

**HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS**

BILL #:	CS/CS/HB 341	FINAL HOUSE FLOOR ACTION:	
SPONSOR(S):	State Affairs Committee; Government Operations Subcommittee; Cummings and others	112 Y's	4 N's
COMPANION BILLS:	CS/SB 172	GOVERNOR'S ACTION:	Approved

SUMMARY ANALYSIS

CS/CS/HB 341 passed the House on April 24, 2015, as CS/SB 172.

Chapters 175 and 185, F.S., were created to provide uniform retirement system benefits for firefighters who are employed by a municipal or special fire control district, and for municipal police officers. A 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. A Police Officers' Pension 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.

The bill substantially changes how insurance premium tax revenues must be used in the funding of firefighter and police officer pension benefits under chapters 175 and 185, F.S., and requires plans to create a defined contribution component of the plan. The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies a formula for the use of these funds. However, a plan may deviate from the premium tax distribution requirements by mutual consent of the members' collective bargaining representative or, if none, by majority consent of the firefighter or police officer members of the fund, and by consent of the municipality or special fire control district.

The bill increases the minimum benefit accrual rates for the pension plan component from 2 percent to 2.75 percent, and specifies certain exceptions to the increase. It permits a reduction in plan benefits that are provided over the minimum benefit levels if the plan provides a 2.75 percent accrual rate, and directs how the freed up money must be used.

The bill grandfathers in changes to a plan that are based on that particular plan's reliance on a Department of Management Services (DMS) interpretation of the existing statute, which must be evidenced by an initial proposal, agreement, or correspondence from the municipality dated before March 3, 2015.

The bill requires a plan board of trustees to provide a detailed accounting report of its expenses to the plan sponsor and to DMS, and to make the report available online. It also requires the board to operate under an administrative expense budget.

The bill amends the definition of "compensation" or "salary" for police officers to provide that overtime may be limited before July 1, 2011, in a local law plan by the plan provisions.

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 chapter 175 or 185, F.S. See Fiscal Comments.

The bill was approved by the Governor on May 21, 2015, ch. 2015-39, L.O.F., and will become effective on July 1, 2015.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0341z1.GVOPS

DATE: May 28, 2015

I. SUBSTANTIVE INFORMATION

A. EFFECT OF 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 Division of Retirement (division), Department of Management Services (DMS).

Municipal Firefighters' Pension Trust Fund and Police Officers' Pension Trust Fund

Chapters 175 and 185, F.S., 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.²

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. In 1993, special fire control districts became eligible to participate under chapter 175, F.S.

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 law 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 fire control district.³ It is payable by the insurers to the Department of Revenue (DOR), and the net

¹ Section 112.62, F.S.

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

³ Section 175.101, F.S.

proceeds are transferred to the appropriate fund at the division. In 2013, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$74.7 million.⁴

The Police Officers' Pension 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.⁵ 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 2013, premium tax distributions to municipalities from the Police Officers' Pension Trust Fund amounted to \$64.8 million.⁶

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 (board) 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 the law, the sponsoring municipality could be denied its insurance premium tax revenues.

Minimum Benefit Levels

Chapters 175 and 185, F.S., specify certain "minimum benefits" that must be provided by firefighter and police officer pension plans⁷ as follows:

Description of Minimum Benefit Levels	
Benefit Calculation	2 percent accrual rate x average final compensation x years of creditable service
Average Final Compensation (AFC)	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. The benefit reduction may not exceed 3 percent for each year prior to the member's normal retirement age.
Death Benefits	If vested, the member's beneficiary receives the member's retirement benefit based on early or normal retirement benefits, whichever is applicable. If pre-retirement death, the beneficiary receives the benefit for 10 years. If the member has already retired and has received a retirement benefit for less than 10 years, the beneficiary receives the member's benefit based on the benefit option selected by the member for the remainder of the 10 years.
Disability Benefits	Plans must provide in-line-of-duty disability benefits immediately and require 10 years of service for non-duty disability benefits. Disability benefits must not be less than 25 percent of the average monthly earnings if non-duty disability and not less than 42 percent of average monthly compensation for in-line-of-duty disability.

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 firefighter and police officer pension plans, except the local

⁴ A copy of the 2013 Premium Tax Distribution report is available online at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited March 9, 2015).

⁵ Section 185.08, F.S.

⁶ *Supra* at FN 4.

