

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – This bill increases terms of office, authorized investments, and authorized signatories for the boards of trustees of the pension trust funds. The bill also requires the boards of trustees to establish a maximum entrance age.

B. EFFECT OF PROPOSED CHANGES:

Background on Municipal and Special District Firefighter Pensions

Firefighters working for municipalities or special districts that have a constituted fire department or an authorized volunteer fire department,¹ which owns and uses equipment for fighting fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase,² have pension plans pursuant to chapter 175, Florida Statutes. Chapter 175, Florida Statutes, is the Marvin B. Clayton Firefighters Pension Trust Fund Act (“Firefighters PTFA”).³ The Firefighters PTFA sets forth the minimum benefits and minimum standards for municipal and special district firefighter pension plans. There currently are 20 special fire control districts and 159 municipalities that have established plans pursuant to the Firefighters PTFA.⁴ These plans had revenues of approximately \$66,319,992 in 2004; \$5,096,380 of those revenues were generated by special fire control districts.⁵

Background on Municipal Police Officer Pensions

Police officers⁶ working for municipalities with a regularly organized police department, which uses equipment in serviceable condition with a value exceeding \$500 for the prevention of crime and for the preservation of life and property, have pension plans pursuant to chapter 185, Florida Statutes. Chapter 185, Florida Statutes is the Marvin B. Clayton Police Officers Pension Trust Fund Act (“Police Officer PTFA”). The Police Officer PTFA sets forth the minimum benefits and minimum standards for municipal police officer pension plans.

Similarities between the Acts

The Firefighter PTFA and the Police Officer PTFA have a number of provisions which mirror each other. For example, both the Firefighter PTFA and the Police Officer PTFA provide the following sources of funding for pension trust funds:

- Payment from the “premium tax” - the net proceeds of the excise tax upon insurance companies, insurance associations, or other property insurers on their gross receipts on premiums from holders of certain policies within the legal boundaries of the municipality or special district;
- Payment of a designated percentage deducted from the salary of each firefighter or police officer;
- Payment of all fines and forfeitures imposed and collected from the violation of any rule and regulation promulgated by the board of trustees;

¹ Fla. Stat. § 175.041(1) (2005).

² Fla. Stat. § 175.041(2) (2005).

³ Fla. Stat. § 175.025 (2005).

⁴ Dep’t of Mgmt. Serv., HB 381 (2006) Staff Analysis (Nov. 25, 2005) (on file with dep’t).

⁵ *Id.*

⁶ Fla. Stat. § 185.02(11) (2005).

- Mandatory payment of the normal cost of and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112, Florida Statutes;
- All gifts, bequests, and devises when donated;
- All increases in the fund by way of interest or dividends on bank deposits; and
- All other sources or income authorized by law for the augmentation of such pension trust funds.⁷

The Firefighter PTFA and the Police Officer PTFA also provide for governance by a board of trustees consisting of five members: two members who are legal residents of the special district or municipality and are appointed by its legislative body; two members who are full-time firefighters or police officers elected by a majority of the active firefighters or police officers who are members of such plan; a fifth member who must be chosen by a majority of the other four members.⁸ This board of trustees must meet quarterly.⁹

Among the powers of these board of trustees: invest and reinvest the assets of the firefighter pension fund in certain authorized investments, issue drafts, keep required records, retain a qualified independent consultant every three years, and employ legal counsel, independent actuaries, and other advisors.¹⁰

Both the Firefighter PTFA and the Police Officer PTFA provide requirements for the retirement,¹¹ disability,¹² death,¹³ and presumed injuries¹⁴ of firefighters and police officers under the plan.

The Division of Retirement is responsible for the daily oversight and monitoring of any firefighter or police officer pension plan under the Firefighter PTFA and the Police Officer PTFA.¹⁵ Actuarial deficits are not, however, obligations of the State of Florida.¹⁶

Changes to Board of Trustee Terms

Currently each member of the board of trustee serves two years and may succeed himself or herself. This bill changes the period of the term to four years.

Express Fiduciary Responsibilities

As this is not explicitly stated within these chapters, this bill provides that boards of trustees under the Firefighter PTFA and the Police Officer PTFA are expressly subject to certain fiduciary standards¹⁷ in the exercise of their general powers and duties.

⁷ Fla. Stat. §§ 175.091 and 185.07 (2005).

