HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1399 Firefighter and Police Officer Pension Plans
SPONSOR(S): Government Operations Subcommittee; Rooney, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 458

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Government Operations Subcommittee	10 Y, 0 N, As CS	Harrington	Williamson
2) Appropriations Committee		Delaney	Leznoff
3) State Affairs Committee			

SUMMARY ANALYSIS

The Municipal Firefighters' Pension Trust Fund and the Police Officers' Trust Fund were created to provide uniform retirement system benefits for firefighters, who are employed by a municipal or special fire district, and for municipal police officers. 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 the boundaries of the municipality. The Police Officers' Retirement 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. Current law requires the use of premium tax revenues to fund additional or extra pension benefits, which has been inconsistently interpreted.

The bill substantially changes how insurance premium tax revenues must be used in the funding of firefighter and police officer pension plans under chapters 175 and 185, F.S. The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies that in order to receive insurance premium tax revenues, those revenues must be used as follows:

- The amount of premium tax revenues received in 1997 must be used to fund the benefits in existence on March 12, 1999.
- The increase in additional premium tax revenues between 1997 and 2012 must be used to fund any benefits above the base benefits.
- Premium tax revenues in excess of the amount received in 2012, and any accumulations of additional premium tax revenues that have not been applied to fund extra benefits must be used as follows:
  - If the plan is less than 80 percent funded, then:
    - Fifty percent of the revenues must be used to pay actuarial deficiencies;
    - Twenty-five percent of the revenues must be used to fund base benefits; and
    - Twenty-five percent of the revenues must fund defined contribution benefits.
  - If the plan is funded at 80 percent or greater, then:
    - Fifty percent of the revenues must be used to fund base benefits; and
    - Fifty percent of the revenues must fund defined contribution benefits.
- Premium tax revenues may not fund new defined benefits after March 1, 2013, except as provided.

The bill permits a reduction in plan benefits, but requires 25 percent of the freed up money to be used towards funding actuarial deficiencies. The bill requires plan sponsors to create a defined contribution component within their plans.

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

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 chapters 175 or 185, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

Municipal Firefighters' Pension Trust Fund and Police Officers' Retirement Trust Fund
The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts[2] 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.[3]

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 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

[1] Section 112.62, F.S.
[2] *See* chapters 175 and 185, F.S.
[3] *See* ss. 175.021(1) and 185.01(1), F.S.

fire control district.[4] 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 2011, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to $71.7 million.[5]

The Police Officers' Retirement 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.[6] 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 2011, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to $59.6 million.[7]

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 those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

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 police officer and firefighter pension plans, except the local law plans established by the cities of Jacksonville, Coral Gables, and Miami.[8] 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, 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.[9]

Until August 2012, the division 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 their 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, the division responded to a letter from the City of Naples, Florida, advising that its ongoing interpretation of s. 185.35(2), F.S., "appears inaccurate." The division 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, the division 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, the division's new interpretation requires plans in effect on October 1, 1998, to provide minimum chapter benefits *only* to the extent that they can be funded with premium tax revenues received in excess of the amount received for calendar year 1997. If additional premium tax

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[4] Section 175.101, F.S.

[5] A copy of the 2011 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/human_resource_support/retirement/local_retirement_plans/municipal_police_and_fire_plans

[6] Section 185.08, F.S.

[7] *Supra* at n. 5.

[8] *See* chapter 99-1, L.O.F., and ss. 175.351(3) and 185.35(3), F.S. The law excludes plans created by special act before May 27, 1939, which include the cities of Jacksonville, Coral Gables, and Miami.

[9] *See* ss. 175.351 and 185.35, F.S.

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 the 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 Pension Plans Definition of "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.[10] 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 pension benefits. However, s. 185.02(4), F.S., also provides that overtime for police officers, for purposes of calculating 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

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 plans under chapters 175 and 185, F.S.

The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies that in order to receive insurance premium tax revenues, those revenues must be used as follows:

- The amount of premium tax revenues received in 1997 must be used to fund the benefits in existence on March 12, 1999.
- The increase in additional premium tax revenues between 1997 and 2012 must be used to fund any benefits above the base benefits.
- Premium tax revenues in excess of the amount received in 2012, and any accumulations of additional premium tax revenues that have not been applied to fund extra benefits must be used as follows:
    - If the plan is less than 80 percent funded, then:
        - Fifty percent of the revenues must be used to pay actuarial deficiencies;
        - Twenty-five percent of the revenues must be used to fund base benefits; and
        - Twenty-five percent of the revenues must fund defined contribution benefits.
    - If the plan is funded at 80 percent or greater, then:
        - Fifty percent of the revenues must be used to fund base benefits; and
        - Fifty percent of the revenues must fund defined contribution benefits.
- Premium tax revenues may not fund new defined benefits after March 1, 2013.

Reduction in Plan Benefits
The bill provides that plan benefits may be reduced if the plan continues to meet the required benefits of the plan and minimum chapter standards. If the plan sponsor reduces benefits, 25 percent of the moneys freed up by the reduction in benefits must be used to fund actuarial deficiencies.

Defined Contribution Component

[10] Chapter 2011-216, L.O.F.

The bill requires plan sponsors to create a defined contribution component within their plans by October 1, 2013, or upon the creation date of a new participating plan. Plans created by special act of the Legislature have until July 1, 2014, to create a defined contribution component. It provides that any supplemental plan in existence on March 1, 2013, is deemed to be a defined contribution plan in compliance with this requirement.

