

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7181 PCB SAC 14-06 Public Retirement Plans

SPONSOR(S): State Affairs Committee; Boyd and Caldwell

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee	10 Y, 6 N	Harrington	Camechis

SUMMARY ANALYSIS

The bill combines HB 7173, relating to the Florida Retirement System (FRS), and HB 7179, relating to local government pension reform, and includes a limited exception to the prohibition on renewed membership in the FRS.

Florida Retirement System

This bill makes the following changes to the FRS, effective July 1, 2015:

- Increases the vesting period for members enrolled in the pension plan from eight years to 10 years;
- Increases the regular disability vesting period for all new enrollees from eight years to 10 years;
- Prohibits members initially enrolled in a position covered by the Elected Officers' Class or Senior Management Service Class from participating in the pension plan and requires participation in the investment plan;
- Changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan;
- Extends the time period for member's to make a plan selection from the last day of the fifth month after the month of hire to the last day of the eighth month after the month of hire;
- Closes the Senior Management Service Optional Annuity Program to new participants; and
- Prohibits elected officials from joining the Senior Management Service Class in lieu of the Elected Officers' Class.

Effective January 1, 2015, the bill creates a limited exception to the prohibition on renewed membership in the FRS and specifies requirements and limitations.

Benefits of current FRS members are not affected by changes in this bill.

Based on the results of special actuarial studies performed by the Milliman actuarial and consulting firm in 2013, the bill will have no fiscal impact for fiscal year 2014-15. It has a projected positive fiscal impact in fiscal year 2015-16 of \$500,000 and a projected negative fiscal impact of \$900,000 for all participating entities in fiscal year 2016-17. In fiscal year 2017-18, the bill is projected to have a positive fiscal impact with savings continuing to increase each subsequent year over the period covered by the study for a projected cumulative savings of \$28.6 billion.

Municipal Firefighter and Police Officer Pension Plans

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., and requires plans to create a defined contribution component of the plan. The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies a formula for the use of these funds.

The bill increases the minimum benefit accrual rates for the pension plan component and specifies certain exceptions to the increase. It permits a reduction in plan benefits that are provided over the minimum benefit levels.

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.

The bill grandfathered in changes to a plan that are based on that particular plan's reliance on a Department of Management Services interpretation of the existing statute.

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 chapter 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: h7181.SAC

DATE: 4/22/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

PUBLIC PENSION PLANS, GENERALLY

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 Division of Retirement (division), Department of Management Services (DMS).

FLORIDA RETIREMENT SYSTEM

Background

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.²

The FRS is governed by the Florida Retirement System Act.³ The FRS, which is a multiple-employer, contributory plan,⁴ provides retirement income benefits to 621,774 active members,⁵ 347,962 retired members and beneficiaries, and 38,724 members of the Deferred Retirement Option Program (DROP).⁶ It is the primary retirement plan for employees of state and county government agencies, district school boards, community colleges, and universities. The FRS also serves as the retirement plan for participating employees of the 186 cities and 267 independent hospitals and special districts that have elected to join the system.⁷

The membership of the FRS is divided into five membership classes:⁸

- Regular Class⁹ consists of 536,506 members (86.3 percent of the membership);
- Special Risk Class¹⁰ includes 68,800 members (11.1 percent);

¹ Section 112.62, F.S.

² *The Florida Retirement System Annual Report*, July 1, 2012 – June 30, 2013, at 18. A copy of the report can be found online at: http://www.dms.myflorida.com/workforce_operations/retirement/publications/annual_reports (last visited March 21, 2014).

³ Chapter 121, F.S.

⁴ Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after June 30, 2011.

⁵ As of June 30, 2013, the FRS defined benefit plan, also known as the pension plan, had 514,436 members, and the defined contribution plan, also known as the investment plan, had 107,338 members. *Supra* at FN 1.

⁶ *Id.* at 10.

