

Committee Substitute for Senate Bill No. 538

An act relating to publicly funded retirement programs; amending s. 121.4501, F.S.; requiring the Trustees of the State Board of Administration to identify and offer at least one terror-free investment product to the Public Employee Optional Retirement Program by a certain date; amending s. 121.591, F.S.; conforming a cross-reference; amending s. 175.032, F.S.; redefining the terms “credible service” and “firefighter”; amending s. 175.061, F.S.; authorizing the terms of office for the board of trustees of the firefighters’ pension trust fund to be revised under certain circumstances; authorizing the firefighters’ pension trust fund plan administrator to withhold funds to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree’s spouse and dependents; providing an exemption from liability under certain circumstances; amending s. 175.071, F.S.; requiring the board of trustees to perform its powers subject to certain fiduciary standards and ethics provisions; increasing the percentage of assets of the firefighters’ pension trust fund that the board of trustees may invest in foreign securities on a market-value basis; authorizing certain individuals to sign drafts issued providing that investment caps on foreign securities may only be amended, repealed, or increased by an act of the Legislature; authorizing certain individuals to sign drafts issued upon the firefighters’ pension trust fund; requiring the board of trustees to identify and divest the fund of any scrutinized companies by a certain date; amending s. 175.101, F.S.; clarifying boundaries of a special fire control district for purposes of assessment and imposition of the excise tax on property insurance premiums; amending s. 175.171, F.S.; authorizing retired firefighters to change their designation of joint annuitant or beneficiary up to two times without the approval of the board of trustees or the prior joint annuitant or beneficiary; conforming provisions relating to joint pensioner or beneficiary to reflect joint annuitant or beneficiary; amending s. 175.361, F.S.; revising fund distribution procedures with respect to plan termination; providing that the Department of Management Services shall effect the termination of the fund; amending s. 185.02, F.S.; redefining the term “creditable service” for purposes of determining credit for prior service as a police officer; amending s. 185.05, F.S.; revising municipal police officers’ retirement trust fund board of trustee selection procedures; authorizing the terms of office for the board of trustees of the municipal police officers’ retirement trust fund to be revised under certain circumstances; authorizing the plan administrator to withhold funds to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree’s spouse and dependents; providing an exemption from liability under certain circumstances; amending s. 185.06, F.S.; requiring the board of trustees to perform its powers subject to certain fiduciary standards and ethics provisions; increasing the percentage of assets of the municipal police officers’ retirement trust fund that the board of trustees may invest in foreign securities on a market-value basis;

providing that the investment cap on foreign securities may only be amended, repealed, or increased by an act of the Legislature; authorizing certain individuals to sign drafts issued upon the municipal police officers' retirement trust fund; requiring the board of trustees to identify and divest the fund of any scrutinized companies by a date certain; amending s. 185.161, F.S.; authorizing retired police officers to change their designation of joint annuitant or beneficiary up to two times without the approval of the board of trustees or the prior joint annuitant or beneficiary; conforming provisions relating to joint pensioner or beneficiary to reflect joint annuitant or beneficiary; amending s. 185.37, F.S.; revising fund distribution procedures with respect to plan termination; providing that the Department of Management Services shall effect the termination of the fund; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present paragraphs (d), (e), and (f) of subsection (9) of section 121.4501, Florida Statutes, are redesignated as paragraphs (e), (f), and (g), respectively, and a new paragraph (d) is added to that subsection, to read:

121.4501 Public Employee Optional Retirement Program.—

(9) INVESTMENT OPTIONS OR PRODUCTS; PERFORMANCE REVIEW.—

(d) By March 1, 2010, the board shall identify and offer at least one terror-free investment product that allocates its funds among securities not subject to divestiture as provided in s. 215.473 if the investment product is deemed by the board to be consistent with prudent investor standards. No person may bring a civil, criminal, or administrative action against an approved provider, the state board, or any employee, officer, director, or trustee of such provider based upon the divestiture of any security or the offering of a terror-free investment product as specified in this paragraph.

