

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 14-04 Local Government Pension Reform

SPONSOR(S): State Affairs Committee

TIED BILLS: **IDEN./SIM. BILLS:** SB 246

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Harrington	Camechis

SUMMARY ANALYSIS

Chapters 175 and 185, F.S., were created to provide uniform retirement system benefits for firefighters who are employed by a municipal or special fire control district, and for municipal police officers. A Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within the boundaries of the municipality. A Police Officers' Pension Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.

The bill substantially changes how insurance premium tax revenues must be used in the funding of firefighter and police officer pension benefits under chapters 175 and 185, F.S. The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies:

- Premium tax revenues equal to the amount received in 1997 (base premium tax revenues) must be used to fund the minimum benefits provided for in chapters 175 or 185, F.S.
- Premium tax revenues in excess of the amount received in calendar year 2013 must be used as follows:
 - 50 percent must be used to fund the minimum chapter benefits or other benefits in excess of the minimum benefits as determined by the municipality; and
 - 50 percent must be used to fund a defined contribution component of the plan.
- The increase in additional premium tax revenues between 1997 and the amount received in calendar year 2013 must be used to fund benefits that are not included in the minimum benefits.
- Additional tax revenues that have not otherwise been applied must be used to fund a defined contribution plan.

The bill requires plan sponsors to create a defined contribution component within the plan. The bill increases the minimum benefit accrual rates for the pension plan component from 2 percent to 2.75 percent, and specifies certain exceptions to the increase. It permits a reduction in plan benefits that are provided over the minimum benefit levels if the plan provides a 2.75 percent accrual rate, and directs how the freed up money must be used.

The bill provides that notwithstanding the premium tax distribution requirements, a plan may deviate from the provisions by mutual consent of the members' collective bargaining representative or, if none, by majority consent of the firefighter or police officer members of the fund, and by consent of the municipality or special fire control district, provided that the plan continues to meet the minimum benefits and standards of the chapter.

The bill grandfathers in changes to a plan that are based on that particular plan's reliance on a Division of Retirement interpretation of the existing statute, which must be evidenced by an initial proposal, agreement, or correspondence from the municipality dated before March 4, 2014.

The bill amends the definition of "compensation" or "salary" for police officer noncollectively bargained service earned before July 1, 2011, or earned under collective bargaining agreements in place before July 1, 2011.

The bill may have an indeterminate negative fiscal impact on state premium tax revenues and an indeterminate fiscal impact on local governments offering pension plans under chapters 175 or 185, F.S.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: pcb04a.SAC

DATE: 4/10/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

State Constitution Requirements

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.

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, operating, or administering a retirement system for public employees, which is funded in whole or in part by public funds.¹ Responsibility for administration of the act has been assigned primarily to the Florida Department of Management Services, Division of Retirement (division).

Municipal Firefighters' Pension Trust Fund and Police Officers' Pension Trust Fund

Chapters 175 and 185, F.S., 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.²

Local firefighter pension plans are governed by chapter 175, F.S., which is known as the Marvin B. Clayton Firefighters Pension Trust Fund Act. 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., the Marvin B. Clayton Police Officers' Pension Trust Fund Act, 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.

The acts set forth the minimum benefits or minimum standards for pensions for municipal firefighters and police officers. The benefits provided in the acts may not be reduced by municipalities; however, the benefits provided in a local law plan may vary from the provisions in that act so long as the minimum standards are met.

Funding for these pension plans primarily 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 to fund the normal cost and any actuarial deficiency of the plan.

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.³ It is payable by the insurers to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division. In 2012, premium tax distributions to

¹ Section 112.62, F.S.

² See ss. 175.021(1) and 185.01(1), F.S.

³ Section 175.101, F.S.

municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$72.4 million.⁴

The Police Officers' Pension Trust Fund is funded through an excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of the municipality.⁵ Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the DOR, and the net proceeds are transferred to the appropriate fund at the division. In 2012, premium tax distributions to municipalities from the Police Officers' Pension Trust Fund amounted to \$62.6 million.⁶

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; however, the day-to-day operational control rests with the local boards of trustees. The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., or s. 185.06, F.S., as applicable, unless specifically authorized to vary from the law.

