

**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 538

INTRODUCER: Senator Baker

SUBJECT: Firefighter and Municipal Police Pensions

DATE: April 2, 2009

REVISED: 04/07/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	<b>Fav/6 amendments</b>
2.	Wilson	Wilson	GO	<b>Fav/3 amendments</b>
3.			GA	
4.			WPSC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/>            | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input checked="" type="checkbox"/> | Significant amendments were recommended |

**I. Summary:**

The bill revises provisions relating to firefighter and municipal police pensions for purposes of determining prior service credit and terms of office for members of both pension plan boards. Both boards are authorized to increase plan asset investments in foreign securities on a market-value basis, and the bill clarifies the boundaries of special fire control districts which have been annexed for purposes of assessments and the imposition of excise taxes on insurance premiums. Revisions are made to audit and compliance requirements and plan beneficiaries are authorized to change the designated joint annuitant or beneficiary up to two times without approval of the pension plan board. The bill clarifies plan termination provisions to provide that accrued benefits are nonforfeitable.

The bill authorizes municipalities to receive another municipality's state premium (excise tax) moneys if there is an interlocal agreement in place regarding the provision of police protection services. The municipality receiving the services may enact an ordinance levying an excise tax on casualty insurance premiums covering property within its corporate limits.

This bill substantially amends the following sections of the Florida Statutes: 173.032, 175.061, 175.071, 175.101, 175.171, 175.361, 185.02, 185.03, 185.05, 185.06, 185.08, 185.161, and 185.37.

## II. Present Situation:

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

In establishing chapters 175 and 185, Florida Statutes, the Legislature found and declared that it as a proper and legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, and that in implementing the provisions of s. 14, Art. X of the State Constitution, such retirement systems or plans be managed, administered, operated, and funded in such a way as to maximize the protection of firefighters’ and police officers’ retirement trust funds.<sup>1</sup> The Municipal Police Officers’ Retirement Trust Fund and the Firefighters’ Pension Trust Fund are housed within the Division of Retirement in the Department of Management Services, which is the state agency responsible for administrative oversight of the funds, including monitoring for actuarial soundness.

**Firefighters’ Pension Trust Fund (FPTF)** - The FPTF is funded through an excise tax on property insurance policies. Up to 1.85 percent of the gross amount of receipts on premiums for policies issued within the municipality boundary or the legally defined boundary of a special fire control district is collected by the Department of Revenue and transferred to the appropriate fund at the Division of Retirement. In 2007, premium tax distributions to cities and special fire control districts from the FPTF amounted to \$70 million.<sup>2</sup>

**Municipal Police Officers’ Retirement Trust Fund (PORTF)** - The PORTF is funded through an excise tax on casualty insurance policies. Up to .85 percent of the gross amount of receipts on premiums for policies issued within the municipality boundary is collected by the Department of Revenue and transferred to the appropriate fund at the Division of Retirement. In 2007, premium tax distributions to municipalities from the PORTF amounted to \$65.3 million.<sup>3</sup>

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

**Insurance Premium Tax** - Section 624.509, F.S., provides that each insurer must annually pay a tax on specified insurance premiums received during the preceding calendar year. An amount equal to 1.75 percent of the gross amount of receipts on the specified policies must be submitted to the Department of Revenue for distribution to 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 the firefighter and police pension funds. Each time a municipality that is currently not imposing the tax enacts an ordinance to impose the tax, a credit is taken by the insurer against the tax paid to the department for deposit into the General Revenue Fund.

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<sup>1</sup> Fla. Stat. 175.01(1), 185.01(1) (2006)

<sup>2</sup> [https://www.rol.frs.state.fl.us/forms/Fire\\_2007.pdf](https://www.rol.frs.state.fl.us/forms/Fire_2007.pdf) (February 2009)

<sup>3</sup> [https://www.rol.frs.state.fl.us/forms/Police\\_2007.pdf](https://www.rol.frs.state.fl.us/forms/Police_2007.pdf) (February 2009)

**Board of Trustees** - On a day-to-day basis, the funds in participating cities and special fire control districts are operated by a governing board of trustees created at the local level and consisting of two residents, two police officers or firefighters selected through the active membership, and one member selected by the other four who is approved by the appropriate governing body pro forma. Board members serve 2-year terms and may succeed themselves in office. By majority vote, the trustees must elect a chair and a secretary, and must at least hold quarterly meetings. The Division of Retirement has regulatory oversight over the boards.

