

## CHAPTER 185

## MUNICIPAL POLICE PENSIONS

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**185.01 Legislative declaration.—**

(1) It is hereby found and declared by the Legislature that police officers as hereinafter defined perform both state and municipal functions; that they make arrests for violations of state traffic laws on public highways; that they keep the public peace; that they conserve both life and property; and that their activities are vital to public welfare of this state. Therefore the Legislature declares that it is a proper and legitimate state purpose to provide a uniform retirement system for the benefit of police officers as hereinafter defined and intends, in implementing the provisions of s. 14, Art. X of the State Constitution as they relate to municipal police officers' retirement trust fund systems and plans, that such retirement systems or plans be managed, administered, operated, and funded in such manner as to maximize the protection of police officers' retirement trust funds. Therefore, the Legislature hereby determines and declares that the provisions of this act fulfill an important state interest.

(2) This chapter hereby establishes, for all municipal pension plans now or hereinafter provided for under this chapter, including chapter plans and local law plans, minimum benefits and minimum standards for the operation and funding of such plans, hereinafter referred to as municipal police officers' retirement trust funds. The minimum benefits and minimum standards set forth in this chapter may not be diminished by local ordinance or by special act of the Legislature, nor may the minimum benefits or minimum standards be reduced or offset by any other local, state, or federal plan that may include police officers in its operation, except as provided under s. 112.65.

*History.—*s. 1, ch. 28230, 1953; s. 1, ch. 86-42; s. 41, ch. 99-1.

**185.015 Short title.—**This chapter may be cited as the "Marvin B. Clayton Police Officers Pension Trust Fund Act."

*History.—*s. 3, ch. 2004-21.

**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:

(1) "Average final compensation" means one-twelfth of the average annual compensation of the 5 best years of the last 10 years of creditable service prior to retirement, termination, or death.

(2) "Casualty insurance" means automobile public liability and property damage insurance to be applied at the place of residence of the owner, or if the subject is a commercial vehicle, to be applied at the place of business of the owner; automobile collision insurance; fidelity bonds; burglary and theft insurance; and plate glass insurance. "Multiple peril" means a combination or

package policy that includes both property coverage and casualty coverage for a single premium.

(3) "Chapter plan" means a separate defined benefit pension plan for police officers which incorporates by reference the provisions of this chapter and has been adopted by the governing body of a municipality as provided in s. 185.08. Except as may be specifically authorized in this chapter, provisions of a chapter plan may not differ from the plan provisions set forth in ss. 185.01-185.341 and 185.37-185.39. Actuarial valuations of chapter plans shall be conducted by the division as provided by s. 185.221(1)(b).

(4) "Compensation" or "salary" means the total cash remuneration including "overtime" paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall such overtime limit be less than 300 hours per officer per calendar year.

(a) Any retirement trust fund or plan which now or hereafter meets the requirements of this chapter shall not, solely by virtue of this subsection, reduce or diminish the monthly retirement income otherwise payable to each police officer covered by the retirement trust fund or plan.

(b) The member's compensation or salary contributed as employee-elective salary reductions or deferrals to any salary reduction, deferred compensation, or tax-sheltered annuity program authorized under the Internal Revenue Code shall be deemed to be the compensation or salary the member would receive if he or she were not participating in such program and shall be treated as compensation for retirement purposes under this chapter.

(c) For any person who first becomes a member in any plan year beginning on or after January 1, 1996, compensation for any plan year shall not include any amounts in excess of the Internal Revenue Code s. 401(a)(17) limitation (as amended by the Omnibus Budget Reconciliation Act of 1993), which limitation of \$150,000 shall be adjusted as required by federal law for qualified government plans and shall be further adjusted for changes in the cost of living in the manner provided by Internal Revenue Code s. 401(a)(17)(B). For any person who first became a member prior to the first plan year beginning on or after January 1, 1996, the limitation on compensation shall be not less than the maximum compensation amount that was allowed to be taken into account under the plan as in effect on July 1, 1993, which limitation shall be adjusted for changes in the cost of living since 1989 in the manner provided by Internal Revenue Code s. 401(a)(17)(1991).

(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:

(a) No police officer will receive credit for years or fractional parts of years of service if he or she has withdrawn his or her contributions to the fund for those years or fractional parts of years of service, unless the police officer repays into the fund the amount he or she has withdrawn, plus interest as determined by the board. The member shall have at least 90 days after his or her reemployment to make repayment.

(b) A police officer may voluntarily leave his or her contributions in the fund for a period of 5 years after leaving the employ of the police department, pending the possibility of his or her being rehired by the same department, without losing credit for the time he or she has participated actively as a police officer. If he or she is not reemployed as a police officer with the same department within 5 years, his or her contributions shall be returned to him or her without interest.

(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 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 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.

(d) In determining the creditable service of any police officer, credit for up to 5 years of the time spent in the military service of the Armed Forces of the United States shall be added to the years of actual service, if:

1. The police officer is in the active employ of the municipality prior to such service and leaves a position, other than a temporary position, for the purpose of voluntary or involuntary service in the Armed Forces of the United States.

2. The police officer is entitled to reemployment under the provisions of the Uniformed Services Employment and Reemployment Rights Act.

3. The police officer returns to his or her employment as a police officer of the municipality within 1 year from the date of his or her release from such active service.

(6) "Deferred Retirement Option Plan" or "DROP" means a local law plan retirement option in which a police officer may elect to participate. A police officer may retire for all purposes of the plan and defer receipt of retirement benefits into a DROP account while continuing employment with his or her employer. However, a police officer who enters the DROP and who is otherwise eligible to participate shall not thereby be precluded from participating, or continuing to participate, in a supplemental plan in existence on, or created after, the effective date of this act.

(7) "Division" means the Division of Retirement of the Department of Management Services.

(8) "Enrolled actuary" means an actuary who is enrolled under Subtitle C of Title III of the Employee Retirement Income Security Act of 1974 and who is a member of the Society of Actuaries or the American Academy of Actuaries.

(9) "Local law municipality" is any municipality in which there exists a local law plan.

(10) "Local law plan" means a defined benefit pension plan for police officers or for police officers and firefighters, where included, as described in s. 185.35, established by municipal ordinance or special act of the Legislature, which enactment sets forth all plan provisions. Local law plan provisions may vary from the provisions of this chapter, provided that required minimum benefits and minimum standards are met. Any such variance shall provide a greater benefit for police officers. Actuarial valuations of local law plans shall be conducted by an enrolled actuary as provided in s. 185.221(2)(b).

(11) "Police officer" means any person who is elected, appointed, or employed full time by any municipality, who is certified or required to be certified as a law enforcement officer in compliance with s. 943.1395, who is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition 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 law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers, but does not include part-time law enforcement officers or auxiliary law enforcement officers as the same are defined in s. 943.10(6) and (8), respectively. For the purposes of this chapter only, "police officer" also shall include a public safety officer who is responsible for performing both police and fire services. Any plan may provide that the police chief shall have an option to participate, or not, in that plan.

(12) "Police Officers' Retirement Trust Fund" means a trust fund, by whatever name known, as provided under s. 185.03 for the purpose of assisting municipalities in establishing and maintaining a retirement plan for police officers.

(13) "Retiree" or "retired police officer" means a police officer who has entered retirement status. For the purposes of a plan that includes a Deferred Retirement Option Plan (DROP), a police officer who enters the DROP shall be considered a retiree for all purposes of the plan. However, a police officer who enters the DROP and who is otherwise eligible to participate shall not thereby be precluded from participating, or continuing to participate, in a supplemental plan in existence on, or created after, the effective date of this act.

(14) "Retirement" means a police officer's separation from city employment as a police officer with immediate eligibility for receipt of benefits under the plan. For purposes of a plan that includes a Deferred Retirement Option Plan (DROP), "retirement" means the date a police officer enters the DROP.

(15) "Supplemental plan" means a plan to which deposits of the premium tax moneys as provided in s. 185.08 are made to provide extra benefits to police officers, or police officers and firefighters where included, under this chapter. Such a plan is an element of a local law plan and exists in conjunction with a defined benefit plan that meets the minimum benefits and minimum standards of this chapter.

(16) "Supplemental plan municipality" means any local law municipality in which there existed a supplemental plan as of December 1, 2000.

**History.**—s. 11, ch. 28230, 1953; s. 1, ch. 29825, 1955; s. 1, ch. 59-320; s. 1, ch. 61-85; s. 7, ch. 79-380; s. 2, ch. 79-388; s. 2, ch. 86-42; s. 43, ch. 91-45; s. 40, ch. 93-193; s. 939, ch. 95-147; s. 14, ch. 95-154; s. 42, ch. 99-1; s. 28, ch. 2000-151; s. 3, ch. 2000-159; s. 2, ch. 2002-66.

**185.03 Municipal police officers' retirement trust funds; creation; applicability of provisions; participation by public safety officers.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) There shall be established a special fund exclusively for the purpose of this chapter, which in the case of chapter plans shall be known as the "Municipal Police Officers' Retirement Trust Fund," in each municipality of this state, heretofore or hereafter created, which now has or which may hereafter have a regularly organized police department, and which now owns and uses or which may hereafter own and use equipment and apparatus of a value exceeding \$500 in serviceable condition for the prevention of crime and for the preservation of life and property.

