

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GVOPS 11-17 Public Retirement Plans

SPONSOR(S): Government Operations Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 1128

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Government Operations Subcommittee	10 Y, 5 N	Meadows	Williamson

SUMMARY ANALYSIS

The Municipal Firefighters' Pension Trust Fund and the Police Officers' Retirement Trust Fund were created to provide a uniform retirement system for the benefit of firefighters, who are employed by a municipality or special fire district, and for municipal police officers.

This bill makes several changes to the firefighters' and police officers' pension trust funds. The bill:

- Revises the definition of "compensation" and "salary" to prohibit the inclusion of overtime compensation in excess of 300 hours per year and payments for accrued, unused sick or annual leave time, effective July 1, 2011.
- Authorizes the use of additional insurance premium tax revenues to pay extra benefits to firefighters and police officers, and to pay the unfunded actuarial accrued liabilities of the plan.
- Revises the definition of "extra benefits" to mean benefits in addition to or greater than those provided to general employees of the municipality or special fire control district, regardless of when the additional or greater benefit was or is provided.
- Requires boards of trustees of the plans to submit a detailed report of their expenses for each fiscal year, and to submit a proposed administrative budget for each fiscal year.
- Requires the Division of Retirement in the Department of Management Services to develop a standardized rating system for classifying the financial strength of the local government pension plans.
- Creates a Task Force on Public Employee Disability Presumptions to study and make recommendations regarding current disability presumptions. The task force must submit a report of its findings and recommendations to the Governor, Chief Financial Officer, and Legislature by January 1, 2012.

The bill creates an unknown fiscal impact on state and local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution: Governmental Unit Retirement and Pension Systems

Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

Florida Statutes: The Florida Protection of Public Employee Retirement Benefits Act

Part VII of chapter 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act,” (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in or operating a retirement system for public employees, which is funded in whole or in part by public funds.

A unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the Division of Retirement in the Department of Management Services.¹ The statement also is required to indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

Municipal Firefighters’ Pension Trust Fund and Police Officers’ Retirement Trust Fund

The Marvin B. Clayton Firefighters’ and Police Officers’ Pension Trust Fund Acts² declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters’ and police officers’ pension trust funds.³

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive—access to premium tax revenues—to encourage the establishment of firefighter retirement plans by cities. Fourteen years later, the Legislature enacted chapter 185, F.S., which provides a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under chapter 175, F.S., in 1993.

Funding for these pension plans comes from four sources: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”), employee contributions, other revenue sources, and mandatory payments by the city of any extra amount needed to keep the plan solvent. To qualify for insurance premium tax dollars, plans must meet requirements found in chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division of Retirement, but day-to-day operational control rests with local boards of trustees. Most firefighters and police officers participate in these plans.

The Firefighters’ Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on fire insurance companies, fire insurance associations, or other property insurers on the gross amount of

¹ Section 112.63, F.S.

² Chapters 175 and 185, F.S.

³ See ss. 175.021(1) and 185.01(1), F.S.,

receipts of premiums from policyholders on all premiums collected on property insurance.⁴ This excise tax is imposed on the policies located within the municipality or special fire control district. It is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.⁵ In 2009, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to \$91.94 million.⁶

The Police Officers' Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amount up to 0.85 percent of the gross receipts on premiums for policies issued within the municipality.⁷ Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.⁸ In 2009, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$64.44 million.⁹

In 1999, the Legislature passed legislation that made virtually all provisions of chapters 175 and 185, F.S., expressly applicable to all participating police officer and firefighter pension plans. All pension plans falling under these chapters were required to meet specific "minimum benefit" standards. The law required that insurance premium tax revenues over a base amount be used to provide additional or "extra benefits" in firefighter and police officer pension plans. 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 firefighters and police officers on March 12, 1999.

Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.¹⁰ These taxes must be paid to the Department of Revenue on March 1 of each year in an amount equal to 1.75 percent of the gross amount of receipts on the specified policies, and 1.00 percent on annuity policies or contracts, to be distributed into the General Revenue Fund. The insurer is allowed to take credits for the municipal taxes imposed on property and casualty insurance policies used to fund firefighter and police pension trust funds.¹¹ Each time a municipality that is not imposing the tax enacts an ordinance to impose the tax, a credit is taken by the insurer against the tax paid to the department for deposit into the General Revenue Fund.

Board of Trustees

The Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Fund are administered by a local governing board of trustees that is created in participating cities and special fire control districts, and subject to the regulatory oversight of the Division of Retirement.¹² The membership of the board consists of five members: two residents appointed by the governing body of the municipality or special fire district, two police officers or firefighters selected by the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma, who are subject to two-year terms.¹³

The board of trustees has the authority to invest and reinvest pension trust fund assets into annuities and life insurance contracts in amounts sufficient to provide entitled benefits and initial and subsequent

⁴ Section 175.091(1)(a), F.S.