Section 2. Paragraph (a) of subsection (1) of section 121.591, Florida Statutes, is amended to read:

121.591 Benefits payable under the Public Employee Optional Retirement Program of the Florida Retirement System.—Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or is deceased and a proper application has been filed in the manner prescribed by the state board or the department. The state board or department, as appropriate, may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the rules of the state board and department. In accordance with their respective responsibilities as provided herein, the state board of Administration and the Department of Management Services shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received. The State Board of Administration and the Department of Management Services, as

appropriate, are authorized to cash out a de minimis account of a participant who has been terminated from Florida Retirement System covered employment for a minimum of 6 calendar months. A de minimis account is an account containing employer contributions and accumulated earnings of not more than \$5,000 made under the provisions of this chapter. Such cash-out must either be a complete lump-sum liquidation of the account balance, subject to the provisions of the Internal Revenue Code, or a lump-sum direct rollover distribution paid directly to the custodian of an eligible retirement plan, as defined by the Internal Revenue Code, on behalf of the participant. If any financial instrument issued for the payment of retirement benefits under this section is not presented for payment within 180 days after the last day of the month in which it was originally issued, the third-party administrator or other duly authorized agent of the State Board of Administration shall cancel the instrument and credit the amount of the instrument to the suspense account of the Public Employee Optional Retirement Program Trust Fund authorized under s. 121.4501(6). Any such amounts transferred to the suspense account are payable upon a proper application, not to include earnings thereon, as provided in this section, within 10 years after the last day of the month in which the instrument was originally issued, after which time such amounts and any earnings thereon shall be forfeited. Any such forfeited amounts are assets of the Public Employee Optional Retirement Program Trust Fund and are not subject to the provisions of chapter 717.

(1) **NORMAL BENEFITS.**—Under the Public Employee Optional Retirement Program:

(a) Benefits in the form of vested accumulations as described in s. 121.4501(6) ~~are shall be~~ payable under this subsection in accordance with the following terms and conditions:

1. To the extent vested, benefits ~~are shall be~~ payable only to a participant.

2. Benefits shall be paid by the third-party administrator or designated approved providers in accordance with the law, the contracts, and any applicable board rule or policy.

3. To receive benefits ~~under this subsection~~, the participant must be terminated from all employment with all Florida Retirement System employers, as provided in s. 121.021(39).

4. Benefit payments may not be made until the participant has been terminated for 3 calendar months, except that the board may authorize by rule for the distribution of up to 10 percent of the participant's account after being terminated for 1 calendar month if ~~the~~ a participant has reached the normal retirement requirements of the defined benefit plan, as provided in s. 121.021(29).

5. If a member or former member of the Florida Retirement System receives an invalid distribution from the Public Employee Optional Retirement Program Trust Fund, such person ~~must shall~~ repay the full invalid distribution to the trust fund within 90 days after receipt of final notification

by the state board of ~~Administration~~ or the third-party administrator that the distribution was invalid. If such person fails to repay the full invalid distribution within 90 days after receipt of final notification, the person may be deemed retired from the ~~Public Employee~~ optional retirement program by the state board, as provided pursuant to s. 121.4501(2)(j), and ~~is shall be~~ subject to the provisions of s. 121.122. If such person is deemed retired by the state board, any joint and several liability set out in s. 121.091(9)(c)2. becomes null and void, and the state board, the department of ~~Management Services~~, or the employing agency is not liable for gains on payroll contributions that have not been deposited to the person's account in the ~~Public Employee Optional~~ retirement program, pending resolution of the invalid distribution. The member or former member who has been deemed retired or who has been determined by the board to have taken an invalid distribution may appeal the agency decision through the complaint process as provided under ~~s. 121.4501(9)(g)3. s. 121.4501(9)(f)3.~~ As used in this subparagraph, the term "invalid distribution" means any distribution from an account in the ~~Public Employee~~ optional retirement program which is taken in violation of the provisions of this section, s. 121.091(9), or s. 121.4501.

Section 3. Paragraph (c) of subsection (4) and paragraph (a) of subsection (8) of section 175.032, Florida Statutes, are amended to read:

175.032 Definitions.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the following words and phrases have the following meanings:

(4) "Creditable service" or "credited service" means the aggregate number of years of service, and fractional parts of years of service, of any firefighter, omitting intervening years and fractional parts of years when such firefighter may not have been employed by the municipality or special fire control district, subject to the following conditions:

(c) Credited service under this chapter shall be provided only for service as a firefighter, as defined in subsection (8), or for military service and ~~does shall~~ not include credit for any other type of service. A municipality may, by local ordinance, or a special fire control district may, by resolution, provide for the purchase of credit for military service prior to employment as well as for prior service as a firefighter for some other employer as long as a firefighter is not entitled to receive a benefit for such ~~other~~ prior service as a firefighter. For purposes of determining credit for prior service as a firefighter, in addition to service as a firefighter in this state, credit may be given for federal, other state, or county service if the prior service is recognized by the Division of State Fire Marshal as provided under chapter 633, or the firefighter provides proof to the board of trustees that his or her service is equivalent to the service required to meet the definition of a firefighter under subsection (8).

