

The 2009 Florida Statutes

Title XII

MUNICIPALITIES

Chapter 175

FIREFIGHTER PENSIONS

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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 of five members, two of whom, unless otherwise prohibited by law, must be legal residents of the municipality or special fire control district and must be appointed by the governing body of the municipality or special fire control district, and two of whom must be full-time firefighters as defined in s. [175.032](#) who are 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 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. The fifth member shall have the same rights as each of the other four members, 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, 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.

(b) The membership of boards of trustees for local law plans shall be as follows:

1. If a municipality or special fire control district has a pension plan for firefighters only, the provisions of paragraph (a) shall apply.
2. If a municipality has a pension plan for firefighters and police officers, the provisions of paragraph (a) shall apply, except that one member of the board shall be a firefighter as defined in s. [175.032](#) and one member of the board shall be a police officer as defined in s. [185.02](#), respectively elected by a majority of the active firefighters or police officers who are members of the plan.
3. Any board of trustees operating a local law plan on July 1, 1999, which is combined with a plan for general employees shall hold an election of the firefighters, or firefighters and police officers, if included, to determine whether a plan is to be established for firefighters only, or for firefighters and police officers where included. Based on the election results, a new board shall be established as provided in subparagraph 1. or subparagraph 2., as appropriate. The municipality or

fire control district shall enact an ordinance or resolution to implement the new board by October 1, 1999. The newly established board shall take whatever action is necessary to determine the amount of assets which is attributable to firefighters, or firefighters and police officers where included. Such assets shall include all employer, employee, and state contributions made by or on behalf of firefighters, or firefighters and police officers where included, and any investment income derived from such contributions. All such moneys shall be transferred into the newly established retirement plan, as directed by the board.

With respect to any board of trustees operating a local law plan on June 30, 1986, nothing in this paragraph shall permit the reduction of the membership percentage of firefighters, or of firefighters and police officers where a joint or mixed fund exists.

(c) Whenever the active firefighter membership of a closed chapter plan or closed local law plan as provided in s. 175.371 falls below 10, an active firefighter member seat may be held by either a retired member or an active firefighter member of the plan who is elected by the active and retired members of the plan. If there are no active or retired firefighters remaining in the plan or capable of serving, the remaining board members may elect an individual to serve in the active firefighter seat. Upon receipt of such person's name, the legislative body of the municipality or special fire control district shall, as a ministerial duty, appoint such person to the board of trustees. This paragraph applies only to those plans that are closed to new members under s. 175.371(2), and does not apply to any other municipality or fire control district having a chapter or local law plan.

(2) The trustees shall by a majority vote elect from their number a chair and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law.

(3) The board of trustees shall meet at least quarterly each year.

(4) Each board of trustees shall be a legal entity with, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

(5) In any judicial proceeding or administrative proceeding under chapter 120 brought under or pursuant to the provisions of this chapter, the prevailing party shall be entitled to recover the costs thereof, together with reasonable attorney's fees.

(6) The provisions of this section may not be altered by a participating municipality or special fire control district operating a chapter plan or local law plan under this chapter.

(7) The board of trustees may, upon written request of the retiree of the plan, or by a dependent, if authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment 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.

History.--s. 1, ch. 63-249; s. 2, ch. 81-168; s. 3, ch. 86-41; s. 15, ch. 93-193; s. 919, ch. 95-147; s. 5, ch. 99-1; s. 3, ch. 2002-66; s. 7, ch. 2004-21; s. 4, ch. 2009-97.

The 2009 Florida Statutes

Title XII**MUNICIPALITIES****Chapter 185****MUNICIPAL POLICE PENSIONS****[View Entire Chapter](#)**

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 of five members, two of whom, unless otherwise prohibited by law, must be legal residents of the municipality and must be appointed by the legislative body of the municipality, and two of whom must be police officers as defined in s. [185.02](#) who are 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 shall, as a ministerial duty, appoint such person to the board of trustees. The fifth member shall have the same rights as each of the other four members appointed or elected, 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, 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 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.

(b) The membership of boards of trustees for local law plans shall be as follows:

1. If a municipality has a pension plan for police officers only, the provisions of paragraph (a) shall apply.
2. If a municipality has a pension plan for police officers and firefighters, the provisions of paragraph (a) shall apply, except that one member of the board shall be a police officer as defined in s. [185.02](#) and one member shall be a firefighter as defined in s. [175.032](#), respectively, elected by a majority of the active firefighters and police officers who are members of the plan.
3. Any board of trustees operating a local law plan on July 1, 1999, which is combined with a plan for general employees shall hold an election of the police officers, or police officers and firefighters if included, to determine whether a plan is to be established for police officers only, or for police officers and firefighters where included. Based on the election results, a new board shall be established as provided in subparagraph 1. or subparagraph 2., as appropriate. The municipality shall enact an ordinance to implement the new board by October 1, 1999. The newly established board shall take whatever action is necessary to determine the amount of assets which is attributable to police officers, or police officers and firefighters where included. Such assets shall

include all employer, employee, and state contributions made by or on behalf of police officers, or police officers and firefighters where included, and any investment income derived from such contributions. All such moneys shall be transferred into the newly established retirement plan, as directed by the board.

