

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO. CACE 15-17333

The CITY OF HOLLYWOOD,
FLORIDA,

Plaintiff,

vs.

The BOARD OF TRUSTEES OF THE
EMPLOYEES RETIREMENT FUND
OF THE CITY OF HOLLYWOOD, and
The BOARD OF TRUSTEES OF THE
CITY OF HOLLYWOOD FIREFIGHTERS
RETIREMENT SYSTEM, and The
BOARD OF TRUSTEES OF THE CITY
OF HOLLYWOOD POLICE OFFICERS
RETIREMENT SYSTEM,

Defendants.

MOTION TO ABATE

Defendants, the BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD FIREFIGHTERS RETIREMENT SYSTEM (“Firefighter Pension Board”), and the BOARD OF TRUSTEES OF THE CITY OF HOLLYWOOD POLICE OFFICERS RETIREMENT SYSTEM (“Police Pension Board”) (collectively the “Boards”), file this Motion to Abate,¹ and as good cause shown state:

¹ A Motion to Dismiss and a Sever to Dismiss are being filed contemporaneously with this Motion to Abate.

1. On or about September 29, 2015, Plaintiff, the City of Hollywood, Florida (the “City”) filed its Complaint against the Boards² seeking a declaratory judgment against the Boards and injunctive relief and recoupment from retirees who have not been named as defendants by the City. The City’s claims lack merit and are otherwise improper.
2. Rather than proceeding directly into active litigation, this case should be abated as required by Section 164.1041, Fla. Stat. The legislatively-mandated process of Chapter 164 is intended to save the parties unnecessary legal fees and conserve judicial resources.
3. The City failed to comply with Chapter 164, Fla. Stat., the Florida Intergovernmental Conflict Resolution Act (the “Act”). Accordingly, this case is required to be abated until the procedural requirements of Chapter 164 have been exhausted.

The Florida Intergovernmental Conflict Resolution Act

4. The Act mandates that governmental entities formally engage in specified conflict resolution procedures prior to filing suit. When one governmental entity files suit against another, “the suit shall be abated, by order of court, until the procedural options of this act have been exhausted.” § 164.1041(1), Fla. Stat.
5. Only when the governing body finds that an “immediate danger to the health, safety, or welfare of the public requires immediate action” or that “significant legal rights will be compromised” may the requirements of the Act be circumvented. This determination is required to be made by a three-fourths super majority vote.³ § 164.1041(1), Fla. Stat.

² A third City pension plan, the Employees Retirement Fund of the City of Hollywood (the “General Employees Plan”), is named as a defendant. The General Employees Plan is separately represented by its own counsel.

³ Similar super-majority voting requirements have been routinely upheld by the courts over the years in other contexts. *Hope v. City of Gainesville*, 355 So. 2d 1172 (Fla. 1977). While municipalities have undisputed authority to operate under the Municipal Home Rule Powers Act, local resolutions are subordinate to Chapter 164’s conciliation requirements. *Thomas v. State*,

Additionally, the Act imposes a “good faith” requirement and explicit penalty for bad faith failure to comply with the Act. § 164.1058, Fla. Stat.

6. The Legislature’s reasons for establishing the Act’s “duty to negotiate” and “conflict resolution procedures” are set forth in Section 164.102, Fla. Stat.:

The purpose and intent of this act is to promote, protect, and improve the public health, safety, and welfare and to enhance intergovernmental coordination efforts by the creation of a governmental conflict resolution procedure that can provide an equitable, expeditious, effective, and inexpensive method for resolution of conflicts between and among local and regional governmental entities. It is the intent of the Legislature that conflicts between governmental entities be resolved to *the greatest extent possible without litigation*.

(emphasis added).

7. The Complaint contains several blatantly inaccurate allegations. Had the City complied with its obligation under the Act it would have realized that judicial and taxpayer resources are being wasted in this matter. Indeed, the City’s failure to comply with the Act has led to the exact harm that the Legislature attempted to avoid by enacting the Act’s mandatory conflict resolution procedures.

Abatement is Mandatory in this Matter

8. The City concedes that the Boards are governmental entities authorized to sue and be sued by Section 112.66(6), Fla. Stat. Complaint at ¶3.
9. The City feigns compliance with the Act by alleging that a three-fourths vote of the City Commission found that significant legal rights will be compromised by delaying this Action. Complaint at ¶19. The City’s boilerplate allegation of compliance with the Act fails to allege what “significant legal rights” would be compromised by delaying suit to

614 So.2d 468, 470 (Fla. 1993)(local ordinances are “inferior to laws of the state and must not conflict with any controlling provision of a statute”).

comply with Chapter 164. Moreover, the City's allegation that a suit was authorized by a three-fourths vote is demonstrably false.⁴

10. The City itself acknowledges that the Act "creates a mandatory governmental conflict procedure that must be complied with prior to the filing of a civil action by one governmental entity against another governmental entity," unless the required three-fourths vote finds that an "immediate danger" to the public requires "immediate action" or that "significant legal rights" will be compromised.⁵
11. The City's failure to accurately reflect the vote against Resolution No. R-2015-214 is but one example of the City's bad faith and transparent effort to circumvent compliance with the Act.⁶ *See* Complaint at Paragraph 19.
12. Notwithstanding the fact that three-fourths of the City Commission *did not* vote to authorize suit, Section 164.1041(2) specifies that the Court has the final word on whether an effort to circumvent the Act is justified, even where there is a three-fourths vote.