(8)(a) "Firefighter" means any person employed solely by a constituted fire department of any municipality or special fire control district who is certified as a firefighter as a condition of employment in accordance with ~~the provisions of~~ s. 633.35 and whose duty it is to extinguish fires, to protect life,

or to protect property. The term includes all certified, supervisory, and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time firefighters, part-time firefighters, or auxiliary firefighters but does not include part-time firefighters or auxiliary firefighters. However, for purposes of this chapter only, the term “firefighter” also includes public safety officers who are responsible for performing both police and fire services, who are certified as police officers or firefighters, and who are certified by their employers to the Chief Financial Officer as participating in this chapter ~~before~~ prior to October 1, 1979. Effective October 1, 1979, public safety officers who have not been certified as participating in this chapter are ~~shall be~~ considered police officers for retirement purposes and are ~~shall be~~ eligible to participate in chapter 185. Any plan may provide that the fire chief has ~~shall have~~ an option to participate, or not, in that plan.

Section 4. Paragraph (a) of subsection (1) and subsection (7) of section 175.061, Florida Statutes, are amended to read:

175.061 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney’s fees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) In each municipality and in each special fire control district there is hereby created a board of trustees of the firefighters’ pension trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for a chapter plan consists ~~shall consist~~ of five members, two of whom, unless otherwise prohibited by law, must ~~shall~~ be legal residents of the municipality or special fire control district and must, ~~who shall~~ be appointed by the governing body of the municipality or special fire control district, and two of whom must ~~shall~~ be full-time firefighters as defined in s. 175.032 who are ~~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. Upon receipt of the fifth person’s name, the governing body of the municipality or special fire control district shall, as a ministerial duty, appoint such person to the board of trustees ~~as its fifth member~~. The fifth member shall have the same rights as each of the other four members ~~appointed or elected as herein provided~~, shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the governing body at whose pleasure he or she serves ~~shall serve~~, and may succeed himself or herself as a trustee. Each firefighter member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality or special fire control district as a firefighter, whereupon a successor shall be chosen in the same manner as an

original appointment. Each firefighter may succeed himself or herself in office. The terms of office of the appointed and elected members may be amended by municipal ordinance, special act of the Legislature, or resolution adopted by the governing body of the special fire control district to extend the terms from 2 years to 4 years. The length of the terms of office shall be the same for all board members.

(7) The board of trustees may, upon written request ~~of~~ by the retiree of the plan, or by a dependent, ~~if when~~ authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment ~~those funds that are necessary to pay for the benefits being received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make any payments for child support or alimony.~~ Upon the written request of the retiree of the plan, the board may also authorize the plan administrator to withhold from the retirement payment those funds necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith.

Section 5. Subsection (1) of section 175.071, Florida Statutes, is amended and subsection (8) is added to that section, to read:

175.071 General powers and duties of board of trustees.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the firefighters' pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the firefighters' pension trust fund ~~are shall be~~ entitled under ~~the provisions of~~ this chapter and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the firefighters' pension trust fund in:

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, if provided:

a. The corporation is 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; and

b. The board of trustees ~~may shall~~ not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor ~~may shall~~ the aggregate investment in any one issuing company exceed 5 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.

This paragraph ~~applies shall apply~~ to all boards of trustees and participants. However, ~~if in the event that~~ a municipality or special fire control district has a duly enacted pension plan pursuant to, and in compliance with, s. 175.351, and the trustees thereof desire to vary the investment procedures ~~herein~~, the trustees of such plan ~~must shall~~ request a variance of the investment procedures as outlined herein only through a municipal ordinance, special act of the Legislature, or resolution by the governing body of the special fire control district; ~~if where~~ a special act, or a municipality by ordinance adopted ~~before prior to~~ July 1, 1998, permits a greater than 50-percent equity investment, such municipality ~~is shall~~ not be required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law ~~to the contrary~~, ~~nothing in~~ this section may ~~not~~ be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 10 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, increased, or repealed except as provided by general law.