⁸ Fla. Stat. § 175.061(1) (2005) (The membership of the board of trustees for a chapter plan shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality or special fire control district, who shall be appointed by the governing body of the municipality or special fire control district, and two of whom shall be full-time firefighters as defined in s. 175.032 who shall be elected by a majority of the active firefighters who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired firefighters to vote in such elections, retirees may continue to vote in such elections. The fifth member shall be chosen by a majority of the previous four members as provided for herein, and such person's name shall be submitted to the governing body of the municipality or special fire control district.). Fla. Stat. § 185.05 (2005).

⁹ Fla. Stat. §§ 175.061(3) and 185.05(3) (2005).

¹⁰ Fla. Stat. §§ 175.071 and 185.06 (2005).

¹¹ Fla. Stat. §§ 175.162 and 185.16 (2005).

¹² Fla. Stat. §§ 175.191 and 185.18 (2005).

¹³ Fla. Stat. §§ 175.201 and 185.21 (2005).

¹⁴ Fla. Stat. § 175.231 (2005) (Conditions or impairment of health of a firefighter caused by tuberculosis, hypertension, or heart disease resulting in total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty after passing a physical examination and subject to rebuttal); Fla. Stat. § 185.34 (2005).

¹⁵ Fla. Stat. §§ 175.341 and 185.23 (2005).

¹⁶ Fla. Stat. §§ 175.051 and 185.04 (2005).

¹⁷ Fla. Stat. §§ 112.611 (requiring compliance with the fiduciary standards set forth in the Employee Retirement Income Security Act of 1974), 112.311 to 112.3187 (Code of Ethics), and 518.11 (prudent investor rule) (2005).

Changes to the Authorized Investments

The Firefighter PTFA and the Police Officer PTFA each provide five authorized investments and reinvestments:¹⁸

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund which is administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.
2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.
3. Bonds issued by the State of Israel.
4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia.¹⁹
5. Foreign securities not to exceed 10 percent of plan assets.

Boards of trustees may, however, request a variance from these authorized investments through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district. In addition, where a special act, or a municipal ordinance, adopted prior to July 1, 1998, permits greater than a 50-percent equity investment, these municipalities are not required to comply with the aggregate equity investment provisions.

This bill removes these authorized investments and expands the investment authority of these boards of trustees to mirror authorized investments of the State Board of Administration:

Authorized Investments – Without Limitation. There are currently 14 types of investments that the State Board of Administration is authorized to invest in without limitation.²⁰ Eight of these investments are bonds (or notes or other obligations) of identified governmental entities (e.g. the United States and the state). Of the six other investments, four relate to savings accounts and certificates of deposit, commercial paper, banker's acceptances, and negotiable certificates of deposit. Except for negotiable certificates of deposit, each of these investments must meet certain criteria:

- Investment in commercial paper must be “of prime quality of the highest letter and numerical rating as provided for by at least one nationally recognized rating service.”²¹

¹⁸ Fla. Stat. §§ 175.071 and 185.06 (2005).

¹⁹ *Id.* (The corporation must be listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service. These investments may not exceed more than five percent of the assets of the board of trustees in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed five percent of the outstanding capital stock of that company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the assets of the fund.).

²⁰ Fla. Stat. § 215.47(1) (2005).

²¹ Fla. Stat. § 215.47(1)(j) (2005). Although not defined in chapter 215, Florida Statutes, a nationally recognized rating service appears to be the same as a nationally recognized statistical rating organization (“NRSROs”) – an organization that has been identified by the United States Securities and Exchange Commission through the no-action letter process. See Securities and Exchange Commission, Release No. 33-8570, Definition of Nationally Recognized Statistical Rating Organization (Apr. 19, 2005), available at <http://www.sec.gov/rules/proposed/33-8570.pdf> (last visited Mar. 11, 2006). Nine firms have been identified as NRSROs; after the consolidation of several credit rating agencies, there currently are five NRSROs: A.M. Best Company, Inc. (“A.M. Best”), Dominion Bond Rating Service Limited (“DBRS”); Fitch, Inc. (“Fitch”); Moody’s Investors Service Inc. (“Moody’s”); and the Standard & Poor’s Division of the McGraw Hill Companies, Inc. (“S&P”). Each of these NRSROs has its own set of credit ratings. For example, Moody’s long-term issue credit ratings range from Aaa to C and Moody’s “appends numerical modifiers to each generic rating classification from

- Investment in “savings accounts in, or certificates of deposit of, any bank, savings bank, or savings and loan association incorporated under the laws of this state or organized under the laws of the United States doing business and situated in this state, the accounts of which are insured by the Federal Government or an agency thereof” is limited to 15 percent of the net worth of the institution or a lesser amount if provided by a rule of the State Board of Administration.²²
- Investments in time drafts or bills of exchange (banker’s acceptances) must be accepted by a member bank of the Federal Reserve System having total deposits not less than \$400 million.²³