⁷ Florida Retirement System Participating Employers for Plan Year 2013-14, prepared by the Department of Management Services, Division of Retirement, Revised January 2014, at 8. A copy of the document can be found online at:

http://www.dms.myflorida.com/workforce_operations/retirement/publications (last visited March 21, 2014).

⁸ *Supra* at FN 2.

⁹ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

- Special Risk Administrative Support Class¹¹ has 58 members (.009 percent);
- Elected Officers' Class¹² has 2,094 members (0.35 percent); and
- Senior Management Service Class¹³ has 7,450 members (1.2 percent).

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined benefit plan, also known as the pension plan; and
- The defined contribution plan, also known as the investment plan.

Certain members, as specified by law and position title, may, in lieu of FRS participation, participate in optional retirement plans.

FRS Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan. The earliest that any member could participate in the investment plan was July 1, 2002.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹⁴ With respect to the employer contributions, a member vests after completing one work year with an FRS employer.¹⁵ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁶

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁷ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁸

FRS Pension Plan

The pension plan is a defined benefit plan that is administered by the secretary of DMS through the division.¹⁹ Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.²⁰ For members initially enrolled on or after July

¹⁰ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

¹¹ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

¹² The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

¹³ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁴ Section 121.4501(6)(a), F.S.

¹⁵ If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b) – (d), F.S.

¹⁶ Section 121.591, F.S.

¹⁷ Section 121.4501(8), F.S.

¹⁸ Section 4, Art. IV, Fla. Const.

¹⁹ Section 121.025, F.S.

²⁰ Section 121.021(45)(a), F.S.

1, 2011, the member vests in the pension plan after eight years of creditable service.²¹ A member vests immediately in all employee contributions paid to the pension plan.

Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.²² The accrual rate varies by class as follows:

Membership Class	Accrual Rate
Regular Class	1.60%
Special Risk Class	3.00%
Special Risk Administrative Support Class	1.60%
Elected Officer's Class	
• Justices and Judges	3.33%
• Others	3.00%
Senior Management Service Class	2.00%

For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²³ For members in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²⁴ Members initially enrolled in the pension plan on or after July 1, 2011, must complete 33 years of service or attain age 65, and members in the Special Risk and Special Risk Administrative Support Classes must complete 30 years of service or attain age 60.²⁵

Default and Second Election

A new enrollee has until the last business day of the fifth month following the employee's month of hire to make a plan selection. If the member fails to make a selection, the member defaults to participation in the pension plan.²⁶

After the initial election or default election to participate in either the pension plan or investment plan, a member has one opportunity, at the member's discretion and prior to termination or retirement, to choose to move from the pension plan to the investment plan or from the investment plan to the pension plan.²⁷

Disability and Death Benefits

Disability retirement benefits are provided for both in-line-of-duty and regular disability. Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability,²⁸ compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for Special Risk Class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If a disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. An FRS member who qualifies for disability while enrolled in the investment plan may apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.²⁹

If the member is terminated by reason of death prior to becoming vested in the FRS, the member's beneficiary is only entitled to the member's accumulated contributions.³⁰ Under the pension plan, if the

²¹ Section 121.021(45)(b), F.S.

²² Section 121.091, F.S.

²³ Section 121.021(29)(a)1., F.S.

²⁴ Section 121.021(29)(b)1., F.S.

²⁵ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁶ Section 121.4501(4), F.S.

²⁷ Section 121.4501(4)(g), F.S.

²⁸ See s. 121.4501(16), F.S.

²⁹ Section 121.091(4)(f), F.S.

