

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Governmental Operations Committee

BILL: CS/SB 198

INTRODUCER: Governmental Operations Committee and Senator Wise

SUBJECT: Firefighter/Municipal Police Pensions

DATE: April 12, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Favorable
2.	Wilson	Wilson	GO	Fav/CS
3.			GA	
4.				
5.				
6.				

I. Summary:

This bill clarifies that for purposes of firefighter pension plans, the term “firefighter” includes all certified supervisory and command personnel with certain specified duties, and excludes part-time firefighters or auxiliary firefighters. The terms of office for appointed and elected members of the boards of trustees of a firefighters’ pension trust fund or a municipal police officers’ retirement trust fund may be amended by municipal ordinance, a special act of the Legislature, or a resolution adopted by the governing body of the special fire control district, but the length of terms for all board members must be the same. Duties of the members of the boards of trustees will be subject to statutory fiduciary standards and the statutory Code of Ethics for public officers and employees.

The bill raises the cap for which the board of trustees of either a firefighter pension fund or a municipal police officer retirement trust fund may invest retirement plan assets in foreign securities. The board of trustees of either fund is authorized to designate persons other than the chair or secretary to sign drafts drawn on the pension or retirement trust fund as long as specified qualifications have been met.

This bill substantially amends ss. 175.032, 175.061, 175.071, 185.05, 185.06, and 190.011, F.S.

II. Present Situation:

“Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts”

In establishing chapters 175 and 185, Florida Statutes, the Legislature found and declared that it was a proper and legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, and that in implementing the provisions of s. 14,

Art. X of the Florida Constitution, such retirement systems or plans be managed, administered, operated and funded in such a way as to maximize the protection of firefighters' and police officers' retirement trust funds.¹ The Municipal Police Officers' Retirement Trust Fund (PORTF) and the Firefighters' Pension Trust Fund (FPTF) are housed within the Division of Retirement in the Department of Management Services, which is the state agency responsible for administrative oversight of the funds, including monitoring for actuarial soundness.

The FPTF is funded through an excise tax on property insurance policies. Up to 1.85 percent of the gross amount of receipts on premiums for policies issued within the city boundary or the legally defined boundary of a special fire control district is collected by the Department of Revenue and transferred to the appropriate fund at the Division of Retirement. In 2005, premium tax distributions to cities and special fire control districts from the FPTF amounted to \$53.5 million.²

The PORTF is funded through an excise tax on casualty insurance policies. Up to .85 percent of the gross amount of receipts on premiums for policies issued within the city boundary is collected by the Department of Revenue and transferred to the appropriate fund at the Division of Retirement. In 2005, premium tax distributions to cities from the PORTF amounted to \$64.33 million.³

Additional revenues for both funds come from employee contributions through salary, employer contributions, and fines for employees violating board rules and regulations, and other sources.

Two types of plans operate under chapters 175 and 185, F.S.: Chapter Plans which adopt the provisions of the appropriate chapter by reference, and Local Law Plans which are created by a special act, local ordinance, or resolution which must meet certain statutory minimum standards. As of January 2007, 21 special fire control districts and 178 cities participate in the FPTF, and 181 cities participate in the PORTF. Of the 220 participating cities, 139 cities participate in both plans. Of the 359 plans, 23 are chapter plans and the rest are local law plans. The Division of Retirement reports that more than 46,900 active police officers and firefighters are plan participants.

On a day-to-day basis, the funds in participating cities and special fire control districts are operated by a governing board of trustees created at the local level and consisting of two residents, two police officers or firefighters selected through the active membership, and one member selected by the other four who is approved by the appropriate governing body pro forma. Board members serve 2-year terms and may succeed themselves in office. By majority vote, the trustees must elect a chair and a secretary, and must at least hold quarterly meetings. The Division of Retirement has regulatory oversight over the boards.

General powers and duties of the boards of trustees included investing and reinvesting assets in:

- Annuities and life insurance contracts,

¹ Fla. Stat. §175.01 (1), 185.01(1) (2006).

² http://dms.myflorida.com/human_resource_support/retirement/municipal_police_and_fire/statistics

³ http://dms.myflorida.com/human_resource_support/retirement/municipal_police_and_fire/statistics

- Time or savings accounts of specified banks and financial institutions;
- Obligations of the United States or obligations guarantees as to principal and interest by the government of the United States,
- Bonds issued by the State of Israel,
- Bonds (which must hold a rating in one of the three highest classifications by a major rating service), stocks, and other indebtedness issued or guaranteed by a United States corporation, and
- Foreign securities not to exceed 10 percent of plan assets.

Public Officers and Employees – Actuarial Soundness of Retirement Systems

Chapter 112, Part VII, Florida Statutes, expresses the Legislature's intent that in implementing s. 14, Art. X of the Florida Constitution, relating to governmental retirement systems, such retirement systems or plans be managed, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits. The provisions of Part VII are applicable to any and all units, agencies, branches, departments, boards, and institutions of state, county, special district, and municipal governments that participate in, operate, or administer a retirement system or plan for public employees which are funded in whole or in part by public funds.

Section 112.661, F.S., establishes investment policies for local retirement systems or plans, and provides that written policies governing the investment of plan assets be structured to maximize financial return to the retirement system or plan consistent with the risk of the investments, and be structured to establish and maintain an appropriate diversification of the retirement system or plan's assets. Investment policies must describe investment objects and the level of prudence and ethical standards to be followed when carrying out investment activities, specify performance measures, list authorized investments, provide maturity and liquidity requirements, establish portfolio composition guidelines, and provide for appropriate diversification, as well as meet additional criteria.