If the division deems that a firefighter or police officer pension plan created pursuant to these chapters is not in compliance with the chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

Minimum Benefit Levels

Chapters 175 and 185, F.S., specify certain "minimum benefits" that must be provided in firefighter and police officer pension plans⁷ as follows:

Description of Minimum Benefit Levels	
Benefit Calculation	2 percent accrual rate x average final compensation x years of creditable service
Average Final Compensation (AFC)	Highest 5 years of last 10 years of service
Vesting	10 years
Normal Retirement Age	Age 55 with 10 years of creditable service or age 52 with 25 years of service
Early Retirement	Age 50 with 10 years of service. The benefit reduction may not exceed 3 percent for each year prior to the member's normal retirement age.
Death Benefits	If vested, the member's beneficiary receives the member's retirement benefit based on early or normal retirement benefits, whichever is applicable. If pre-retirement death, the beneficiary receives the benefit for 10 years. If the member has already retired and has received a retirement benefit for less than 10 years, the beneficiary receives the member's benefit based on the benefit option selected by the member for the remainder of the 10 years.
Disability Benefits	Plans must provide in-line-of-duty disability benefits immediately and require 10 years of service for non-duty disability benefits. Disability benefits must not be less than 25 percent of the average monthly earnings if non-duty disability and not less than 42 percent of average monthly compensation for in-line-of-duty disability.

Premium Tax Revenue Restrictions

In 1999, the Legislature passed legislation that made virtually all provisions of chapters 175 and 185, F.S., expressly applicable to all participating firefighter and police officer pension plans, except the local

⁴ A copy of the 2012 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited April 7, 2014).

⁵ Section 185.08, F.S.

⁶ *Supra* at n. 4.

⁷ Sections 175.162, 175.191, 185.16, and 185.18, F.S.

law plans established by the cities of Jacksonville, Coral Gables, and Miami.⁸ All pension plans falling under these chapters are required to meet specific “minimum benefit” standards. The law requires insurance premium tax revenues over the amount received for calendar year 1997 to 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, 1999.⁹

Until August 2012, the division had consistently interpreted the law to require that premium tax revenues be used first to meet any minimum benefit requirements and those other pension benefits that were in place on March 12, 1999. Once the plan was in compliance with the minimum benefits requirements, any additional premium tax revenues had to be used to fund extra benefits. Plans were not permitted to reduce pension benefits below the minimum benefits level or the level of pension benefits in effect on March 12, 1999, if greater.

In August 2012, the division responded to a letter from the City of Naples, Florida, advising that its ongoing interpretation of s. 185.35(2), F.S., “appears inaccurate.”¹⁰ The division was asked whether a city could negotiate with its police officers to reduce benefits below the level of benefits provided on March 12, 1999, and whether that reduction would jeopardize its premium tax revenues. In response, the division advised that for local law plans in effect on October 1, 1998, the law compels the plan to provide chapter minimum benefits only to the extent that those benefits can be funded with additional premium tax revenues. Thus, the division’s new interpretation requires plans in effect on October 1, 1998, to provide minimum chapter benefits *only* to the extent the benefits can be funded with premium tax revenues received in excess of the amount received for calendar year 1997. If additional premium tax revenues are available after providing the chapter minimum benefits, additional premium tax revenues must be used to fund extra benefits.

Utilizing this new interpretation, it appears that the following may occur:

- The plan’s pension benefits could be reduced to a level that can be funded solely by those additional premium tax revenues received in excess of the 1997 level;
- A plan sponsor may redirect, at its discretion, its pre-1997 premium tax revenues from funding minimum pension benefits to funding other non-pension retirement benefits;
- A plan sponsor could reduce its mandatory contribution it was previously making to the plan to fund minimum benefits and redirect those monies to other municipal purposes; and
- Post-1997 insurance premium tax revenues used previously to fund extra benefits would be used to fund the minimum benefits.

Municipal Police Officer Pension Plans: Definition of “Compensation” or “Salary”

In 2011, the Legislature imposed a 300 hour cap on the amount of overtime hours to be included in the calculation of retirement benefits in ss. 112.66, 175.032, and 185.02, F.S.¹¹ Section 112.66, F.S., provides that “a local government may include up to 300 hours per year of overtime compensation” when calculating retirement benefits. Likewise, ss. 175.032(3) and 185.02(4), F.S., provide that “up to 300 hours per year in overtime compensation may be included” for purposes of calculating firefighter and police officer retirement benefits. However, s. 185.02(4), F.S., also provides that overtime for police officers, for purposes of calculating retirement benefits, may not be less than 300 hours per officer per calendar year for service earned under collective bargaining agreements in place before July 1, 2011.

Effect of the Bill

Definitions

The bill creates new definitions in both chapters 175 and 185, F.S., which include:

⁸ See chapter 99-1, L.O.F., and ss. 175.351 and 185.35, F.S. The law excludes plans created by special act before May 27, 1939, which include the cities of Jacksonville, Coral Gables, and Miami.

⁹ See ss. 175.351(2)(b) and 185.35(2)(b), F.S.

¹⁰ A copy of the letter is on file with the State Affairs Committee.