(c) Issue drafts upon the firefighters' pension trust fund pursuant to this act and rules ~~and regulations~~ prescribed by the board of trustees. All such drafts ~~must shall~~ be consecutively numbered, be signed by the chair and secretary, or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purpose for which the drafts are drawn. The treasurer or depository of each municipality or special fire control district shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money ~~may shall~~ be otherwise drawn from the fund.

(d) Convert into cash any securities of the fund.

(e) Keep a complete record of all receipts and disbursements and ~~of~~ the board's acts and proceedings.

(8) Notwithstanding paragraph (1)(b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect

holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 30, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by s. 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this paragraph.

Section 6. Subsection (1) of section 175.101, Florida Statutes, is amended to read:

175.101 State excise tax on property insurance premiums authorized; procedure.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) Each municipality or special fire control district in this state described and classified in s. 175.041, having a lawfully established firefighters' pension trust fund or municipal fund or special fire control district fund, by whatever name known, providing pension benefits to firefighters as provided under this chapter, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereinafter engage in or carry on, the business of property insurance as shown by the records of the Office of Insurance Regulation of the Financial Services Commission, an excise tax in addition to any lawful license or excise tax now levied by each of the municipalities or special fire control districts, respectively, amounting to 1.85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of such municipalities or within the legally defined boundaries of special fire control districts, respectively. Whenever the boundaries of a special fire control district that has lawfully established a firefighters' pension trust fund encompass a portion of the corporate territory of a municipality that has also lawfully established a firefighters' pension trust fund, that portion of the tax receipts attributable to insurance policies covering property situated both within the municipality and the special fire control district shall be given to the fire service provider. For the purpose of this section, the boundaries of a special fire control district include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), or other agreed-upon extension, or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3). The agent shall identify the fire service provider on the

property owner's application for insurance. Remaining revenues collected pursuant to this chapter shall be distributed to the municipality or special fire control district according to the location of the insured property.

This section also applies to any municipality consisting of a single consolidated government which is made up of a former county and one or more municipalities, consolidated pursuant to the authority in s. 3 or s. 6(e), Art. VIII of the State Constitution, and to property insurance policies covering property within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, provided the properties are being provided fire protection services by the consolidated government. This section also applies to any municipality, as provided in s. 175.041(3)(c), which has entered into an interlocal agreement to receive fire protection services from another municipality participating under this chapter. The excise tax may be levied on all premiums collected on property insurance policies covering property located within the corporate limits of the municipality receiving the fire protection services, but will be available for distribution to the municipality providing the fire protection services.

Section 7. Paragraphs (b) and (c) of subsection (1) and paragraph (b) of subsection (2) of section 175.171, Florida Statutes, are amended to read:

175.171 Optional forms of retirement income.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in s. 175.162, a firefighter, upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

(b) A retirement income of a modified monthly amount, payable to the firefighter during the joint lifetime of the firefighter and a joint annuitant pensioner designated by the firefighter, and following the death of either of them, 100 percent, 75 percent, 66 $\frac{2}{3}$ percent, or 50 percent of such monthly amounts payable to the survivor for the lifetime of the survivor.

(c) Such other amount and form of retirement payments or benefits as, in the opinion of the board of trustees, will best meet the circumstances of the retiring firefighter.

1. The firefighter upon electing any option of this section must ~~will~~ designate the joint annuitant pensioner or beneficiary (~~or beneficiaries~~) to receive the benefit, if any, payable under the plan in the event of his or her death, and may ~~will have the power to~~ change such designation ~~from time to time~~, but any such change shall be deemed a new election and is ~~will be~~ subject to approval by the board of trustees. Such designation must ~~will~~ name a joint annuitant pensioner or one or more primary beneficiaries where applicable. If a firefighter has elected an option with a joint annuitant pensioner or

beneficiary and his or her retirement income benefits have commenced, the firefighter may ~~thereafter~~ change the designated joint ~~annuitant pensioner~~ or beneficiary, but only if the board of trustees consents to such change and if the joint ~~annuitant pensioner~~ last ~~previously~~ designated by the firefighter is alive when the firefighter files with the board of trustees a request for such change.

2. The consent of a firefighter's joint ~~annuitant pensioner~~ or beneficiary to any such change ~~is~~ shall not be required.

