

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: SB 1902

INTRODUCER: Senator Bennett

SUBJECT: Public Retirement Plans

DATE: March 14, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Pre-meeting
2.			GO	
3.			GA	
4.			WPSC	
5.				
6.				

I. Summary:

This bill requires a retirement system or plan to include a projection of the employer's required annual contributions and an experiment study in its actuarial report. The bill also limits the benefits payable to an FRS member who has not attained ten years of service by a certain date, and revises the calculations used for upgrading a special risk member's contributions for past service.

The bill makes amendments to the firefighter and municipal police pension plan provisions under chapters 175 and 185, F.S., and creates sections relating to benefit payments under another retirement system and the use of premium tax monies.

The provisions of this bill are declared to be a legitimate state interest.

This bill substantially amends the following sections of the Florida Statutes: 112.63, 112.65, 112.66, 121.0515, 175.041, 175.061, 175.091, 175.162, 175.351, 175.371, 185.02, 185.03, 185.05, 185.07, 185.16, 185.35, and 185.38.

This bill creates ss. 175.372 and 185.381 of the Florida Statutes.

II. Present Situation:

Florida Retirement System

The Florida Retirement System (FRS) was established by the Legislature in 1970 to consolidate then-existing state administered retirement programs for state and county employees and

officers, teachers, judges, and highway patrol officers.¹ Membership in the FRS is compulsory for all state and county employees that work in regularly established positions; however, certain elected officials are permitted to withdraw from the FRS under s. 121.052(3), F.S. Cities and special districts are given the option to participate in the FRS.²

FRS membership is broken down into five different classes: Regular, Special Risk (law enforcement officers, firefighters, etc), Special Risk Administrative Support, Elected Officers, and Senior Management Service. The following table reflects the number of active FRS employees in 2009 by membership class:

Membership Class ³	Members
Regular Class	582,568
Special Risk Class	75,640
Special Risk Administrative Support Class	76
Senior Management Service Class	7,725
Elected Officer's Class	2,304

The FRS is composed of two programs: The Defined Benefit Program (FRS Pension Plan) and the Defined Contribution Program (FRS Investment Plan), properly known as the Public Employee Optional Retirement Program (PEORP). The term 'defined contribution' for the FRS Investment Plan means that employer *contributions* are defined; [whereas] in the FRS Pension Plan, the *benefit* is defined.⁴ Eligible new employees are automatically enrolled into the Pension Plan and are given five months to join the Investment Plan before they are defaulted into the Pension Plan. FRS employees are also given a one-time second election option during the course of their employment in which they are permitted to change their retirement plan.

Employer Contribution Rates

FRS employers are responsible for contributing a set percentage of their employee's monthly compensation to the Division of Retirement to be distributed into the Florida Retirement System Contributions Clearing Trust Fund. The employer is required to make these contributions no later than the fifth working day of the month following the end of the payroll period.⁵

The employer contribution rate is a "blended contribution rate" set by statute, which is the same percentage regardless of which plan their employee participates in. The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.⁶ The current employer contribution rate for each membership class is:

¹ Section 121.051, F.S.

² Information received from the Department of Management Services (on file with the Senate Committee on Community Affairs) (stating that approximately 181 cities and 221 independent special districts in Florida have become members of the FRS as of June 30, 2009).

³ *Id.*

⁴ MyFRS *FRS Investment Plan Summary Plan Description*, (July 1, 2009) available at http://www.myfrs.com/imageserver/pdf/forms/frs_ip_spd.pdf (last visited on Feb. 24, 2010) [emphasis added]

⁵ Section 121.78, F.S.

⁶ Section 112.63, F.S.

Membership Class	Effective July 1, 2009	Effective July 1, 2010
Regular Class	8.69 %	9.63 %
Special Risk Class	19.76 %	22.11 %
Special Risk Administrative Support Class	11.39 %	12.10 %
Elected Officer's Class		
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	13.32 %	15.20 %
• Justices and Judges	18.40 %	20.65 %
• County Officers	15.37 %	17.50 %
Senior Management Class	11.96 %	13.43 %

7

After employer contributions are placed into the FRS Contributions Clearing Trust Fund, benefits under the Investment Plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas benefits under the Pension Plan are placed into the FRS Trust Fund.⁸

Special Risk Class

As of January 30, 2009, the Florida Retirement System (FRS) Pension Plan had 75,640 Special Risk Class Members.⁹ The Special Risk Class includes employees who meet the eligibility requirements found in s. 121.0515, F.S., and who are employed by an FRS employer as a law enforcement officer, firefighter, correctional officer, correctional probation officer, emergency medical technician, paramedic, youth custody officer, or who are in a specified professional health care or forensic position and spend at least 75 percent of their time performing duties involving inmate contact for the Department of Corrections or patient contact for the Department of Children and Family Services.

