

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.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/CS/SB 458

INTRODUCER: Appropriations Committee; Governmental Oversight and Accountability Committee; and Senator Ring

SUBJECT: Firefighter and Police Officer Pension Plans

DATE: April 4, 2013 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Fav/CS
2.	Toman	Yeatman	CA	Favorable
3.	Fournier	Hansen	AP	Fav/CS
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

CS/CS/SB 458 substantially amends provisions specifying how insurance premium tax revenues must be used in police and firefighter pension plans. Premium tax revenues equal to the amount received in 1997 must be used to fund benefits in existence in 1999. The increase in additional premium tax revenues between 1997 and 2012 must be used to fund any benefits that were not included in the base benefits of the plan. Plans with a long-term funded ratio of less than 80 percent must use 50 percent of their post-2012 increase in premium tax revenues and accumulated premium tax revenues to pay the plans' actuarial deficiencies. Twenty-five percent of the post-2012 increase must fund base benefits, and 25 percent must be placed in a defined contribution plan to fund special benefits. Plans funded greater than 80 percent must use half of the post-2012 increase in premium tax revenues for defined contribution benefits, and the other half for the base benefits.

The bill should reduce the long-term unfunded actuarial liabilities of local police and firefighter pension plans. The overall costs or savings associated with the bill are indeterminate because approximately 350 local police and firefighter pension plans are affected by the bill. The bill has no fiscal impact on state government.

The bill grandfathers certain changes or proposed changes to a plan that are/were based on the plan's reliance on a DMS interpretation, as evidenced by correspondence with the DMS between August 14, 2012, and February 1, 2013.

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

This bill substantially amends the following sections of the Florida Statutes: 175.021, 175.032, 175.071, 175.091, 175.351, 185.01, 185.02, 185.06, 185.07, and 185.35.

II. Present Situation:

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

The Marvin B. Clayton Firefighters' and Police Officers' Pension Trust Fund Acts¹ declare a legitimate state purpose of providing 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.²

The Legislature enacted chapter 175, F.S., in 1939 to provide an incentive to cities—access to premium tax revenues—to encourage the establishment of firefighter retirement plans. Fourteen years later, the Legislature enacted ch. 185, F.S., which provides a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.

Four sources provide funding for these pension plans: 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 the normal cost of the plan.³ To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175 and 185, F.S. The Division of Retirement (“division”) in the Department of Management Services (DMS) is responsible for overseeing and monitoring these plans, but day-to-day operational control rests with local boards of trustees. Most firefighters and police officers participate in these plans. If the division were to deem that a firefighter or police pension plan created pursuant to ch. 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its insurance premium tax revenues.

An excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or district funds the Firefighters' Pension Trust Fund of each municipality or special fire control district.⁴ The insurers pay the tax to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at

¹ See ch. 175 and 185, F.S.

² See ss. 175.021(1) and 185.01(1), F.S.

³ Sections 175.091(1)(a) and 185.07(1), F.S.

⁴ Section 175.101(1), F.S.

the division.⁵ In 2011, premium tax distributions to municipalities and special fire districts from the Firefighters’ Pension Trust Fund amounted to \$71.7 million.⁶

An excise tax of 0.85 percent imposed on the gross premiums on casualty insurance policies covering property within the boundaries of a municipality funds the Police Officers’ Retirement Trust Fund.⁷ Similar to the Firefighters’ Pension Trust Fund, insurers pay the excise tax to the DOR, which transfers the net proceeds to the appropriate fund at the division.⁸ In 2011, premium tax distributions to municipalities from the Police Officers’ Retirement Trust Fund amounted to \$59.6 million.⁹

Chapters 175 and 185, F.S., specify certain “minimum benefits” that must be provided in firefighter and police plans,¹⁰ summarized in relevant part below:

Benefit	Description of minimum level
Retirement Benefit	2 percent x average final compensation x years of creditable service
Average Final Compensation (AFC)	Average annual compensation of 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 Retirement benefit is reduced 3 percent for each year prior to reaching normal retirement age.
Earnings	Police = total cash remuneration Fire = fixed monthly compensation
Death Benefits	Prior to vesting - beneficiary receives employee contributions without interest earnings Vested - beneficiary receives benefit based on early or normal retirement benefits, whichever are applicable Post-retirement - beneficiary receives benefit based on retirement

⁵ See s. 175.121, F.S.