General powers and duties of the boards of trustees include investing and reinvesting assets in:

- Annuities and life insurance contracts;
- Time or savings accounts of specified banks and financial institutions;
- Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States;
- Bonds issued by the State of Israel;
- Bonds (which must hold a rating in one of the three highest classifications by a major rating service), stocks, and other indebtedness issued or guaranteed by a United States Corporation; and
- Foreign securities not to exceed 10 percent of plan assets.

**Board of Trustees of the Town of Lake Park Firefighters' Pension Plan v Town of Lake Park, Florida** (966 So.2d 448)

In 2002, the Town of Lake Park and Palm Beach County entered into a local agreement for fire protection. As part of the agreement, the county agreed to provide fire and emergency medical services to the Town of Lake Park, and also agreed to hire all of the town's firefighters as county employees. On the effective date of the interlocal agreement, all of the firefighters became mandatory members of the Florida Retirement System. The Town of Lake Park Firefighters' Pension Plan was terminated, all contributions to the plan stopped, and the pension plan's board of trustees decided that accrued benefits should be paid to the plan members in the form of lump sum distributions. The plan's actuary determined that the plan asset value was less than the value of the accrued benefits, and the board of trustees asked the Town of Lake Park to pay the \$2 million difference. The Town of Lake Park disagreed and filed a complaint for declaratory relief. The board of trustees responded with a countersuit claiming that the town violated Florida Statutes, and violated the interlocal agreement.

The trial court found in favor of the Town of Lake Park and declared that the town had no obligation to fund the plan's actuarial shortfall because the statute provided for less than full payment to certain plan members. The board of trustees appealed to the 4th District Court of Appeals which overturned the lower court ruling and declared that the board of trustees had the sole authority to choose the method of distributing the plan assets, and the board followed the proper statutory procedure for distributing the assets available at the time of termination. In addition, the statute provides that benefits accrued to the date of termination cannot be forfeited.<sup>4</sup> Finally, because the Town of Lake Park decided to enter into the interlocal agreement with Palm Beach County which resulted in the pension plan being terminated, there could be no impairment

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<sup>4</sup> s. 175.361, F.S.

or reduction in benefits or other pension rights accruing to any firefighter who was a plan member.<sup>5</sup>

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 175.032, F.S., to clarify the definition of “creditable service” or “credited service” to provide that a municipality or a fire control district may allow the purchase of prior service as a firefighter for federal, other state, or county service if such prior service is recognized by the Division of State Fire Marshall as provided under chapter 633, or if the firefighter provides proof to the local pension plan board of trustees that such service is equal to the service required under the statutory definition of a “firefighter.”

The definition of “firefighter” is revised to include all certified supervisory and command personnel whose duties include the supervision, training, guidance and management responsibilities of full-time, part-time, or auxiliary firefighters. Part-time firefighters and auxiliary firefighters are excluded.

**Section 2.** Amends s. 175.061, F.S., to provide that the term of office for appointed or elected members of each firefighter pension board can be extended from 2 to 4 years through enactment of a municipality ordinance, a special act of the Legislature, or a resolution adopted by the governing board of a special fire control district. Specifies that the length of the terms of office must be the same for all members of the board. Expands the ability of the pension plan board to withhold from retirement payments those funds necessary to pay premiums for accident, health, and long-term care insurance for retirees, their spouses, and dependents.

**Section 3.** Amends s. 175.071, F.S., to provide that drafts upon the pension trust fund can be signed by two individuals designated by the firefighter pension board who are subject to the same fiduciary standards as required for board members. Authorizes the pension board to invest up to 25 percent of plan assets in foreign securities on a market-value basis.