3. The board of trustees may request ~~such~~ evidence of the good health of the joint ~~annuitant pensioner~~ that is being removed ~~as it may require~~ and the amount of the retirement income payable to the firefighter upon designation of a new joint ~~annuitant pensioner~~ shall be actuarially redetermined taking into account the age and ~~gender~~ ~~sex~~ of the former joint ~~annuitant pensioner~~, the new joint ~~annuitant pensioner~~, and the firefighter. Each ~~such~~ designation ~~must~~ will be made in writing on a form prepared by the board of trustees and ~~on completion will be~~ filed with the board of trustees. ~~If~~ ~~In~~ the event that no designated beneficiary survives the firefighter, such benefits as are payable in the event of the death of the firefighter subsequent to his or her retirement shall be paid as provided in s. 175.181.

4. Notwithstanding the provisions of this paragraph, a retired firefighter may change his or her designation of joint annuitant or beneficiary up to two times as provided in s. 175.333 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retiree is not required to provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

(2) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(b) If the designated beneficiary ~~(or beneficiaries)~~ or joint ~~annuitant pensioner~~ dies before the firefighter's retirement under the plan, the option elected ~~is~~ will be canceled automatically and a retirement income of the normal form and amount ~~is~~ will be payable to the firefighter upon retirement as if the election had not been made, unless a new election is made in accordance with ~~the provisions of this section~~ or a new beneficiary is designated by the firefighter ~~before~~ ~~prior to~~ retirement and within 90 days after the death of the beneficiary.

Section 8. Section 175.361, Florida Statutes, is amended to read:

175.361 Termination of plan and distribution of fund.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, the plan may be terminated by the municipality or special fire control district. Upon termination of the plan by the municipality or special fire control district for any reason or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, or upon written notice by the municipality or special fire control district to the board of

trustees that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination and the amounts credited to the employees' accounts are non-forfeitable. The fund shall be ~~apportioned and~~ distributed in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value ~~required to fund all the nonforfeitable benefits to be distributed,~~ after taking into account the expenses of such distribution. The board shall inform the municipality or special fire control district if additional assets are required, in which event the municipality or special fire control district shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, ~~that is,~~ whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each firefighter entitled to benefits under the plan as specified in subsection (3).

(3) The board of trustees shall ~~distribute~~ ~~apportion~~ the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is ~~shall mean~~ the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is ~~shall mean~~ the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

~~(a) Apportionment shall first be made in respect of each retired firefighter receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) firefighter, and each firefighter who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value is less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~(b) If there is any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each firefighter in the service of the municipality or special fire control district on such date who has completed at least 10 years of credited service, in the firefighters' pension trust fund for at least 10 years, and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the firefighter's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of s. 175.211 who has not by such date reached his or her normal retirement date, in the~~

~~amount required to provide the actuarial equivalent of the accrued normal retirement income to which he or she is entitled under s. 175.211; provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(c) If there is any asset value after the apportionments under paragraphs (a) and (b), apportionment shall lastly be made in respect of each firefighter in the service of the municipality or special fire control district on such date who is not entitled to an apportionment under paragraphs (a) and (b) in the amount equal to the firefighter's total contributions to the plan to date of termination; provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(4)(d) If In the event that there is asset value remaining after the full distribution apportionment specified in subsection (3), and after the payment of any expenses incurred with such distribution paragraphs (a), (b), and (c), such excess shall be returned to the municipality or special fire control district, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality or special fire control district and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality or special fire control district and the state.~~

~~(5)(4) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts determined ~~apportioned~~ under subsection (3).~~

~~If, after a period of 24 months after the date on which the plan terminated or the date on which the board received written notice that the contributions thereunder were being permanently discontinued, the municipality or special fire control district or the board of trustees of the firefighters' pension trust fund affected has not complied with all the provisions in this section, the Department of Management Services division shall effect the termination of the fund in accordance with this section.~~

Section 9. Paragraph (c) of subsection (5) of section 185.02, Florida Statutes, is amended to read:

185.02 Definitions.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the following words and phrases as used in this chapter shall have the following meanings, unless a different meaning is plainly required by the context:

(5) "Creditable service" or "credited service" means the aggregate number of years of service and fractional parts of years of service of any police officer, omitting intervening years and fractional parts of years when such police officer may not have been employed by the municipality subject to the following conditions:

(c) Credited service under this chapter shall be provided only for service as a police officer, as defined in subsection (11), or for military service and may shall not include credit for any other type of service. A municipality may, by local ordinance, provide for the purchase of credit for military service occurring before ~~prior to~~ employment as well as prior service as a police officer for some other employer as long as the police officer is not entitled to receive a benefit for such other prior service as a police officer. For purposes of determining credit for prior service, in addition to service as a police officer in this state, credit may be given for federal, other state, or county service as long as such service is recognized by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement as provided under chapter 943 or the police officer provides proof to the board of trustees that such service is equivalent to the service required to meet the definition of a police officer under subsection (11).