⁶ 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_2011.pdf (last visited on December 19, 2012).

⁷ See s. 185.08, F.S.

⁸ See s. 185.10, F.S.

⁹ 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_2011.pdf (last visited on December 19, 2012).

¹⁰ Sections 175.162 and 185.16, F.S.

	benefit option selected by member at time of retirement
Disability Benefits	<p>Eligibility - no service requirement for in line of duty disability; 10 years of service for non service related disability</p> <p>Benefits - no less than 25 percent of average monthly earnings if non-service related; no less than 42 percent of average monthly earnings if service related</p>

In 1999, the Legislature passed legislation that made virtually all provisions of ch. 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.¹¹ This legislation required all pension plans falling under these chapters to meet the 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, 1999.¹²

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 the minimum benefits requirements, any additional premium tax revenues had to be used in their entirety to provide 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.

Recent Interpretation

In response to a letter from the City of Naples in August 2012, the division advised that its ongoing interpretation of s. 185.35(2), F.S., “appears inaccurate.” The division was asked, in essence, whether a city that negotiated and mutually agreed with its police officers to reduce benefits below levels in place on March 12, 1999, would jeopardize its premium tax revenues. In its new interpretation, 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.” So, for local law plans in effect on October 1, 1998, chapter minimum benefits must be provided only to the extent that they can be funded with premium tax revenues received in excess of the amount received for calendar year 1997.

Under the new interpretation, *it appears* that the following things are true:

- 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;

¹¹ Sections 175.351(3) and 185.35(3), F.S.

¹² See ss. 175.351 and 185.35, F.S.

- 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 could reduce the 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.

The division has subsequently provided this new interpretation to other inquiring cities, on a case by case basis. DMS has adopted neither this new interpretation, nor its previous entirely different interpretation of the exact same statutory language, as a rule.

Definition of Salary in Municipal Police Pension Plans

In 2011 a 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 ch. 2011-216, L.O.F. The provisions for general public retirement systems (ch. 112, F.S.) and firefighter pensions (ch. 175, F.S.) did not have existing stipulations allowing any overtime hours to be included in the calculation of retirement benefits. Section 185.02(4), F.S., had the following definition before the 2011 changes:

"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.

As amended by ch. 2011-216, L.O.F., 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-2011 provision set the limit at no less than 300 hours, effectively acting as a floor or minimum of 300 hours. The current language has been interpreted to mean that after July 1, 2011, the 300 hour floor has been replaced by a 300 hour cap. After the effective date of ch. 2011-216, L.O.F., the DMS Division of Retirement appeared to take the position that the law did not *replace* the floor with a cap, but supplemented the 300 hour floor with a 300 hour cap. In other words, the employer would have had to include at least 300 hours of overtime in the calculation, but could not include more than 300 hours. Subsequently, however, the division has taken the position that the amount of overtime hours that may be included when calculating retirement benefits may be anywhere from 0 to 300 hours.¹³

III. Effect of Proposed Changes:

Definitions

The bill defines several new terms. The most relevant terms are “base benefits”, “required benefits” and “special benefits”. Base benefits are those retirement benefits in effect on March 12, 1999. Required benefits are the lesser of the base benefits and the minimum benefits set forth in the two chapters. (For plans created after March 1, 2013, the required benefits are the minimum benefits set forth in the two chapters.) Special benefits are those retirement benefits offered through a defined contribution plan.

Use of Insurance Premium Tax Revenues

The bill substantially changes how insurance premium tax revenues must be used in the funding of police and firefighter pension plans in ch. 175 and 185, F.S.

The bill amends parallel provisions in ch. 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.
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- 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 has a long-term funded ratio of less than 80 percent:
 - 50 percent of the revenues must be used to pay actuarial deficiencies;
 - 25 percent of the revenues must be used to fund base benefits; and
 - The remainder must be placed in a defined contribution plan to fund special benefits.
 - If the plan has a long-term funded ratio of 80 percent or greater:
 - 50 percent of the revenues must be used to fund base benefits; and
 - The remainder must be placed in a defined contribution plan to fund special benefits.