¹¹ Chapter 2011-216, L.O.F.

- “Additional premium tax revenues” means revenues received by a municipality (or special fire control district), which exceed base premium tax revenues.
- “Base premium tax revenues” means the revenues received by a municipality (or special fire control district) equal to the amount of such revenues received in calendar year 1997.
- “Defined contribution plan” means the component of a local law plan to which deposits are made to provide benefits for firefighters or police officers, as applicable. Such component is an element of a local law plan and exists in conjunction with the defined benefit component that meets the base benefits and minimum standards of the chapter. Benefits provided by a defined contribution plan must be provided through individual member accounts and are limited to the contributions made into each member’s account and the actual accumulated earnings, net of expenses, earned on the member’s account.
- “Minimum benefits” means the benefits set forth in the applicable chapter.
- “Minimum standards” means the standards set forth in the applicable chapter.
- “Special benefits” means benefits provided in a defined contribution plan for firefighters or police officers, as applicable.
- “Special act plan” means a plan subject to the provisions of the applicable chapter that was created by and continues to require an act of the legislature to alter plan benefits.

The bill revises the definition of “supplemental plan” to provide that any supplemental plan in existence on March 1, 2014, must be deemed a defined contribution plan in compliance with the chapter. The bill also revises the definition of “local law plan” to provide that it includes both a defined benefit plan component and a defined contribution plan component.

Defined Contribution Plan Component

The bill requires plan sponsors to create a defined contribution component within their plans to fund special benefits:

- By October 1, 2014, for non-collectively bargained service;
- Upon entering into a collective bargaining agreement on or after July 1, 2014; or
- Upon the creation date of a new participating plan.

Minimum Benefit Accrual Rate

The bill increases the minimum service accrual rate from 2 percent to 2.75 percent. It also provides options for plans to deviate from this new plan minimum:

- A plan in compliance with the chapter, except for the 2.75 percent minimum, must maintain, at a minimum, the percentage in effect on July 1, 2014; such a plan is not required to increase the benefit to 2.75 percent.
- A plan that is in compliance with the chapter, except that the benefit is less than 2.75 percent, but the plan chooses to increase its accrual rate to 2.75 percent, or greater, may not thereafter decrease the rate to less than 2.75 percent.

The bill deletes the provision that based the availability of additional benefits upon state funding.

Use of Insurance Premium Tax Revenues

The bill substantially changes how insurance premium tax revenues must be used in the funding of firefighter and police officer pension benefits under chapters 175 and 185, F.S. The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies:

- Premium tax revenues equal to the amount received in 1997 (base premium tax revenues) must be used to fund the minimum benefits provided for in chapters 175 or 185, F.S.
- Premium tax revenues in excess of the amount received in calendar year 2013 must be used as follows:
 - 50 percent must be used to fund the minimum chapter benefits or other benefits in excess of the minimum benefits as determined by the municipality; and
 - 50 percent must be used to fund a defined contribution component of the plan.
- The increase in additional premium tax revenues between 1997 and the amount received in calendar year 2013 must be used to fund benefits that are not included in the minimum benefits.

- Additional tax revenues that have not otherwise been applied must be used to fund a defined contribution plan.

For plans created after March 1, 2014, 50 percent of the insurance premium tax revenues must be used to fund defined-benefit plan benefits and the remainder must be used to fund defined-contribution plan benefits.

Reduction in Plan Benefits

The bill provides that plan benefits in excess of the minimum benefits may be reduced, excluding supplemental plans in effect as of September 1, 2013, if the plan continues to meet the minimum benefits and minimum standards of the chapter. If the plan sponsor reduces the excess benefits, 50 percent of the moneys freed up by the reduction in benefits must be used to fund minimum benefits and the other 50 percent must be used to fund a defined contribution component of the plan. The bill does not permit a reduction in excess benefits if the plan does not meet the minimum benefit accrual rate of 2.75 percent.

Collective Bargaining Agreement

The bill provides that notwithstanding the premium tax distribution requirements, a plan may deviate from the provisions by mutual consent of the members' collective bargaining representative or, if none, by majority consent of the firefighter or police officer members of the fund, and by consent of the municipality or special fire control district, provided that the plan continues to meet the minimum benefits and standards of the chapter. The bill provides that "a special act plan or plan within a supplemental plan municipality shall be considered to have mutually consented to such deviation as of July 1, 2014, regarding the existing arrangement of the use of premium tax revenues."

