HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1279 Retirement
SPONSOR(S): Government Operations Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee		Harrington	Williamson

SUMMARY ANALYSIS

Chapters 175 and 185, F.S., were created to provide uniform retirement system benefits for firefighters who are employed by a municipal or special fire control district, and for municipal police officers. A Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within the boundaries of the municipality. A Police Officers' Pension Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality. The Municipal Firefighters' Pension Trust Fund and Police Officers' Pension Trust Fund are administered by a local governing board of trustees that is created in participating cities and special fire control districts, and subject to the regulatory oversight of the Division of Retirement.

The bill amends parallel provisions in chapters 175 and 185, F.S., relating to the membership and responsibilities of the board of trustees.

The bill provides that the board of trustees must consist of five members. Three members must be legal residents of the municipality or special fire control district and may not be members, retirees, beneficiaries, or payees of the pension plan. It provides for a term limit of eight consecutive years. For local law plans that provide benefits for both firefighters and police officers, it expands the board membership to nine members instead of five members. It provides that five of the members must be appointed by the governing body of the municipality or special fire control district, two must be firefighters, and two must be police officers.

The bill provides additional duties for the board of trustees. First, it requires the board of trustees to provide a detailed accounting report of its expenses for each fiscal year. The report must be submitted to the plan sponsor and the Department of Management Services, and must be made available to the members of the plan. Second, the board of trustees must operate under an administrative expense budget for each fiscal year, provide the budget to the plan sponsor, and make it available to plan members. The administrative expense budget must regulate the administrative expenses of the board of trustees. The budget, including any budget amendments, is not effective until approved by a majority vote of the plan sponsor. Finally, the board of trustees must establish qualifications for the plan administrator. The bill provides minimum qualifications that the board of trustees must consider when establishing qualifications for the position.

The bill provides that a plan that has an assets to liabilities ratio, utilizing the most recent actuarial report, of 75 percent or less, must, every three years, conduct an internal audit of the plan's management and accounting practices and investments.

In addition, the bill provides that notwithstanding specific provisions in the chapters, the changes made in the act apply to a local law plan created by special act before May 27, 1939.

The bill may have an indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution Requirements
Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

The Florida Protection of Public Employee Retirement Benefits Act
Part VII of chapter 112, F.S., the Florida Protection of Public Employee Retirement Benefits Act (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.[1] Responsibility for administration of the act has been assigned primarily to the Division of Retirement (division), Department of Management Services (DMS).

Municipal Firefighters' Pension Trust Fund and Police Officers' Pension Trust Fund
Chapters 175 and 185, F.S., declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.[2]

Local firefighter pension plans are governed by chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters Pension Trust Fund Act. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive--access to premium tax revenues--to encourage the establishment of firefighter retirement plans by cities. Fourteen years later, the Legislature enacted chapter 185, F.S., the Marvin B. Clayton Police Officers' Pension Trust Fund Act, which provides a similar funding mechanism for municipal police officers. In 1993, special fire control districts became eligible to participate under chapter 175, F.S.

The acts set forth the minimum benefits or minimum standards for pensions for municipal firefighters and police officers. Municipalities may not reduce the benefits provided in the acts; however, the benefits provided in a local law plan may vary from the provisions in the act so long as the minimum standards are met.

Funding for these pension plans primarily comes from four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);
- Employee contributions;
- Other revenue sources; and
- Mandatory payments by the city to fund the normal cost and any actuarial deficiency of the plan.

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.[3] It is payable by the insurers to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division. In 2013, premium tax distributions to

[1] Section 112.62, F.S.
[2] *See* ss. 175.021(1) and 185.01(1), F.S.
[3] Section 175.101, F.S.

municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to $74.7 million.[4]

The Police Officers' Pension Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.[5] Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the DOR, and the net proceeds are transferred to the appropriate fund at the division. In 2013, premium tax distributions to municipalities from the Police Officers' Pension Trust Fund amounted to $64.8 million.[6]

To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. If the division deems that a firefighter or police officer pension plan created pursuant to these chapters is not in compliance with the law, the sponsoring municipality could be denied its insurance premium tax revenues.