⁵ Section 175.121, F.S.

⁶ Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Firefighters*, available online at: https://www.rol.frs.state.fl.us/forms/Fire_2009.pdf (last visited on April 4, 2011).

⁷ Section 185.08, F.S.

⁸ Section 185.10, F.S.

⁹ Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2009.pdf (last visited on April 4, 2011).

¹⁰ Section 624.509(1), F.S.

¹¹ Section 624.51055, F.S., state, "[t]here is allowed a credit of 100 percent of ... However, such credit may not exceed 75 percent of the tax due under s. 624.509(1) after deducting such tax deductions for ... credits for taxes paid under ss. 175.101 and 185.08 ...

¹² See ss. 175.061 and 185.05, F.S.

¹³ *Id.*

premiums.¹⁴ Under current law, if the trust fund is not sufficient to provide entitled benefits, any additional contributions necessary to maintain the plan actuarial soundness must be paid by the municipality.¹⁵

Disability Presumption

Any conditions or impairments of health suffered by firefighters or police officers that are caused by tuberculosis, hypertension, or heart disease, and that result in total or partial disability or death, are presumed to have been accidental and suffered in the line of duty unless contrary evidence is presented.¹⁶ The firefighters and police officers are required to submit to and successfully pass a physical examination.¹⁷ This physical examination must be taken prior to entering into service. Provisions regarding disability presumption are only applicable to firefighters and police officers with regard to pension and retirement benefits.

Effect of Proposed Changes

Compensation

The bill redefines the terms “compensation” and “salary” contained in ss. 175.032 and 185.02, F.S. The terms are revised to mean the monthly salary paid to a firefighter or police officer for noncollectively bargained service earned before July 1, 2011. It also encompasses salary earned under collective bargaining agreements in place before July 1, 2011. Overtime in excess of 300 hours per year may not be used to calculate retirement benefits for noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011. Furthermore, payments for accrued, unused sick or annual leave may not be used in the calculation of retirement benefits.

Insurance Premium Tax Revenues

The bill requires local law plans that participate in the distribution of the insurance premium tax revenues to provide benefits to firefighters and police officers that are greater than the pension benefits provided to general employees of the municipality or special fire control district. The bill revises the definition of “extra benefits” to mean benefits in addition to or greater than those provided to general employees of the municipality or special fire control district regardless of when the additional or greater benefit was or is provided. It deletes language that defined “extra benefits” as benefits in addition to or greater than those provided to general employees of the municipality and in addition to those in existence for firefighters and police officers on March 12, 1999.

The bill authorizes the use of additional insurance premium tax revenues to pay extra benefits to firefighters or police officers, or to pay the unfunded actuarial accrued liabilities of the plan. Further, if the aggregate level cost method is the actuarial cost method used to fund the plan, the unfunded actuarial accrued liabilities must be measured using the entry age normal cost method.

Board of Trustees

The bill requires the board of trustees to provide a detailed report that contains an accounting report of its expenses for each fiscal year. It must include all administrative expenses related to any legal counsel, actuary, plan administrator, consultants, travel, and any other expenses paid to or on behalf of the members of the board of trustees or anyone else on behalf of the plan. The report must be submitted to the plan sponsor and the Department of Management Services, and must be made available to each member of the plan.

The board must submit its proposed administrative budget for each fiscal year at least 120 days before the beginning of the fiscal year. It must be submitted to and approved by the plan sponsor. The budget

¹⁴ See ss. 175.071 and 185.06, F.S.

¹⁵ See ss. 175.091(1)(d) and 185.07(1)(d), F.S.; see also ss. 175.051 and 185.04, F.S., stating, “[f]or any municipality, chapter plan, local law municipality, or local plan under this chapter, actuarial deficits, if any, arising under this chapter are not the obligation of the state”.

¹⁶ Sections 175.231 and 185.34, F.S.

¹⁷ *Id.*

is only effective upon approval of the plan sponsor, and may not be amended without prior approval from the plan sponsor.

Financial Rating

The bill requires the Division of Retirement (Division) in the Department of Management Services to develop standardized ratings for classifying the financial strength of the local government pension plans. The factors to be considered in formulating these ratings are as follows:

- The plan's current and future unfunded liabilities;
- The plan's net asset value, managed returns, and funded ratio;
- Metrics related to the sustainability of the plan;
- Municipal bond rating for the local governments;
- Whether the local government has reduced contribution rates to the plan when the plan has an actuarial surplus; and
- Whether the local government uses any actuarial surplus in the plan for obligations outside of the plan.

The bill further requires the local governments and pension boards to provide the Division with all necessary data and records to formulate the ratings. Finally, this rating is required to be posted on the Division's website.