**Section 4.** Amends s. 175.101, F.S., to provide that when a portion of a special fire control district is annexed, the district may continue to receive state excise tax revenues on property insurance premiums until the completion of the 4-year period provided in s. 171.093(4), F.S., or until the completion of an agreed upon extension, or execution of an interlocal agreement pursuant to s. 171.093(3), F.S.

**Section 5.** Amends s. 175.171, F.S., to clarify that a retired firefighter may change a designation of joint annuitant or beneficiary up to two times without the approval of the pension board or without the approval of the prior joint annuitant or beneficiary. The retiree may not be required to provide proof of good health of the annuitant or beneficiary being removed, and the annuitant or beneficiary being removed need not be living.

**Section 6.** Amends s. 175.361, F.S., to repeal apportionment provisions relating to assets distributed upon plan termination, and to codify in statute the ruling of the District Court of Appeals, 4th District, in *Board of Trustees of the Town of Lake Park Firefighters Pension Plan v*

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<sup>5</sup> s. 112.0501, F.S.

*Town of Lake Park.*<sup>6</sup> The pension board must determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after accounting for expenses. The board must inform the municipality or special fire district if additional assets are required, and if so, the municipality or district must continue to financially support the plan until all nonforfeitable benefits have been funded. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if the plan provides for interest, less the value of any plan benefits previously paid to the employee.

**Section 7.** Amends s. 185.02, F.S., to provide that a municipality may allow the purchase of prior service as a police officer for federal, other state, or county service if the prior service is recognized by the Criminal Justice Standards and Training Commission with the Department of Law Enforcement, or if the member provides proof to the pension board that such past service is equal to the service required to meet the statutory definition of a "police officer."

**Section 8.** Amends s. 185.03, F.S., to allow a municipality to receive another municipality's state premium tax moneys if there is an interlocal agreement in place to provide police protection services for a period of 12 months or more. A municipality receiving police protection services from another municipality is authorized to enact an ordinance levying an excise tax as provided in s. 185.08, F.S. The municipality providing police protection services must notify the state's Division of Retirement at the Department of Management Services that it has entered into an interlocal agreement with another municipality. Upon receipt of a copy of the ordinance and the interlocal agreement, the division is authorized to distribute premium taxes reported for the municipality levying the tax and receiving the police protection services to the municipality providing the services.

**Section 9.** Amends s. 185.05, F.S., to provide that the terms of office of appointed and elected members of each police pension board can be extended from 2 to 4 years through enactment of a city ordinance or by special act of the Legislature. Specifies that the length of the terms of office must be the same for all board members. The plan trustees may also authorize payroll deduction privileges for the provision of post-retirement supplemental insurance products for retirees, their spouses, and dependents.

**Section 10.** Amends s. 185.06, F.S., to allow a police pension board to invest up to 25 percent of plan assets in foreign securities on a market-value basis, and to allow the board to designate two individuals, in addition to the board's chair and secretary, to sign drafts drawn on the pension trust fund. The two individuals are subject to the same fiduciary standards as the pension board members.

**Section 11.** Amends s. 185.08, F.S., to provide that the authority of municipalities to impose an insurance premium excise tax to fund police pension plans extends to municipalities that have entered into an interlocal agreement to receive police protection services. The tax may be levied on insurance policies covering property located within the corporate limits of the municipality receiving the services but is available for distribution to the municipality providing the services.

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<sup>6</sup> 966 So.2d 448

**Section 12.** Amends s. 185.161, F.S., to clarify that a retired police officer may change a designation of joint annuitant or beneficiary up to two times without the approval of the pension board members or the prior joint annuitant or beneficiary. The retiree may not be required to provide proof of good health or the annuitant or beneficiary being removed, and the removed annuitant or beneficiary need not be living.

**Section 13.** Amends s. 185.37, F.S., to repeal apportionment provisions relating to assets distributed upon plan termination, and to codify in statute the ruling of the District Court of Appeals, 4th District, in *Board of Trustees of the Town of Lake Park Firefighters Pension Plan v Town of Lake Park*.<sup>7</sup> The police pension board must determine the date of distribution and the asset value required to fund all the nonforfeitable benefits after accounting for expenses. The board must inform the municipality if additional assets are required, and if so, the municipality must continue to financially support the plan until all nonforfeitable benefits have been funded. The actuarial single-sum value may not be less than the employee's accumulated contributions to the plan, with interest if the plan provides for interest, less the value of any plan benefits previously paid to the employee.