(2) The provisions of this chapter shall apply only to municipalities organized and established pursuant to the laws of the state, and said provisions shall not apply to the unincorporated areas of any county or counties nor shall the provisions hereof apply to any governmental entity whose police officers are eligible to participate in the Florida Retirement System.

(3) No municipality shall establish more than one retirement plan for public safety officers which is supported in whole or in part by the distribution of premium tax funds as provided by this chapter or chapter 175, nor shall any municipality establish a retirement plan for public safety officers which receives premium tax funds from both this chapter and chapter 175.

**History.**—s. 1, ch. 28230, 1953; s. 2, ch. 29825, 1955; s. 2, ch. 61-119; s. 1, ch. 65-152; s. 7, ch. 79-380; s. 2, ch. 79-388; s. 3, ch. 86-42; s. 43, ch. 99-1.

**185.04 Actuarial deficits not state obligations.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, actuarial deficits, if any, arising under this chapter are not the obligation of the state.

**History.**—s. 1b, ch. 28230, 1953; s. 44, ch. 99-1.

**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 shall consist of five members, two of whom, unless otherwise prohibited by law, shall be legal residents of the municipality, who shall be appointed by the legislative body of the municipality, and two of whom shall be police officers as defined in s. 185.02 who 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. 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 legislative body at whose pleasure the member 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 in the same manner as an original appointment. Each police officer may succeed himself or herself in office.

(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, 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.

(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.

**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 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 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 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 shall apply to all boards of trustees and participants. However, 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; where a special act, or a municipality by ordinance adopted prior to July 1, 1998, permits a greater than 50-percent equity investment, such municipality 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 be construed to take away any preexisting legal authority to make equity investments that exceed the requirements of this paragraph. The board of trust-

ees may invest up to 10 percent of plan assets in foreign securities.

(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, 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 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.

(2) Any and all acts and decisions shall be effectuated by vote of a majority of the members of the board; however, no trustee shall take part in any action in connection with his or her own participation in the fund, and no unfair discrimination shall be shown to any individual employee participating in the fund.

(3) The secretary of the board of trustees shall keep a record of all persons receiving retirement payments under the provisions of this chapter, in which shall be noted the time when the pension is allowed and when the pension shall cease to be paid. In this record, the secretary shall keep a list of all police officers employed by the municipality. The record shall show the name, address, and time of employment of such police officer and when he or she ceases to be employed by the municipality.

(4) The sole and exclusive administration of, and the responsibilities for, the proper operation of the retirement trust fund and for making effective the provisions of this chapter are vested in the board of trustees; however, nothing herein shall empower a board of trustees to amend the provisions of a retirement plan without the approval of the municipality. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the retirement trust fund and for checking the actual experience of the fund.

(5)(a) At least once every 3 years, the board of trustees shall retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money manager and shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in the same manner as for any meeting of the board.

(b) For the purpose of this subsection, the term "professionally qualified independent consultant" means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum:

1. Provides his or her services on a flat-fee basis.

2. Is not associated in any manner with the money manager for the pension fund.

3. Makes calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be made net of fees.

4. Has 3 or more years of experience working in the public sector.

(6) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

(a) Employ independent legal counsel at the pension fund's expense.

(b) Employ an independent actuary, as defined in s. 185.02(8), at the pension fund's expense.

(c) Employ such independent professional, technical, or other advisers as it deems necessary at the pension fund's expense.

If the board chooses to use the municipality's or special district's legal counsel or actuary, or chooses to use any of the municipality's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

**History.**—s. 3, ch. 28230, 1953; s. 1, ch. 57-118; s. 3, ch. 59-320; s. 2, ch. 61-119; s. 1, ch. 65-366; ss. 22, 35, ch. 69-106; s. 5, ch. 86-42; s. 941, ch. 95-147; s. 2, ch. 98-134; s. 67, ch. 99-2; s. 18, ch. 99-392; s. 29, ch. 2000-151.

#### **185.061 Use of annuity or insurance policies.—**

When the board of trustees of any municipality, chapter plan, local law municipality, or local law plan purchases annuity or life insurance contracts to provide all or part of the benefits promised by this chapter, the following principles shall be observed:

(1) Only those officers who have been members of the retirement trust fund for 1 year or longer may be included in the insured plan.

(2) Individual policies shall be purchased only when a group insurance plan is not feasible.

(3) Each application and policy shall designate the pension fund as owner of the policy.

(4) Policies shall be written on an annual premium basis.

(5) The type of policy shall be one which for the premium paid provides each individual with the maximum retirement benefit at his or her earliest statutory normal retirement age.

(6) Death benefit, if any, should not exceed:

(a) One hundred times the estimated normal monthly retirement income, based on the assumption that the present rate of compensation continues without change to normal retirement date, or

(b) Twice the annual rate of compensation as of the date of termination of service, or

(c) The single-sum value of the accrued deferred retirement income (beginning at normal retirement date) at date of termination of service, whichever is greatest.

(7) An insurance plan may provide that the assignment of insurance contract to separating officer shall be at least equivalent to the return of the officer's contributions used to purchase the contract. An assignment of contract discharges the municipality from all further obligation to the participant under the plan even though the cash value of such contract may be less than the employee's contributions.

(8) Provisions shall be made, either by issuance of separate policies, or otherwise, that the separating officer does not receive cash values and other benefits under the policies assigned to the officer which exceed the present value of his or her vested interest under the retirement plan, inclusive of the officer's contribution to the plan; the contributions by the state shall not be exhausted faster merely because the method of funding adopted was through insurance companies.

(9) The police officer shall have the right at any time to give the board of trustees written instructions designating the primary and contingent beneficiaries to receive death benefit or proceeds and the method of the settlement of the death benefit or proceeds, or requesting a change in the beneficiary, designation or method of settlement previously made, subject to the terms of the policy or policies on the officer's life. Upon receipt of such written instructions, the board of trustees shall take the necessary steps to effectuate the designation or change of beneficiary or settlement option.

**History.**—s. 4, ch. 59-320; s. 2, ch. 61-119; s. 942, ch. 95-147; s. 46, ch. 99-1.

**185.07 Creation and maintenance of fund.—**For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) The municipal police officers' retirement trust fund in each municipality described in s. 185.03 shall be created and maintained in the following manner:

(a) By the net proceeds of the .85-percent excise tax which may be imposed by the respective cities and towns upon certain casualty insurance companies on their gross receipts of premiums from holders of policies, which policies cover property within the corporate limits of such municipalities, as is hereinafter expressly authorized.

(b) Except as reduced or increased contributions are authorized by subsection (2), by the payment to the fund of 5 percent of the salary of each full-time police officer duly appointed and enrolled as a member of such police department, which 5 percent shall be deducted by the municipality from the compensation due to the police officer and paid over to the board of trustees of the retirement trust fund wherein such police officer is employed. No police officer shall have any right to the money so paid into the fund except as provided in this chapter.

(c) By all fines and forfeitures imposed and collected from any police officer because of the violation of any rule adopted by the board of trustees.

(d) By payment by the municipality or other sources of a sum equal to the normal cost and the amount required to fund any actuarial deficiency shown by an actuarial valuation as provided in part VII of chapter 112.

(e) By all gifts, bequests and devises when donated to the fund.

(f) By all accretions to the fund by way of interest or dividends on bank deposits or otherwise.

(g) By all other sources of income now or hereafter authorized by law for the augmentation of such municipal police officers' retirement trust fund.

(2) Member contribution rates may be adjusted as follows:

(a) The employing municipality, by local ordinance, may elect to make an employee's contributions. However, under no circumstances may a municipality reduce the member contribution to less than one-half of 1 percent of salary.

(b) Police officer member contributions may be increased by consent of the members' collective bargaining representative or, if none, by majority consent of police officer members of the fund to provide greater benefits.

Nothing in this section shall be construed to require adjustment of member contribution rates in effect on the date this act becomes a law, including rates that exceed 5 percent of salary, provided that such rates are at least one-half of 1 percent of salary.

**History.**—s. 4, ch. 28230, 1953; s. 3, ch. 29825, 1955; s. 5, ch. 59-320; s. 2, ch. 61-119; s. 6, ch. 86-42; s. 943, ch. 95-147; s. 5, ch. 95-250; s. 47, ch. 99-1.

**185.08 State excise tax on casualty insurance premiums authorized; procedure.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) Each incorporated municipality in this state described and classified in s. 185.03, as well as each other city or town of this state which on July 31, 1953, had a lawfully established municipal police officers' retirement trust fund or city fund, by whatever name known, providing pension or relief benefits to police officers 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 hereafter engage in or carry on, the business of casualty insurance as shown by 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 said municipalities, respectively, amounting to .85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on casualty insurance policies covering property within the corporate limits of such municipalities, respectively.

(2) In the case of multiple peril policies with a single premium for both property and casualty coverages in such policies, 30 percent of such premium shall be used as the basis for the .85-percent tax above.

(3) The excise tax shall be payable annually March 1 of each year after the passing of an ordinance assessing and imposing the tax herein authorized. Installments of taxes shall be paid according to the provisions of s. 624.5092(2)(a), (b), and (c).