³⁰ For purposes of disbursement of benefits, a member is considered retired as of the date of the death.

member has vested at the time of his or her death, the member's joint annuitant³¹ is entitled to receive the optional form³² of payment for the annuitant's lifetime.³³ If the designated beneficiary does not qualify as a joint annuitant, the member's beneficiary is only entitled to the return of the member's personal contributions, if any.³⁴ If the member dies in the line of duty, the surviving spouse of the member is entitled to receive a monthly benefit equal to one-half of the monthly salary being received by the member at the time of death for the rest of the surviving spouse's lifetime.³⁵ Members in the investment plan are not entitled to these death benefits; instead, the member's beneficiary is entitled to the balance of the member's investment plan account, provided the member has met the one-year vesting requirement.³⁶

DROP

All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.³⁷ While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.³⁸

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.³⁹

Health Insurance Subsidy

Upon the conclusion of DROP, or upon service retirement or disability retirement, a retiree is eligible to receive the Health Insurance Subsidy (HIS), which assists retired members in paying for the costs of health insurance.⁴⁰ Eligible retirees receive \$5 per month for each year of creditable service used to calculate the retirement benefit. The HIS payment must be at least \$30, but not more than \$150 per month.⁴¹

³¹ A joint annuitant is considered to be the member's spouse, natural or legally adopted child who is either under age 25 or is physically or mentally disabled and incapable of self-support (regardless of age), or any person who is financially dependent upon the member for one-half or more of his or her support and is the member's parent, grandparent, or person for whom the member is the legal guardian. Section 121.021(28), F.S.

³² Under the pension plan, a member has a choice of payment options. If the member dies prior to retirement, the member's joint annuitant is entitled to select either to receive the member's contributions or a reduced monthly benefit payment for life.

³³ Section 121.091(7)(b)1., F.S.

³⁴ Section 121.091(7)(b)2., F.S.

³⁵ Section 121.091(7)(d)1., F.S. If the surviving spouse dies, or if the member is not married, the monthly payment that would have otherwise gone to the surviving spouse must be paid for the use and benefit of the member's child or children that are under 18 years of age and unmarried until the 18th birthday of the member's youngest child. Section 121.091(7)(d)2. and 3., F.S.

³⁶ See s. 121.591(3)(b), F.S.

³⁷ Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment for an additional eight years under certain circumstances.

³⁸ If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP was reduced to 1.3 percent.

³⁹ See s. 121.4501(2)(k) and (4)(f), F.S.

⁴⁰ Sections 112.363(1) and (2), F.S.

⁴¹ Section 112.363(3)(e), F.S.

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;⁴²
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program,⁴³ and
- Members of a Florida college may elect to enroll in the State Community College System Optional Retirement Program.⁴⁴

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member's monthly compensation to the division to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.⁴⁵ The rate is determined annually based on an actuarial study by DMS that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

The following are the current employer contribution rates for each class:⁴⁶

Membership Class	Effective July 1, 2013
Regular Class	3.53%
Special Risk Class	11.00%
Special Risk Administrative Support Class	4.17%
Elected Officer's Support Class	
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.52%
• Justices and Judges	10.05%
• County Officers	8.44%
Senior Management Service Class	4.81%

Regardless of employee class, all employees contribute 3 percent of their compensation towards retirement.⁴⁷

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.⁴⁸

⁴² The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

⁴³ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

⁴⁴ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

⁴⁵ Section 121.70(1), F.S.

⁴⁶ Section 121.71(4), F.S.

⁴⁷ Section 121.71(3), F.S.

⁴⁸ See ss. 121.4503 and 121.72(1), F.S.

Renewed Membership

Prior to July 1, 2010, retired members of the FRS could renew membership in the FRS upon reemployment with an FRS-covered employer. Such employees renewed membership in the FRS pension plan or investment plan, or an optional retirement program, and earned service toward a subsequent retirement benefit. Renewed members are not allowed to participate in DROP and are not eligible for disability retirement.⁴⁹

Currently, retirees initially re-employed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and cannot earn creditable service toward a subsequent retirement benefit.⁵⁰ This restriction from renewed membership includes retirees of the FRS and optional retirement programs.

There are 27,983 retirees of the investment plan who retired prior to July 1, 2010, and who have earned less than 10 years of creditable service. Approximately 1,380 retirees of the investment plan, who earned less than 10 years of creditable service prior to taking a distribution, have returned to work with an FRS-covered employer; such employees do not earn creditable service towards a retirement benefit.⁵¹

Effect of the Bill on the FRS

The bill makes changes to the FRS; however, benefits of current members and retirees are not affected by changes in this bill. In addition, employees initially enrolled in the FRS before July 1, 2015, will not have their retirement choices affected.