The Special Risk Class was created for employees who must, as an essential function of the position, perform work that is physically demanding or arduous, or work that requires extraordinary agility and mental acuity. As persons in such positions age, they might not be able to continue performing their duties without posing a risk to the health and safety of themselves, the public, and their co-workers. Because of this, Special Risk Class members who are vested in the FRS receive more credit toward retirement for each year of service and are eligible to retire at an earlier age than Regular Class members.¹⁰

Special Risk Credit for Past Service

Section 121.021(18), F.S., defines "past service" for all FRS members to mean:

⁷ Section 121.71, F.S.

⁸ See ss. 121.4503 and 121.72, F.S.

⁹ Information received from the Department of Management Services (on file with the Senate Committee on Community Affairs).

¹⁰ *Id.* (A Special Risk Class member can retire at the age of 55, or after 25 years of service, while a Regular Class member can retire at the age of 62, or after 30 years of service. A Special Risk Class member can earn retirement credits at 3 percent of the Average Final Compensation (AFC) for each year of service, while a Regular Class member earns retirement credits at 1.6-1.68 percent of AFC for each year of service.).

The number of years and complete months and any fractional part of a month, recognized and credited by an employer and approved by the administrator, during which the member was in the active employ of a governmental employer and for which the employee is not entitled to a benefit before his or her date of participation.¹¹

Under current law, a Special Risk class member is allowed to purchase retirement credits in the Special Risk class, based on his/her past service, and may upgrade those credits up to the amount of two percent of the member's average monthly compensation.¹² Section 121.0515(5)(a), F.S., provides the following circumstances in which a member's past service may be claimed as special risk service:

The member may purchase special risk credit for past service with a city or special district which has elected to join the Florida Retirement System, or with a participating agency to which a member's governmental unit was transferred, merged, or consolidated as provided in s. 121.081(1)(f), if the member was employed with the city or special district at the time it commenced participating in the Florida Retirement System or with the governmental unit at the time of its transfer, merger, or consolidation with the participating agency.¹³

Law enforcement officers, firefighters, and correctional officers in the Special Risk class, are also required to satisfy the criteria set forth in s. 121.0515(2), F.S., requiring the performance of certain duties and responsibilities.¹⁴

The cost to upgrade eligible past service to special risk service is calculated by subtracting the difference between the contributions made for past services and the special risk contribution rate, and multiplying that number by the salary earned during that time period, plus interest.¹⁵

Actuarial Soundness and Minimum Funding Standards

Article X, s. 14, of the State Constitution, requires public retirement benefits to be funded on a sound actuarial basis.

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.¹⁶

¹¹ Section 121.021(18), F.S.

¹² Section 121.0515(5), F.S.

¹³ Section 121.0515(5)(a), F.S.

¹⁴ *Id.* See also 121.0515(2)(a)-(j), F.S.

¹⁵ Information obtained from the Department of Management Services (stating that there is a 4 percent interest for past service prior to July 1, 1975, and then charged at 6.5 percent annually on any unpaid balance) (on file with the Senate Committee on Community Affairs).

¹⁶ Art. X, section 14 of the Florida Constitution.

The “Florida Protection of Public Employee Retirement Benefits Act” located in part VII, of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this Act is to “prohibit 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 tax payers.”¹⁷

The “Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund” Acts

The Marvin B. Clayton Firefighters and Police Officers Pension Trust Fund Acts, located in chapters 175 and 185, Florida Statutes, declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, in implementing the provisions of s. 14, Art. X of the State Constitution. Pursuant to ss. 175.021(1) and 185.01(1), F.S., 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.¹⁸ The Division of Retirement within the Department of Management Services is the primary state agency responsible for administrative oversight, including monitoring for actuarial soundness, of the funds in the Municipal Police Officers’ Retirement Trust Fund and the Firefighters’ Pension Trust Fund.¹⁹

