

**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 Committee on Appropriations

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BILL: CS/SB 246

INTRODUCER: Appropriations Committee and Senators Ring and Bradley

SUBJECT: Local Government Pension Reform

DATE: April 14, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>McSwain</u>	<u>Kynoch</u>	<u>AP</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 246 substantially amends provisions specifying how insurance premium tax revenues must be used in police and firefighter pension plans. For each plan, premium tax revenues equal to the amount received in 1997 by a particular plan must be used to fund defined minimum benefits specified in chapters 175 or 185, F.S. and other retirement benefits. Use of additional premium tax revenues, as defined in the bill, are required to be used to fund minimum benefits, additional retirement benefits and defined contribution plans under certain specified situations. The bill authorizes deviation from the specified uses of premium tax revenues, including accumulations of additional tax revenues which have not been applied to fund benefits in excess of the defined minimum benefits, by mutual consent of collective bargaining representatives or majority consent of plan members and consent of the municipality (or special fire control district).

The bill increases the percentage of average final compensation used to calculate defined benefit retirement benefits under chapters 175 and 185, F.S., from 2.0 percent to 2.75 percent, subject to certain exceptions.

The overall costs or savings from bill are indeterminate. The impact of the bill will vary depending upon the level of benefits currently offered by those plans, the amount of revenue received from the insurance premium tax by the plan sponsor, the service accrual rate under each plan, and the terms of any collective bargaining agreement between the plan sponsor and the

affected police or firefighter collective bargaining unit. The bill has no fiscal impact on state government.

The bill grandfathers changes to a plan that are based on that particular plan's reliance on an interpretation by the Department of Management Services (DMS) of the existing statute, as evidenced by correspondence with the DMS between August 14, 2012, and March 4, 2014.

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

## 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 Acts<sup>1</sup> 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.<sup>2</sup>

In 1939, the Legislature enacted ch. 175, F.S., thereby encouraging cities to establish firefighter retirement plans by providing cities with the incentive of access to premium tax revenues. 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.

The Division of Retirement (division) within the DMS administers benefits to local police officers and firefighters under two types of plans, a chapter plan or a local plan. A chapter plan is a plan that adopts the provisions of either ch. 175 or 185 by reference. A local plan is a plan that is created by a special act of the Legislature, or by a local ordinance or resolution that meets the minimum statutory requirements. The division is responsible for overseeing and monitoring these plans, but day-to-day operational control rests with local boards of trustees subject to the regulatory authority of the division.<sup>3</sup> 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.

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.<sup>4</sup> To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175 and 185, F.S.

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<sup>1</sup> See ch. 175 and 185, F.S.

<sup>2</sup> See ss. 175.021(1) and 185.01(1), F.S.

<sup>3</sup> The division is responsible for administrative oversight of funds, including monitoring for actuarial soundness.

<sup>4</sup> Sections 175.091(1)(a) and 185.07(1), F.S.

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.<sup>5</sup> The insurers pay the tax to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.<sup>6</sup> In 2011, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to \$72.4 million.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> In 2011, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to \$62.6 million.<sup>10</sup>

Chapters 175 and 185, F.S., specify certain "minimum benefits" that must be provided in firefighter and police plans,<sup>11</sup> summarized in relevant part below:

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<sup>5</sup> Section 175.101(1), F.S.

<sup>6</sup> See s. 175.121, F.S.

<sup>7</sup> Division of Management Services, *Firefighters' 2012 Premium Tax Distribution Calculation*, available online at: [https://www.rol.frs.state.fl.us/forms/Fire\\_2012.pdf](https://www.rol.frs.state.fl.us/forms/Fire_2012.pdf) (last visited on January 3, 2014).

<sup>8</sup> See s. 185.08, F.S.

<sup>9</sup> See s. 185.10, F.S.

<sup>10</sup> Division of Management Services, *Police Officers' 2012 Premium Tax Distribution Calculations*, available online at: [https://www.rol.frs.state.fl.us/forms/Police\\_2012.pdf](https://www.rol.frs.state.fl.us/forms/Police_2012.pdf) (last visited on January 3, 2014).

<sup>11</sup> Sections 175.162 and 185.16, F.S.

<b>Benefit</b>	<b>Description of minimum level</b>
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 benefit option selected by member at time of retirement.
Disability Benefits	Eligibility - no service requirement for in line of duty disability; 10 years of service for non-service-related disability. 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.

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, Miami, and Miami Beach.<sup>12</sup> 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.<sup>13</sup>

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.

<sup>12</sup> Sections 175.351(3) and 185.35(3), F.S.

<sup>13</sup> See ss. 175.351 and 185.35, F.S.

### **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;
- 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. The 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**

Legislation in 2011 added 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.<sup>14</sup> 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.

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<sup>14</sup> Chapter 2011-216, L.O.F.

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 division 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.<sup>15</sup>

### **III. Effect of Proposed Changes:**

#### **Definitions**

The bill defines several new terms for purposes of ch. 175 and 185, F.S. The most relevant terms are “additional premium tax revenues,” “base premium tax revenues,” and “minimum benefits.” Additional premium tax revenues mean insurance premium tax revenues received by a municipality (or special fire control district) which exceed base premium tax revenues. Base premium tax revenues are those insurance premium taxes received by a municipality (or special fire control district) for calendar year 1997. Minimum benefits are the benefits set forth in specified sections of chapter 175 (for firefighters) and chapter 185 (for police officers and, if included in the plan, firefighters).

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<sup>15</sup> 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.

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.

