

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 365 Public Employees  
**SPONSOR(S):** Costello and others  
**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 910

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	7 Y, 6 N, As CS	Meadows	Williamson
2) Community & Military Affairs Subcommittee			
3) Appropriations Committee			
4) State Affairs Committee			

### SUMMARY ANALYSIS

The Municipal Firefighters' Pension Trust Fund and the Police Officers' Retirement Trust Fund were created to provide a uniform retirement system for the benefit of firefighters, who are employed by a municipality or special fire district, and for municipal police officers.

The bill provides that municipalities having their own police officer and firefighter pension plans will be deemed compliant with chapters 175 and 185, F.S., if they come to an agreement on retirement benefits or to the use of income from the premium tax with the pension plan members' collective bargaining representative or, if there is no representative, a majority of the members. This provision also applies to a special fire control district with a firefighter pension plan. The bill provides for a retroactive application of this provision to any agreement that was entered into or effective on or after October 1, 2010.

The bill revises the definition of "compensation" or "salary." It removes a provision that provided that the limit of overtime may not be less than 300 hours per year for noncollectively bargained service earned before July 1, 2011, or for service earned under a collectively bargained agreement in place before July 1, 2011.

The bill provides a declaration of important state interest.

The bill may have a fiscal impact on local governments.

The bill provides an effective date of upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

###### State Constitution: Governmental Unit Retirement and Pension Systems

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.

###### Florida Statutes: 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 or operating a retirement system for public employees, which is funded in whole or in part by public funds.

A unit of local government may not agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system and furnished a copy of such statement to the Division of Retirement (division) in the Department of Management Services.<sup>1</sup> The statement also is required to indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

###### Municipal Firefighters’ Pension Trust Fund and Police Officers’ Retirement Trust Fund

The Marvin B. Clayton Firefighters’ and Police Officers’ Pension Trust Fund Acts<sup>2</sup> 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.<sup>3</sup>

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., 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.

Funding for these pension plans comes from four sources: net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the “premium tax”), employee contributions, other revenue sources, and mandatory payments by the city of any extra amount needed to keep the plan solvent. 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, but day-to-day operational control rests with local boards of trustees. Most firefighters and police officers participate in these plans.

The Firefighters’ Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on fire insurance companies, fire insurance associations, or other property insurers on the gross amount of

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<sup>1</sup> See s. 112.63, F.S.

<sup>2</sup> See chapters 175 and 185, F.S.

<sup>3</sup> See ss. 175.021(1) and 185.01(1), F.S.

receipts of premiums from policyholders on all premiums collected on property insurance.<sup>4</sup> This excise tax is imposed on the policies located within the municipality or special fire control district. It is payable to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.<sup>5</sup> In 2010, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to \$92.38 million.<sup>6</sup>

The Police Officers' Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amount up to 0.85 percent of the gross receipts on premiums for policies issued within the municipality.<sup>7</sup> 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.<sup>8</sup> In 2010, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$62.52 million.<sup>9</sup>

In 1999, the Legislature passed legislation that made virtually all provisions of chapters 175 and 185, F.S., expressly applicable to all participating police officer and firefighter pension plans. All pension plans falling under these chapters were required to meet specific "minimum benefit" standards. The law required that insurance premium tax revenues, over the amount received for calendar year 1997, 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 the municipality, and in addition to those in existence for firefighters and police officers on March 12, 1999.<sup>10</sup>

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.

#### Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.<sup>11</sup> These taxes must be paid to the DOR on March 1 of each year in an amount equal to 1.75 percent of the gross amount of receipts on the specified policies, and 1.00 percent on annuity policies or contracts, to be distributed into the General Revenue Fund.<sup>12</sup> The insurer is allowed to take credits for the municipal taxes imposed on property and casualty insurance policies used to fund firefighter and police pension trust funds.<sup>13</sup> Each time a municipality that is not imposing the tax enacts an ordinance to impose the tax, a credit is taken by the insurer against the tax paid to DOR for deposit into the General Revenue Fund.

#### 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 current law by Senate Bill 1128 (2011).<sup>14</sup> The provisions for general public retirement systems<sup>15</sup> and firefighter pensions<sup>16</sup> did not have existing provisions allowing any overtime

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<sup>4</sup> Section 175.091(1)(a), F.S.

<sup>5</sup> See s. 175.121, F.S.

<sup>6</sup> Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Firefighters*, available online at: [https://www.rol.frs.state.fl.us/forms/Fire\\_2010.pdf](https://www.rol.frs.state.fl.us/forms/Fire_2010.pdf) (last visited on January 27, 2012).

<sup>7</sup> See s. 185.08, F.S.

<sup>8</sup> See s. 185.10, F.S.

<sup>9</sup> Division of Management Services, *Municipal Police Officers' and Firefighters' Retirement Forms: Facts and Figures Premium Tax Distribution History Police*, available online at: [https://www.rol.frs.state.fl.us/forms/Police\\_2010.pdf](https://www.rol.frs.state.fl.us/forms/Police_2010.pdf) (last visited on January 27, 2012).

<sup>10</sup> See ss. 175.351 and 185.35, F.S.

<sup>11</sup> Section 624.509(1), F.S.

<sup>12</sup> See ss. 624.509(1) and (2), F.S.

<sup>13</sup> Section 624.51055, F.S., states, "[t]here is allowed a credit of 100 percent of ... However, such credit may not exceed 75 percent of the tax due under s. 624.509(1) after deducting such tax deductions for ... credits for taxes paid under ss. 175.101 and 185.08 ..."