Effective July 1, 2015, the bill makes the following changes to the FRS:

- Increases the vesting period for members newly enrolled in the pension plan from eight years to 10 years;
- Increases the regular disability vesting period for all new enrollees from eight years to 10 years;
- Prohibits members initially enrolled in a position covered by the Elected Officers' Class or Senior Management Service Class from participating in the pension plan and requires participation in the investment plan;
- Changes the default from the pension plan to the investment plan for members who do not affirmatively choose a plan;
- Extends the time period for member's to make a plan selection from the last day of the fifth month after the month of hire to the last day of the eighth month after the month of hire;
- Closes the Senior Management Service Optional Annuity Program to new participants; and
- Prohibits elected officials from joining the Senior Management Service Class in lieu of participation in the Elected Officers' Class.

⁴⁹ Sections 121.091(13)(a)1. and 121.122(1)(b), F.S.

⁵⁰ Section 121.122(2), F.S.

⁵¹ According to a document received from the SBA on April 21, 2014 (on file with the State Affairs Committee).

Elected Officers' Class and Senior Management Service Class

The bill provides that members initially enrolled in the FRS on or after July 1, 2015, in a position covered by the Elected Officers' Class or Senior Management Service Class may not participate in the pension plan. Instead of having a choice between two plans, such members must participate in the investment plan and may not utilize a second election option to become a member of the pension plan. Investment plan membership continues even if subsequent employment results in the member becoming covered by another membership class.

For a member initially enrolled in the FRS on or after July 1, 2015, in a position covered by another class, the member may choose to participate in the pension plan or the investment plan. If the member chooses to participate in the pension plan and subsequently participates in a position covered by the Elected Officers' Class or Senior Management Service Class, the member may continue to participate in the pension plan. Therefore, the prohibition against participation in the pension plan only affects members initially enrolling in the FRS on or after July 1, 2015, in positions covered by the Elected Officers' Class or Senior Management Service Class.

Default

Members initially enrolled on or after July 1, 2015, have until the last day of the eighth month after the month of hire to choose between participation in the investment plan or pension plan, except that members of the Elected Officers' Class and Senior Management Service Class may not participate in the pension plan. If the member does not make a selection, the member will default to the investment plan.

Vesting

For members initially enrolled in the FRS Pension Plan on or after July 1, 2015, the bill extends the vesting period from eight years to 10 years of creditable service. The vesting period for members of the investment plan remains at one year of creditable service.

The bill also extends the disability vesting period for non-duty disability from eight years to 10 years for all members initially enrolled in the FRS on or after July 1, 2015.

Optional Retirement Programs

The bill closes the Senior Management Service Optional Annuity Program to new members on July 1, 2015. Any member may elect to participate in the annuity program before July 1, 2015, and members currently enrolled in the annuity program may continue to participate in that program. However, no new members may join the program on or after July 1, 2015.

Elected Officials

The bill prohibits elected officials from joining the Senior Management Service Class in lieu of participating in the Elected Officers' Class. Because the Senior Management Service Optional Annuity Program will not be offered on or after July 1, 2015, elected officers will no longer be able to switch service classes for the purpose of participating in the optional annuity program. Instead, elected officials can participate in the FRS or withdraw from the system.⁵²

Renewed Membership

Effective January 1, 2015, the bill creates a limited exception to the prohibition against renewed membership in the FRS. In order to qualify for renewed membership in the investment plan, a member:

- Must be a retiree of the investment plan, Senior Management Service Optional Annuity Program, State University System Optional Retirement Program (SUSORP), or State Community College System Optional Retirement Program (SCCSORP);
- Had to retire before July 1, 2010;
- Had to earn less than 10 years of creditable service; and
- Must be employed in a regularly established position with a covered employer on or after January 1, 2015.