⁷ Sections 175.162, 175.191, 185.16, and 185.18, F.S.

law plans established by the cities of Jacksonville, Coral Gables, Miami, and Miami Beach.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 to 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, DMS 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 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, DMS responded to a letter from the City of Naples, Florida, advising that its ongoing interpretation of s. 185.35(2), F.S., “appears inaccurate.”¹⁰ DMS 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, DMS 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, DMS’ new interpretation requires plans in effect on October 1, 1998, to provide minimum chapter benefits *only* to the extent the benefits can be funded with premium tax revenues received in excess of the amount received for calendar year 1997. If additional premium tax 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 a 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 Officer Pension Plans: Definition of “Compensation” or “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.¹¹ 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 benefits. However, s. 185.02(4), F.S., also provides that overtime for police officers, for purposes of calculating retirement 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.

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

⁹ See ss. 175.351(2)(b) and 185.35(2)(b), F.S.

¹⁰ A copy of the letter is on file with the Government Operations Subcommittee.

¹¹ Chapter 2011-216, L.O.F.

Effect of the Bill

Definitions

The bill creates new definitions in both chapters 175 and 185, F.S. The term:

- “Additional premium tax revenues” means revenues received by a municipality (or special fire control district), which exceed base premium tax revenues.
- “Base premium tax revenues” means:
 - For a local law plan in effect on October 1, 2003, the revenues received by the municipality (or special fire control district) for the 2002 calendar year.
 - For a local law plan created between October 1, 2003, and March 1, 2015, the revenues received by a municipality (or special fire control district) based upon the tax collections during the second calendar year of participation.
- “Defined contribution plan” means the component of a local law plan to which deposits, if any, 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 minimum 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.
- “Minimum benefits” means the benefits set forth in the applicable chapter.
- “Minimum standards” means the standards set forth in the applicable chapter.
- “Special act plan” means a plan subject to the provisions of the applicable chapter that was created by and continues to require an act of the Legislature to alter plan benefits.
- “Special benefits” means benefits provided in a defined contribution plan for firefighters or police officers, as applicable.

The bill revises the definition of the term “supplemental plan” to provide that any supplemental plan in existence on March 1, 2015, must be deemed a defined contribution plan in compliance with the chapter. The bill also revises the definition of the term “local law plan” to provide that it includes both a defined benefit plan component and a defined contribution plan component.

Defined Contribution Plan Component

The bill requires plan sponsors to create a defined contribution component within their plans to fund special benefits:

- By October 1, 2015, for non-collectively bargained service;
- Upon entering into a collective bargaining agreement on or after July 1, 2015; or
- Upon the creation date of a new participating plan.

Minimum Benefit Accrual Rate

The bill increases the minimum service accrual rate from 2 percent to 2.75 percent. It also provides options for plans to deviate from this new plan minimum:

- A plan in compliance with the chapter, except for the 2.75 percent minimum, must maintain, at a minimum, the percentage in effect on July 1, 2015; such plan is not required to increase the benefit to 2.75 percent.
- A plan that is in compliance with the chapter, except that the benefit is less than 2.75 percent, but the plan chooses to increase its accrual rate to 2.75 percent or greater may not thereafter decrease the rate to less than 2.75 percent.

The bill deletes the provision that based the availability of additional benefits upon state funding.

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 benefits under chapters 175 and 185, F.S. The bill amends parallel provisions in chapters 175 and 185, F.S., and specifies:

- Premium tax revenues equal to the amount received in 2002 (base premium tax revenues) must be used to fund the minimum benefits provided for in chapter 175 or 185, F.S.
- Premium tax revenues in excess of the amount received in calendar year 2012 must be used as follows:
 - Fifty percent must be used to fund the minimum chapter benefits or other benefits in excess of the minimum benefits as determined by the municipality or special fire control district; and
 - Fifty percent must be used to fund a defined contribution component of the plan.
- The increase in additional premium tax revenues between 2002 and the amount received in calendar year 2012 must be used to fund benefits that are not included in the minimum benefits. If this amount exceeds the cost to pay for the extra benefits, then:
 - Fifty percent must be used to fund minimum chapter benefits or other benefits in excess of the minimum benefits as determined by the municipality; and
 - Fifty percent must be used to fund a defined contribution component of the plan.
- Accumulations of additional tax revenues that have not otherwise been applied must be used to fund extra benefits as follows:
 - Fifty percent must be used to fund a defined contribution component of the plan; and
 - Fifty percent must be applied towards paying any accrued unfunded actuarial liability of the plan.