Authorized Investments – No More than 25 Percent. There are currently 11 types of investments that the State Board of Administration is authorized to invest in “with no more than 25 percent of any fund.”²⁴ Most of these “25-percent-authorized investments” also must meet certain criteria:

- Municipal/Political Subdivision Bonds, Notes, or Obligations. Currently, the State Board of Administration may invest in bonds, notes, or obligations of any municipality or political subdivision or any agency or authority of the state as long as those obligations are rated in any one of the three highest ratings by two nationally recognized rating services.²⁵ If only one nationally recognized rating service has rated the obligation, the rating must be in one of the two highest classifications.²⁶

Source	Requirement	S&P	Moody’s
Current Law - two ratings	Three Highest Ratings	AAA, AA, A	Aaa, Aa1, Aa2
Current Law - one rating	Two Highest Ratings	AAA, AA	Aaa, Aa1

- Certain Notes Secured by First Mortgages. The State Board of Administration is authorized to invest in notes secured by first mortgages on Florida real property that are insured or guaranteed by the Federal Housing Administration or the United States Department of Veterans Affairs.²⁷
- Investments Collateralized by Certain First Mortgages. The State Board of Administration is authorized to invest in investments that are collateralized by first mortgages covering single-family Florida residences which meet certain criteria: do not exceed \$60,000, do not exceed 80 percent of value, are not delinquent, and are originated by a lender regulated by the state

Aa to Caa.” See Moody’s, Long-Term Obligation Ratings, available at <http://www.moodys.com/moodys/cust/AboutMoody/AboutMoody.aspx?topic=rdef&subtopic=moodys%20credit%20ratings&title=Long+Term+Obligation+Ratings.htm> (last visited Mar. 11, 2006; free login required) (“Obligations rated Aaa are judged to be of the highest quality, with minimal credit risk. Obligations rated C are the lowest rated class of bonds and are typically in default, with little prospect for recovery of principal or interest.”). By contrast, S&P long-term issue credit ratings range from AAA to D and “may be modified by the addition of a plus or minus sign to show relative standing within the major categories.” See S&P, Long-term issue credit ratings, available at <http://www2.standardandpoors.com/servlet/Satellite?pagename=sp%2FPage%2FSiteSearchResultsPg&l=EN&r=1&b=10&search=site&vqt=%22long-term+issue+credit+ratings%22#FixedIncome> (click on “Long-term Issue Credit Ratings” in results, last visited Mar. 11, 2006) (“An obligation rated ‘AAA’ has the highest rating assigned by S&P and the obligor’s capacity to meet its financial commitment on the obligation is extremely strong. An obligation rated ‘D’ is in payment default. The ‘D’ rating category is used when payments on an obligation are not made on the date due even if the applicable grace period has not expired, unless Standard & Poor’s believes that such payments will be made during such grace period. The ‘D’ rating also will be used upon the filing of a bankruptcy petition or the taking of a similar action if payments on an obligation are jeopardized.”).

²² Fla. Stat. § 215.47(1)(h) (2005).

²³ Fla. Stat. § 215.47(1)(k) (2005).

²⁴ Fla. Stat. § 215.47(2) (2005).

²⁵ Fla. Stat. § 215.47(2)(a) (2005).

²⁶ *Id.*

²⁷ Fla. Stat. § 215.47(2)(b) (2005).

or Federal Government.²⁸ The aggregate collateral furnished by the mortgage must be at least 150 percent of the aggregate investment and the mortgages must be segregated by the lending institution.²⁹ If one of these mortgages becomes more than three months delinquent, the lender is required to substitute a mortgage of equal or greater value.³⁰

- Certain mortgage securities. The State Board of Administration is authorized to invest in mortgage securities which represent participation in or are collateralized by mortgage loans secured by real property, provided those securities are issued by an agency of or enterprise sponsored by the United States Government, including, but not limited to, the Government National Mortgage Association, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation.
- Certain Group Annuity Contracts. The State Board of Administration is authorized to invest in group annuity contracts of the pension investment type with insurers licensed to do business in this state provided that the amount invested with any one insurer does not exceed three percent of its assets.³¹
- Certain Real and Personal Property Interests. This authorization includes mortgages and related instruments on commercial or industrial real property, with provisions for equity or income participation or with provisions for convertibility to equity ownership. It also includes interests in collective investment funds.
- Fixed-Income Obligations of Foreign Governments. The State Board of Administration is authorized to invest in fixed-income obligations issued by foreign governments or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities, if the obligations are rated investment grade by at least one nationally recognized rating service.
- Israeli Bonds. The State Board of Administration may invest in rated or unrated bonds, notes, or instruments backed by the full faith and credit of the government of Israel.
- Other Authorized Obligations. The State Board of Administration may authorize obligations of the United States under the Florida Retirement System Defined Benefit Plan Investment Policy Statement established in section 215.475, Florida Statutes.
- Dollar-Denominated Obligations. The State Board of Administration is authorized to invest in United States dollar-denominated obligations issued by foreign governments, or political subdivisions or agencies thereof, supranational agencies, foreign corporations, or foreign commercial entities.
- Other Asset Backed-Securities. The State Board of Administration is authorized to invest in other asset-backed securities.

