

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 Governmental Oversight and Accountability Committee

BILL: CS/SB 910

INTRODUCER: Banking and Insurance Committee and Senators Hays and Bennett

SUBJECT: Public Retirement Plans

DATE: February 8, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Burgess	BI	Fav/CS
2.	McKay	Roberts	GO	Pre-meeting
3.	_____	_____	BC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill provides that for a firefighter or police plan established under Chapters 175 or 185, F.S., if the local government and the plan members' collective bargaining representative or, if none, a majority of the plan members agree to the retirement benefits provided in the plan or to the use from the premium tax, the provisions of the agreement are deemed to comply with the chapter. This provision is retroactive in application to any agreement entered into or effective on or after October 1, 2010. The bill also eliminates the requirement that a minimum of 300 hours of overtime must be included in the definition of "salary" for police officers plans under ch. 185, F.S.

This bill substantially amends the following sections of the Florida Statutes: 175.351, 185.02, and 185.35.

II. Present Situation:

Overview of State and Local Government Retirement Systems

The Division of Retirement in the Department of Management Services (DMS) is responsible for monitoring Florida's state and local government defined benefit pension plans for compliance with Florida laws. However, the local boards of trustees are responsible for overseeing these local plans on a day-to-day basis. The local government plans include local pension plans under the provisions of part VII of ch. 112, F.S., and municipal police and firefighters plans established under the provisions of chs. 175 and 185, F.S., respectively.

The Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Fund are administered by a local governing board of trustees, which are created in participating cities and special fire control districts, and subject to the regulatory oversight of the Division of Retirement.¹ The membership of the board consists of five members: two residents appointed by the governing body of the municipality or a special fire control 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.²

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 premiums.³ Under current law, if the trust fund is not sufficient to provide entitled benefits, the municipality pays any additional contributions necessary to maintain the actuarial soundness of the plan.⁴

Actuarial Soundness and Minimum Funding Standards for Pension Plans

Article X, s. 14, of the State Constitution requires the funding of public retirement benefits 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.

Part VII of ch. 112, F.S., creates minimum operation and funding standards for public employee retirement 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.

¹ Sections 175.061 and 185.05, F.S.

² *Id.*

³ Sections 175.071 and 185.06, F.S.

⁴ Sections 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."

Pursuant to ch. 112, F.S., a local government may not change 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.⁵ The statement also is required to indicate whether the proposed changes comply 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

Funding

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.⁶ 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. Most firefighters and police officers participate in these plans.

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.⁷ 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.⁸

The Firefighters' Pension Trust Fund is financed 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 receipts of premiums from policyholders on all premiums collected on property insurance.⁹ 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.¹⁰

The Police Officers' Retirement Trust Fund is financed 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.¹¹ Similar to the Firefighters' Pension Trust Fund, the excise tax is

⁵ Section 112.63, F.S.

⁶ Sections 175.021(1) and 185.01(1), F.S.

⁷ Section 624.509, F.S.

⁸ Section 624.51055, F.S.

⁹ Section 175.091(1), F.S.

¹⁰ Section 175.121, F.S.

¹¹ Section 185.08, F.S.

payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.¹²

Benefits

Prior to the 1999 Legislative Session, the statutes contained different benefit levels for “chapter” and “local law” plans. With the amendments in 1999, all cities and districts receiving premium tax proceeds had to meet the same minimum chapter-plan benefit levels in order to be eligible for the state moneys.¹³ The legislation also provided that minimum benefits could not be reduced by local charter, ordinance, resolution, or by special act of the Legislature, nor could the minimum benefits or minimum standards be reduced or offset by any other local, state, or federal law that may include firefighters or police officers in its operation, except as provided under s. 112.65, F.S.^{14 15}

Local plans were allowed to continue to use the amount of premium tax proceeds for the calendar year 1997 to fund their existing benefits, but were required to enact any missing minimum benefits as the increases in state funds became available. The law also provides that local plans in effect on October 1, 1998, must comply with the minimum benefit provisions of ch. 175 or 185, F.S., only to the extent that additional premium tax revenues become available to fund incrementally the cost of such compliance. Once a plan complies with such minimum benefit provisions, as subsequent additional premium tax revenues become available, they must be used to provide extra benefits.¹⁶ Sections 175.351 and 185.35, F.S., define the term “extra benefits,” to mean 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, respectively, on March 12, 1999.¹⁷

Any benefits in place on March 12, 1999, must be provided in order to maintain compliance with ch. 175 or 185, F.S., and eligibility for premium tax revenues. According to the DMS, any benefit improvements by a local plan enacted since March 12, 1999, can be reduced, or eliminated.¹⁸ Of the 346 participating plans as of September 30, 2010, 31 have still not met all the required chapter minimum benefits, and of those, 13 are police plans that have failed to satisfy the 300 hours of overtime-minimum benefit.¹⁹

Definition of Salary in Municipal Police Pension Plans

In 2011, the Legislature enacted²⁰ a yearly 300 hour cap on the amount of overtime hours allowed in the calculation of retirement benefits, in ss. 112.66, 175.032, and 185.02, F.S. The provisions for general public retirement systems (Chapter 112, F.S.) and firefighter pensions (Chapter 175, F.S.) did not have existing provisions allowing any overtime hours to be included

¹² Section 185.10, F.S.