⁴ Resolution No. R-2015-214, Item 38, was purportedly adopted by the City on July 8, 2015 but is invalid according to its own terms. Resolution No. R-2015-214 is attached hereto as Exhibit "A." Of the seven members of the City Commission, only four voted to authorize suit. Vice Mayor Kevin Biederman, Commissioner Traci Callari, and Commissioner Peter Hernandez all voted "NO" against the Resolution. Thus, the July 8 vote was a bare 57% majority, which is invalid under the 75% requirement set forth in Section 164.1041(2). Not surprisingly, the minutes for the July 8, 2015 meeting have not yet been approved by the City, but the video of the meeting is available online:
http://hollywoodfl.granicus.com/MediaPlayer.php?view_id=2&clip_id=472&meta_id=37447

⁵ Exhibit "A", whereas clause, at p. 2.

⁶ The text of Resolution No. 2015-214 is yet another example, which confirms that the City was well aware of the three-quarter vote requirement. Moreover, the City's suggestion of "immediate" danger requiring "immediate" action to avoid compliance with the Act is belied by the nearly three month delay between the July 8 vote and September 29 date for filing the complaint. The boilerplate assertions by the City are also belied by the City's very specific allegations that the Boards authorized supplemental payments dating back to at least the year 2000. Complaint at ¶12 - ¶13.

13. Section 164.1041(2), Fla. Stat., provides:

However, the court, upon motion, may review the justification for failure to comply with the provisions of this act and make a determination as to whether the provisions of this act should be complied with prior to court action and that following the provisions of this act will not result in the compromise of significant legal rights, the court shall abate the suit until the provisions of this act are complied with.

14. To be clear, the Boards are not asserting at this time that the Court should examine the City's justification for deciding not to comply with the Act. Rather, the Boards are simply asserting that the City *completely failed to comply* with the Act, absent the requisite three-fourths vote.

WHEREFORE, the Boards respectfully request that this Honorable Court enter an Order abating this matter and requiring the City to comply with the mandatory provisions of Chapter 164.

Respectfully submitted,

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Retirement System, and Board of Trustees of City of
Hollywood Police Officers Retirement System

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by electronic mail on this 23rd day of November, 2015, to the Clerk of Court by the e-filing portal system which will send a notice of electronic filing to the following:

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By /s/ Robert D. Klausner
ROBERT D. KLAUSNER

RESOLUTION NO. R-2015-214

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA, AUTHORIZING THE CITY ATTORNEY TO FILE CIVIL ACTIONS AGAINST THE BOARDS OF TRUSTEES OF THE POLICE OFFICERS RETIREMENT SYSTEM, THE FIREFIGHTERS PENSION SYSTEM, AND THE EMPLOYEES RETIREMENT FUND (COLLECTIVELY, THE "BOARDS") FOR THE IMPROPER PAYMENT OF SUPPLEMENTAL DISTRIBUTIONS.

WHEREAS, the pension plan for Hollywood police officers provides for a supplemental distribution to eligible retirees for each year in which the rate of investment return on the assets of the fund exceeds the assumed rate; and

WHEREAS, the pension plan for Hollywood firefighters provides for the payment of a supplemental distribution to eligible retirees for each year in which the rate of investment return on the assets of the fund exceeds the assumed rate; and

WHEREAS, the pension plan for Hollywood general employees provides for the payment of a supplemental distribution to eligible retirees for each year in which the rate of investment return on the assets of the fund exceeds the assumed rate plus 2%; and

WHEREAS, the payment of supplemental distributions is governed not only by the pension plans but also by Florida Statute Section 112.61; and

WHEREAS, Section 112.61 provides, in relevant part, that the actuarial experience of a pension fund may be used to fund additional benefits *only* if the present value of such benefits does not exceed the net actuarial experience accumulated from all sources of gains and losses; and

WHEREAS, each of the Boards has made one or more supplemental distributions, totaling millions of dollars, which, in the opinion of the City Attorney, violated Section 112.61 and which have had and/or will have the effect of increasing the City's required contributions to the plans by the same millions of dollars; and

WHEREAS, the City Attorney recommends that the City Commission authorize the filing of one or more civil actions against the Boards, and any other appropriate parties, to enforce the City's rights with respect to limiting the supplemental distributions made by the Boards only to those instances in which the above cited statute would allow them and to seek any and all relief to which the City may be entitled; and

WHEREAS, the Florida Governmental Conflict Resolution Act (the "Act") creates a mandatory governmental conflict resolution procedure that must be complied with prior to the filing of a civil action by one governmental entity against another governmental entity, unless the first government entity, by a three-fourths vote of its governing body, finds that an immediate danger to the health, safety, or welfare of the public requires immediate action, or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of the Act are complied with;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the City Attorney is hereby authorized to file one or more civil actions against the Boards and any other appropriate parties to enforce the City's rights with respect to the supplemental distributions made by the Boards and to seek any and all relief to which the City may be entitled.

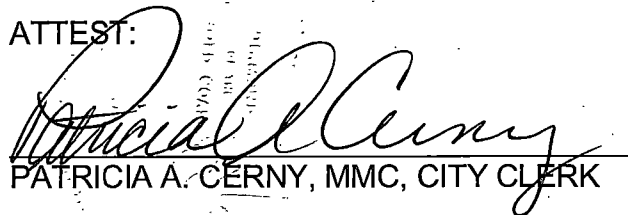
Section 2: That the City Commission hereby finds that an immediate danger to the health, safety or welfare of the public requires immediate action or that significant legal rights will be compromised if a court proceeding does not take place before the provisions of the Act are complied with.

Section 3: That this resolution shall be in full force and effect immediately upon its passage and adoption.

PASSED AND ADOPTED this 8 day of July, 2015.


PETER BOBER, MAYOR

ATTEST:


PATRICIA A. CERNY, MMC, CITY CLERK

APPROVED AS TO FORM & LEGALITY
for the use and reliance of the
City of Hollywood, Florida only:


JEFFREY P. SHEFFEL, CITY ATTORNEY *a7*