Reliance on Division Interpretation

The bill provides that notwithstanding the provisions of the chapter, a plan that has relied on an interpretation of the division on or after August 14, 2012, and before March 4, 2014, may continue to implement proposed changes in reliance on that interpretation.¹² Such reliance must be evidenced by a written collective bargaining proposal or agreement, or formal correspondence between the municipality or district and the division which describes the specific changes to the plan. Such initial proposal, agreement, or correspondence from the municipality must be dated before March 4, 2014. The changes that are otherwise contrary to the chapter provisions may continue in effect until the earlier of October 1, 2017, or the effective date of the collective bargaining agreement that is contrary to the changes to the local law plan.

Municipal Police Officer Pension Plans: Definition of "Compensation" or "Salary"

The bill amends s. 185.02(4), F.S., regarding the definition of "compensation" or "salary" for noncollectively bargained service earned before July 1, 2011, or for service earned under a collective bargaining agreement in place before July 1, 2011. It provides that overtime may be limited in a local law plan under applicable law prior to July 1, 2011. The provision currently provides that overtime may not be limited to less than 300 hours per officer per calendar year.

Important State Interest

The bill provides that the act fulfills an important state interest as related to public pension plans.

B. SECTION DIRECTORY:

Section 1 amends s. 175.021, F.S., revising the legislative declaration to require that all firefighter pension plans meet the requirements of chapter 175, F.S., in order to receive insurance premium tax revenues.

Section 2 amends s. 175.032, F.S., revising definitions to conform to changes made by the act and providing new definitions.

¹² According to a division email dated April 9, 2014, approximately 33 letters have been issued by the division (a copy of the email is on file with the State Affairs Committee).

Section 3 amends s. 175.071, F.S., conforming a cross-reference.

Section 4 amends s. 175.091, F.S., revising the method of creating and maintaining a firefighters' pension trust fund.

Section 5 amends s. 175.162, F.S., deleting a provision basing the availability of additional benefits in a firefighter pension plan upon state funding; revising the calculation of monthly retirement income for a full-time firefighter; providing that certain firefighter pension plans must maintain a certain minimum percentage of average final compensation after a specified date.

Section 6 amends s. 175.351, F.S., relating to municipalities and special fire control districts that have their own pension plans and want to participate in the distribution of a tax fund; revising criteria governing the use of revenues from the premium tax; authorizing a pension plan to reduce excess benefits if the plan continues to meet certain minimum benefits and standards; providing that the use of premium tax revenues may deviate from the requirements of chapter 175, F.S., under certain circumstances; requiring plan sponsors to have a defined contribution plan in place by a certain date; authorizing a municipality to implement certain changes to a local law plan which are contrary to chapter 175, F.S., for a limited time.

Section 7 amends s. 185.01, F.S., revising the legislative declaration to require that all police officer pension plans meet the requirements of chapter 185, F.S., in order to receive insurance premium tax revenues.

Section 8 amends s. 185.02, F.S., revising definitions to conform to changes made by the act and adding new definitions.

Section 9 amends s. 185.06, F.S., conforming a cross-reference.

Section 10 amends s. 185.07, F.S., revising the method of creating and maintaining a police officers' retirement trust fund.

Section 11 amends s. 185.16, F.S., deleting a provision basing the availability of additional benefits in a police officer pension plan upon state funding; revising the calculation of monthly retirement income for a police officer; providing that certain police officer pension plans must maintain a certain minimum percentage of average final compensation after a specified date.

Section 12 amends s. 185.35, F.S., relating to municipalities that have their own pension plans for police officers and want to participate in the distribution of a tax fund; conforming a cross-reference; revising criteria governing the use of income from the premium tax; authorizing a plan to reduce excess benefits if the plan continues to meet certain minimum benefits and minimum standards; providing that the use of premium tax revenues may deviate from the requirements of chapter 185, F.S., under specified circumstances; requiring plan sponsors to have a defined contribution plan in place by a certain date; authorizing a municipality to implement certain changes to a local law plan which are contrary to chapter 185, F.S., for a limited time.

Section 13 provides a declaration of important state interest.

Section 14 provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an indeterminate negative fiscal impact on state revenues. Certain provisions of the bill directing the expenditure of insurance premium tax revenues may offer some incentive for entities currently not offering firefighter or police officer pension plans to do so, which would reduce the amount of premium tax revenues deposited in the state's General Revenue fund. However, virtually all of the largest public employers already offer such plans, or are irrevocably participating in the Florida Retirement System, significantly mitigating any potential fiscal impact. A reasonable estimate of the number of, if any, entities that may decide to offer a plan as a result of the new provisions of the bill, is indeterminate, as is the impact of them doing so.

The bill redirects how premium tax revenues provided to local governments are to be used in funding their firefighter and police officer pension plans. The bill will have an indeterminate impact on local government plans.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Actuarial Requirements

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 ch. 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.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.