**Section 14.** Provides that if enacted into law, the act shall take effect July 1, 2009.

#### 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:

**State:** This bill will have a minimal, negative fiscal impact on the state's General Revenue Fund by allowing additional municipalities to receive a share of the premium

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<sup>7</sup> 966 So.2d 448

tax revenues to fund their local police pension plans. It is unknown how many municipalities are affected by this bill, and therefore, the fiscal impact is indeterminate.

**Local:** Municipalities who provide police services to other municipalities under an interlocal agreement are eligible to receive the premium tax revenues due to the municipality receiving the services. Additional administrative costs may be incurred by the municipality providing the police services.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

In 2005, the Legislature enacted 2005-205, Laws of Florida, which authorized municipalities to receive excise taxes for firefighter pension plans from another municipality if there is an interlocal agreement in place to provide for fire protection services and the municipality receiving the services is levying or enacts an ordinance to levy the excise tax.

The bill provides that firefighters and police officers may receive credit for prior service under certain conditions. One of the conditions is that the firefighter or officer may provide proof to the pension board that the service for which credit is being applied is equal to the service required by firefighters and police officers under Florida law. No guidelines are provided for what constitutes “proof” which may result in different requirements for “proof” being applied by the individual pension boards.

#### **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:**

**Barcode 907414 By Governmental Oversight and Accountability on April 7, 2009:**  
Amends s. 121.4501, F.S., to provide that investment products offered to participants in the Florida Retirement System’s Defined Contribution Program (the Investment Plan) must effect compliance with s. 215.473, F.S, on the divestiture of assets with companies doing business with Sudan or Iran. (WITH TITLE AMENDMENT)

**Barcode 691514 by Governmental Oversight and Accountability on April 7, 2009:**  
Amendment to Barcode 289978 which provides a delayed effective date for divestiture until September 30, 2010.

**Barcode 952056 by Governmental Oversight and Accountability on April 7, 2009:**  
Amendment to Barcode 410350 which provides delayed effective date for divestiture until September 30, 2010.

**Barcode 929624 by Community Affairs on March 3, 2009:**

Updates references in the bill to change “joint pensioner” to “joint annuitant” to conform with the provisions of sub-paragraph (1)(c)4. being created in s. 175.171, F.S. (WITH TITLE AMENDMENT)

**Barcode 158558 by Community Affairs on March 3, 2009:**

Updates references in the bill to change “joint pensioner” to “joint annuitant” to conform with the provisions of sub-paragraph (1)(c) being created in s. 185.161, F.S. (WITH TITLE AMENDMENT)

**Barcode 289978 by Community Affairs on March 10, 2009:**

Provides that the investment cap on foreign securities may only be amended by general law. Requires the firefighter pension board of trustees to divest of scrutinized companies by March 1, 2010. (WITH TITLE AMENDMENT)

**Barcode 410350 by Community Affairs on March 10, 2009:**

Provides that the investment cap on foreign securities may only be amended by general law. Requires the police pension board of trustees to divest of scrutinized companies by March 1, 2010. (WITH TITLE AMENDMENT)

**Barcode 123552 by Community Affairs on March 10, 2009:**

Provides that for a 2-year period and only for firefighter pension plans that are not fully funded, cities and special fire control districts may use additional premium taxes received in excess of the amount needed to comply with minimum benefit requirements and for extra benefits implemented prior to July 1, 2009, to reduce their required contribution to the pension plan. (WITH TITLE AMENDMENT)

**Barcode 839958 by Community Affairs on March 10, 2009:**

Provides that for a 2-year period and only for police pension plans that are not fully funded, cities may use additional premium taxes received in excess of the amount needed to comply with minimum benefit requirements and for extra benefits implemented prior to July 1, 2009, to reduce their required contribution to the pension plan. (WITH TITLE AMENDMENT)