**History.**—s. 5, ch. 28230, 1953; s. 2, ch. 61-119; s. 1, ch. 63-196; ss. 13, 35, ch. 69-106; s. 7, ch. 86-42; s. 24, ch. 87-99; s. 15, ch. 88-206; s. 11, ch. 89-167; s. 944, ch. 95-147; s. 48, ch. 99-1; s. 164, ch. 2003-261.

**185.085 Determination of local premium tax situs.**

(1)(a) Any insurance company that is obligated to report and remit the excise tax on casualty insurance premiums imposed under s. 185.08 shall be held harmless from any liability, including, but not limited to, liability for taxes, interest, or penalties that would otherwise be due solely as a result of an assignment of an insured property to an incorrect local taxing jurisdiction if the insurance company exercises due diligence in applying an electronic database provided by the Department of

Revenue under subsection (2). Insurance companies that do not use the electronic database provided by the Department of Revenue or that do not exercise due diligence in applying the electronic database for tax years on or after January 1, 2006, are subject to a 0.5 percent penalty on the portion of the premium pertaining to any insured risk that is improperly assigned, whether assigned to an improper local taxing jurisdiction, not assigned to a local taxing jurisdiction when it should be assigned to a local taxing jurisdiction, or assigned to a local taxing jurisdiction when it should not be assigned to a local taxing jurisdiction.

(b) Any insurance company that is obligated to report and remit the excise tax on commercial casualty insurance premiums imposed under s. 185.08 and is unable, after due diligence, to assign an insured property to a specific local taxing jurisdiction for purposes of complying with paragraph (a) shall remit the excise tax on commercial casualty insurance premiums using a methodology of apportionment in a manner consistent with the remittance for the 2004 calendar year. An insurance company which makes two contacts with the agent responsible for a commercial casualty insurance application for the purpose of verifying information on the application necessary for the assignment to the appropriate taxing jurisdiction shall be considered to have exercised due diligence. Any insurance company which complies with the provisions of this paragraph shall not be subject to the penalty provided in paragraph (a).

(2)(a) The Department of Revenue shall, subject to legislative appropriation, create as soon as practical and feasible, and thereafter shall maintain, an electronic database that conforms to any format approved by the American National Standards Institute's Accredited Standards Committee X12 and that designates for each street address and address range in the state, including any multiple postal street addresses applicable to one street location, the local taxing jurisdiction in which the street address and address range is located, and the appropriate code for each such participating local taxing jurisdiction, identified by one nationwide standard numeric code. The nationwide standard numeric code must contain the same number of numeric digits, and each digit or combination of digits must refer to the same level of taxing jurisdiction throughout the United States and must be in a format similar to FIPS 55-3 or other appropriate standard approved by the Federation of Tax Administrators and the Multistate Tax Commission. Each address or address range must be provided in standard postal format, including the street number, street number range, street name, and zip code. Each year after the creation of the initial database, the Department of Revenue shall annually create and maintain a database for the current tax year. Each annual database must be calendar-year specific.

(b)1. Each participating local taxing jurisdiction shall furnish to the Department of Revenue all information needed to create the electronic database as soon as practical and feasible. The information furnished to the Department of Revenue must specify an effective date.

2. Each participating local taxing jurisdiction shall furnish to the Department of Revenue all information needed to create and update the current year's database, including changes in annexations, incorporations, and reorganizations and any other changes in jurisdictional boundaries, as well as changes in eligibility to participate in the excise tax imposed under this chapter. The information must specify an effective date and must be furnished to the Department of Revenue by July 1 of the current year.

3. The Department of Revenue shall create and update the current year's database in accordance with the information furnished by participating local taxing jurisdictions under subparagraph 1. or subparagraph 2., as appropriate. To the extent practicable, the Department of Revenue shall post each new annual database on a website by September 1 of each year. Each participating local taxing jurisdiction shall have access to this website and, within 30 days thereafter, shall provide any corrections to the Department of Revenue. The Department of Revenue shall finalize the current year's database and post it on a website by November 1 of the current year. If a dispute in jurisdictional boundaries cannot be resolved so that changes in boundaries may be included, as appropriate, in the database by November 1, the changes may not be retroactively included in the current year's database and the boundaries will remain the same as in the previous year's database. The finalized database must be used in assigning policies and premiums to the proper local taxing jurisdiction for the insurance premium tax return due on the following March 1 for the tax year 2005. For subsequent tax years, the finalized database must be used in assigning policies and premiums to the proper local taxing jurisdiction for the insurance premium tax return due for the tax year beginning on or after the January 1 following the website posting of the database. Information contained in the electronic database is conclusive for purposes of this chapter. The electronic database is not an order, a rule, or a policy of general applicability.

4. Each annual database must identify the additions, deletions, and other changes to the preceding version of the database.

(3)(a) As used in this section, the term "due diligence" means the care and attention that is expected from and is ordinarily exercised by a reasonable and prudent person under the circumstances.

(b) Notwithstanding any law to the contrary, an insurance company is exercising due diligence if the insurance company complies with the provisions of paragraph (1)(b) or if the insurance company assigns an insured's premium to local taxing jurisdictions in accordance with the Department of Revenue's annual database and with respect to such database:

1. Expends reasonable resources to accurately and reliably implement such method;

2. Maintains adequate internal controls to correctly include in its database of policyholders the location of the property insured, in the proper address format, so that matching with the department's database is accurate; and

3. Corrects errors in the assignment of addresses to local taxing jurisdictions within 120 days after the insurance company discovers the errors.

(4) There is annually appropriated from the moneys collected under this chapter and deposited in the Police and Firefighter's Premium Tax Trust Fund an amount sufficient to pay the expenses of the Department of Revenue in administering this section, but not to exceed \$50,000 annually, adjusted annually by the lesser of a 5- percent increase or the percentage of growth in the total collections.

(5) The Department of Revenue shall adopt rules necessary to administer this section, including rules establishing procedures and forms.

(6)(a) Notwithstanding any other law, a methodology, formula, or database that is adopted in any year after January 1, 2005, may not result in a distribution to a participating municipality that has a retirement plan created pursuant to this chapter of an amount of excise tax which is less than the amount distributed to such participating municipality for calendar year 2004. However, if the total proceeds to be distributed for the current year from the excise tax imposed under s. 185.08 are less than the total amount distributed for calendar year 2004, each participating municipality shall receive a current year distribution that is proportionate to its share of the total 2004 calendar year distribution. If the total proceeds to be distributed for the current year from the excise tax imposed under s. 185.08 are greater than or equal to the total amount distributed for calendar year 2004, each participating municipality shall initially be distributed a minimum amount equal to the amount received for calendar year 2004. The remaining amount to be distributed for the current year, which equals the total to be distributed for the current year, less minimum distribution amount, shall be distributed to those municipalities with an amount reported for the current year which is greater than the amount distributed to such municipality for calendar year 2004. Each municipality eligible for distribution of this remaining amount shall receive its proportionate share of the remaining amount based upon the amount reported for that municipality, above the calendar year 2004 distribution for the current year, to the total amount over the calendar year 2004 distribution for all municipalities with an amount reported for the current year which is greater than the calendar year 2004 distribution.

(b) If a new municipality elects to participate under this chapter during any year after January 1, 2005, such municipality shall receive the total amount reported for the current year for such municipality. All other participating municipalities shall receive a current year distribution, calculated as provided in this section, which is proportionate to their share of the total 2004 calendar year distribution after subtracting the amount paid to the new participating plans.

(c) This subsection expires January 1, 2008.

(7) Any insurer that is obligated to collect and remit the tax on casualty insurance imposed under s. 185.08 shall be held harmless from any liability, including, but not limited to, liability for taxes, interest, or penalties that would otherwise be due solely as a result of an assignment of an insured risk to an incorrect local tax-

ing jurisdiction, based on the collection and remission of the tax accruing before January 1, 2005, if the insurer collects and reports this tax consistent with filings for periods before January 1, 2005. Further, any insurer that is obligated to collect and remit the tax on casualty insurance imposed under this section is not subject to an examination under s. 624.316 or s. 624.3161 which would occur solely as a result of an assignment of an insured risk to an incorrect local taxing jurisdiction, based on the collection and remission of such tax accruing before January 1, 2005.

**History.**—s. 4, ch. 2004-21.

#### **185.09 Report of premiums paid; date tax payable.**

For any municipality, chapter plan, local law municipality, or local law plan under this chapter, whenever any municipality passes an ordinance establishing a chapter plan or local law plan and assessing and imposing the tax authorized in s. 185.08, a certified copy of such ordinance shall be deposited with the division; and thereafter every insurance company, corporation, or other insurer carrying on the business of casualty insuring, on or before the succeeding March 1 after date of the passage of the ordinance, shall report fully in writing to the division and the Department of Revenue a just and true account of all premiums received by such insurer for casualty insurance policies covering or insuring any property located within the corporate limits of such municipality during the period of time elapsing between the date of the passage of the ordinance and the end of the calendar year. The aforesaid insurer shall annually thereafter, on March 1, file with the Department of Revenue a similar report covering the preceding year's premium receipts. Every such insurer shall, at the time of making such report, pay to the Department of Revenue the amount of the tax heretofore mentioned. Every insurer engaged in carrying on a general casualty insurance business in the state shall keep accurate books of account of all such business done by it within the limits of such incorporated municipality in such a manner as to be able to comply with the provisions of this chapter. Based on the insurers' reports of premium receipts, the division shall prepare a consolidated premium report and shall furnish to any municipality requesting the same a copy of the relevant section of that report.