¹³ Letter from the DMS Division of Retirement to City of Largo, dated April 4, 2012, on file with the Committee on Governmental Oversight and Accountability.

- Premium tax revenue not described above must be used to fund benefits that were not included in base benefits.
- Premium tax revenues may not fund new defined benefits after March 1, 2013, except for new plans created after that date which may contain a defined benefit component funded by up to 50 percent of the local insurance premium tax revenues

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's mandatory contribution is reduced by reducing benefits, 25 percent of the reduction must be used to fund actuarial deficiencies.

The bill also requires plan sponsors to create defined contribution plan components 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.

The bill explicitly allows plans to use the insurance premium tax revenues and offer benefits below the statutorily required levels in certain instances. The plan must have relied upon the interpretation of the statute by the DMS to reduce the level of benefits or use the premium tax revenues, and such reliance must be evidenced by certain documentation. The plan may continue to offer these reduced benefits and/or use the premium tax revenues in this manner until the earlier of October 1, 2016, or another collective bargaining agreement is negotiated addressing the benefits or use of revenues.

300 Hour Cap

The bill amends s. 185.02(4), F.S., to delete the sentence that states: "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." Deleting this sentence should clarify that the definition has a maximum cap of 300 hours, with no required minimum, consistent with a recent interpretation by the division, as it applies to the inclusion of overtime hours in the calculation of police retirement benefits.

Conforming Changes

Sections 3 and 9 amend ss. 175.071 and 185.06, F.S., to make conforming changes.

Important State Interest

Section 13 provides that the Legislature determines that the bill fulfills an important state interest as related to public pension plans.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

To the extent this bill requires a local government to expend funds to comply with its terms, the provisions of s. 18(a), Art. VII, State Constitution, may apply. If those

provisions do apply, in order for the law to be binding upon the cities and counties, the Legislature must find that the law fulfills an important state interest (included in section 11 of the bill), and one of the following relevant exceptions must be met:

- Funds estimated at the time of enactment sufficient to fund such expenditures are appropriated;
- Counties and cities are authorized to enact a funding source not available for such local government on February 1, 1989, that can be used to generate the amount of funds necessary to fund the expenditures;
- The expenditure is required to comply with a law that applies to all persons similarly situated; or
- The law must be approved by two-thirds of the membership of each house of the Legislature.

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:

The bill should reduce local police and firefighter pension plans' long term unfunded liabilities. The overall costs or savings associated with the bill are indeterminate, since each of the approximately 350 plans affected by the bill has a different funded status. The bill has no impact on state government.

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/CS by Appropriations on April 3, 2013:

The primary differences between the CS and the CS/CS are as follows:

- The CS/CS defines the term “required benefits.”
- The CS/CS allows the plans to reduce benefits to the “required benefits” level without having the full insurance premium tax revenue distribution withheld.
- The CS/CS grandfathers in certain plans that relied on a statutory interpretation by DMS to reduce the plan benefits or to use the premium tax revenues in a different way. This grandfathering provision expires by October 1, 2016.
- The CS/CS specifies that a new plan created after March 1, 2013, may use a portion of its insurance premium tax revenues to fund a defined benefit component.

CS by Governmental Oversight and Accountability on February 21, 2013:

Some differences between how the committee substitute amends ch. 175 and 185, F.S., and how the bill as originally filed did so, are as follows:

- The CS does not include a provision in the bill that would require plan sponsors to continue funding the plans at 2013 levels until the plans are fully funded.
- The CS generally requires plan sponsors to fund the plans at least at the level of benefits in existence on March 12, 1999.
- Plans less than 80 percent funded must use 50 percent of their post-2012 increase in premium tax revenues, and accumulated premium tax revenues, to pay the plans’ actuarial deficiency; 25 percent must fund defined contribution benefits; and 25 percent must be used to fund base benefits. Plans funded greater than 80 percent must use 50 percent the post-2012 increase in premium tax revenues for defined contribution benefits, and 50 percent to fund base benefits.
- Plan benefits may be reduced to base benefit levels; 25 percent of the plan sponsor’s mandatory contribution freed up by reducing benefits must be used to fund actuarial deficiencies.
- The CS reinstates an existing statutory exclusion applicable to three cities that was inadvertently deleted in the bill.

- B. **Amendments:**

None.