With respect to any board of trustees operating a local law plan on June 30, 1986, nothing in this paragraph shall permit the reduction of the membership percentage of police officers or police officers and firefighters.

(c) Whenever the active police officer membership of a closed chapter plan or closed local law plan as provided in s. 185.38 falls below 10, an active police officer member seat may be held by either a retired police officer or an active police officer member of the plan who is elected by the active and retired members of the plan. If there are no active or retired police officers remaining in the plan or capable of serving, the remaining board members may elect an individual to serve in the active police officer member seat. Upon receipt of such person's name, the legislative body of the municipality shall, as a ministerial duty, appoint such person to the board of trustees. This paragraph applies only to those plans that are closed to new members under s. 185.38(2), and does not apply to any other municipality having a chapter or local law plan.

(d) If the chapter plan or local law plan with an active membership of 10 or more is closed to new members, the member seats may be held by either a retiree, as defined in s. 185.02, or an active police officer of the plan who has been elected by the active police officers. A closed plan means a plan that is closed to new members but continues to operate, pursuant to s. 185.38(2), for participants who elect to remain in the existing plan. This paragraph applies only to those plans that are closed to new members pursuant to s. 185.38(2) and does not apply to any other municipality that has a chapter plan or a local law plan.

(2) The trustees shall by majority vote elect from its members a chair and a secretary. The secretary of the board shall keep a complete minute book of the actions, proceedings, or hearings of the board. The trustees shall not receive any compensation as such, but may receive expenses and per diem as provided by Florida law.

(3) The board of trustees shall meet at least quarterly each year.

(4) Each board of trustees shall be a legal entity that shall have, in addition to other powers and responsibilities contained herein, the power to bring and defend lawsuits of every kind, nature, and description.

(5) In any judicial proceeding or administrative proceeding under chapter 120 brought under or pursuant to the provisions of this chapter, the prevailing party shall be entitled to recover the costs thereof, together with reasonable attorney's fees.

(6) The board of trustees may, upon written request by the retiree of the plan, or by a dependent, if authorized by the retiree or the retiree's beneficiary, authorize the plan administrator to withhold from the monthly retirement payment funds 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.

(7) The provisions of this section may not be altered by a participating municipality operating a

chapter or local law plan under this chapter.

History.--s. 2, ch. 28230, 1953; s. 2, ch. 59-320; s. 2, ch. 61-119; s. 4, ch. 86-42; s. 41, ch. 93-193; s. 940, ch. 95-147; s. 45, ch. 99-1; s. 6, ch. 2002-66; s. 8, ch. 2004-21; s. 10, ch. 2009-97.

ESTABLISHMENT OF THE BOARD OF TRUSTEES

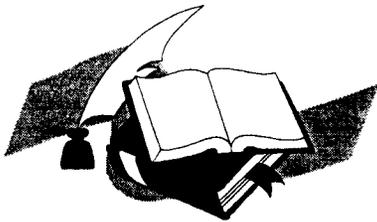
Many of the new members with Police and Fire Pension Plans will be establishing a Board of Trustees and holding their first organizational meeting in the next few months. The first agenda should include several items related to the responsibilities of the Board. These items may include;

- Election of the Board of Trustees' Chairman and Secretary. The Board may also elect a Vice-Chairman.
- Ratification of prior appointment or appointment of the Professional Administrator
- Approval of the Investment Policy (Attached to Plan Document as Exhibit A: It should be noted that the Investment Policy of the Florida Municipal Pension Trust Fund cannot be modified and should be considered for adoption in its current form .
- Approval of a Disability Claims Policy
- Approval of a Claims Review Procedures (located in Article 12 of the "Plan".

Subsequent to the first "organizational " Board of Trustees meeting, a list of your Board of Trustees and any subsequent future changes to the Board should be forwarded to the Professional Administrator.

TRUSTEE DUTIES AND RESPONSIBILITIES

A professional standard of conduct is demanded of a trustee in every aspect of his duties and responsibilities. Each trustee is expected to make decisions as a prudent person, acting in a like capacity and familiar with such matters. The Trustee may seek the advice of professional consultants prior to making decisions. Trustees should become knowledgeable of all documents governing the plan to discern if the professional advice is prudent and in the best interest of the beneficiaries of the Plan.