Task Force on Public Employee Disability Presumptions

The bill creates the Task Force on Public Employee Disability Presumptions (task force) to develop findings and issue recommendations on the disability presumptions in ss. 112.18, 175.231, and 185.34, F.S. Members of the task force must be appointed on or before July 15, 2011, and is composed of nine members as follows:

- Three members appointed by the President of the Senate;
- Three members appointed by the Speaker of the House of Representatives;
- A member employed by the Office of the Auditor General;
- A member employed by the Division of Retirement; and
- A member employed by the Department of Financial Services.

The task force must address the data related to the operation of the statutory disability presumptions, the manner in which other states handle disability presumptions, and proposals for changes to the existing disability presumptions.

The task force is required to submit a report to the Governor, Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives by January 1, 2012. The report must include the findings of the task force and recommendations for legislative action during the 2012 regular session. The task force is dissolved once the report is submitted.

The bill designates the Department of Financial Services to provide administrative support for the task force.

Miscellaneous Provisions

The bill provides a statement of important state interest.

B. SECTION DIRECTORY:

Section 1 amends s. 175.032, F.S., to revise definitions.

Section 2 amends s. 175.061, F.S., to provide duties of the board of trustees relating to the reporting of expenses and the submission of a proposed administrative expense budget.

Section 3 amends s. 175.071, F.S., to revise requirements of the board of trustees relating to the employment of legal counsel, actuaries, and other advisors.

Section 4 amends s. 175.091, F.S., to remove an adjustment requirement for member contribution rates to a retirement plan for firefighters.

Section 5 amends s. 175.351, F.S., to revise provisions relating to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan.

Section 6 amends s. 185.02, F.S., to revise definitions.

Section 7 amends s. 185.05, F.S., to provide duties of the board of trustees relating to the reporting of expenses and the submission of a proposed administrative expense budget.

Section 8 amends s. 185.06, F.S., to revise requirements of the board of trustees relating to the employment of legal counsel, actuaries, and other advisors.

Section 9 amends s. 185.07, F.S., to remove an adjustment requirement for member contribution rates to a retirement plan for police officers.

Section 10 amends s. 185.35, F.S., to revise provisions relating to benefits paid by a municipality that has its own pension plan.

Section 11 directs the Division of Retirement to rate the financial strength of local government defined benefit plans; to specify the factors for assigning the ratings; requires local pension boards and local governments to cooperate in providing data for the ratings; to require the ratings to be posted on the division's website.

Section 12 creates the Task Force on Public Employee Disability Presumptions; provides for appointment and membership; specifies issues to be addressed; requires a report to be submitted to the Governor, Chief Financial Officer, and Legislature by a certain date.

Section 13 provides a declaration of important state interest.

Section 14 provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has an unknown, significant fiscal impact on the Division of Retirement. The Division is required to provide a rating plan for the financial strength of the local government pension plans.

The bill has a fiscal impact on the Department of Financial Services. The Department is required to provide administrative support for the task force. In addition members of the task force are entitled to reimbursement for per diem and travel expenses. The total fiscal impact is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The bill has a fiscal impact on local governments. It allows insurance premium tax revenues to be utilized to pay for additional benefits for firefighters and police officers. In addition, the insurance premium tax revenues may be used to pay down the unfunded actuarial accrued liabilities. The bill will free up monies available to municipalities and special fire districts, but the amount is unknown at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a shared state tax or premium sales tax received by cities or counties.

2. Other:

Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act" (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

This bill appears to meet the requirements of Article X, s. 14 of the State Constitution.

B. RULE-MAKING AUTHORITY:

The bill does not appear to authorize nor require any additional grants of rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The following comments were provided by the Department of Management Services:¹⁸

We are unaware of any standard rating system for the financial strength of pension plans. Evaluation of the health of a defined benefit pension plan is a

¹⁸ Substantive Analysis, Florida Department of Management Services, April 7, 2011, at 11 (on file with the Government Operations Subcommittee).

complex, subjective field that must factor in many variables and assumptions. There are nearly 500 local pension plans sponsored by Florida local governments and each one is administered by its own independent local board of trustees. The methods and assumptions used are determined individually for each plan and make direct plan-to-plan comparisons difficult.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 8, 2011, the Government Operations Subcommittee adopted two amendments and reported the bill favorably as amended.

The first amendment clarifies that members of the police officer and firefighter pension funds may include up to 300 hours of overtime per year in the calculation of retirement benefits, as collectively bargained. The proposed committee bill stated overtime compensation in excess of 300 hours per year may not be included for purposes of calculating retirement benefits. This gave the impression that 300 hours of overtime compensation would automatically be included in the calculation of retirement benefits for the members of the pension plans.

The second amendment changes the date that deemed local law plans compliant with chapters 175 and 185, F.S., from May 23, 1939, to May 27, 1939.