CARLTON FIELDS

Deadline for 175/185 Plans Approaches

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Lowell J. Walters

This alert should interest plan sponsors of defined benefit plans for police officers or firefighters intended to qualify for receipt of insurance premium tax (IPT) dollars under Florida Statutes Chapters 175 or 185.

Chapter 215¬39, General Laws of Florida (available online at http://laws.flrules.org/2015/39 as of July 17, 2015), made numerous changes to Florida Statutes Chapters 175 and 185, which contain provisions governing IPT funds and the retirement plan provisions and standards that must be satisfied in order for retirement plans to receive such amounts to assist with funding.

Following is a brief list of a few notable revisions to Chapters 175 and 185, generally effective October 1, 2015 or, if later, the date of the first collective bargaining agreement entered into on or after July 1, 2015. This is not an exhaustive list of all the new requirements:

- Each retirement plan is required to establish a defined contribution plan (or defined contribution component) with individual accounts that may receive contributions and receives allocations of actual earnings. As those of you with Deferred Retirement Option Programs may already know, the IRS has significant concerns about defined benefit plans with defined contribution components, and careful drafting is recommended.
- Although a defined contribution plan or component must exist, it might be drafted to provide $0 contributions. Because of the requirements described in item 3, below, we expect that most will be drafted to receive divide IPT funds (or, at least, 50% of the IPT funds in excess of the 2012 baseline) among participants. Such arrangements are commonly known as “share plans.”
- The baseline year separating standard benefits from “extra benefits” is now 2002 and 2012 (instead of 1999). 2002 is the baseline against which IPT amounts are compared, but 2012 may set an even more important baseline, as IPT amounts received in excess of the 2012 baseline must be equally and completely divided to provide special benefits (probably through a “share plan”) and to offset defined benefit plan costs.
- The ability to save unallocated IPT amounts in a trust for later use is diminished, making it harder to build up a sizable trust amount to purchase additional benefits or provide additional funding if previously approved benefits are more expensive than anticipated. As always, the use of reasonable actuarial assumptions is vital.
- More detailed budget and expense reporting by pension boards is required.
- The minimum multiplier is now 2.75%, but because of grandfathering, this will generally only affect new plans. For ongoing plans agreeing to increase the multiplier, careful drafting is recommended to restrict any increased multiplier to future benefit accruals, if that is the intention.
- Many of the new “requirements” do not apply to pre-existing plans, and many that do apply may be avoided or changed by mutual agreement between the participants (through their union, if applicable) and the plan sponsor (i.e. city).

Pension boards should carefully review the new requirements, assess how they impact their plan, and prepare any required amendments. Cities and other plan sponsors should separately assess the requirements and determine their own interests and needs, and review any proposed amendments carefully.

If you have any questions, please contact the Carlton Fields attorney with whom you usually work, or the author of this Legal News Alert.