Firefighters Pension Trust Fund - The Firefighters Pension Trust Fund is funded through an excise tax on property insurance policies that amounts up to 1.85 percent of the gross amount of receipts on premiums for policies issued within the municipality boundary or the legally defined boundary of a special fire control district.²⁰ This excise tax is payable to the Department of Revenue on March 1 of each year, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.²¹ In 2008, premium tax distributions to cities and special fire control districts from the Firefighters Pension Trust Fund amounted to \$67.15 million.²² The 2009 Legislature clarified that the boundaries of a special fire control district for purposes of the 1.85 percent excise tax shall “include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3).”²³

Municipal Police Officers Retirement Trust Fund - The Police Officers Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amounts up to .85 percent of the gross receipts on premiums for policies issued within the municipality boundary.²⁴ This excise tax is also payable to the Department of Revenue and the net proceeds are transferred to

¹⁷ Section 112.61, F.S.

¹⁸ See ss. 175.021(1) and 185.01(1), F.S., (2006).

¹⁹ See ss. 175.121 and 185.10, F.S.

²⁰ Section 175.101(1), F.S.

²¹ Section 175.101(3), F.S.

²² Division of Management Services, *Municipal Police Officers and Firefighters’ Retirement Forms: Facts and Figures Premium Tax Distribution History Fire*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2008.pdf (last visited on March 14, 2010).

²³ Chapter 2009-97, s. 6, Laws of Florida (L.O.F.).

²⁴ Section 185.08, F.S.

the appropriate fund at the Division of Retirement. In 2008, premium tax distributions to municipalities from the Police Officers Retirement Trust Fund amounted to \$63.96 million.²⁵

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, and fines for employees violating board rules and regulations, and other sources.²⁶

Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.²⁷ These taxes must be paid to the Department of Revenue on March 1 of each year in amount equal to 1.75 percent of the gross amount of receipts on the specified policies and a 1 percent on annuity policies or contracts, to be distributed into the General Revenue Fund. Pursuant to s. 624.51055, F.S., 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.²⁸ Each time a municipality that is currently 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.²⁹

Board of Trustees

Firefighters and Police Officers Retirement Trust Funds 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.³⁰ The membership of the board consists of five members: two residents, two police officers or firefighters selected through the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma that are subject to two-year terms. The chair and secretary of the board are elected by a majority vote.³¹

The general powers and duties of the board of trustees are:

- To invest and reinvest pension trust fund assets in amounts sufficient to provide entitled benefits and initial and subsequent premiums;
- To invest and reinvest pension trust fund assets into:
 - Annuities and life insurance contracts;
 - Time or savings accounts of specified banks and financial institutions;

²⁵ 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_2008.pdf (last visited on March 14, 2010).

²⁶ See ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

²⁷ Section 624.509(1), F.S.

²⁸ Section 624.51055, F.S., (“There 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 ...”).

²⁹ According to the Department of Management Services the state premium tax distribution made during 2009, amount to approximately \$131,113,000.

³⁰ See ss. 175.061 and 185.05, F.S.

³¹ The secretary of the board shall keep a record of all persons receiving retirement payments under ch. 175 and ch. 185. See ss. 175.071(4) and 185.06(3), F.S., respectively.

- Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States;
- Bonds issued by the State of Israel;
- Bonds (which must hold a rating in one of the three highest classifications by a major rating service), stocks, and other indebtedness issued or guaranteed by a United States Corporation; and
- Foreign securities not to exceed 10 percent of plan assets;
- To issue drafts upon the pension trust fund;
- To convert fund securities into cash; and
- To keep record on all receipts and disbursements and the board's acts and proceedings.³²

In addition to these duties, the board must hold quarterly meetings and retain a professional consultant at least once every three years to evaluate the performance of any existing money manager.³³

Bd. of Tr. of the Town of Lake Park Firefighters' Pension Plan v Town of Lake Park, Fla.³⁴

Pursuant to a municipal ordinance, all firefighters employed by the Town of Lake Park (Town) were required to become compulsory members and make a five percent contribution to the Town's firefighter defined benefit pension plan established under ch. 175, F.S. In 2002, the Town entered into an Interlocal Agreement with Palm Beach County (County) calling for the County to provide fire and emergency medical services to the Town and hire all of the Town's firefighters as county employees.