### **Change of the Minimum Accrual Percentage of Average Final Compensation**

The bill increases the percentage of average final compensation used to calculate retirement benefits for police and firefighter pension plans from 2.0 percent to 2.75 percent. Effective July 1, 2014, a plan that is in compliance with the requirements of ch. 175 or 185, F.S.:

- Except that the plan provides a benefit that is less than 2.75 percent of average final compensation of a full-time firefighter or police officer, must maintain, at a minimum, the percentage amount effective on July 1, 2014, and is not required to increase that percentage.
- Except that the plan provides a benefit that is less than 2.75 percent of average final compensation of a full-time firefighter or police officer and that changes its accrual rate to 2.75 percent or greater of the average final compensation of a fire fighter or police officer, may not thereafter decrease the accrual rate to less than 2.75 percent of the average final compensation of a firefighter or police officer.

### **Use of Insurance Premium Tax Revenues**

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:

- Base premium tax revenues must be used to fund minimum benefits or other retirement benefits in excess of the minimum benefits.
- Of the additional premium tax revenues received in excess of the amount received in calendar year 2013, 50 percent must be used to fund minimum benefits or other retirement benefits in excess of the minimum benefits, as determined by the municipality (or special fire control district) and 50 percent must be placed in a defined contribution plan to fund special benefits.
- Additional premium tax revenues not required to be distributed to fund minimum benefits, retirement benefits in excess of minimum benefits or special benefits must be used to fund benefits **not** included in the minimum benefits. If the additional premium tax revenues required to be distributed to fund minimum benefits, additional retirement benefits and special benefits exceed the full cost of benefits provided through a retirement plan:
  - 50 percent of any excess must be used to fund minimum benefits or other retirement benefits; and
  - 50 percent must be placed in a defined contribution plan.
- Any accumulations of additional premium tax revenues which have not been applied to fund benefits in excess of minimum benefits, may be allocated by mutual consent of the members' collective bargaining representative (or a majority of the members of the fund) and the municipality (or special fire control district).
- For plans created after March 1, 2014, 50 percent of the insurance premium tax revenues must be used to fund minimum benefits and the remainder must be used to fund defined contribution plan component benefits.
- If a plan offers benefits in excess of the minimum benefits, excluding supplemental plan benefits in effect as of September 30, 2013, those plan benefits may be reduced if the plan continues to meet the minimum benefits and minimum standards in ch. 175 and 185, F.S. The amount of insurance premium tax revenues previously used to fund benefits in excess of

minimum benefits, excluding supplemental benefits in effect as of September 30, 2013, before the reduction must be used to fund minimum benefits or other retirement benefits (50 percent) and a defined contribution plan (50 percent). However, benefits may not be reduced if the plan does not have a minimum accrual rate of 2.75 percent, or greater, of the average final compensation of a full-time firefighter or police officer.

Notwithstanding those provisions of the bill, the use of insurance premium tax revenues, including additional tax revenues which have not been applied to fund benefits in excess of the minimum benefits, may deviate from the requirements of the bill by mutual consent of the members' collective bargaining representative or, if there is none, by majority consent of the members' of the fund and consent of the municipality (or special fire control district), provided the plan continues to meet the minimum benefits and the minimum standards of ch. 175 and 185, F.S. However, a plan that does not meet a minimum benefit as of October 1, 2012, may continue to provide the benefit not meeting the minimum benefit at the same level, but not less than that level as was provided on October 1, 2012, and all other benefits must continue to meet the minimum benefits. A mutually agreed deviation must continue until modified or revoked by subsequent mutual consent. A special act plan or a plan within a supplemental plan municipality are considered to have mutually agreed to such deviation as of July 1, 2014, regarding the existing agreement on the use of premium tax revenues.

The bill also requires plan sponsors to create defined contribution plan components within their plans by October 1, 2014, for non-collectively bargained services, upon entering into a collectively bargaining agreement on or after July 1, 2014, or upon the creation date of a new participating plan. Depending upon the use of insurance premium tax revenues as otherwise provided in the bill, a defined contribution component may or may not receive funding.

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, 2017, or another collective bargaining agreement is negotiated addressing the benefits or use of revenues.

### **300 Hour Cap**

The bill amends the definition of "compensation" or "salary" in s. 185.02(4), F.S., relating to police officer retirement plans, 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.
- Provide that overtime may be limited prior to July 1, 2011, in a local law plan by the plan provisions. Local law plans are retirement plans, which include a defined benefit plan component and a defined contribution plan component, for police officers (and

firefighters, if included) established by municipal ordinance or special act of the Legislature.

### **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, 2014.

## **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 art. VII, s. 18(a) of the Florida 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 13 of the bill), and one of the following relevant exceptions must be met:

- 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 overall costs or savings to local government from CS/SB 246 are indeterminate, because approximately 350 plans are affected by the bill. The impact of the bill will vary depending upon the level of benefits currently offered by those plans, the amount of revenue received from the insurance premium tax by the plan sponsor, the service accrual rate under each plan, and the terms of any collective bargaining agreement reached between the plan sponsor and the affected police or firefighter collective bargaining unit. The bill has no impact on state government.

**VI. Technical Deficiencies:****VII. Related Issues:**

None

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 175.021, 175.032, 175.071, 175.091, 175.162, 175.351, 185.01, 185.02, 185.06, 185.07, 185.16, and 185.35.

The bill creates an undesignated section of Florida law.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Appropriations on April 10, 2014:**

The committee substitute:

- Substantially revises provisions specifying how insurance premium tax revenues must be used in police and firefighter pension plans.
- Authorizes deviation from the required uses of premium tax revenues, including accumulations of additional tax revenues which have not been applied to fund benefits in excess of the defined minimum benefits, by mutual consent of collective bargaining representatives or majority consent of plan members and consent of the municipality (or special fire control district).
- Increases the percentage of average final compensation used to calculate retirement benefits under chapters 175 and 185, F.S., from 2.0 percent to 2.75 percent, subject to certain exceptions.

**B. Amendments:**

None.