**History.**—s. 6, ch. 28230, 1953; s. 2, ch. 61-85; ss. 12, 13, 35, ch. 69-106; s. 42, ch. 93-193; s. 49, ch. 99-1; s. 7, ch. 2000-355.

**185.10 Department of Revenue and Division of Retirement to keep accounts of deposits; disbursements.**—For any municipality having a chapter plan or local law plan under this chapter:

(1) The Department of Revenue shall keep a separate account of all moneys collected for each municipality under the provisions of this chapter. All moneys so collected must be transferred to the Police and Firefighters' Premium Tax Trust Fund and shall be separately accounted for by the division. The moneys budgeted as necessary to pay the expenses of the division for the daily oversight and monitoring of the police officers' retirement plans under this chapter and for the oversight and actuarial reviews conducted under part VII of chapter 112 are annually appropriated from the

interest and investment income earned on the moneys collected for each municipality or special fire control district and deposited in the Police and Firefighters' Premium Tax Trust Fund. Interest and investment income remaining thereafter in the trust fund which is unexpended and otherwise unallocated by law shall revert to the General Revenue Fund on June 30 of each year.

(2) The Chief Financial Officer shall, on or before July 1 of each year, and at such other times as authorized by the division, draw his or her warrants on the full net amount of money then on deposit pursuant to this chapter in the Police and Firefighters' Premium Tax Trust Fund, specifying the municipalities to which the moneys must be paid and the net amount collected for and to be paid to each municipality, respectively. The sum payable to each municipality is appropriated annually out of the Police and Firefighters' Premium Tax Trust Fund. The warrants of the Chief Financial Officer shall be payable to the respective municipalities entitled to receive them and shall be remitted annually by the division to the respective municipalities. In lieu thereof, the municipality may provide authorization to the division for the direct payment of the premium tax to the board of trustees. In order for a municipality and its retirement fund to participate in the distribution of premium tax moneys under this chapter, all the provisions shall be complied with annually, including state acceptance pursuant to part VII of chapter 112.

**History.**—s. 7, ch. 28230, 1953; s. 2, ch. 29734, 1955; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 1, ch. 74-297; s. 4, ch. 85-61; s. 8, ch. 86-42; s. 43, ch. 93-193; s. 13, ch. 94-259; s. 1458, ch. 95-147; s. 6, ch. 95-250; s. 50, ch. 99-1; s. 165, ch. 2003-261.

**185.105 Police and Firefighters' Premium Tax Trust Fund.**—The Police and Firefighters' Premium Tax Trust Fund is created, to be administered by the Division of Retirement of the Department of Management Services. Funds credited to the trust fund, as provided in chapter 95-250, Laws of Florida, or similar legislation, shall be expended for the purposes set forth in that legislation.

**History.**—s. 1, ch. 95-249.

**Note.**—Also published at s. 175.1215.

**185.11 Funds received by municipalities, deposit in retirement trust fund.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, all state and other funds received by any municipality under the provisions of this chapter shall be deposited by the municipality immediately, and under no circumstances more than 5 days after receipt, with the board of trustees. In lieu thereof, the municipality may provide authorization to the division for the direct payment of the premium tax to the board of trustees. The board shall deposit such moneys in the Municipal Police Officers' Retirement Trust Fund immediately, and under no circumstances more than 5 days after receipt. Employee contributions, however, which are withheld by the employer on behalf of an employee member shall be deposited immediately after each pay period with the board of trustees of the municipal police officers' retirement trust fund. Employer contributions shall be deposited at least quarterly.

**History.**—s. 8, ch. 28230, 1953; s. 2, ch. 61-119; s. 9, ch. 86-42; s. 51, ch. 99-1.

**185.12 Payment of excise tax credit on similar state excise or license tax.**—The tax herein authorized shall in nowise be additional to the similar state excise or license tax imposed by part IV, chapter 624, but the payor of the tax hereby authorized shall receive credit therefor on his or her state excise or license tax and the balance of said state excise or license tax shall be paid to the Department of Revenue as provided by law.

**History.**—s. 9, ch. 28230, 1953; s. 3, ch. 61-85; ss. 13, 35, ch. 69-106; s. 10, ch. 86-42; s. 945, ch. 95-147; s. 52, ch. 99-1.

**185.13 Failure of insurer to comply with chapter; penalty.**—If any insurance company, corporation or other insurer fails to comply with the provisions of this chapter, on or before March 1 in each year as herein provided, the certificate of authority issued to said insurance company, corporation or other insurer to transact business in this state may be canceled and revoked by the Office of Insurance Regulation of the Financial Services Commission, and it is unlawful for any such insurance company, corporation or other insurer to transact any business thereafter in this state unless such insurance company, corporation or other insurer shall be granted a new certificate of authority to transact business in this state, in compliance with provisions of law authorizing such certificate of authority to be issued. The division shall be responsible for notifying the Office of Insurance Regulation regarding any such failure to comply.

**History.**—s. 10, ch. 28230, 1953; ss. 13, 35, ch. 69-106; s. 53, ch. 99-1; s. 166, ch. 2003-261.

**185.16 Requirements for retirement.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, any police officer who completes 10 or more years of creditable service as a police officer and attains age 55, or completes 25 years of creditable service as a police officer and attains age 52, and for such period has been a member of the retirement fund is eligible for normal retirement benefits. Normal retirement under the plan is retirement from the service of the city on or after the normal retirement date. In such event, for chapter plans and local law plans, payment of retirement income will be governed by the following provisions of this section:

(1) The normal retirement date of each police officer will be the first day of the month coincident with or next following the date on which the police officer has completed 10 or more years of creditable service and attained age 55 or completed 25 years of creditable service and attained age 52.

(2) The amount of the monthly retirement income payable to a police officer who retires on or after his or her normal retirement date shall be an amount equal to the number of the police officer's years of credited service multiplied by 2 percent of his or her average final compensation. However, if current state contributions pursuant to this chapter are not adequate to fund the additional benefits to meet the minimum requirements in this chapter, only increment increases shall be required as state moneys are adequate to provide. Such increments shall be provided as state moneys become available.

(3) The monthly retirement income payable in the event of normal retirement will be payable on the first day of each month. The first payment will be made on the police officer's normal retirement date, or on the first day of the month coincident with or next following the police officer's actual retirement, if later, and the last payment will be the payment due next preceding the police officer's death; except that, in the event the police officer dies after retirement but before receiving retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary (or beneficiaries) as designated by the police officer for the balance of such 10-year period, or, if no beneficiary is designated, to the estate of the police officer, as provided in s. 185.162. If a police officer continues in the service of the city beyond his or her normal retirement date and dies prior to the date of actual retirement, without an option made pursuant to s. 185.161 being in effect, monthly retirement income payments will be made for a period of 10 years to a beneficiary (or beneficiaries) designated by the police officer as if the police officer had retired on the date on which death occurred, or, if no beneficiary is designated, to the estate of the police officer, as provided in s. 185.162.

(4) Early retirement under the plan is retirement from the service of the city, with the consent of the city, as of the first day of any calendar month which is prior to the police officer's normal retirement date but subsequent to the date as of which the police officer has both attained the age of 50 years and completed 10 years of contributing service. In the event of early retirement, payment of retirement income will be governed as follows:

(a) The early retirement date shall be the first day of the calendar month coincident with or immediately following the date a police officer retires from the service of the city under the provisions of this section prior to his or her normal retirement date.

(b) The monthly amount of retirement income payable to a police officer who retires prior to his or her normal retirement date under the provisions of this section shall be an amount computed as described in subsection (2), taking into account his or her credited service to the date of actual retirement and his or her final monthly compensation as of such date, such amount of retirement income to be actuarially reduced to take into account the police officer's younger age and the earlier commencement of retirement income payments. In no event shall the early retirement reduction exceed 3 percent for each year by which the member's age at retirement preceded the member's normal retirement age, as provided in subsection (1).

(c) The retirement income payable in the event of early retirement will be payable on the first day of each month. The first payment will be made on the police officer's early retirement date and the last payment will be the payment due next preceding the retired police officer's death; except that, in the event the police officer dies before receiving retirement benefits for a period of 10 years, the same monthly benefit will be paid to the beneficiary designated by the police officer for the balance of such 10-year period, or, if no designated beneficiary is surviving, the same monthly bene-

fit for the balance of such 10-year period shall be payable as provided in s. 185.162.

**History.**—s. 14, ch. 28230, 1953; s. 4, ch. 29825, 1955; s. 6, ch. 59-320; s. 5, ch. 61-85; s. 2, ch. 63-196; s. 1, ch. 70-128; s. 12, ch. 86-42; s. 946, ch. 95-147; s. 56, ch. 99-1.