As a result of the agreement, all of the Town's firefighters became mandatory members of the Florida Retirement System as county employees and the Town's Firefighters' Pension Plan and paid contributions were terminated. The Board of Trustees provided that upon the Plan's termination, the Town was obligated to pay the \$2 million difference between the Plan's asset value and the accrued benefits to the Plan members. In disagreement with the Board's decision, the Town filed a complaint for declaratory relief and the Board responded with a counterclaim stating that the Town violated ss. 175.361, 112, 0515, and 175.091(d), Florida Statutes, as well as the Interlocal Agreement. Ruling in favor of the Town, the trial court declared that the Town had no obligation to fund the plan's actuarial shortfall because the statute provided for less than full payment to certain plan members.

On appeal, the Fourth District Court overturned the lower court's ruling and held that under s. 175.091(1)(d), F.S., "the Town was required to make a mandatory payment of a sum equal to the normal cost of and the amount required to fund any actuarial deficiency" if the Plan's assets are insufficient to meet the accrued benefits required to be distributed to Plan members.³⁵ The court also determined that the benefits accrued to the date of termination were "nonforfeitable" and therefore could not be impaired or reduced pursuant to ss. 112.0515 and 175.361, F.S.

³² See ss. 175.07(1)(a)-(e) and 185.06(1)-(f), F.S., (note s. 185.06(1)(d), F.S., provides that the board of trustees may also decide all claims to relief for municipal police pension plans).

³³ See ss. 175.061(3), 175.071(6)(a), 185.05(3), and 185.06(5), F.S.

³⁴ *Bd. of Trustees of Town of Lake Park Firefighters' Pension Plan v. Town of Lake Park Fla.* 966 So.2d 448 (4th DCA 2007).

³⁵ *Id.* at 452. See also s. 175.091(1)(d), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 112.63, F.S., to require a retirement system or plan include in its actuarial report a five-year projection of the employer's annual required contributions and an experience study that must be performed at least once every 5 years.

Adds subsection (7) to s. 112.63, F.S., to require that each retirement plan have an actuarial experience study prepared at least once every 5 years to compare the plan's actual experience to plan assumptions for key factors, including, but not limited to, investment return, payroll growth, employee salary changes, employee retirement rates and employee turnover. Any material variance must be explained by an enrolled actuary with a recommendation about whether an assumption change is appropriate.

Section 2 amends s. 112.65, F.S., to limit the benefits payable to a member of a retirement system or plan who has not attained ten years of service by July 1, 2010, to not exceed 70 percent of his or her highest annual base pay, excluding overtime and other additional compensation. This section limits the benefits to 90 percent in situations where the member's employer does not participate in the federal Social Security Act.

Section 3 amends s. 112.66, F.S., to require the board of trustees of a retirement system or plan to provide a detailed account report of its expenses to the plan sponsor and the Department of Management Services for each fiscal year. The report must include, but is not limited to:

- All administrative expenses, defined to mean all expenses relating to any legal counsel, actuary, plan administrator and all other consultants; and
- All travel and other expenses paid to or on behalf of board of trustees or anyone of the retirement system or plan.

This section also requires the board to submit its proposed administrative expense budget to the plan sponsor for review and approval, each fiscal year at least 120 days before the beginning of the fiscal year.

Section 4 amends s. 121.0515, F.S., to revise the calculations used for upgrading a special risk member's contributions for past service. This section allows the member to purchase the increase in accrual value of upgraded special risk past service credits that are greater than two percent but not exceeding three percent. The bill retains the current calculation method to determine the costs for upgrading the first two percent of the member's contributions for past service. The costs to upgrade special risk past service from two percent to three percent accrual value must be in an amount representing the actuarial accrued liability (AAL) for the difference in the accrual value during the period of service being upgraded.

Section 5 amends s. 175.041, F.S., to provide a number of exceptions for the types of plans that would be eligible for the state insurance premium tax funds.

Section 6 amends s. 175.061, F.S., to limit the number of trustees of a firefighters' pension trust fund who may also be members of the plan; providing that a majority of the board of trustee

members cannot be members or retirees of the plan for which the board is administering the trust fund.

Section 7 amends s. 175.091, F.S. to remove an adjustment requirement for member contribution rates to a retirement plan for firefighters.

