMENT COUNCIL:

Prepared by:

Staff Director:

Andrew S. Grayson, Esquire

Don Rubottom

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Andrew S. Grayson, Esq.

Joan Highsmith-Smith