



Intermediate Course:  
“How to Comply with Chapters 112-175-185”  
Short Answer – Ask Questions

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# Presentation Overview

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In light of the breadth and depth of this subject, the goal of this presentation is to explore:

- 1) how are the statutes organized
- 2) what topics are covered by the statutes;
- 3) issue spotting (where to look and what to look for)

Statutes can be viewed by using the Legislature's Online Sunshine website:

[www.leg.state.fl.us](http://www.leg.state.fl.us)

The Division of Retirement also has a useful website: [www.frs.state.fl.us](http://www.frs.state.fl.us)

# Chapter 112 – Overview

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## CHAPTER 112 applies to “PUBLIC OFFICERS AND EMPLOYEES”

- ▶ Chapter 112 is a patchwork of statutory provisions governing public officers/employees (including pension trustees) and their benefits (including pension);
- ▶ Compliance with Chapter 112 is mandatory;
- ▶ You comply with Chapter 112 every meeting;
- ▶ Trustees cannot rely solely on duties set forth in your pension ordinance

# Chapter 112 – Overview

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- ▶ Establishes minimum standards for operation and funding of all FL public pensions.
- ▶ Chapters 175 & 185 establish additional minimum standards for police and fire plans.
- ▶ Portions of Ch. 112 apply to general employee, police and fire pension plans, pension trustees, active members and retirees.
- ▶ Common misunderstanding: Many wrongly assume Ch.112 doesn't govern police or fire.
- ▶ Sections 176.121(2) & 185.10(2) require compliance with 112 Part VII.

# Chapter 112 – Organization

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- ▶ Chapter 112 is divided into 8 loosely related parts:

Part I: **Conditions of employment; retirement; travel**

(112.011-112.218)

Part III: **Code of ethics for public officers & employees**

(112.311-112.326)

Part VII: **Actuarial soundness of pensions**

(112.60-112.67)

# Chapter 112 – Organization

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- ▶ **Parts I, III and VII** will be discussed today.
- ▶ How much time do we have to cover this “topic”? FPPTA has separate courses covering various Chapter112 topics in more detail.
- ▶ Division of Retirement’s authority to regulate pensions flows from 112.665.
- ▶ As a general rule, disputes with the Division of Retirement involve administrative law, litigated before the Division of Administrative Hearings (DOAH).

## 112 Part I - Conditions of employment; retirement; travel expenses

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- ▶ **112.042**: prohibits discrimination based on race, color, national origin, sex, handicap, or religion
- ▶ **112.043**: prohibits discrimination solely based on age
- ▶ **112.0515**: protects employees after a transfer, merger or consolidation of public employers
- ▶ I predict 112.0515 will get increased attention in light of recent “merger” activity. Each employee gets to vote whether to remain in plan or transfer to new employer’s plan.
- ▶ The pension rights of all public employees are “fully protected.” No consolidation/merger shall “diminish or impair the rights” of any public employee in a plan which existed at the date of consolidation...nor shall merger result in “any impairment or reduction in benefits or other pension rights”.

## **112 Part I - Conditions of employment; retirement; travel expenses**

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- ▶ **112.061**: Per diem and travel expenses
- ▶ **112.18**: “Heart Lung Bill” for public safety creates rebuttable presumption for heart disease & hypertension. Same presumption also in 175 & 185.
- ▶ **112.181**: Communicable diseases (hepatitis, meningitis, or tuberculosis) for public safety
- ▶ **112.19**: Police death benefits (not pension)
- ▶ **112.191**: Firefighter death benefits (not pension)  
Lump sum payments are available (\$50,000 to \$150,000) for accidental/intentional criminal acts, plus educational and insurance expenses.



## 112 Part III – Code of Ethics

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- ▶ **112.313**: Standards of conduct
- ▶ **112.3135**: Nepotism
- ▶ **112.3143**: Voting conflicts
- ▶ **112.3144**: Disclosure of financial interests (Form 1 due by July 1)
- ▶ **112.3173**: Forfeiture of pension (for specified offenses involving breach of public trust); forfeiture is mandatory & heavily litigated
- ▶ **112.320**: Commission on Ethics

## 112 Part VII - Overview

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- ▶ Florida Protection of Employee Retirement Benefits Act. Applies to all public DB (and for limited purposes DC) plans.
- ▶ Establishes minimum standards (not minimum benefits) for operation and funding of public pensions.
- ▶ Valuation by an enrolled actuary at least every 3 years. Impact statements shall be provided to Division prior to second reading of pension ordinance.
- ▶ 30 year amortization of unfunded liabilities for amendments; changes in assumptions, changes in funding methods, or actuarial losses.

## **112 Part VII – Actuarial & administrative requirements (112.63 - 112.64 -112.661)**

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- ▶ Actuarial reports must contain actuary's certification: report is complete & accurate and that techniques & assumptions are reasonable and comply with Ch. 112.
- ▶ Division required to acknowledge receipt of actuarial reports within 21 days, but only required to review on a 3 year basis.
- ▶ Valuation reports must: describe actuarial assumptions, contain amortization schedule of unfunded liability, comparative review of salary & investment history over prior 3 years, and include various other data.
- ▶ For each valuation, Board shall determine “the total expected annual rate of return for the current year, for each of the next several years, and for the long term thereafter.” Must be provided to Division, plan sponsor and actuary. 112.661(9)

## 112 Part VII – Limitation of benefits (112.65)

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- ▶ Maximum benefit: Normal retirement benefits shall not exceed 100 % of average final compensation for employees hired after January 1, 1980.
- ▶ Double dipping: Not allowed to receive a pension benefit which is in part or in whole based upon any service with respect to which the member is already receiving, or will receive in the future, a retirement benefit or pension from a different employer's retirement plan.