Section 10. Paragraph (a) of subsection (1) and subsection (6) of section 185.05, Florida Statutes, are amended to read:

185.05 Board of trustees; members; terms of office; meetings; legal entity; costs; attorney's fees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) In each municipality described in s. 185.03 there is hereby created a board of trustees of the municipal police officers' retirement trust fund, which shall be solely responsible for administering the trust fund. Effective October 1, 1986, and thereafter:

(a) The membership of the board of trustees for chapter plans consists ~~shall consist~~ of five members, two of whom, unless otherwise prohibited by law, must shall be legal residents of the municipality and must, ~~who shall~~ be appointed by the legislative body of the municipality, and two of whom must shall be police officers as defined in s. 185.02 who are shall be elected by a majority of the active police officers who are members of such plan. With respect to any chapter plan or local law plan that, on January 1, 1997, allowed retired police officers 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, and such person's name shall be submitted to the legislative body of the municipality. Upon receipt of the fifth person's name, the legislative body of the municipality shall, as a ministerial duty, appoint such person to the board of trustees as its fifth member. ~~as its fifth member.~~ The fifth member shall have the same rights as each of the other four members appointed or elected as herein provided, ~~as herein provided,~~ shall serve as trustee for a period of 2 years, and may succeed himself or herself in office. Each resident member shall serve as trustee for a period of 2 years, unless sooner replaced by the legislative body at whose pleasure the member serves shall serve, ~~serves shall serve,~~ and may succeed himself or herself as a trustee. Each police officer member shall serve as trustee for a period of 2 years, unless he or she sooner leaves the employment of the municipality as a police officer, whereupon the legislative body of the municipality shall choose a successor shall be chosen ~~the legislative body of the municipality shall choose a successor shall be chosen~~ in the same manner as an original appointment. Each police officer may succeed himself or herself in office. The terms of office of the appointed and elected members of the board of trustees may be amended by municipal ordinance or special

act of the Legislature to extend the terms from 2 years to 4 years. The length of the terms of office shall be the same for all board members.

(6) The board of trustees may, upon written request by the retiree of the plan, or by a dependent, ~~if when~~ authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment ~~those funds that are necessary to pay for the benefits being received through the governmental entity from which the employee retired, to pay the certified bargaining agent of the governmental entity, and to make any payments for child support or alimony.~~ Upon the written request of the retiree of the plan, the board of trustees may also authorize the plan administrator to withhold from the retirement payment those funds necessary to pay for premiums for accident, health, and long-term care insurance for the retiree and the retiree's spouse and dependents. A retirement plan does not incur liability for participation in this permissive program if its actions are taken in good faith.

Section 11. Subsection (1) of section 185.06, Florida Statutes, is amended and subsection (7) is added to that section, to read:

185.06 General powers and duties of board of trustees.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the retirement trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants in the municipal police officers' retirement trust fund ~~are shall be~~ entitled under ~~the provisions of this chapter,~~ and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the retirement trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings 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 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, provided:

a. The corporation is 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; and

b. The board of trustees ~~may~~ shall not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor shall the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of the company or the aggregate of its investments under this subparagraph at cost exceed 50 percent of the fund's assets.

This paragraph ~~applies~~ shall apply to all boards of trustees and participants. However, ~~if in the event that~~ a municipality has a duly enacted pension plan pursuant to, and in compliance with, s. 185.35 and the trustees thereof desire to vary the investment procedures herein, the trustees of such plan shall request a variance of the investment procedures as outlined herein only through a municipal ordinance or special act of the Legislature; ~~if where~~ a special act, or a municipality by ordinance adopted ~~before~~ prior to July 1, 1998, permits a greater than 50-percent equity investment, such municipality ~~is~~ shall not be required to comply with the aggregate equity investment provisions of this paragraph. Notwithstanding any other provision of law ~~to the contrary, nothing in this section may not~~ be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. Notwithstanding any other provision of law, the board of trustees may invest up to 25 10 percent of plan assets in foreign securities on a market-value basis. The investment cap on foreign securities may not be revised, amended, repealed, or increased except as provided by general law.