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 benefits" means the level of benefits in existence for firefighters or police officers, as applicable, on March 12, 1999.
- "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 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.
- "Long-term funded ratio" or "funded ratio" means the ratio of the actuarial value of assets of the plan to the actuarial accrued liabilities of the plan, as reported in the most recent actuarial valuation of the plan.
- "Minimum benefits" means the benefits set forth in the applicable chapter.
- "Minimum standards" means the standards set forth in the applicable chapter.
- "Required benefits" means the lesser of the minimum benefits set forth in the chapter and the base benefits of the plan. For local law plans created after March 1, 2013, the required benefits are the minimum benefits set forth in the chapter.
- "Special benefits" means benefits provided in a defined contribution plan for firefighters or police officers, as applicable.

The bill revises the definition of "supplemental plan" to provide that any supplemental plan in existence on March 1, 2013, 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.

Municipal Police Officer Definition of "Salary"

The bill amends s. 185.02(4), F.S., to remove the sentence that provides that local law plans may limit overtime to not less than 300 hours per officer per calendar year for the calculation of retirement benefits. Deleting this provision should clarify that overtime is capped at 300 hours, with no required minimum, for the calculation of police officer retirement benefits.

Reliance on Division Interpretation

The bill provides that notwithstanding provisions of the chapter, a plan that has relied on an interpretation of the Department of Management Services (department) on or after August 14, 2012, and before February 1, 2013, may continue to implement proposed changes in reliance on that interpretation.[11] Such reliance must be evidenced by formal correspondence between the municipality or district and the department. The changes that are otherwise contrary to the chapter provisions may continue in effect until the earlier of October 1, 2016, or the effective date of the collective bargaining agreement that is contrary to the changes to the local law plan.

Retirement Computation Requirements

[11] During the Government Operations Subcommittee meeting on April 1, 2013, a representative from the Florida League of Cities stated that less 20 letters have been issued by the department.

Current law provides that retirement benefits must equal the number of years of service multiplied by 2 percent of the member's average final compensation. If current contributions are not adequate to fund the additional benefits to meet minimum requirements, only incremental increases must be required. Such increases must be provided as state moneys become available. The bill deletes the provision that permits incremental increases if contributions are not adequate to fund the additional benefits.

Important State Interest
The bill provides that the act fulfills an important state interest as related to public pension plans.

Effective Date
The bill provides an effective date of July 1, 2013.

B. SECTION DIRECTORY:

Section 1 amends s. 175.021, F.S., revising the legislative declaration to require all plans to meet the requirements of chapter 175, F.S., in order to receive insurance premium tax revenues.

Section 2 amends s. 175.032, F.S., revising and providing definitions.

Section 3 amends s. 175.071, F.S., conforming a cross-reference.

Section 4 amends s. 175.091, F.S., revising existing payment provisions and providing an additional mandatory payment by the municipality or special fire control district to the firefighters' pension trust fund.

Section 5 amends s. 175.162, F.S., deleting a limitation on state contributions funding additional benefits.

Section 6 amends s. 175.351, F.S., relating to municipalities and special fire control districts that have their own pension plans and choose to participate in the distribution of a tax fund; revising criteria governing the use of income from the premium tax; 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., under certain circumstances.

Section 7 amends s. 185.01, F.S., revising the legislative declaration to require all plans to meet the requirements of chapter 185, F.S., in order to receive insurance premium tax revenues.

Section 8 amends s. 185.02, F.S., revising and providing definitions; deleting a provision allowing a local law plan to limit the amount of overtime payments which can be used for retirement benefit calculations.

Section 9 amends s. 185.06, F.S., conforming a cross-reference.

Section 10 amends s. 185.07, F.S., revising existing payment provisions and providing for an additional mandatory payment by the municipality to the police officers' retirement trust fund.

Section 11 amends s. 185.16, F.S., deleting a limitation on state contributions funding additional benefits.

Section 12 amends s. 185.35, F.S., relating to municipalities that have their own pension plans for police officers and choose to participate in the distribution of a tax fund; revising criteria governing the use of income from the premium tax; 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., under certain circumstances.

Section 13 provides a declaration of important state interest.

Section 14 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS.

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:

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 police or firefighter 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 Florida Retirement System, 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 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 police and fire pension plans. The bill will have an indeterminate impact on local government plans as each has a different funding status and premium tax revenue stream.

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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 an 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:

   <u>Actuarial Requirements</u>
   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. According to the division, this bill appears to comply with the requirements of Article X, s. 14 of the State Constitution.[12]

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 1, 2013, the Government Operations Subcommittee adopted a strike-all amendment and reported HB 1399 favorably as a committee substitute. The committee substitute:

- Requires "required benefits" and minimum standards to be met as a condition precedent to the plan or plan sponsor receiving a distribution of insurance premium tax revenues, rather than "base benefits" and minimum standards.
- Defines "minimum benefits," "minimum standards," and "required benefits."
- Amends the definition for "supplemental plan" to provide that any supplemental plan in existence on March 1, 2013, must be deemed to be a defined contribution plan.
- Authorizes a local law plan created after March 1, 2013, to use up to 50 percent of the insurance premium tax revenues to fund defined benefit plan component benefits and the remaining must be used to fund defined contribution plan component benefits.
- Deletes language in current law that permits plans to provide for incremental increases in benefits.
- Allows for a reduction in benefits if the plan offers benefits in excess of required benefits of the plan and the minimum standards of the chapter.
- Permits plans to rely on an interpretation of the department, as evidenced by formal correspondence between the plan and the department, until the earlier of October 1, 2016, or the effective date of the collective bargaining agreement.

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

[12] Department of Management Services, Bill Analysis 2013 for HB 1399, dated March 15, 2013 (on file with the Government Operations Subcommittee).