⁵² Members of the Elected Officers' Class may withdraw from the FRS. Section 121.052(3), F.S.

The bill provides that a retiree of the investment plan or an optional retirement program, regardless of membership class, will become a renewed member of the Regular Class of the investment plan, unless employed in a position eligible for participation in the SUSORP or the SCCSORP. If the retiree is employed in a position eligible for participation in the SUSORP or the SCCSORP, the retiree must participate as a renewed member in the optional retirement program rather than the investment plan.

The bill provides that a renewed member is not eligible to receive disability retirement benefits. In addition, the renewed member must satisfy the vesting requirements of the plan.

The bill also provides that creditable service, including credit towards the HIS, does not accrue for a retiree's employment in a regularly established position with a covered employer from July 1, 2010, through December 31, 2014. Nor may employer or employee contributions be paid into a renewed member's account for employment with a covered employer during this time period.

CHAPTERS 175 AND 185, F.S., MUNICIPAL FIREFIGHTERS' AND POLICE OFFICERS' PENSION PLANS

Background

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.⁵³

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.⁵⁴ 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 municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$72.4 million.⁵⁵

⁵³ See ss. 175.021(1) and 185.01(1), F.S.

⁵⁴ Section 175.101, F.S.

⁵⁵ 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).

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.⁵⁶ 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.⁵⁷

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 by firefighter and police officer pension plans⁵⁸ 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 law plans established by the cities of Jacksonville, Coral Gables, Miami, and Miami Beach.⁵⁹ 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

⁵⁶ Section 185.08, F.S.

⁵⁷ *Supra* at FN 55.

⁵⁸ Sections 175.162, 175.191, 185.16, and 185.18, F.S.

⁵⁹ 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, Miami, and Miami Beach.

the municipality, and in addition to those in existence for firefighters and police officers on March 12, 1999.⁶⁰

Until August 2012, DMS 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, DMS responded to a letter from the City of Naples, Florida, advising that its ongoing interpretation of s. 185.35(2), F.S., “appears inaccurate.”⁶¹ DMS 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, DMS 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, DMS’ 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.⁶² 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 on Municipal Firefighter and Police Officer Pension Plans

Definitions

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

- “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

⁶⁰ See ss. 175.351(2)(b) and 185.35(2)(b), F.S.

⁶¹ A copy of the letter is on file with the State Affairs Committee.

⁶² Chapter 2011-216, L.O.F.

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 chapter 175 or 185, F.S.
- Premium tax revenues in excess of the amount received in calendar year 2013 must be used as follows:
 - Fifty 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
 - Fifty 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. If this amount exceeds the cost to pay for the extra benefits, then:
 - Fifty percent must be used to fund minimum chapter benefits or other benefits in excess of the minimum benefits as determined by the municipality; and
 - Fifty percent must be used to fund a defined contribution component of the plan.
- Accumulations of additional tax revenues that have not otherwise been applied must be used to fund extra benefits as follows:
 - Fifty percent must be used to fund a defined contribution component of the plan; and
 - Fifty percent must be applied towards paying any accrued unfunded actuarial liability of the 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. However, a plan operating with a mutual consent agreement that does not meet a minimum benefit as of October 1, 2012, may continue to provide the benefit at the same level as provided on October 1, 2012, and all other benefit levels must continue to meet the minimum benefit levels. 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 DMS Interpretation

The bill provides that notwithstanding the provisions of chapter 175 or 185, F.S., a plan that has relied on an interpretation of DMS on or after August 14, 2012, and before March 4, 2014, may continue to implement proposed changes in reliance on that interpretation.⁶³ Such reliance must be evidenced by a written collective bargaining proposal or agreement, or formal correspondence between the municipality or district and DMS that 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 by plan provisions. The provision currently provides that overtime may not be limited to less than 300 hours per officer per calendar year.