Section 8 amends s. 175.162, F.S., to delete a provision relating to inadequate state contribution for additional retirement benefits. This provision stated that only such incremental increases shall be required for which state moneys can adequately provide when they become available.

Section 9 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. This section deletes the minimum benefit and standards that are currently provided to simply state that local law plans must provide extra benefits to firefighter pension plans that are equal to or greater than the value of the premium tax income received. This section also adds subsection (5) allowing a municipality or special fire control district to establish one or more new plans, or benefit levels within a plan that have different benefit levels based on the member's hire date so long as the benefits meet or exceed the minimum benefits within this chapter. The municipality or fire control district choosing to operate under this subsection shall use the premium tax for the current plan or benefit level, for any additional plan or benefit level, or for contributions to FRS.

Section 10 amends s. 175.371, F.S., to revise provisions relating to benefits payable by an existing plan when a firefighter transfers to another retirement system. Stating that participants that elect to remain in the existing plan shall continue to receive state premium tax moneys until fully funded.

Section 11 creates s. 175.372, F.S., to provide for the payment of benefits under another retirement system and the use of premium tax moneys. Prohibiting a firefighter that has a vested right to benefits under the pension plan from receiving a benefit under a new retirement system or pension plan for any period of service for which benefits are being paid. Subsection (2) of this new section allows a municipality or special fire control district to continue to receive and use state premium tax moneys as needed to fully fund the pre-existing plan or to reduce the required contributions to the new retirement system or pension program; after creating or transferring to another retirement system or pension program. This provision also applies to defined contribution programs for all or some of the municipality or special district's firefighters that are members of the pension plan or were hired after a certain date.

Section 12 amends s. 185.02, F.S., to redefine the term "compensation" for purposes of calculating police pensions to mean "fixed monthly" and not include overtime.

Section 13 amends s. 185.03, F.S., to provide a number of exceptions for the types of plans that would be eligible for the state insurance premium tax funds.

Section 14 amends s. 185.05, F.S., to limit the number of trustees of a police officers' pension trust fund who may also be members of the plan; providing that a majority of the board of trustee members cannot be members or retirees of the plan for which the board is administering the trust fund.

Section 15 amends s. 185.07, F.S., to remove an adjustment requirement for member contribution rates to a retirement plan for police officers.

Section 16 amends s. 185.16, F.S., to delete a provision relating to inadequate state contributions for additional retirement benefits. This provision stated that only such incremental increases shall be required for which state moneys can adequately provide when they become available.

Section 17 amends s. 185.35, F.S., to revise provisions relating to benefits paid by a municipality that has its own pension plan. This section deletes the minimum benefit and standards that are currently provided to simply state that local law plans must provide extra benefits to police officer pension plans that are equal to or greater than the value of the premium tax income received. This section also adds subsection (5) allowing a municipality to establish one or more new plans, or benefit levels within a plan that have different benefit levels based on the member's hire date so long as the benefits meet or exceed the minimum benefits within this chapter. A municipality choosing to operate under this subsection shall use the premium tax for the current plan or benefit level, for any additional plan or benefit level, or for contributions to FRS.

Section 18 amends s. 185.38, F.S., to revise provisions relating to benefits payable by an existing plan when a police officer transfers to another retirement system. Stating that participants that elect to remain in the existing plan shall continue to receive state premium tax moneys until fully funded.

Section 19 creates s. 185.381, F.S., to provide for the payment of benefits under another retirement system and the use of premium tax moneys. Prohibiting a police officer that has a vested right to benefits under the pension plan from receiving a benefit under a new retirement system or pension plan for any period of service for which benefits are being paid. Subsection (2) of this new section allows a municipality to continue to receive and use state premium tax moneys as needed to fully fund a pre-existing plan or to reduce the required contributions to the new retirement system or pension program; after creating or transferring to another retirement system or pension program. This provision also applies to defined contribution programs for all or some of the municipality's police officers that are members of the pension plan or were hired after a certain date.

Section 20 provides a statement of legitimate state interest and requires that all benefits be funded on a sound actuarial basis as required by Article X, s.14 of the State Constitution, and Part VII of ch. 112, F.S.

