

**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.)

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Prepared By: The Professional Staff of the Governmental Oversight and Accountability Committee

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BILL: SB 2088

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Municipal Police Pensions

DATE: January 24, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	Roberts	GO	<b>Pre-meeting</b>
2.			CA	
3.			BC	
4.				
5.				
6.				

**I. Summary:**

The bill clarifies that a maximum of 300 hours of overtime may be included for purposes of calculating municipal police pension plan benefits.

This bill amends section 185.02 of the Florida Statutes.

**II. Present Situation:**

**Local Retirement Systems and Plans**

The Division of Retirement of the Department of Management Services (DMS) reports<sup>1</sup> that as of September 30, 2011, there are 492 defined benefit plans sponsored by 251 local governments. The vast majority of the plans, 486, are local government defined benefit systems that provide benefits to 69,178 retirees, with 106,541 active employees, and total plan assets of \$23.9 billion.<sup>2</sup> The average annual pension in these local plans is \$24,485, and the average annual required contribution rate as a percentage of payroll is 25.74 percent.

**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, and in

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<sup>1</sup> Division of Management Services, *Florida Local Government Retirement Systems*, 2011 Annual Report.

<sup>2</sup> The other 6 plans are school board early retirement programs that provide benefits to 1,617 retirees, with active plan membership of 8,613, and total plan assets of \$58.7 million.

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. 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.<sup>3</sup>

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.<sup>4</sup> This excise tax is also payable to the Department of Revenue and the net proceeds are transferred to the appropriate fund at the Division of Retirement. In 2010, premium tax distributions to municipalities from the Police Officers Retirement Trust Fund amounted to \$57.4 million.<sup>5</sup>

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, fines for employees violating board rules and regulations, and other sources.<sup>6</sup>

### **Changes to Local Pensions in 2011**

The 2011 Legislature enacted<sup>7</sup> sweeping changes to local government pension plans, by providing for the following:

- Local plans' actuarial reports are required to include the present value of all benefits, using a standard rate of return, to promote comparisons between plans;
- DMS is required to post on their website a five-year history of each plan's funded ratio, and local plans are required to link to this DMS website;
- Actuarial or cash surpluses in a local plan may not be used outside the plan;
- Local plans may not reduce contributions required to fund normal cost;
- For all local plans, accrued sick or annual leave may not be included in calculations of retirement benefits; overtime may be included, but is capped at 300 hours; and
- With approval of the members, firefighter and police plans are allowed to increase member contributions without increasing member benefits.

### **Definition of Salary in Municipal Police Pension Plans**

The 300 hour cap on the amount of overtime hours to be included in the calculation of retirement benefits was added to ss. 112.66, 175.032, and 185.02, F.S., by SB 1128. The provisions for

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<sup>3</sup> See ss. 175.121 and 185.10, F.S.

<sup>4</sup> Section 185.08, F.S.

<sup>5</sup> 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\\_2010.pdf](https://www.rol.frs.state.fl.us/forms/Police_2010.pdf) (last visited on January 20, 2012).

<sup>6</sup> See ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

<sup>7</sup> Chapter 2011-216, L.O.F.; Senate Bill 1128.

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 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 appears to be taking the position that SB 1128 did not *replace* the floor with a cap, but supplemented the 300 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:**

The bill amends s. 185.02(4), F.S., to delete the “overtime limit may not be less than 300 hours” language, which should clarify that the definition has a maximum cap of 300 hours, with no required minimum.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Municipal police pension plans could incur lower pension plan costs with this clarification.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**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.

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

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