(c) Issue drafts upon the municipal police officers' retirement trust fund pursuant to this act and rules ~~and regulations~~ prescribed by the board of trustees. All such drafts shall be consecutively numbered, be signed by the chair and secretary or by two individuals designated by the board who are subject to the same fiduciary standards as the board of trustees under this subsection, and state upon their faces the purposes for which the drafts are drawn. The city treasurer or other depository shall retain such drafts when paid, as permanent vouchers for disbursements made, and no money ~~may~~ shall otherwise be drawn from the fund.

(d) Finally decide all claims to relief under the board's rules and regulations and pursuant to the provisions of this act.

(e) Convert into cash any securities of the fund.

(f) Keep a complete record of all receipts and disbursements and of the board's acts and proceedings.

(7) Notwithstanding paragraph (1)(b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities

it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 10, 2010. The board and its named officers or investment advisors may not be deemed to have breached their fiduciary duty in any action taken to dispose of any such security, and the board shall have satisfactorily discharged the fiduciary duties of loyalty, prudence, and sole and exclusive benefit to the participants of the pension fund and their beneficiaries if the actions it takes are consistent with the duties imposed by s. 215.473, and the manner of the disposition, if any, is reasonable as to the means chosen. For the purposes of effecting compliance with that section, the pension fund shall designate terror-free plans that allocate their funds among securities not subject to divestiture. No person may bring any civil, criminal, or administrative action against the board of trustees or any employee, officer, director, or advisor of such pension fund based upon the divestiture of any security pursuant to this paragraph.

Section 12. Subsection (1) and paragraph (b) of subsection (2) of section 185.161, Florida Statutes, are amended to read:

185.161 Optional forms of retirement income.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1)(a) In lieu of the amount and form of retirement income payable in the event of normal or early retirement as specified in s. 185.16, a police officer, upon written request to the board of trustees and subject to the approval of the board of trustees, may elect to receive a retirement income or benefit of equivalent actuarial value payable in accordance with one of the following options:

1. A retirement income of larger monthly amount, payable to the police officer for his or her lifetime only.

2. A retirement income of a modified monthly amount, payable to the police officer during the joint lifetime of the police officer and a joint annuitant pensioner designated by the police officer, and following the death of either of them, 100 percent, 75 percent, 66 $\frac{2}{3}$ percent, or 50 percent of such monthly amount payable to the survivor for the lifetime of the survivor.

3. Such other amount and form of retirement payments or benefit as, in the opinion of the board of trustees, will best meet the circumstances of the retiring police officer.

(b) The police officer upon electing any option of this section must will designate the joint annuitant pensioner or beneficiary (~~or beneficiaries~~) to receive the benefit, if any, payable under the plan in the event of the police officer's death, and may will have the power to change such designation ~~from time to time~~ but any such change shall be deemed a new election and is will be subject to approval by the pension committee. Such designation must will name a joint annuitant pensioner or one or more primary beneficiaries where applicable. If a police officer has elected an option with a joint annuitant pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may ~~thereafter~~ change the designated joint annuitant pensioner or beneficiary but only if the board of trustees consents to such

change and if the joint annuitant pensioner last previously designated by the police officer is alive when he or she files with the board of trustees a request for such change. The consent of a police officer's joint annuitant pensioner or beneficiary to any such change ~~is~~ shall not be required. The board of trustees may request ~~such~~ evidence of the good health of the joint annuitant pensioner ~~that is being removed as it may require~~ and the amount of the retirement income payable to the police officer upon the designation of a new joint annuitant pensioner shall be actuarially redetermined taking into account the ages and gender sex of the former joint annuitant pensioner, the new joint annuitant pensioner, and the police officer. Each ~~such~~ designation must will be made in writing on a form prepared by the board of trustees, and ~~on completion will be~~ filed with the board of trustees. ~~If~~ In the event that no designated beneficiary survives the police officer, such benefits as are payable in the event of the death of the police officer subsequent to his or her retirement shall be paid as provided in s. 185.162.

(c) Notwithstanding paragraph (b), a retired police officer may change his or her designation of joint annuitant or beneficiary up to two times as provided in s. 185.341 without the approval of the board of trustees or the current joint annuitant or beneficiary. The retiree need not provide proof of the good health of the joint annuitant or beneficiary being removed, and the joint annuitant or beneficiary being removed need not be living.