Authorized Investments – Stock and Corporate Obligations. The State Board of Administration is authorized, subject to certain restrictions, to invest no more than 80 percent of any fund in common stock, preferred stock, and obligations which may be converted to common stock, provided the corporation is organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia or is listed on any one or more of the recognized national

²⁸ Fla. Stat. § 215.47(2)(c) (2005).

²⁹ *Id.*

³⁰ *Id.*

³¹ Fla. Stat. § 215.47(2)(e) (2005).

stock exchanges in the United States and conforms with the periodic reporting requirements under the Securities Exchange Act of 1934.³²

Authorized Investments – Certain Interest-Bearing Obligations. The State Board of Administration may invest no more than 80 percent of any fund in interest-bearing obligations with a fixed maturity of any corporation or commercial entity within the United States.³³

Authorized Investments – Certain Foreign Corporations or Foreign Commercial Entities. The State Board of Administration is authorized to invest no more than 20 percent of any fund in corporate obligations and securities of any kind of a foreign corporation or a foreign commercial entity which has its principal office located in any country other than the United States of America or its possessions or territories.³⁴ This authority does not include United States dollar-denominated securities listed and traded on a United States exchange which are a part of the ordinary investment strategy of the board.³⁵

Authorized Investments – Five Percent Notwithstanding. The State Board of Administration is authorized to invest no more than five percent of any fund outside of the investment authorizations and limitations in section 215.47, Florida Statutes.³⁶

The investment authority of the State Board of Administration includes repurchase agreements or reverse repurchase agreements³⁷ as well as the buying and selling of futures and options.³⁸ The State Board of Administration may also loan its purchased or held securities or investments to securities dealers or financial institutions.³⁹

Changes to Draft Authority

Currently, in order to issue drafts upon the pension trust funds, the drafts must be consecutively numbered, signed by the chair and secretary, and state the purpose for the drafts. This bill will allow two individuals designated by the board to sign drafts.

Establishing a Maximum Age

There is currently not a maximum age for entrance into either type of pension fund. This bill requires the boards of trustees to establish a maximum age for entrance into the fund, with the provisions of section 112.044, Florida Statutes, which prohibits discrimination based on age.

Changes Affecting Only the Firefighter PTFA

Section 175.032, Florida Statutes, provides the definitions for the Firefighters PTFA, including a definition for “firefighter.” This bill expands the definition of firefighter to include all certified supervisory and command personnel whose duties include the supervision, training, guidance, and management

³² Fla. Stat. § 215.47(3) (2005) (This is provided that not more than 75 percent of the fund may be in internally managed common stock; provided that no more than 10 percent of the equity assets of any fund are invested in the common stock, preferred stock, and interest-bearing obligations having an option to convert into common stock, of any one issuing corporation; and provided that no more than three percent of the equity assets of any fund may be invested in the securities of any one issuing corporation except to the extent a higher percentage of the same issue is included in a nationally recognized market index, based on market values, at least as broad as the Standard and Poor’s Composite Index of 500 Companies, or except upon a specific finding by the board that such higher percentage is in the best interest of the fund.).

³³ Fla. Stat. § 215.47(4) (2005).

³⁴ Fla. Stat. § 215.47(5) (2005).

³⁵ *Id.*

³⁶ Fla. Stat. § 215.47(6) (2006).

³⁷ Fla. Stat. § 215.47(8) (2006).

³⁸ Fla. Stat. § 215.47(10) (2006) (This is provided the instruments for such purpose are traded on a securities exchange or board of trade regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission, unless the board by rule authorizes a different market.).

³⁹ Fla. Stat. § 215.47(16) (2005) (This is provided the loan is collateralized by cash or securities having a market value of at least 100 percent of the market value of the securities loaned.).

responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters, but does not include part-time firefighters or auxiliary firefighters. This is similar to a provision in the Police Officers PTFA in section 185.02(11), Florida Statutes.