¹³ Chapter 99-1, L.O.F.

¹⁴ Sections 175.021(2) and 185.01(2), F.S.

¹⁵ Sections 175.381 and 185.39, F.S.

¹⁶ Section 175.351(2), F.S.

¹⁷ Sections 175.351 and 185.02, F.S.

¹⁸ Memorandum from Patricia Shoemaker, Division of Retirement of the Department of Management Services, to Randy Knight, City Manager of Winter Park, dated December 14, 2011.

¹⁹ Department of Management Services SB 910 analysis, dated December 1, 2011.

²⁰ Chapter 2011-216, L.O.F.; Senate Bill 1128.

in the calculation of retirement benefits. Section 185.02(4), F.S., had the following definition before amendment by SB 1128:

“Compensation” or “salary” means the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or a special detail work performed on behalf of a second party employer. However, a local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes, but in no event shall such overtime limit be less than 300 hours per officer per calendar year.

After amendment, the section reads as follows:

“Compensation” or “salary” means, for noncollectively bargained service earned before July 1, 2011, or for service earned under collective bargaining agreements in place before July 1, 2011, the total cash remuneration including “overtime” paid by the primary employer to a police officer for services rendered, but not including any payments for extra duty or special detail work performed on behalf of a second party employer. A local law plan may limit the amount of overtime payments which can be used for retirement benefit calculation purposes; however, such overtime limit may not be less than 300 hours per officer per calendar year. 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, the term has the same meaning except that when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included as specified in the plan or collective bargaining agreement, but payments for accrued unused sick or annual leave may not be included.

The pre-SB 1128 provision sets the limit at no less than 300 hours, effectively acting as a floor or minimum of 300 hours. The post-SB 1128 language has been interpreted to mean that after July 1, 2011, the 300 hour floor has been replaced by a 300 hour cap. The DMS Division of Retirement has not yet taken final agency action on its interpretation of the provision, but at one point appeared to be taking the position that SB 1128 did not *replace* the floor with a cap, but supplemented the 300 hour floor with a 300 hour cap. In other words, the employer must include at least 300 hours of overtime in the calculation, but may not include more than 300 hours. If the division deems that a firefighter or police pension plan created pursuant to Chapters 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

III. Effect of Proposed Changes:

Section 1 amends s. 175.351, F.S., to provide that, notwithstanding any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members mutually consent to the retirement benefits provided in the plan or to the use income for retirement benefits from premium taxes, the provisions of the agreement are deemed to comply with this chapter. This provision is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

Section 2 amends s. 185.02(4), F.S., by eliminating the requirement that a minimum of 300 hours of overtime must be included in the definition of salary for police officer plans under this chapter.

Sections 3 amends ss. 185.35, F.S., to provide that, notwithstanding any plan established under this chapter, if the municipality and the plan members' collective bargaining representative or, if none, a majority of the plan members mutually consent to the retirement benefits provided in the plan or to the use from the use of income for retirement benefits from premium taxes, the provisions of the agreement are deemed to comply with this chapter. This provision is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

Section 4 provides that the bill fulfills an important state interest.

Section 5 provides that the bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill would require a local government to expend funds to comply with its terms, the provisions of section 18(a) of article VII of the State Constitution may apply. If those provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (section 4 of the bill) and one of the following relevant exceptions must apply:

- Funds estimated at the time of enactment to be sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Indeterminate.

B. Private Sector Impact:

None.

C. Government Sector Impact:

To the extent that local governments are allowed to use premium tax revenues for more of their pension funding needs each year, there would be more revenue available to help pay these expenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The two policy issues in this bill are also addressed, differently, in CS/SB 2088, which was temporarily postponed by the Community Affairs Committee on February 13, 2012.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on February 2, 2012:

The CS made the following changes:

- Eliminates revisions to the workers' compensation presumption under s. 112.18, F.S.
- Eliminates changes relating to the use of premium tax moneys.
- Eliminates changes to definitions of terms in chs. 175 and 185, F.S.
- Removes authority of municipalities and fire districts to establish one or more new plans, or benefit levels within a plan or to transfer all of its police and firefighters into a defined contribution plan or enroll their police and firefighters in the Florida Retirement System.
- Eliminates reporting requirements.

B. Amendments:

None.

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