**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 pensioner designated by the police officer, and following the death of either of them, 100 percent, 75 percent, 66⅔ 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 will designate the joint 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 will have the power to change such designation from time to time but any such change shall be deemed a new election and will be subject to approval by the pension committee. Such designation will name a joint pensioner or one or more primary beneficiaries where applicable. If a police officer has elected an option with a joint pensioner or beneficiary and his or her retirement income benefits have commenced, he or she may thereafter change the designated joint pensioner or beneficiary but only if the board of trustees consents to such change and if the joint 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 pensioner or beneficiary to any such change shall not be required. The board of trustees may request such evidence of the good health of the joint 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 pensioner shall be actuarially redetermined taking into account the ages and sex of the former joint pensioner, the new joint pensioner, and the police officer. Each such designation 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. 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.

(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:

(a) If a police officer dies prior to his or her normal retirement date or early retirement date, whichever first occurs, no benefit will be payable under the option to any person, but the benefits, if any, will be determined under s. 185.21.

(b) If the designated beneficiary (or beneficiaries) or joint pensioner dies before the police officer's retirement under the plan, the option elected will be canceled automatically and a retirement income of the normal form and amount 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 prior to his or her retirement and within 90 days after the death of the beneficiary.

(c) If both the retired police officer and the designated beneficiary (or beneficiaries) die before the full payment has been effected under any option providing for payments for a period certain and life thereafter, made pursuant to the provisions of subparagraph (1)(a)3., the board of trustees may, in its discretion, direct that the commuted value of the remaining payments be paid in a lump sum and in accordance with s. 185.162.

(d) If a police officer continues beyond his or her normal retirement date pursuant to the provisions of s. 185.16(1) and dies prior to actual retirement and while an option made pursuant to the provisions of this section is in effect, monthly retirement income payments will be made, or a retirement benefit will be paid, under the option to a beneficiary (or beneficiaries) designated by the police officer in the amount or amounts computed as if the police officer had retired under the option on the date on which death occurred.

(3) No police officer may make any change in his or her retirement option after the date of cashing or depositing his or her first retirement check.

**History.**—s. 7, ch. 59-320; s. 13, ch. 86-42; s. 947, ch. 95-147; s. 57, ch. 99-1.

**185.162 Beneficiaries.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) Each police officer may, on a form, provided for that purpose, signed and filed with the board of trustees, designate a choice of one or more persons, named sequentially or jointly, as his or her beneficiary (or beneficiaries) to receive the benefit, if any, which may be payable in the event of the police officer's death, and each designation may be revoked by such police officer by signing and filing with the board of trustees a new designation or beneficiary form.

(2) If no beneficiary is named in the manner provided by subsection (1), or if no beneficiary designated by the member survives him or her, the death benefit, if any, which may be payable under the plan with respect to such deceased police officer shall be paid by the board of trustees to the estate of such deceased police officer, provided that in any of such cases the

board of trustees, in its discretion, may direct that the commuted value of the remaining monthly income payments be paid in a lump sum. Any payment made to any person pursuant to this subsection shall operate as a complete discharge of all obligations under the plan with regard to such deceased police officer and shall not be subject to review by anyone, but shall be final, binding and conclusive on all persons ever interested hereunder.

(3) Notwithstanding any other provision of law to the contrary, the surviving spouse of any pension participant member killed in the line of duty shall not lose survivor retirement benefits if the spouse remarries. The surviving spouse of such deceased member whose benefit terminated because of remarriage shall have the benefit reinstated as of July 1, 1994, at an amount that would have been payable had such benefit not been terminated.

**History.**—s. 7, ch. 59-320; s. 5, ch. 94-171; s. 1459, ch. 95-147; s. 58, ch. 99-1.

**185.18 Disability retirement.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) A police officer having 10 or more years of credited service, or a police officer who becomes totally and permanently disabled in the line of duty, regardless of length of service, may retire from the service of the city under the plan if he or she becomes totally and permanently disabled as defined in subsection (2) by reason of any cause other than a cause set out in subsection (3) on or after the effective date of the plan. Such retirement shall herein be referred to as disability retirement.

(2) A police officer will be considered totally disabled if, in the opinion of the board of trustees, he or she is wholly prevented from rendering useful and efficient service as a police officer; and a police officer will be considered permanently disabled if, in the opinion of the board of trustees, such police officer is likely to remain so disabled continuously and permanently from a cause other than as specified in subsection (3).

(3) A police officer will not be entitled to receive any disability retirement income if the disability is a result of:

(a) Excessive and habitual use by the police officer of drugs, intoxicants, or narcotics;

(b) Injury or disease sustained by the police officer while willfully and illegally participating in fights, riots, civil insurrections or while committing a crime;

(c) Injury or disease sustained by the police officer while serving in any armed forces;

(d) Injury or disease sustained by the police officer after employment has terminated;

(e) Injury or disease sustained by the police officer while working for anyone other than the city and arising out of such employment.

(4) No police officer shall be permitted to retire under the provisions of this section until examined by a duly qualified physician or surgeon, to be selected by the board of trustees for that purpose, and is found to be disabled in the degree and in the manner specified in this section. Any police officer retiring under this section may be examined periodically by a duly qualified physician or surgeon or board of physicians and surgeons to be selected by the board of trustees for that

purpose, to determine if such disability has ceased to exist.

(5) The benefit payable to a police officer who retires from the service of the city with a total and permanent disability as a result of a disability is the monthly income payable for 10 years certain and life for which, if the police officer's disability occurred in the line of duty, his or her monthly benefit shall be the accrued retirement benefit, but shall not be less than 42 percent of his or her average monthly compensation as of the police officer's disability retirement date. If after 10 years of service the disability is other than in the line of duty, the police officer's monthly benefit shall be the accrued normal retirement benefit, but shall not be less than 25 percent of his or her average monthly compensation as of the police officer's disability retirement date.

(6) The monthly retirement income to which a police officer is entitled in the event of his or her disability retirement shall be payable on the first day of the first month after the board of trustees determines such entitlement. However, the monthly retirement income shall be payable as of the date the board determines such entitlement, and any portion due for a partial month shall be paid together with the first payment. The last payment will be, if the police officer recovers from the disability, the payment due next preceding the date of such recovery or, if the police officer dies without recovering from his or her disability, the payment due next preceding death or the 120th monthly payment, whichever is later. In lieu of the benefit payment as provided in this subsection, a police officer may select an optional form as provided in s. 185.161. Any monthly retirement income payments due after the death of a disabled police officer shall be paid to the police officer's designated beneficiary (or beneficiaries) as provided in ss. 185.162 and 185.21.

(7) If the board of trustees finds that a police officer who is receiving a disability retirement income is no longer disabled, as provided herein, the board of trustees shall direct that the disability retirement income be discontinued. Recovery from disability as used herein shall mean the ability of the police officer to render useful and efficient service as a police officer.

(8) If the police officer recovers from disability and reenters the service of the city as a police officer, his or her service will be deemed to have been continuous, but the period beginning with the first month for which the police officer received a disability retirement income payment and ending with the date he or she reentered the service of the city may not be considered as credited service for the purposes of the plan.

**History.**—s. 16, ch. 28230, 1953; s. 6, ch. 59-320; s. 6, ch. 61-85; s. 2, ch. 61-119; s. 2, ch. 70-128; s. 14, ch. 86-42; s. 948, ch. 95-147; s. 59, ch. 99-1.

**185.185 False, misleading, or fraudulent statements made to obtain public retirement benefits prohibited; penalty.**—

(1) It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement or withhold or conceal material information to obtain any benefit available under a retirement plan receiving funding under this chapter.

(2)(a) A person who violates subsection (1) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) In addition to any applicable criminal penalty, upon conviction for a violation described in subsection (1), a participant or beneficiary of a pension plan receiving funding under this chapter may, in the discretion of the board of trustees, be required to forfeit the right to receive any or all benefits to which the person would otherwise be entitled under this chapter. For purposes of this paragraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

**History.**—s. 60, ch. 99-1.

**185.19 Separation from municipal service; refunds.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) If any police officer leaves the service of the municipality before accumulating aggregate time of 10 years toward retirement and before being eligible to retire under the provisions of this chapter, such police officer shall be entitled to a refund of all of his or her contributions made to the municipal police officers' retirement trust fund without interest, less any benefits paid to him or her.

(2) If any police officer who has been in the service of the municipality for at least 10 years elects to leave his or her accrued contributions, if contributions are required, in the municipal police officers' retirement trust fund, such police officer upon attaining age 50 years or more may retire at the actuarial equivalent of the amount of such retirement income otherwise payable to him or her, as provided in s. 185.16(4), or, upon attaining age 55 years, may retire as provided in s. 185.16(2).

**History.**—s. 17, ch. 28230, 1953; s. 6, ch. 59-320; s. 7, ch. 61-85; s. 2, ch. 61-119; s. 949, ch. 95-147; s. 61, ch. 99-1.

**185.191 Lump-sum payment of small retirement income.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, notwithstanding any provision of the plan to the contrary, if the monthly retirement income payable to any person entitled to benefits hereunder is less than \$100 or if the single-sum value of the accrued retirement income is less than \$2,500 as of the date of retirement or termination of service, whichever is applicable, the board of trustees, in the exercise of its discretion, may specify that the actuarial equivalent of such retirement income be paid in a lump sum.