Section 112.656, F.S., requires that in the discharge of duties with respect to a retirement plan, a fiduciary must act solely for the purpose of providing plan participant benefits and defraying the administrative costs of administering the plan. Section 518.11, F.S., governs investments by fiduciaries and provides that a fiduciary has a duty to invest and manage assets as a prudent investor would.

Chapter 112, Part III, Florida Statutes, contains the Code of Ethics for Public Officers and Employees, and establishes the Legislature's intent to protect the integrity of government by establishing standards of conduct for public officers, employees of agencies and others.

III. Effect of Proposed Changes:

Section 1. Amends s. 175.032, F.S., to redefine the definition of "firefighter" to include all certified supervisory and command personnel whose duties include the supervision, training, guidance and management responsibilities of full-time firefighters, and to exclude part-time or auxiliary firefighters. The section also permits community development districts under ch. 190, F.S., to qualify as special fire control districts.

Section 2. Amends s. 175.061, F.S., to provide that effective upon the act becoming a law, the term for members serving on a firefighter pension plan board of trustees can be extended from 2 to 4 years through enactment of a city ordinance, a special act of the Legislature, or a resolution adopted by the governing body of a special fire control district. Specifies that the length of the terms of office must be the same for all members of the board. The plan trustees may also authorize payroll deduction privileges for the provision of post-retirement supplemental insurance products for retirees, their spouses, and dependents.

Section 3. Amends s. 175.071, F.S., to provide the following:

- Board of Trustees members are subject to statutory fiduciary duties and responsibilities, statutory investment policies governing the investment of assets of any local retirement system or plan, and statutory requirements governing prudent investments by fiduciaries.
- Board of Trustees members are subject to the statutory Code of Ethics for public officers and employees.
- Raises the cap on foreign securities investments which may be made by members of the Board of Trustees from 10 percent to 20 percent.
- Authorizes the Board of Trustees to designate two individuals, in addition to the Board's chair and secretary, to sign drafts drawn on the FPTF. The two individuals are subject to the same fiduciary standards as the Board of Trustees members.

Section 4. Amends s. 185.05, F.S., to provide that effective upon the act becoming a law, the term for members serving on a municipal police officers retirement fund board of trustees can be extended from 2 to 4 years through enactment of a city ordinance or a special act of the Legislature. Specifies that the length of the terms of office must be the same for all board members. The plan trustees may also authorize payroll deduction privileges for the provision of pot-retirement supplemental insurance products for retirees, their spouses, and dependents.

Section 5. Amends s. 185.06, F.S., to provide the following:

- Board of Trustees members are subject to statutory fiduciary duties and responsibilities, statutory investment policies governing the investment of assets of any local retirement system or plan, and statutory requirements governing prudent investments by fiduciaries.
- Board of Trustees members are subject to the statutory Code of Ethics for public officers and employees.
- Raises the cap on foreign securities investments which may be made by members of the Board of Trustees from 10 percent to 20 percent.
- Authorizes the Board of Trustees to designate two individuals, in addition to the Board's chair and secretary, to sign drafts drawn on the PORTF. The two individuals are subject to the same fiduciary standards as the Board of Trustees members.

Section 6. Amends s. 190.011, F.S., to permit a community development district to impose the insurance premium tax if it chooses to become a special fire control district and create its own pension plan.

Section 7. Provides that if any provision of the act is held invalid, the invalidity does not affect other provisions or applications of the act, and provides that provisions of the act are severable.

Section 8. Provides that the act shall take effect upon becoming a law.

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 Division of Retirement in the Department of Management Services concluded that there is no revenue impact to local government under the provisions of the bill, and that the bill does not affect either the Florida Retirement System or the Florida Retirement System Trust Fund.

VI. Technical Deficiencies:

Although this bill takes effect upon becoming a law, two provisions of the bill contain language providing that proposed revisions also will take effect upon the act becoming a law.

VII. Related Issues:

Section 112.665 (1)(d), F.S., places an annual reporting requirement on the Department of Management Services to

“(I)ssue, by January 1 annually, a report to the President of the Senate and the Speaker of the House of Representatives, which report details division activities, findings and

recommendations concerning all governmental retirement systems. The report may include legislation proposed to carry out such recommendations.”

The 2006 report released in 2007 reported one city and its three sponsored pension plans - general, police, and firefighter - to have engaged in the use of one or more unreasonable assumptions that have suppressed its required funding under law. The division actuary recommended statutory changes to ch. 112, F.S., to discipline all of the 507 local government defined benefit pension plans and to prevent “the current abuse of Legislative intent.”⁴

Many of the local government pension plans in Florida are small in size with assets less than \$100 million. The bill authorizes all police and firefighter plans to increase their investment exposure to foreign securities to 20 percent. For plans that lack the sophistication to understand foreign markets this authority, while nominally neutral since it is permissive, can expose them to the prospects of large gains or losses. If a plan is trying to compensate for loss by assuming additional risk, the ambitious use of this new authority can compromise its ability to make realistic and reasonable investment decisions, particularly if the result makes the plan less diversified or more concentrated in markets not well understood.

A number of medium size local government pension plans are already experiencing high payroll costs, flat asset and payroll growth and increasing liabilities. These experiences, coupled with altered actuarial assumptions and a significant decline in the plan funded ratio (the ratio of assets to liabilities), suggest that the trustees and the division will have to provide greater oversight to prevent further deterioration in their funding bases.

The division made specific additional recommendations for amendment of chs. 175 and 185, F.S., on this very subject, none of which is contained in this bill.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

⁴ Florida Department of Management Services, *Florida Local Government Retirement Systems, 2006 Annual Report*. Tallahassee, FL: 2007. p. 31.

VIII. Summary of Amendments:

None.

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