DUTIES - NUTS 'N BOLTS OF A TRUSTEE

- ✓ **The Trustee's Mandate is to:**
 - Operate the Plan in accordance with the direction provided by the City/District Council/Commission. This direction is set forth in local ordinances and resolutions.
 - As a Fiduciary, the trustee must discharge duties solely in the interest of Participants and Beneficiaries for the exclusive purpose of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administration of the Plan.

✓ **The Trustee is not required to increase benefits for members of the Plan or decrease the city's cost of providing benefits.**

✓ **A Trustee needs to:**

- Read and be familiar with local ordinances or resolutions pertaining to the Plan.
- Read and be familiar with communications provided to members of the plan, such as summary plan descriptions, employees' benefit statements, retirement benefit notifications, handouts from personnel to new employees, enrollment forms, etc.
- Be familiar with any rules or regulations adopted by the Board.
- Acquire knowledge regarding the state and federal laws that affect the Plan operations.
- Learn who are the various advisors to the Board, know the functions of each, and monitor their performance.
- Determine what insurance or bonding exists to cover the Trustees and the Fund.
- Review or establish investment guidelines and objectives for the Fund's investment managers.
- Be familiar with the general operations of the Plan, the Board and the Fund.

✓ **Laws and Regulations**

- Chapter 112, Part VII, Florida Statutes
 - A comprehensive law applicable to all plans that cover government employees, requiring actuarial soundness to be demonstrated.
 - Administered by the Bureau of Local Retirement Systems, Divisions of Retirement.
 - Applicable Administrative Rules are in Chapter 60T-1, Florida Administrative Code.
- Chapters 175 and 185, Florida Statutes
 - Applies to plans covering Police Officers, Public Safety Officers and Firefighters
 - Establishes the Distinction between "Local Law" plans vs. "Chapter" plans.
 - Provide for the payment of premium taxes collected on property and casualty insurance written within the City limits to qualifying plans.
 - Administered by the Bureau of Municipal Police/Fire Retirement Trust Funds, department of insurance.
 - Applicable administrative rules are in Chapters 60Z-1 and 60Z-2, Florida Administrative Code.
- The aforementioned statutes provides that an actuarial impact statement must be filed before any change in benefits may occur. The statement must be issued before the final public hearing on the amending ordinance.
- Sec. 286.011, Fla. Stat. Sunshine Law and Secs. 112.3144 and 112.3145 Fla.. Stat Financial Disclosure Laws.

- Section 112.3173, Fla Stat. - Provides that public employees found guilty of certain felonies shall forfeit all pension benefits except for a return of their own contributions.

✓ **Federal Laws, Regulations and Agencies**

- Governmental plans are exempt from requirements imposed upon retirement plans of private employers by the Employee Retirement Income Security Act (ERISA), and resulting filing and reporting requirements. In order to qualify, a governmental plan must comply with a mixture of pre-ERISA and post-ERISA requirements. The benefit of being qualified is not so much for the employer (tax-exempt), but for the trust to be tax-exempt under Internal Revenue Code (IRC) 501 and the benefits not to be taxed until withdrawal.
- Governmental plans are considered to be "Tax-Qualified". This means even those that have not received determinations letters from the IRS.
 - While nearly all private plans are filed for approval with the IRS, most government plans are not filed.
 - The most common reason for an approval filing of a governmental plan is to implement an employer pick-up under code section 414(h) (2). (Tax-deferred employee mandatory contributions.)
 - Since 1977, the IRS following a policy of not raising issues of discrimination in the 1989 case of government plans. That policy was officially rescinded.
 - If a plan is not "Tax-Qualified" then: 1) investment earnings of the pension fund become taxable; 2) participants of the plan pay income tax on employer contributions made to the plan; 3) favorable tax treatment on distributions from the plan are lost.
- Some provisions of federal law that should be included in qualified plan language are:
 - Code Section 415 benefit limitations.
 - Code Section 401(a)(9) required distribution rules.
 - Maximum Compensation Limits per Code Section 401(a)(17)
 - Actuarial equivalence factors per Code Section 401(a)(25).
 - Optional Direct Rollover per Code Section 401(a)31.
 - Code Section 401(m) Matching and Employee Contributions.
- Other federal requirements that apply to governmental plans are:
 - Nondiscrimination rules of Code Section 401(a)(4).
 - Minimum participation rules of Code Section 401(a)(26).
 - Coverage rules of code section 401(a)(3);70%/80% test.
 - IRS forms (1099-R, etc.) Must be completed for any person who receives a payment from the fund. These forms are usually prepared by the payor of the benefit.
 - A 10% additional income tax is payable on certain distributions from a pension fund made before the member is age 59½.
 - Persons receiving distributions must be given the option of having federal tax withholding deducted from their payments.
 - Americans with Disabilities Act (ADA) of 1991.