MISCELLANEOUS PROVISIONS IN THE BILL

The bill provides a statement of important state interest. It provides that a proper and legitimate state purpose is served, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

The bill also conforms cross-references.

⁶³ 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).

B. SECTION DIRECTORY:

Section 1 amends s. 121.021, F.S., revising the definition of “vested” or “vesting”; providing that a member initially enrolled in the FRS Pension Plan after a certain date is vested after 10 years of creditable service.

Section 2 amends s. 121.051, F.S., providing for compulsory membership in the FRS Investment Plan for employees in the Elected Officers’ Class or the Senior Management Service Class initially enrolled on or after a specified date; conforming cross-references to changes made by the act.

Section 3 amends s. 121.052, F.S., prohibiting members of the Elected Officers’ Class from joining the Senior Management Service Class on a specified date.

Section 4 amends s. 121.053, F.S., authorizing renewed membership in the retirement system for retirees who are reemployed in a position eligible for the Elected Officers’ Class under certain circumstances.

Section 5 amends s. 121.055, F.S., authorizing renewed membership in the retirement system for retirees of the Senior Management Service Optional Annuity Program who are reemployed on or after a specified date; prohibiting an elected official eligible for membership in the Elected Officers’ Class from enrolling in the Senior Management Service Class or in the Senior Management Service Optional Annuity Program; closing the Senior Management Service Optional Annuity Program to new members after a specified date.

Section 6 amends s. 121.091, F.S., providing that certain members are entitled to a monthly disability benefit; revising provisions to conform to changes made by the act.

Section 7 amends s. 121.122, F.S., requiring that certain retirees who are employed on or after a specified date be renewed members in the investment plan; providing exceptions; providing that creditable service does not accrue for a reemployed retiree during a specified period; prohibiting certain funds from being paid into a renewed member’s investment plan account for a specified period of employment; requiring the renewed member to satisfy vesting requirements; prohibiting a renewed member from receiving disability benefits; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions to the member’s investment plan account; providing for the administration of the employer and employee contributions; prohibiting the purchase of past service in the investment plan during certain dates; authorizing a renewed member to receive additional credit toward the HIS under certain circumstances; providing that a retiree employed on or after a specified date in a regularly established position eligible for the SUSORP is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program during certain dates; providing that a retiree employed on or after a specified date in a position eligible for the SCCSORP is a renewed member of that program; specifying requirements and limitations; requiring the employer and the retiree to make applicable contributions; prohibiting the purchase of past service in the program during certain dates.

Section 8 amends s. 121.4501, F.S., requiring certain employees initially enrolled in the FRS on or after a specified date to be compulsory members of the investment plan; revising the definition of “member” or “employee”; revising a provision relating to acknowledgment of an employee’s election to participate in the investment plan; placing certain employees in the pension plan from their date of hire until they are automatically enrolled in the investment plan or timely elect enrollment in the pension plan; providing certain members with a specified time to choose participation in the pension plan or investment plan; specifying that a retiree who has returned to covered employment before a specified date may continue membership in his or her selected retirement plan; conforming a provision to changes made by the act; providing for the transfer of certain contributions; revising a provision relating to the acknowledgement of an employee’s election to participate in the investment plan; revising the education component; conforming provisions and cross-references to changes made by the act.

Section 9 amends s. 121.591, F.S., increasing the service time required to qualify for disability benefits to 10 years for members enrolled in the investment plan on or after a specified date.

Section 10 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 11 amends s. 175.032, F.S., revising definitions to conform to changes made by the act and providing new definitions.

Section 12 amends s. 175.071, F.S., conforming a cross-reference.

Section 13 amends s. 175.091, F.S., revising the method of creating and maintaining a firefighters' pension trust fund.

Section 14 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 15 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 16 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 17 amends s. 185.02, F.S., revising definitions to conform to changes made by the act and adding new definitions.

Section 18 amends s. 185.06, F.S., conforming a cross-reference.