For plans created after March 1, 2015, 50 percent of the insurance premium tax revenues must be used to fund defined benefit plan benefits and the remainder must be used to fund defined contribution plan benefits.

Reduction in Plan Benefits

The bill provides that plan benefits in excess of the minimum benefits may be reduced, excluding supplemental plans in effect as of September 30, 2014, if the plan continues to meet the minimum benefits and the minimum standards of the chapter. If the plan sponsor reduces the excess benefits, 50 percent of the moneys freed up by the reduction in benefits must be used to fund minimum benefits and the other 50 percent must be used to fund a defined contribution component of the plan. The bill does not permit a reduction in excess benefits if the plan does not meet the minimum benefit accrual rate of 2.75 percent, or provides an effective benefit that is below 2.75 percent as a result of a maximum benefit limitation.

Collective Bargaining Agreement

The bill provides that notwithstanding the premium tax distribution requirements, a plan may deviate from the provisions by mutual consent of the members' collective bargaining representative or, if none, by majority consent of the firefighter or police officer members of the fund, and by consent of the municipality or special fire control district, provided that the plan continues to meet the minimum benefits and standards of the chapter. However, a plan operating with a mutual consent agreement that does not meet a minimum benefit as of October 1, 2012, may continue to provide the benefit at the same level as provided on October 1, 2012, and all other benefit levels must continue to meet the minimum benefit levels. The bill provides that certain existing arrangements within a special act plan or plan within a supplemental plan municipality are authorized deviations as of the effective date of the bill. Specifically, an existing arrangement for the use of premium tax revenues contained within a special act plan or plan within a supplemental plan municipality is considered a deviation by mutual consent.

Reliance on DMS Interpretation

The bill provides that notwithstanding the provisions of chapter 175 or 185, F.S., a plan that has relied on an interpretation of DMS on or after August 14, 2012, and before March 3, 2015, may continue to

implement proposed changes in reliance on that interpretation. Such reliance must be evidenced by a written collective bargaining proposal or agreement, or formal correspondence between the municipality or special fire control district and DMS that describes the specific changes to the plan. The initial proposal, agreement, or correspondence from the municipality must be dated before March 3, 2015. The changes that are otherwise contrary to the chapter provisions may continue in effect until the earlier of October 1, 2018, or the effective date of the collective bargaining agreement that is contrary to the changes to the local law plan.

Transparency Provisions

The bill requires the board to provide a detailed accounting report of its expenses to the plan sponsor and to DMS, and to make the report available online. It also requires the board to operate under an administrative expense budget. If the board amends its administrative expense budget, it must provide a copy of the amended budget to the plan sponsor and make it available to the plan members.

The bill provides that the transparency provisions apply to a local law plan created by special act before May 27, 1939, notwithstanding ss. 175.351(2) and (3) and 185.35(2) and (3), F.S. Sections 175.351(2) and (3) and 185.35(2) and (3), F.S., provide in pertinent part that “[l]ocal law plans created by special act before May 27, 1939, shall be deemed to comply with this chapter.”

According to the division, there are four plans that were created by special act before May 27, 1939: Jacksonville, Miami, Miami Beach, and Coral Gables. As a result, the bill would require all plans, including these four plans, to comply with the transparency provisions; however, the bill does not affect the applicability of any other part of the chapter for these specific plans.

Municipal Police Officer Pension Plans: Definition of “Compensation” or “Salary”

The bill amends s. 185.02(4), F.S., regarding the definition of “compensation” or “salary.” It provides that overtime may be limited before July 1, 2011, in a local law plan by the plan provisions. The provision currently provides that overtime may not be limited to less than 300 hours per officer per calendar year.

Miscellaneous Provisions in the Bill

The bill provides a statement of important state interest. It provides that a proper and legitimate state purpose is served, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

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 firefighter or police officer 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. On March 20, 2015, the Revenue Estimating Conference estimated that the bill would have a zero to negative indeterminate fiscal impact on state revenues.

The bill redirects how premium tax revenues provided to local governments are to be used in funding their firefighter and police officer pension plans. It also requires each board to provide a detailed accounting of its expenses for each fiscal year and to operate under an administrative budget. The additional duties of the board may result in an indeterminate negative fiscal impact to the plan; however, the transparency of producing and sharing annual expenses and operating under a budget may produce an indeterminate positive fiscal impact. As a result, the bill will have an indeterminate impact on local government plans.