(2) Retirement income payments shall be made under the option elected in accordance with the provisions of this section and shall be subject to the following limitations:

(b) If the designated beneficiary ~~(or beneficiaries)~~ or joint annuitant pensioner dies before the police officer's retirement under the plan, the option elected ~~is~~ will be canceled automatically and a retirement income of the normal form and amount ~~is~~ will be payable to the police officer upon his or her retirement as if the election had not been made, unless a new election is made in accordance with the provisions of this section or a new beneficiary is designated by the police officer ~~before~~ prior to his or her retirement and within 90 days after the death of the beneficiary.

Section 13. Section 185.37, Florida Statutes, is amended to read:

185.37 Termination of plan and distribution of fund.—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the plan may be terminated by the municipality. Upon termination of the plan by the municipality for any reason, or because of a transfer, merger, or consolidation of governmental units, services, or functions as provided in chapter 121, or upon written notice to the board of trustees by the municipality that contributions under the plan are being permanently discontinued, the rights of all employees to benefits accrued to the date of such termination or discontinuance and the amounts credited to the employees' accounts are nonforfeitable. The fund shall be ~~apportioned and distributed~~ in accordance with the following procedures:

(1) The board of trustees shall determine the date of distribution and the asset value required to fund all the nonforfeitable benefits to be distributed, after taking into account the expenses of such distribution. The board shall

inform the municipality if additional assets are required, in which event the municipality shall continue to financially support the plan until all nonforfeitable benefits have been funded.

(2) The board of trustees shall determine the method of distribution of the asset value, ~~that is,~~ whether distribution shall be by payment in cash, by the maintenance of another or substituted trust fund, by the purchase of insured annuities, or otherwise, for each police officer entitled to benefits under the plan, as specified in subsection (3).

(3) The board of trustees shall ~~distribute~~ apportion the asset value as of the date of termination in the manner set forth in this subsection, on the basis that the amount required to provide any given retirement income is shall mean the actuarially computed single-sum value of such retirement income, except that if the method of distribution determined under subsection (2) involves the purchase of an insured annuity, the amount required to provide the given retirement income is shall mean the single premium payable for such annuity. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if provided by the plan, less the value of any plan benefits previously paid to the employee.

~~(a) Apportionment shall first be made in respect of each retired police officer receiving a retirement income hereunder on such date, each person receiving a retirement income on such date on account of a retired (but since deceased) police officer, and each police officer who has, by such date, become eligible for normal retirement but has not yet retired, in the amount required to provide such retirement income, provided that, if such asset value is less than the aggregate of such amounts, such amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such asset value.~~

~~(b) If there is any asset value remaining after the apportionment under paragraph (a), apportionment shall next be made in respect of each police officer in the service of the municipality on such date who has completed at least 10 years of credited service, in the municipal police officers' retirement trust fund for at least 10 years, and who is not entitled to an apportionment under paragraph (a), in the amount required to provide the actuarial equivalent of the accrued normal retirement income, based on the police officer's credited service and earnings to such date, and each former participant then entitled to a benefit under the provisions of s. 185.19 who has not by such date reached his or her normal retirement date, in the amount required to provide the actuarial equivalent of the accrued normal retirement income to which he or she is entitled under s. 185.19, provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(c) If there is an asset value after the apportionments under paragraphs (a) and (b), apportionment shall lastly be made in respect of each police officer in the service of the municipality on such date who is not entitled to~~

~~an apportionment under paragraphs (a) and (b) in the amount equal to the police officer's total contributions to the plan to date of termination, provided that, if such remaining asset value is less than the aggregate of the amounts apportioned hereunder, such latter amounts shall be proportionately reduced so that the aggregate of such reduced amounts will be equal to such remaining asset value.~~

~~(4)(d) If In the event that there is asset value remaining after the full distribution apportionment specified in subsection (3), and after payment of any expenses incurred with such distribution paragraphs (a), (b), and (c), such excess shall be returned to the municipality, less return to the state of the state's contributions, provided that, if the excess is less than the total contributions made by the municipality and the state to date of termination of the plan, such excess shall be divided proportionately to the total contributions made by the municipality and the state.~~

~~(5)(4) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts determined apportioned under subsection (3).~~

~~If, after a period of 24 months after the date on which the plan terminated or the date on which the board received written notice that the contributions thereunder were being permanently discontinued, the municipality or the board of trustees of the municipal police officers' retirement trust fund affected has not complied with all the provisions in this section, the Department of Management Services division shall effect the termination of the fund in accordance with this section.~~

Section 14. This act shall take effect July 1, 2009.

Approved by the Governor June 1, 2009.

Filed in Office Secretary of State June 1, 2009.