Section 19 amends s. 185.07, F.S., revising the method of creating and maintaining a police officers' retirement trust fund.

Section 20 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 21 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 22 amends s. 238.072, F.S., conforming cross references.

Section 23 amends s. 413.051, F.S., conforming cross references.

Section 24 provides a declaration of important state interest.

Section 25 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:

See Fiscal Comments.

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:

Florida Retirement System

During the 2013 Legislative Session, the Milliman actuarial and consulting firm conducted several actuarial studies at the request of the Speaker of the House of Representatives and the President of the Senate. The purpose of the studies was to determine the fiscal impact of requiring new enrollees who participate in the Elected Officers' Class or Senior Management Service Class to participate in the investment plan, increasing the vesting period for the pension plan, and changing the default for employees who fail to make a plan selection. The studies provided a comparison between continuing the current plan and making the above changes to the FRS.

The relevant 2013 studies were compared to determine the projected fiscal impact of this bill, because no major changes have been made to the FRS since those studies were performed. However, this bill may not necessarily produce the same projected midterm and long term results as predicted in the relevant 2013 studies.

Based on the results of the comparison between the applicable studies, the bill is projected to have no fiscal impact in fiscal year 2014-15. The projected (costs)/savings for select subsequent years are summarized in the table below (in millions \$):

Employer Funded by State	FY 2014-15		FY 2015-16		FY 2016-17		FY 2017-18		FY 2018-19	
	GR	TF	GR	TF	GR	TF	GR	TF	GR	TF
State	-	-	0.1	0.1	(0.1)	(0.1)	1.0	0.9	1.9	1.9
School Boards	-	-	-	-	-	-	6.4	-	9.6	-
State Universities	-	-	-	-	-	-	1.1	-	1.7	-
State Colleges	-	-	-	-	-	-	0.5	-	0.8	-
Total	-	-	0.1	0.1	(0.1)	(0.1)	9.0	0.9	14.0	1.9
Employers Not Funded by State										
Counties	-	-	0.3	-	(0.6)	-	2.2	-	4.6	-
Cities/Other	-	-	-	-	(0.1)	-	0.7	-	1.1	-
Subtotal	-	-	0.3	-	(0.7)	-	2.9	-	5.7	-
Grand Total	-	-	0.4	0.1	(0.8)	(0.1)	11.9	0.9	19.7	1.9

Employer Funded by State	FY 2019-20		FY 2024-25		FY 2029-30		FY 2034-35		FY 2039-40	
	GR	TF	GR	TF	GR	TF	GR	TF	GR	TF
State	3.4	3.4	14.8	14.8	35.6	35.5	75.9	75.9	178.1	178.1
School Boards	17.1	-	68.4	-	168.6	-	372.2	-	877.5	-
State Universities	3.0	-	13.8	-	39.2	-	89.8	-	208.3	-
State Colleges	1.4	-	5.8	-	14.5	-	32.0	-	74.5	-
Total	24.9	3.4	102.8	14.8	257.9	35.5	569.9	75.9	1,338.4	178.1
Employers Not Funded by State										
Counties	8.5	-	41.2	-	106.0	-	244.7	-	604.6	-
Cities/Other	2.0	-	8.5	-	21.8	-	48.2	-	113.2	-
Subtotal	10.5	-	49.7	-	127.8	-	292.9	-	717.8	-
Grand Total	35.4	3.4	152.5	14.8	385.7	35.5	862.8	75.9	2,056.2	178.1

The comparison of the actuarial studies projects increasing savings over the long-term for a total cumulative savings of \$28.6 billion. However, the actuary cautioned that projections become increasingly unreliable, particularly after the fifth year. Variances from plan assumptions invariably occur which may become magnified over time. Nonetheless, the rates produced by the comparative analysis to the baseline plan, using the same assumptions, yield the above theoretical savings.