C. SECTION DIRECTORY:

- Section 1: Amends section 175.032, Florida Statutes, to expand the definition of firefighter.
- Section 2: Amends section 175.061, Florida Statutes, to change terms of office for the boards of trustees.
- Section 3: Amends section 175.071, Florida Statutes, to expand the fiduciary standards, authorized investments, drafting authority, and entrance ages.
- Section 4: Amends section 185.05, Florida Statutes to change terms of office for the boards of trustees.
- Section 6: Amends section 185.06, Florida Statutes, to expand the fiduciary standards, authorized investments, drafting authority, and entrance ages.
- Section 6: Sets forth a severability clause.
- Section 7: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There does not appear to be a fiscal impact on state government revenues.

2. Expenditures:

There does not appear to be a fiscal impact on state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There does not appear to be a fiscal impact on local government revenues.

2. Expenditures:

There does not appear to be fiscal impact on local government expenditures. The bill, however, may create some compliance costs for the municipal and special district pension boards.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The expanded investment authority of the municipal and special district pension boards may have a positive, direct impact on the private sector.

D. FISCAL COMMENTS:

The Department of Management Services provided a fiscal note from the enrolled actuary regarding this bill: "There are no actuarial or benefit issues associated with this bill."⁴⁰

⁴⁰ Fla. Dep't of Mgmt. Serv., HB 1251 (2006) Substantive Bill Analysis (Mar. 24, 2006) (on file with dep't).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require municipalities or counties to spend funds or to take an action requiring the expenditure of funds. This bill does not appear to reduce the percentage of a state tax shared with municipalities or counties. This bill does not appear to reduce the authority that municipalities or counties have to raise revenue.

2. Other:

Article X, section 14 of the Florida Constitution provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis. Since this bill does not directly increase benefits, this constitutional requirement does not apply. The Department of Management Services reached the same conclusion.⁴¹

B. RULE-MAKING AUTHORITY:

Although this bill does not appear to specifically create, modify, or eliminate rulemaking authority, the bill will require changes in the rules, regulations, resolutions, and ordinances which govern police officer and firefighter pension boards for local governments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Division of Retirement within the Department of Management Services, which is responsible for the daily oversight and monitoring for actuarial soundness, made the following comments on the bill. These comments appear to raise valid issues which the sponsor of the bill may wish to address.

Optional Increase to Terms of Office

Because there are many existing local ordinances, legislative acts, and resolutions related to the pension plans, the change to the terms of office of the boards of trustees should be optional.⁴²

Additional Fiduciary Standard

Section 112.656, Florida Statutes, which relates to fiduciary duties and fiduciaries for retirement systems, should be added to the fiduciary standards included in the bill.⁴³

Do Not Mirror the Authorized Investments in Section 215.47, Florida Statutes

“Chapters 175 and 185, Florida Statutes, allow for the adoption of more liberal investment standards, which may match or exceed the standards in section 215.47, Florida Statutes, with the exception of the 10 percent foreign restriction. It is suggested that the existing law simply be amended to change the 10 percent foreign restriction to 20 percent. In this manner, existing plan provisions that have been adopted by many local law cities/districts are not adversely affected and a foreign investment restriction is maintained that matches the restriction placed on the State Board of Administration in investing the assets of the Florida Retirement System.”⁴⁴

⁴¹ *Id.*

⁴² *Id.* at 2.

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 4-5.

“Many municipalities and fire control districts take comfort in the comparatively conservative investment parameters established under chapters 175 and 185, Florida Statutes. Since the municipalities and special districts are ultimately responsible for the proper funding of pension plans, they enjoy the legislative control that they have over granting more liberal investment parameters.”

Two Designated Signatories for Drafts

The provision allowing the board to designate two individuals to sign disbursements from the trust fund “appears to erode the responsibility and direction of the board of trustees. No criteria are established for the selection of these two individuals and no fiduciary designation is required. While it is not clear why this amendment is needed, if it is maintained in the proposal, it is suggested that additional language be added to require the designated individuals to be considered ‘fiduciaries’ to the plan.”⁴⁵

Establishing an Entrance Age

“The requirement that boards of trustees establish an entrance age appears to violate the legislative intent in establishing chapters 175 and 185 plans and violates several existing statutory provisions with regard to firefighters, police officers and the board’s authority. This requirement should be deleted.”⁴⁶

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

⁴⁵ *Id.* at 6.

⁴⁶ *Id.* at 7-8.