Board of Trustees
Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees (board or boards). The boards are created in participating cities and special fire control districts, and subject to the regulatory oversight of the division.[7] The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., or s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law. The board is solely responsible for administering the trust fund.[8]

The membership of the board consists of five members: two residents appointed by the governing body of the municipality or special fire control district, two police officer or firefighter members selected by the active firefighter or police officer members of the plan, and one member selected by the other four members and approved by the appropriate governing body. Members are subject to two-year terms, unless extended to four-year terms by municipal ordinance, special act of the Legislature, or resolution adopted by the governing body of the special fire control district.[9]

The board must meet at least quarterly each year.[10] The board has the authority to invest and reinvest pension trust fund assets.[11] If the trust fund is not sufficient to provide entitled benefits, any additional contributions necessary to maintain the actuarial soundness of the plan must be paid by the municipality.[12]

Effect of the Bill

The bill amends parallel provisions in chapters 175 and 185, F.S., relating to board membership and responsibilities.

Membership Requirements
The bill revises membership requirements for the board. It provides that the board must consist of five members. Three of the members must be legal residents of the municipality or special fire control district, and may not be a member, retiree, beneficiary, or payee of the pension plan. The bill deletes the requirement that the fifth member be chosen by a majority of the other four members. It provides for a term limit of eight consecutive years.

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[4] A copy of the 2013 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited March 9, 2015).
[5] Section 185.08, F.S.
[6] *Supra* at FN 4.
[7] Sections 175.061 and 185.05, F.S.
[8] *Id.*
[9] *Id.*
[10] Sections 175.061(3) and 185.05(3), F.S.
[11] Sections 175.071 and 185.06, F.S.
[12] Sections 175.091(1)(d) and 185.07(1)(d), F.S.

For local law plans that provide benefits for both firefighters and police officers, it expands the board membership to nine members instead of five members. Five of the members must be appointed by the governing body of the municipality or special fire control district, two must be firefighters, and two must be police officers.

<u>Board Duties and Responsibilities</u>
The bill requires each board to provide a detailed accounting report of its expenses for each fiscal year. It must include all administrative expenses related to any legal counsel, actuary, plan administrator, consultants, travel, and any other expenses paid to or on behalf of the members of the board or anyone else on behalf of the plan. The report must be submitted to the plan sponsor and DMS, and must be made available to the members of the plan.

The bill requires the board to operate under an administrative expense budget for each fiscal year, and to provide the budget to the plan sponsor and make it available to plan members. If the board amends the budget, it must submit the amendment to the plan sponsor and make it available to the members of the plan. The administrative expense budget must regulate the administrative expenses of the board. The budget, including any budget amendments, is not effective until approved by a majority vote of the plan sponsor.

The board must establish qualifications for the plan administrator. At a minimum, the qualifications must require that the individual have a bachelor's degree from an accredited college or university with a major in finance or be a licensed public accountant, have at least three years of professional experience managing retirement plans in the private or public sector, and be approved by a majority plus one vote of the plan sponsor.

The bill provides that a plan that has an assets to liabilities ratio, utilizing the most recent actuarial report, of 75 percent or less, must, every three years, conduct an internal audit of the plan's management and accounting practices and investments. The board must pay for the audit and the results must be provided to the municipality and DMS.

<u>Application</u>
The bill provides that the changes made in the act apply to a local law plan created by special act before May 27, 1939, notwithstanding ss. 175.351(2) and (3) and 185.35(2) and (3), F.S.[13] According to the division, there are four plans that were created by special act before May 27, 1939: Coral Gables, Jacksonville, Miami, and Miami Beach.

<u>Miscellaneous</u>
The bill provides a statement of important state interest.

B. SECTION DIRECTORY:

Sections 1 and 3 amend ss. 175.061 and 185.05, F.S., providing for application of the sections; revising membership and requirements for the board of trustees of the firefighters' pension trust fund and the municipal police officers' retirement trust fund.

Sections 2 and 4 amend ss. 175.351 and 185.35, F.S., relating to municipalities and special fire control districts that have their own pension plans and want to participate in the distribution of a tax fund; providing requirements for municipalities with plans with an unfunded liability; providing for application of the sections.

Section 5 provides a declaration of important state interest.

Section 6 provides an effective date of July 1, 2015.

[13] Sections 175.351(2) and (3) and 185.35(2) and (3), F.S., provide in pertinent part that "[l]ocal law plans created by special act before May 27, 1939, shall be deemed to comply with this chapter."

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill requires that each board must provide a detailed accounting of its expenses for each fiscal year, operate under an administrative budget that regulates the administrative expenses of the board, establish qualifications for the position of plan administrator, and conduct and fund audits if the plan has a specified funding ratio. The additional duties of the board may result in an indeterminate negative fiscal impact to the plan. However, the transparency of producing and sharing annual expenses and operating under a budget may produce an indeterminate positive fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.