**History.**—s. 7, ch. 59-320; s. 62, ch. 99-1.

**185.21 Death prior to retirement; refunds of contributions or payment of death benefits.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) If a police officer dies before being eligible to retire, the heirs, legatees, beneficiaries, or personal representatives of such deceased police officer shall be entitled to a refund of 100 percent, without interest, of the contributions made to the municipal police officers' retirement trust fund by such deceased police officer or, in the event an annuity or life insurance contract

has been purchased by the board on such police officer, then to the death benefits available under such life insurance or annuity contract, subject to the limitations on such death benefits set forth in s. 185.061 whichever amount is greater.

(2) If a police officer having at least 10 years of credited service dies prior to retirement, his or her beneficiary is entitled to the benefits otherwise payable to the police officer at early or normal retirement age.

In the event that a death benefit paid by a life insurance company exceeds the limit set forth in s. 185.061(6), the excess of the death benefit over the limit shall be paid to the municipal police officers' retirement trust fund. However, death benefits as provided pursuant to s. 112.19 or any other state or federal law shall not be included in the calculation of death or retirement benefits provided under this chapter.

**History.**—s. 19, ch. 28230, 1953; s. 6, ch. 29825, 1955; s. 3, ch. 57-118; s. 6, ch. 59-320; s. 2, ch. 61-119; s. 15, ch. 86-42; s. 6, ch. 90-138; s. 950, ch. 95-147; s. 63, ch. 99-1.

**185.221 Annual report to Division of Retirement; actuarial valuations.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the board of trustees for every chapter plan and local law plan shall submit the following reports to the division:

(1) With respect to chapter plans:

(a) Each year by February 1, the chair or secretary of each municipal police officers' retirement trust fund operating a chapter plan shall file a report with the division which contains:

1. A statement of whether in fact the municipality is within the provisions of s. 185.03.

2. An independent audit by a certified public accountant if the fund has \$250,000 or more in assets, or a certified statement of accounting if the fund has less than \$250,000 in assets, for the most recent plan year, showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning and end of the year.

3. A statistical exhibit showing the total number of police officers on the force of the municipality, the number included in the retirement plan and the number ineligible classified according to the reasons for their being ineligible, and the number of disabled and retired police officers and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

4. A statement of the amount the municipality, or other income source, has contributed to the retirement plan for the most recent plan year and the amount the municipality will contribute to the retirement plan for the current plan year.

5. If any benefits are insured with a commercial insurance company, the report shall include a statement of the relationship of the insured benefits to the benefits provided by this chapter. This report shall also contain information about the insurer, basis of premium rates and mortality table, interest rate and method used in valuing retirement benefits.

(b) In addition to annual reports provided under paragraph (a), by February 1 of each triennial year, an actuarial valuation of the chapter plan must be made by the division at least once every 3 years, as provided in s. 112.63, commencing 3 years from the last actuarial valuation of the plan or system for existing plans, or commencing 3 years from the issuance of the initial actuarial impact statement submitted under s. 112.63 for newly created plans. To that end, the chair of the board of trustees for each municipal police officers' retirement trust fund operating under a chapter plan shall report to the division such data as the division needs to complete an actuarial valuation of each fund. The forms for each municipality shall be supplied by the division. The expense of the actuarial valuation shall be borne by the municipal police officers' retirement trust fund established by s. 185.10. The requirements of this section are supplemental to the actuarial valuations necessary to comply with s. 218.39.

(2) With respect to local law plans:

(a) Each year, on or before March 15, the trustees of the retirement plan shall submit the following information to the division in order for the retirement plan of such municipality to receive a share of the state funds for the then-current calendar year:

1. A certified copy of each and every instrument constituting or evidencing the plan. This includes the formal plan, including all amendments, the trust agreement, copies of all insurance contracts, and formal announcement materials.

2. An independent audit by a certified public accountant if the fund has \$250,000 or more in assets, or a certified statement of accounting if the fund has less than \$250,000 in assets, for the most recent plan year, showing a detailed listing of assets and a statement of all income and disbursements during the year. Such income and disbursements must be reconciled with the assets at the beginning and end of the year.

3. A certified statement listing the investments of the plan and a description of the methods used in valuing the investments.

4. A statistical exhibit showing the total number of police officers, the number included in the plan, and the number ineligible classified according to the reasons for their being ineligible, and the number of disabled and retired police officers and their beneficiaries receiving pension payments and the amounts of annual retirement income or pension payments being received by them.

5. A certified statement describing the methods, factors, and actuarial assumptions used in determining the cost.

6. A certified statement by an enrolled actuary showing the results of the latest actuarial valuation of the plan and a copy of the detailed worksheets showing the computations used in arriving at the results.

7. A statement of the amount the municipality, or other income source, has contributed toward the plan for the most recent plan year and will contribute toward the plan for the current plan year.

When any of the items required hereunder is identical to the corresponding item submitted for a previous

year, it is not necessary for the trustees to submit duplicate information if they make reference to the item in the previous year's report.

(b) In addition to annual reports provided under paragraph (a), an actuarial valuation of the retirement plan must be made at least once every 3 years, as provided in s. 112.63, commencing 3 years from the last actuarial valuation of the plan or system for existing plans, or commencing 3 years from issuance of the initial actuarial impact statement submitted under s. 112.63 for newly created plans. Such valuation shall be prepared by an enrolled actuary, subject to the following conditions:

1. The assets shall be valued as provided in s. 112.625(7).

2. The cost of the actuarial valuation must be paid by the individual police officer's retirement trust fund or by the sponsoring municipality.

3. A report of the valuation, including actuarial assumptions and type and basis of funding, shall be made to the division within 3 months after the date of the valuation. If any benefits are insured with a commercial insurance company, the report must include a statement of the relationship of the retirement plan benefits to the insured benefits, the name of the insurer, the basis of premium rates, and the mortality table, interest rate, and method used in valuing the retirement benefits.

**History.**—s. 7, ch. 59-320; s. 2, ch. 61-119; ss. 13, 35, ch. 69-106; s. 16, ch. 86-42; s. 44, ch. 93-193; s. 951, ch. 95-147; s. 8, ch. 96-324; s. 64, ch. 99-1; s. 43, ch. 2001-266; s. 16, ch. 2004-305.

### **185.23 Duties of Division of Retirement; rulemaking authority; investments by State Board of Administration.—**

(1) The division shall be responsible for the daily oversight and monitoring for actuarial soundness of the municipal police officers' retirement plans, whether chapter or local law plans, established under this chapter, for receiving and holding the premium tax moneys collected under this chapter, and, upon determining compliance with the provisions of this chapter, for disbursing those moneys to the municipal police officers' retirement plans. The funds to pay the expenses for such administration shall be annually appropriated from the interest and investment income earned on moneys deposited in the trust fund.

(2) The division has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter.

(3) The State Board of Administration shall invest and reinvest the moneys in the trust fund in accordance with ss. 215.44-215.53. Costs incurred by the board in carrying out the provisions of this section shall be deducted from the interest and investment income accruing to the trust fund.

**History.**—s. 20, ch. 28230, 1953; ss. 13, 35, ch. 69-106; s. 45, ch. 93-193; s. 7, ch. 95-250; s. 13, ch. 98-200; s. 65, ch. 99-1; s. 30, ch. 2000-151.

**185.25 Exemption from tax and execution.—**For any municipality, chapter plan, local law municipality, or local law plan under this chapter, the pensions, annuities, or any other benefits accrued or accruing to any person under any municipality, chapter plan, local law

municipality, or local law plan under the provisions of this chapter and the accumulated contributions and the cash securities in the funds created under this chapter are exempted from any state, county, or municipal tax of the state and shall not be subject to execution or attachment or to any legal process whatsoever and shall be unassignable.

**History.**—s. 21, ch. 28230, 1953; s. 66, ch. 99-1.

**185.30 Depository for retirement fund.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, all funds of the municipal police officers' retirement trust fund of any municipality, chapter plan, local law municipality, or local law plan under this chapter may be deposited by the board of trustees with the treasurer of the municipality acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. However, any funds so deposited with the treasurer of the municipality shall be kept in a separate fund by the municipal treasurer or clearly identified as such funds of the municipal police officers' retirement trust fund. In lieu thereof, the board of trustees shall deposit the funds of the municipal police officers' retirement trust fund in a qualified public depository as defined in s. 280.02, which depository with regard to such funds shall conform to and be bound by all of the provisions of chapter 280.

**History.**—s. 26, ch. 28230, 1953; s. 2, ch. 61-119; s. 19, ch. 86-42; s. 3, ch. 88-185; s. 954, ch. 95-147; s. 69, ch. 99-1.

**185.31 Municipalities and boards independent of other municipalities and boards and of each other.**—In the enforcement and interpretation of the provisions of this chapter for any municipality, chapter plan, local law municipality, or local law plan under this chapter, each municipality shall be independent of any other municipality, and the board of trustees of the municipal police officers' retirement trust fund of each municipality shall function for the municipality which they are to serve as trustees. Each board of trustees shall be independent of each municipality for which it serves as board of trustees to the extent required to accomplish the intent, requirements, and responsibilities provided for in this chapter.