## 112 Part VII – Fiduciary duties

(112.656 & 112.66)

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- ▶ Each plan shall have one or more named fiduciaries. “However, the plan administrator, and any officer, trustee, and custodian, and any counsel, accountant, and actuary of the retirement plan who is employed on a full-time basis, shall be included as fiduciaries.” (so specify duty in the contract)
- ▶ May purchase insurance to cover liability or losses incurred by reason of act or omission of the fiduciary.
- ▶ Any contract provision attempting to relieve fiduciary from responsibility is void against public policy.

## **112 Part VII – Fiduciary duties**

**(112.656 & 112.66)**

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- ▶ A fiduciary shall discharge duties “solely in the interest of the participants and beneficiaries for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.”

## **112 Part VII - General plan administrative requirements (112.66)**

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- ▶ Plan provisions shall be summarized in a written summary plan description (SPD), published every 2 years, in a manner calculated to be understood by the average member and sufficiently accurate and comprehensive to apprise of rights and obligations.
- ▶ Shall include a report of pertinent financial and actuarial information on plan solvency and actuarial soundness.

## **112 Part VII - General plan administrative requirements (112.66)**

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- ▶ Such SPD shall be furnished to a members upon initial employment and with each new biennial publication.
- ▶ The administrator shall publish the SPD not later than 210 days after the end of the plan year in which publication is required. For years when a complete SPD is not published, the administrator shall
- ▶ <sup>16</sup> publish a supplement of changes.



## 112 Part VII - Investment policies (112.661)

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- ▶ Investments must be consistent with Board's **written investment policy.**
- ▶ Investment policies shall be structured to “maximize the financial return...consistent with the risks incumbent in each investment and shall be structured to establish and maintain an appropriate diversification of plan assets”.
- ▶ The policy shall describe Board's **investment objectives** and shall specify appropriate **performance measures/benchmarks.**

## **112 Part VII - Investment policies (112.661)**

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- ▶ Investment policy must specify that the Board shall comply with the fiduciary standards set forth in ERISA [29 USC s. 1104(a)(1)(A)-(C)].
- ▶ Shall list authorized investments.
- ▶ Investments not listed in the policy are prohibited.

# Chapters 175 and 185 - Overview

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- ▶ For this presentation, Chapters 175/185 are basically identical (except where statutes provide otherwise).
- ▶ Overseen by Trish Shoemaker of the Municipal Police & Fire Trust Fund Office in Tallahassee.
- ▶ 175/185 establish minimum benefits & minimum standards for police and fire.
- ▶ After all minimums are satisfied, “additional premium tax revenue” over and above the adjusted base year must be used to purchase “extra benefits”. Extra benefits may be provided through a supplemental plan (“share plan”).

## Chapters 175 and 185 – Premium taxes

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- ▶ Voluntary program to encourage cities to provide pensions for public safety officers who protect life and property thereby benefiting insurance companies.
- ▶ Participation **does not** increase taxes for residents.
- ▶ 175 is funded by a .85% premium tax on casualty insurance (homeowners/fire).
- ▶ 185 is funded by a 1.85% premium tax on property insurance (auto, fidelity bonds, burglary, plate glass).
- ▶ Checks are distributed in July/August every year.  
(supplemental checks for 175 plans paid in October)

## Chapters 175 & 185 – Requirements

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- ▶ Annual reports are required to be submitted by March 15 for “Local Law plans”, January 1 for “Chapter plans”.
- ▶ Untimely reporting results in withholding of premium taxes.
- ▶ If the plan has not been approved by 9/30, it wont be able to include the year’s premium taxes on the Annual Report. Deficiency will have to be paid by employer, with interest.

## Chapters 175 & 185 – Requirements

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- ▶ The Division interprets Sections 175.091 & 185.07 to prevent employee contributions from being increased without consent of the membership, to provide “greater benefits”.
- ▶ Sole and exclusive responsibility for administration and proper operation of plan is vested in the Board.
- ▶ Each board must be given authority to invest up to 25% of the portfolio in foreign securities (but can’t invest in scrutinized companies doing business with Iran/Sudan).

## 175 and 185 - Comparison to 112

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- ▶ Section 176.121(2) & 185.10(2) require compliance with Chapter 112 Part VII;
- ▶ Limits board composition to 5 trustees (2 appointed, 2 elected and one “5<sup>th</sup> trustee”) except for grandfathered plans;
- ▶ 2 year terms but may amend for 4 years.

## 175 and 185 - Comparison to 112

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- ▶ Employee contributions shall be deposited immediately after each pay period (112 requires at least monthly for GE plans); employer contributions at least quarterly;
- ▶ Requires annual independent audit by CPA if assets >\$250,000;
- ▶ “Professionally qualified” independent investment consultant may not be associated in any manner with the plan’s money managers (best practice anyway).