<sup>14</sup> See ss. 112.66, 175.032, and 185.02, F.S.

<sup>15</sup> See chapter 112, F.S.

hours to be included in the calculation of retirement benefits. Section 185.02(4), F.S., had the following definition before amendment by Senate Bill 1128 (2011):

“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 passage of Senate Bill 1128 (2011), s. 185.02(4), F.S., 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-Senate Bill 1128 (2011) provision sets the limit at no less than 300 hours, effectively acting as a floor or minimum of 300 hours. The post-Senate Bill 1128 (2011) language has been interpreted to mean that after July 1, 2011, the 300 hour floor has been replaced by a 300 hour cap. The division has not yet taken final agency action on its interpretation of the provision, but appears to be taking the position that Senate Bill 1128 (2011) did not replace the floor with a cap, but supplemented the 300 hour floor with a 300 hour cap. In other words, the employer must include at least 300 hours of overtime in the calculation, but may not include more than 300 hours.

### **Effect of Proposed Changes**

The bill provides that municipalities having their own police officer and firefighter pension plans will be deemed compliant with chapters 175 and 185, F.S., if they come to an agreement on retirement benefits or to the use of income from the premium tax with the pension plan members’ collective bargaining representative or, if there is no representative, a majority of the members. This provision also applies to a special fire control district with a firefighter pension plan. The bill provides for a retroactive application of this provision to any agreement that was entered into or effective on or after October 1, 2010.

The bill revises the definition of “compensation” or “salary.” It removes the provision that provided that the limit of overtime may not be less than 300 hours per year for noncollectively bargained service earned before July 1, 2011, or for service earned under a collectively bargained agreement in place before July 1, 2011. The removal of this provision clarifies that the definition has a maximum cap of 300 hours, with no required minimum.

The bill provides a statement of important state interest.

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<sup>16</sup> See chapter 175, F.S.

The bill provides that the act takes effect upon becoming a law.

**B. SECTION DIRECTORY:**

Section 1 amends s. 175.351, F.S., to revise provisions related to benefits paid from the premium tax by a municipality or special fire control district that has its own pension plan.

Section 2 amends s. 185.02, F.S., to revise the definition of the term “compensation” or “salary” for purposes of police officers’ pensions.

Section 3 amends s. 185.35, F.S., to revise provisions related to benefits paid by a municipality that has its own pension plan.

Section 4 provides a declaration of important state interest.

Section 5 provides an effective date of upon becoming law.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**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:**

With the removal of the 300 hour floor for overtime benefits municipal police pension plans could incur lower pension plan costs with this clarification.

Municipalities and Special Fire Control Districts may see savings from the ability to collectively bargain the use of income from the premium insurance tax.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to

raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

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 chapter 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.

This bill appears to meet the requirements of Article X, s. 14 of the State Constitution.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or require additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 31, 2012, the Government Operations Subcommittee passed the proposed committee substitute for House Bill 365. The committee substitute substantially changed the original bill. The following is a listing of the substantial changes:

- Removes the requirement that a police officer, fire fighter, and correctional officer be less than 37 years old and be employed with the current employer for at least 5 years to be entitled to the disability presumption.
- Removes the requirement that a pre-employment screening apply to correctional officers and correctional probation officers.
- Removes the provision revising the evidentiary level for an employer to rebut the disability presumption from "competent evidence" to "a preponderance of the evidence."
- Removes the provision authorizing the use of risk factors and epidemiological data as considerations in denying or overcoming disability presumptions.
- Removes the provision under chapters 175 and 185, F.S., requiring the board of trustees of a fire or police pension plan to provide a detailed accounting report for each fiscal year.
- Removes the provision requiring the board of trustees of a fire or police pension plan to operate under an administrative budget.
- Removes the provision allowing a municipality or special fire control district to revoke its participation under chapters 175 and 185, F.S.
- Removes the provision providing that plan benefits and the use of the state funds are contingent upon the terms of the collective bargaining agreement, if applicable. In addition, it removes the provision stating that if no new agreement is reached by the end of the contract term, then the benefits will revert to the statutory minimums and the state funds may be used by the municipality or special fire control district to offset the required contributions.

- Maintains the provision allowing firefighters and police officers to elect whether to use the state moneys in the existing defined benefit plan for extra benefits, or place it in a supplemental plan for extra benefits.
- Maintains the requirement that the premium tax monies be used in their entirety to provide “extra benefits.”
- Removes the provision authorizing municipalities and special fire control districts to establish one or more new plans, or benefit levels within a plan, based on a member’s date of hire as long as the new plan or benefit level provides pension benefits that, in the aggregate meet or exceed the minimum benefits set forth, as determined by the plan’s actuary.
- Maintains the provision authorizing the board of trustees to determine the date of distribution and the asset value required to fund the nonforfeitable benefits; determine if additional assets from the plan sponsor are needed; determine the method of distribution of the asset value; and distribute the asset value.
- Adds the provision providing that municipalities and special fire control districts having their own fire or police pension plan will be deemed compliant with chapters 175 and 185, F.S., if they come to an agreement on retirement benefits or to the use of income from the premium tax with the pension plan members’ collective bargaining representative or, if there is no representative, a majority of the members. This provision applies retroactively to agreements entered into or effective on or after October 1, 2010.

The analysis is drafted to the committee substitute as passed by the Government Operations Subcommittee.