**History.**—s. 27, ch. 28230, 1953; s. 2, ch. 61-119; s. 20, ch. 86-42; s. 70, ch. 99-1.

**185.34 Disability in line of duty.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, any condition or impairment of health of any and all police officers employed in the state caused by tuberculosis, hypertension, heart disease, or hardening of the arteries, resulting in total or partial disability or death, shall be presumed to be accidental and suffered in line of duty unless the contrary be shown by competent evidence. Any condition or impairment of health caused directly or proximately by exposure, which exposure occurred in the active performance of duty at some definite time or place without willful negligence on the part of the police officer, resulting in total or partial disability, shall be presumed to be accidental and suffered in the line of duty, provided that such police officer shall have successfully passed a

physical examination upon entering such service, which physical examination including electrocardiogram failed to reveal any evidence of such condition, and, further, that such presumption shall not apply to benefits payable under or granted in a policy of life insurance or disability insurance. This section shall be applicable to all police officers only with reference to pension and retirement benefits under this chapter.

**History.**—ss. 1, 2, ch. 57-340; s. 1, ch. 67-580; s. 62, ch. 79-40; s. 21, ch. 86-42; s. 72, ch. 99-1.

**185.341 Discrimination in benefit formula prohibited; restrictions regarding designation of joint annuitants.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) No plan shall discriminate in its benefit formula based on color, national origin, sex, or marital status.

(2)(a) If a plan offers a joint annuitant option and the member selects such option, or if a plan specifies that the member's spouse is to receive the benefits that continue to be payable upon the death of the member, then, in both of these cases, after retirement benefits have commenced, a retired member may change the designation of joint annuitant or beneficiary only twice.

(b) Any retired member who desires to change the joint annuitant or beneficiary shall file with the board of trustees of his or her plan a notarized notice of such change either by registered letter or on such form as is provided by the administrator of the plan. Upon receipt of a completed change of joint annuitant form or such other notice, the board of trustees shall adjust the member's monthly benefit by the application of actuarial tables and calculations developed to ensure that the benefit paid is the actuarial equivalent of the present value of the member's current benefit. Nothing herein shall preclude a plan from actuarially adjusting benefits or offering options based upon sex, age, early retirement, or disability.

(3) Eligibility for coverage under the plan must be based upon length of service, or attained age, or both, and benefits must be determined by a nondiscriminatory formula based upon:

(a) Length of service and compensation; or

(b) Length of service.

**History.**—s. 22, ch. 86-42; s. 955, ch. 95-147; s. 73, ch. 99-1.

**185.35 Municipalities having their own pension plans for police officers.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, in order for municipalities with their own pension plans for police officers, or for police officers and firefighters where included, to participate in the distribution of the tax fund established pursuant to s. 185.08, local law plans must meet the minimum benefits and minimum standards set forth in this chapter:

(1) **PREMIUM TAX INCOME.**—If a municipality has a pension plan for police officers, or for police officers and firefighters where included, which, in the opinion of the division, meets the minimum benefits and minimum standards set forth in this chapter, the board of trustees of the pension plan, as approved by a majority of police officers of the municipality, may:

(a) Place the income from the premium tax in s. 185.08 in such pension plan for the sole and exclusive

use of its police officers, or its police officers and firefighters where included, where it shall become an integral part of that pension plan and shall be used to pay extra benefits to the police officers included in that pension plan; or

(b) May place the income from the premium tax in s. 185.08 in a separate supplemental plan to pay extra benefits to the police officers, or police officers and firefighters where included, participating in such separate supplemental plan.

The premium tax provided by this chapter shall in all cases be used in its entirety to provide extra benefits to police officers, or to police officers and firefighters, where included. However, local law plans in effect on October 1, 1998, shall be required to comply with the minimum benefit provisions of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance as provided in s. 185.16(2). When a plan is in compliance with such minimum benefit provisions, as subsequent additional tax revenues become available, they shall be used to provide extra benefits. For the purpose of this chapter, "additional premium tax revenues" means revenues received by a municipality pursuant to s. 185.10 which exceed the amount received for calendar year 1997, and the term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for police officers on March 12, 1999. Local law plans created by special act before May 23, 1939, shall be deemed to comply with this chapter.

(2) **ADOPTION OR REVISION OF A LOCAL LAW PLAN.**—No retirement plan or amendment to a retirement plan shall be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. No such proposed plan or proposed plan change shall be adopted without the approval of the municipality or, where permitted, the Legislature. Copies of the proposed plan or proposed plan change and the actuarial impact statement of the proposed plan or proposed plan change shall be furnished to the division prior to the last public hearing thereon. Such statement shall also indicate whether the proposed plan or proposed plan change is in compliance with s. 14, Art. X of the State Constitution and those provisions of part VII of chapter 112 which are not expressly provided in this chapter. Notwithstanding any other provision, only those local law plans created by special act of legislation prior to May 23, 1939, shall be deemed to meet the minimum benefits and minimum standards only in this chapter.

(3) Notwithstanding any other provision, with respect to any supplemental plan municipality:

(a) Section 185.02(4)(a) shall not apply, and a local law plan and a supplemental plan may continue to use their definition of compensation or salary in existence on the effective date of this act.

(b) Section 185.05(1)(b) shall not apply, and a local law plan and a supplemental plan shall continue to be administered by a board or boards of trustees numbered, constituted, and selected as the board or boards

were numbered, constituted, and selected on December 1, 2000.

(c) The election set forth in paragraph (1)(b) shall be deemed to have been made.

(4) The retirement plan setting forth the benefits and the trust agreement, if any, covering the duties and responsibilities of the trustees and the regulations of the investment of funds must be in writing and copies made available to the participants and to the general public.

**History.**—s. 7, ch. 59-320; s. 2, ch. 61-119; s. 3, ch. 63-196; ss. 13, 35, ch. 69-106; s. 23, ch. 86-42; s. 47, ch. 93-193; s. 956, ch. 95-147; s. 74, ch. 99-1; s. 7, ch. 2002-66; s. 6, ch. 2004-21.

**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 to be distributed, after taking into account the expenses of such distribution.

(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 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 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 shall mean the single premium payable for such annuity.

(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.

(d) In the event that there is asset value remaining after the full apportionment specified in 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.

(4) The board of trustees shall distribute, in accordance with the manner of distribution determined under subsection (2), the amounts 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 division shall effect the termination of the fund in accordance with this section.

*History.*—s. 8, ch. 61-85; s. 2, ch. 61-119; s. 4, ch. 63-196; s. 24, ch. 86-42; s. 48, ch. 93-193; s. 957, ch. 95-147; s. 76, ch. 99-1.

**185.38 Transfer to another state retirement system; benefits payable.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter:

(1) Any police officer who has a vested right to benefits under a pension plan created pursuant to the pro-

visions of this chapter and who elects to participate in another state retirement system may not receive a benefit under the provisions of the latter retirement system for any year's service for which benefits are paid under the provisions of the pension plan created pursuant to this chapter.

(2) When every active participant in any pension plan created pursuant to this chapter elects to transfer to another state retirement system, the pension plan created pursuant to this chapter shall be terminated and the assets distributed in accordance with s. 185.37. If some participants in a pension plan created pursuant to this chapter elect to transfer to another state retirement system and other participants elect to remain in the existing plan created pursuant to this chapter, the plan created pursuant to this chapter shall continue to receive state premium tax moneys until fully funded. If the plan is fully funded at a particular valuation date and not fully funded at a later valuation date, the plan shall resume receipt of state premium tax moneys until the plan is once again determined to be fully funded. "Fully funded" means that the present value of all benefits, accrued and projected, is less than the available assets and the present value of future member contributions and future plan sponsor contributions on an actuarial entry age cost funding basis. Effective May 31, 1998, for plans discussed herein, the plan shall remain in effect until the final benefit payment has been made to the last participant or beneficiary and shall then be terminated in accordance with s. 185.37.

*History.*—s. 25, ch. 86-42; s. 77, ch. 99-1; s. 8, ch. 2002-66.

**185.39 Applicability.**—This act applies to all municipalities, chapter plans, local law municipalities, or local law plans presently existing or to be created pursuant to this chapter. Those plans presently existing pursuant to s. 185.35 and not in compliance with the provisions of this act must comply no later than December 31, 1999. However, the plan sponsor of any plan established by special act of the Legislature shall have until July 1, 2000, to comply with the provisions of this act, except as otherwise provided in this act with regard to establishment and election of board members. The provisions of this act shall be construed to establish minimum standards and minimum benefit levels, and nothing contained in this act or in chapter 185 shall operate to reduce presently existing rights or benefits of any police officer, directly, indirectly, or otherwise.

*History.*—s. 26, ch. 86-42; s. 78, ch. 99-1.

**185.50 Retiree health insurance subsidy.**—For any municipality, chapter plan, local law municipality, or local law plan under this chapter, under the broad grant of home rule powers under the Florida Constitution and chapter 166, municipalities have the authority to establish and administer locally funded health insurance subsidy programs. Pursuant thereto:

(1) **PURPOSE.**—The purpose of this section is to allow municipalities the option to use premium tax moneys, as provided for under this chapter, to establish and administer health insurance subsidy programs which will provide a monthly subsidy payment to retired members of any municipal police officers' pension trust fund system or plan as provided under this chapter, or to

beneficiaries who are spouses or financial dependents entitled to receive benefits under such a plan, in order to assist such retired members or beneficiaries in paying the costs of health insurance.