Renewed Membership

The bill creates a limited exception to renewed membership in the FRS and provides that upon renewed membership or reemployment of a retiree, the employer and the retiree must pay the applicable employer and employee contributions. Thus, employers participating in the FRS that hire employees eligible for renewed membership will incur greater personnel costs associated with contributing to the FRS. Likewise, the renewed members will contribute three percent of their salaries to the FRS.

Chapters 175 and 185, F.S., Municipal Firefighters' and Police Officers' Pension Plans

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 FRS, 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:

The mandates provision of Art. VII, s. 18, of the State Constitution may apply because this bill requires cities and counties to spend money or take an action that requires the expenditure of money; however, an exception applies as the Legislature has determined that this bill satisfies an important state interest. In addition, similarly situated persons are all required to comply.

2. Other:

Actuarial Requirements: Public Pension Plans

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.

Contractual Obligations: Florida Retirement System

Article I, s. 10 of the State Constitution prohibits any bill of attainder, ex post facto law, or law impairing the obligation of contracts from being passed by the Florida Legislature.

The Florida Statutes provide that the rights of members of the FRS are of a contractual nature, entered into between the member and the state, and such rights are legally enforceable as valid contractual rights and may not be abridged in any way.⁶⁴ This "preservation of rights" provision⁶⁵ was established by the Florida Legislature with an effective date of July 1, 1974.

The Florida Supreme Court has held that the Florida Legislature may only alter the benefits structure of the FRS prospectively.⁶⁶ The prospective application would only alter future benefits. Those benefits previously earned or accrued by the member, under the previous benefit structure, remain untouched and the member continues to enjoy that level of benefit for the period of time up until the effective date of the proposed changes. Further, once the participating member reaches retirement status, the benefits under the terms of the FRS in effect at the time of the member's retirement vest.⁶⁷

⁶⁴ Section 121.011(3)(d), F.S.

⁶⁵ The "preservation of rights" provision vests all rights and benefits already earned under the present retirement plan so the legislature may now only alter the benefits prospectively. *Florida Sheriffs Association v. Department of Administration, Division of Retirement*, 408 So.2d 1033, 1037 (Fla. 1981).

⁶⁶ *Id.* at 1035.

⁶⁷ *Id.* at 1036.

The Florida Supreme Court further held that the “preservation of rights” provision was not intended to bind future legislatures from prospectively altering benefits which accrue for future state service.⁶⁸ More recently, the Florida Supreme Court reaffirmed the previous holding, finding that the Legislature can alter the terms of the FRS, so long as the changes to the FRS are prospective.⁶⁹

This bill does not change any benefits that a FRS member earned prior to July 1, 2015. In fact, members enrolled in the FRS before July 1, 2015, should experience no change in the benefits available under the FRS. The bill only changes the FRS system for new enrollees, enrolling in the system on or after July 1, 2015.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Other Comments:

The bill combines HB 7173, relating to the Florida Retirement System, and HB 7179, relating to local government pension reform. This bill is substantively identical to those bills, except that this bill also includes a limited exception to the prohibition on renewed membership in the FRS.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 21, 2014, the State Affairs Committee adopted one amendment and reported PCB SAC 14-06 favorably as amended. The amendment created a limited exception to the prohibition on renewed membership in the FRS. The amendment specified that in order to qualify for renewed membership in the investment plan, the member:

- Must be a retiree of the investment plan, Senior Management Service Optional Annuity Program, State University System Optional Retirement Program, or State Community College System Optional Retirement Program;
- Had to retire before July 1, 2010;
- Had to have earned less than 10 years of creditable service; and
- Must be employed in a regularly established position with a covered employer on or after January 1, 2015.

The amendment provided that a retired member, regardless of membership class, will become a member of the Regular Class of the investment plan. It also provided for limited renewed membership in the optional retirement programs and specified requirements.

This analysis is drafted to the proposed committee bill as amended by the State Affairs Committee.

⁶⁸ *Id.* at 1037.

⁶⁹ *Rick Scott, et al. v. George Williams, et al.*, 107 So.3d 379 (Fla. 2013).