Section 21 states that this act shall take effect July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article X, s. 14, of the State Constitution, requires public retirement benefits to be funded on a sound actuarial basis.³⁶ Section 20 of this bill requires these benefits to be fair and adequate, and to be managed, administered, and funded in an actuarially sound manner in accordance to the constitution and Florida Statutes.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

This bill will limit the benefits that are payable to an FRS member who has not attained ten years of service by July 1, 2010. This bill will affect members of Municipal Firefighter and Police Pension Plans and Special District Firefighter Pension Plans.

C. Government Sector Impact:

This bill provides additional authority and discretion to municipalities and special firefighter control districts in relation to the administration of firefighter and police officer pension plans. The bill will also require FRS employers to provide additional information in their actuarial reports.

Although a fiscal impact has not been determined, DMS notes that the following changes will have a negative impact on the General Revenue Fund:

- The amendments to ss. 175.351 and 185.35, F.S., removing the minimum benefit requirements and the funding source for the implementation of such minimums in sections 9 and 17 of the bill.
- The amendment to ss. 175.371 and 185.38, F.S., to allow municipalities and fire control districts that elect to participate in the FRS to continue to receive state premium tax moneys in sections 10 and 11 of the bill.
- The amendments to ss. 175.372 and 185.381, F.S., to allow municipalities and districts to establish any kind of local retirement plan or transfer to the FRS and be funded with state moneys and state premium tax moneys under sections 11 and 19 of the bill.

³⁶ Art. X, section 14 of the Florida Constitution.

- The proposed changes in section 4 of the bill, relating to the increase from two to three present accrual value for special risk past service, will have a budgetary impact on the Division of Retirement due to the costs associated in FRS calculations of actuarial accrued liabilities. The department states that the cost for each calculation is \$400, regardless of whether the upgrade is purchased and that there are no limitations on the number of calculations that may be requested before retirement.³⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Management Services has raised the following issues pertaining to SB 1902:

- The proposed amendments in this bill will undermine the 1986 and 1999 Legislative amendments to chapters 175 and 185, F.S., which stated that the minimum benefits and standards may not be diminished by local charter, ordinance, or resolution or special act of the Legislature.
- The five-year experience study requirement in section 1 of the bill should be amended to only apply to larger plans (more than 100 total participants), since it is less meaningful and the fees would be more substantial for smaller plans.
- The amendment to s. 112.65, F.S., in section 2 of the bill, limiting retirement plan benefits for members that do not have 10 years of service at a certain date, is unclear on whether over 70 percent of a member's average final compensation could be paid as long as it is under 70 percent of the highest base pay. The department states that the current language could cause the provision to be administered differently, and therefore suggests that the limitation apply to members hired on or after a *specific date*, to avoid confusion and litigation.
 - Further noting that retirement benefits are calculated based on a member's *average final compensation (AFC)*, not *base pay*.
- There are no corresponding changes made in ch. 121, F.S., to reflect the amendments made to ch.112, F.S. This would create a conflict since ch. 121, F.S., still has a 100 percent AFC benefit limitation.
- The amendment to s. 121.0515, F.S., in section 4 of the bill, does not limit the periods of past service that can be upgraded to the special risk value. If the bill is not amended to limit the upgrade of past service to service on or after October 1, 1974, members that join the FRS through an agency join, merger, transfer, or consolidation could receive a higher accrual value for Special Risk class service earned between December 1, 1970, and September 30, 1974, than Special Risk Class members who are actively working at that time.
- The bill does not define or explain the phrase "*any additional benefit level*" in paragraph (5), of ss. 175.351 and 185.35, F.S., in sections 9 and 17 of the bill.

³⁷ Email from Garry Green, Operations & Management Consultant Manager of the Department of Management Services, *SB 1902 Comments* (March 19, 2010, 5:16 p.m.) (on file with the Senate Committee on Community Affairs).

- The amendment to the definition of “compensation” or “salary” in section 12 of the bill will cause a significant reduction in the definition of salary used to determine the employee’s contributions and benefits, which in effect may have negative impact to the local government’s funding.
- The amendments to ss. 175.351, F.S. and 185.35, F.S., in sections 9 and 17 of the bill removing the minimum benefit requirements, will create a disparate treatment between the remaining 38 local plans that did not meet the minimum requirements as of September 30, 2008, and the 290 local plans that did. Additionally, the elimination of a firefighter and police officer’s election to place state premium tax moneys into the existing or supplemental plan will create a conflict with other sections of law that define or describe supplemental plans.³⁸

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

³⁸ Id.