**(2) MUNICIPAL RETIREE HEALTH INSURANCE SUBSIDY TRUST FUNDS; ESTABLISHMENT AND TERMINATION.—**

(a) Any municipality having a municipal police officers' pension trust fund system or plan as provided under this chapter may, in its discretion, establish by ordinance a trust fund to be known as the municipal police officers' retiree health insurance subsidy trust fund. This fund may be a separate account established for such purpose in the existing municipal police officers' pension fund, provided that all funds deposited in such account are segregated from, and not commingled with, pension funds or other public moneys and that the account otherwise conforms to the requirements of subsection (8). The trust fund shall be used to account for all moneys received and disbursed pursuant to this section.

(b) Prior to the second reading of the ordinance before the municipal legislative body, an actuarial valuation must be performed by an enrolled actuary as defined in s. 185.02, and copies of the valuation and the proposed implementing ordinance shall be furnished to the division.

(c) The subsidy program may, at the discretion of the municipal governing body, be permanently discontinued by municipal ordinance at any time, subject to the requirements of any applicable collective bargaining agreement, in the same manner and subject to the same conditions established for plan termination and fund distribution under s. 185.37.

**(3) FUNDING.—**Trust funds established pursuant to this section shall be funded in the following manner:

(a) By payment to the fund of an amount equivalent to one-half of the net increase over the previous tax year in the premium tax funds provided for in this chapter, said amount to be established in the implementing ordinance.

(b) By no less than one-half of 1 percent of the base salary of each police officer, for so long as the police officer is employed and covered by a pension plan established pursuant to this chapter. The municipality, with approval of the board of trustees, may increase member contributions if needed to fund benefits greater than the minimums established in this section.

(c) By payment by the municipality, on at least a quarterly basis, of whatever sum is determined necessary to maintain the actuarial soundness of the fund in accordance with s. 112.64.

Such contributions and payments shall be submitted to the board of trustees of the police officers' pension trust fund, or the plan trustees in the case of local law plans established under s. 185.35, and deposited in the Municipal Police Officers' Retiree Health Insurance Subsidy Trust Fund, in the same manner and subject to the same time constraints as provided under s. 185.11.

**(4) ELIGIBILITY FOR RETIREE HEALTH INSURANCE SUBSIDY.—**A person who has contributed to the Retiree Health Insurance Subsidy Trust Fund and

retires under a municipal police officers' pension trust fund system or plan as provided under this chapter, including any local law plan as provided under s. 185.35, or a beneficiary who is a spouse or financial dependent entitled to receive benefits under such a plan, is eligible for health insurance subsidy payments provided under this section. However, the fund, with approval of the board of trustees and the municipality, may provide coverage to retirees and beneficiaries when the retirees have not contributed to the fund as provided in subsection (3). Payment of the retiree health insurance subsidy shall be made only after coverage for health insurance for the retiree or beneficiary has been certified in writing to the board of trustees of the municipal police officers' pension trust fund.

**(5) RETIREE HEALTH INSURANCE SUBSIDY AMOUNT.—**Beginning on the effective date established in the implementing ordinance, each eligible retiree, or beneficiary who is a spouse or financial dependent thereof, shall receive a monthly retiree health insurance subsidy payment equal to the aggregate number of years of service with the municipality, as defined in s. 185.02, completed at the time of retirement multiplied by an amount determined in the implementing ordinance, but no less than \$3 for each year of service. Nothing herein shall be construed to restrict the plan sponsor from establishing, in the implementing ordinance, a cap of no less than 30 years upon the number of years' service for which credit will be given toward a health insurance subsidy or a maximum monthly subsidy amount.

**(6) PAYMENT OF RETIREE HEALTH INSURANCE SUBSIDY.—**Beginning on the effective date established in the implementing ordinance, any monthly retiree health insurance subsidy amount due and payable under this section shall be paid to retired members, or their eligible beneficiaries, by the board of trustees of the police officers' pension trust fund, or the plan trustees in the case of local law plans established under s. 185.35, in the same manner as provided by s. 185.06(1)(c) for drafts upon the pension fund.

**(7) INVESTMENT OF THE TRUST FUND.—**The trustees of the police officers' pension trust fund, or the plan trustees in the case of local law plans established under s. 185.35, are hereby authorized to invest and reinvest the funds of the Municipal Police Officers' Retiree Health Insurance Subsidy Trust Fund in the same manner and subject to the same conditions as apply hereunder to the investment of municipal police officers' pension funds under s. 185.06.

**(8) DEPOSIT OF PENSION FUNDS.—**All funds of the health insurance subsidy fund may be deposited by the board of trustees with the treasurer of the municipality, acting in a ministerial capacity only, who shall be liable in the same manner and to the same extent as he or she is liable for the safekeeping of funds for the municipality. Any funds so deposited shall be segregated by said treasurer in a separate fund, clearly identified as funds of the health insurance subsidy fund. In lieu thereof, the board of trustees shall deposit the funds of the health insurance subsidy fund in a qualified public depository as defined in s. 280.02, which shall conform to and be bound by the provisions of chapter

280 with regard to such funds. In no case shall the funds of the health insurance subsidy fund be deposited in any financial institution, brokerage house trust company, or other entity that is not a public depository as provided by s. 280.02.

(9) **SEPARATION FROM SERVICE; REFUNDS.**—Any police officer who terminates employment with a municipality having a Municipal Retiree Health Insurance Subsidy Trust Fund system or plan as provided under this section shall be entitled to a refund of all employee contributions he or she made to that trust fund, without interest, regardless of whether he or she has vested for purposes of retirement. Any police officer who has vested for purposes of retirement in the service of the municipality, and has contributed to the Municipal Police Officers' Retiree Health Insurance Subsidy Trust Fund for so long as he or she was eligible to make such contributions, may, in his or her discretion, elect to leave his or her accrued contributions in the fund, whereupon, such police officer shall, upon retiring and commencing to draw retirement benefits, receive a health insurance subsidy based upon his or her aggregate number of years of service with the municipality, as defined in s. 185.02.

(10) **ADMINISTRATION OF SYSTEM; ACTUARIAL VALUATIONS; AUDITS; RULES; ADMINISTRATIVE COSTS.**—The board of trustees of the police officers' pension trust fund, or the plan trustees in the case of local law plans established under s. 185.35, shall be solely responsible for administering the health insurance subsidy trust fund. Pursuant thereto:

(a) As part of its administrative duties, no less frequently than every 3 years, the board shall have an actuarial valuation of the municipal police officers' retiree health insurance subsidy trust fund prepared as provided in s. 112.63 by an enrolled actuary, covering the same reporting period or plan year used for the municipal police officers' pension plan, and shall submit a report of the valuation, including actuarial assumptions and type and basis of funding, to the division.

(b) By February 1 of each year, the trustees shall file a report with the division, containing an independent audit by a certified public accountant if the fund has \$250,000 or more in assets, or a certified statement of accounting if the fund has less than \$250,000 in assets, for the most recent plan year, showing a detailed listing of assets and methods used to value them and a statement of all income and disbursements during the year. Such income and disbursements shall be reconciled with the assets at the beginning of and end of the year.

(c) The trustees may adopt such rules and regula-

tions as are necessary for the effective and efficient administration of this section.

(d) At the discretion of the plan sponsor, the cost of administration may be appropriated from the trust fund or paid directly by the plan sponsor.

(11) **BENEFITS.**—Subsidy payments shall be payable under the municipal police officers' retiree health insurance subsidy program only to participants in the program or their beneficiaries. Such subsidy payments shall not be subject to assignment, execution, or attachment or to any legal process whatsoever, and shall be in addition to any other benefits to which eligible recipients are entitled under any workers' compensation law, pension law, collective bargaining agreement, municipal or county ordinance, or any other state or federal statute.

(12) **DISTRIBUTION OF PREMIUM TAXES; COMPLIANCE REQUIRED.**—Premium tax dollars for which spending authority is granted under this section shall be distributed from the Police and Firefighters' Premium Tax Trust Fund and remitted annually to municipalities in the same manner as provided under this chapter for police officers' pension funds. Once a health insurance subsidy plan has been implemented by a municipality under this section, in order for the municipality to participate in the distribution of premium tax dollars authorized under this section, all provisions of this section, including state acceptance pursuant to part VII of chapter 112, shall be complied with, and said premium tax dollars may be withheld for noncompliance.

**History.**—s. 2, ch. 92-51; s. 49, ch. 93-193; s. 14, ch. 94-259; s. 1460, ch. 95-147; s. 8, ch. 95-250; s. 80, ch. 99-1.

**185.60 Optional participation.**—A municipality may revoke its participation under this chapter by rescinding the legislative act, or ordinance which assesses and imposes taxes authorized in s. 185.08, and by furnishing a certified copy of such legislative act, or ordinance to the division. Thereafter, the municipality shall be prohibited from participating under this chapter, and shall not be eligible for future premium tax moneys. Premium tax moneys previously received shall continue to be used for the sole and exclusive benefit of police officers, or police officers and firefighters where included, and no amendment, legislative act, or ordinance shall be adopted which shall have the effect of reducing the then-vested accrued benefits of the police officers, retirees, or their beneficiaries. The municipality shall continue to furnish an annual report to the division as provided in s. 185.221. If the municipality subsequently terminates the defined benefit plan, they shall do so in compliance with the provisions of s. 185.37.

**History.**—s. 82, ch. 99-1.