



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 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>

Sections 175.351 and 185.35, F.S., specify that in order to participate in the distribution of the premium tax funds, local law plans must meet the minimum benefits and minimum standards set forth in Chapters 175 and 185, F.S. This determination is made by the DMS Division of Retirement.

### **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:

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<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.

<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 Feb. 8, 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.

- 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 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:

**Sections 1 and 3** respectively amend sections 175.351 and 185.35, F.S., by providing the following provision in both sections:

Notwithstanding any other provision, with respect to any plan established under this chapter, if the municipality or special fire control district and the plan members' collective bargaining representative or, if none, a majority of the plan members, mutually consent to the retirement benefits provided in the plan or to the use of income from the premium tax provided pursuant to this chapter, the provisions of the agreement shall be deemed to comply with this chapter for retirement purposes. This subsection is retroactive in application to any agreement entered into or effective on or after October 1, 2010.

This provision appears designed to allow municipalities and their plan members to mutually agree to changes in retirement benefits without putting premium tax revenues at risk by a determination by the Division of Retirement that the plan does not meet the minimum benefits and standards requirements of Chapters 175 and 185, F.S.

**Section 2** amends s. 185.02(4), F.S., by providing that for service prior to July 1, 2011, the amount of overtime to be used in the retirement benefit calculation may not be less than 300 hours per officer per calendar year "unless a smaller number of hours is mutually agreed to by the collective bargaining representative and municipality." For service after July 1, 2011, up to 300 hours per year in overtime compensation may be included "unless a smaller number of hours is mutually agreed to by a majority of the plan members and the municipality."

This language appears to require a mutual agreement between the municipality and collective bargaining unit or plan members, in order to include less than 300 hours of overtime in the retirement calculation.

**Section 4** provides a statement of important state interest.

**Section 5** provides an effective date of July 1, 2012.

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

Article VII, Section 18(a) of the Florida Constitution states that no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest. None of the constitutional exceptions apply.

However, subsection (d) of Section (18) provides an exemption for general laws having an insignificant fiscal impact. Laws determined to have an “insignificant fiscal impact,” means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.88 million for FY 2010-2011). No current revenue estimate is available for this bill; however, if the costs incurred by municipalities are greater than \$1.88 million, the law may be unenforceable unless the bill contains a finding of an important state interest and it is passed by a two-thirds vote of the membership of each house of the Legislature. The bill contains a finding of important state interest.

**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:**

Indeterminate.

**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.)

**CS by Governmental Oversight and Accountability on February 1, 2012:**

The CS allows municipalities and their firefighter and police plan members to mutually agree to changes in retirement benefits without putting premium tax revenues at risk, and requires a mutual agreement between a municipality and collective bargaining unit or plan members in police pension plans, in order to include less than 300 hours of overtime in the retirement calculation.

- B. **Amendments:**

None.