FINAL BILL ANALYSIS

BILL #: CS/CS/SB 1128

FINAL HOUSE FLOOR ACTION:
80 Y's 35 N's

SPONSOR: Sen. Ring (Rep. Patronis)

GOVERNOR'S ACTION: Approved

COMPANION BILLS: CS/HB 7241

SUMMARY ANALYSIS

CS/CS/SB 1128 passed the House on May 4, 2011. The bill was approved by the Governor on June 23, 2011, chapter 2011-216, Laws of Florida, and takes effect July 1, 2011.

The bill makes several changes to local government pension plans.

Effective July 1, 2011, the bill revises the definition of "compensation" and "salary" to limit the inclusion of payments for overtime compensation, up to 300 hours per year, in the calculation of retirement benefits as specified in the local plan or the collective bargaining agreement. Unused sick and annual leave may not be included in the calculation. The bill extends these requirements to general employees of local pension plans.

The bill allows for the increase of member contributions to a firefighter or police pension plan without an increase in member benefits. The increase must be approved by the collective bargaining representative or by a majority of the members if there is no representative.

The bill allows a municipality, by ordinance, to change its representation on the board of trustees operating the pension plan. The change may not reduce the membership percentages of firefighters, police officers, and municipal representatives.

The bill revises the actuarial reporting requirements to require each pension plan to disclose the present value of its accrued vested, nonvested, and total benefits as adopted by the Financial Accounting Standards Board, using the Florida Retirement System assumed rate of return.

The bill prohibits the use of an actuarial or cash surplus for expenses outside of the plan. Additionally, it prohibits local pension plans from reducing contributions required to fund the normal cost of the plans.

The Department of Management Services (DMS) must post a fact sheet for each pension plan that contains the plan's most current actuarial data, minimum funding requirements, and a five-year history of each local plan's funded ratio on its website. Local plans must provide a link on their website to the DMS website. It also requires DMS to develop a plan to create a standardized rating system to classify the financial strength of each local pension plan. The plan must be submitted to the Governor, Legislature, and Chief Financial Officer by January 1, 2012.

Finally, the bill creates an eight member Task Force on Public Employee Disability Presumptions (Task Force) to develop findings and issue recommendations on disability presumptions. The Task Force must submit a report to the Governor, Legislature, and Chief Financial Officer, by January 1, 2012. The Task Force is dissolved once the report is submitted.

The bill appears to have an unknown fiscal impact on state and local governments.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

State Constitution: Governmental Unit Retirement and Pension Systems
Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

Florida Statutes: The Florida Protection of Public Employee Retirement Benefits Act
Part VII of chapter 112, F.S., the "Florida Protection of Public Employee Retirement Benefits Act," (act) was adopted by the Legislature to implement the provisions of s. 14, Art. X of the State Constitution. The act establishes minimum standards for operating and funding public employee retirement systems and plans. It is applicable to all units of state, county, special district, and municipal governments participating in or operating a retirement system for public employees, which is funded in whole or in part by public funds.

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

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

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 municipalities. Fourteen years later, the Legislature enacted chapter 185, F.S., which provides a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under chapter 175, F.S., in 1993.

Funding for these pension plans comes from four sources: net proceeds from an excise tax levied by a municipality upon property and casualty insurance companies (known as the "premium tax"), employee contributions, other revenue sources, and mandatory payments by the municipality of any extra amount needed to keep the plan solvent. Employee contributions

[1] Section 112.63, F.S.
[2] Chapters 175 and 185, F.S.
[3] *See* ss. 175.021(1) and 185.01(1), F.S.

used to fund the pension plan may not be increased unless the increase provides for greater benefits to the members of that plan.[4]

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 of Retirement, but day-to-day operational control rests with local boards of trustees. Most firefighters and police officers participate in these plans.

The Firefighters' Pension Trust Fund is funded through an excise tax of 1.85 percent imposed on fire insurance companies, fire insurance associations, or other property insurers on the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance.[5] This excise tax is imposed on the policies located within the municipality or special fire control district. It is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.[6] In 2009, premium tax distributions to municipalities and special fire districts from the Firefighters' Pension Trust Fund amounted to $91.94 million.[7]

The Police Officers' Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amount up to 0.85 percent of the gross receipts on premiums for policies issued within the municipality.[8] Similar to the Firefighters' Pension Trust Fund, the excise tax is payable to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Division of Retirement.[9] In 2009, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to $64.44 million.[10]

In 1999, the Legislature passed legislation that made virtually all provisions of chapters 175 and 185, F.S., expressly applicable to all participating police officer and firefighter pension plans. All pension plans falling under these chapters were required to meet specific "minimum benefit" standards. The law required that insurance premium tax revenues over the amount received for calendar year 1997 be used to provide additional or "extra benefits" in firefighter and police officer pension plans. The term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality, and in addition to those in existence for firefighters and police officers on March 12, 1999.[11]

Chapters 175 and 185, F.S., allow police officers and firefighters to utilize overtime, unused sick leave, and unused annual leave in the computation of retirement benefits.[12] Current law provides that firefighters may use all overtime hours earned in the computation of retirement

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[4] *See* ss. 175.091(2)(b) and 185.07(2)(b), F.S.
[5] Section 175.091(1)(a), F.S.
[6] Section 175.121, F.S.
[7] 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_2009.pdf (last visited on April 4, 2011).
[8] Section 185.08, F.S.
[9] Section 185.10, F.S.
[10] 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_2009.pdf (last visited on April 4, 2011).
[11] Sections 175.351 and 185.35, F.S.
[12] *See* ss. 175.032 and 185.02, F.S.

benefits; however, police officers have a cap of 300 hours per year that may be used in the calculation of retirement benefits.[13]

Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.[14] These taxes must be paid to the Department of Revenue on March 1 of each year in an amount equal to 1.75 percent of the gross amount of receipts on the specified policies, and 1.00 percent on annuity polices or contacts, to be distributed into the General Revenue Fund. The insurer is allowed to take credits for the municipal taxes imposed on property and casualty insurance policies used to fund firefighter and police pension trust funds.[15] Each time a municipality that is not imposing the tax enacts an ordinance to impose the tax, a credit is taken by the insurer against the tax paid to the department for deposit into the General Revenue Fund.

Supplemental Plans

A supplemental plan is a defined contribution plan in which deposits are made to provide extra benefits to firefighters and police officers. These plans are an element of the local law plans and exist in conjunction with defined benefit pension plans that meet the minimum benefits proscribed in chapters 175 and 185, F.S. There are approximately 40 municipalities that provide supplemental plans to their members.

Board of Trustees

The Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Fund are administered by a local governing board of trustees that is created in participating municipalities and special fire control districts, and subject to the regulatory oversight of the Division of Retirement.[16] The membership of the board consists of five members: two residents appointed by the governing body of the municipality or a special fire control district, two police officers or firefighters selected by the active membership, and one member selected by the other four members and approved by the appropriate governing body pro forma, who are subject to two-year terms.[17]

The board of trustees has the authority to invest and reinvest pension trust fund assets into annuities and life insurance contracts in amounts sufficient to provide entitled benefits and initial and subsequent premiums.[18] Under current law, if the trust fund is not sufficient to provide entitled benefits, any additional contributions necessary to maintain the actuarial soundness of the plan must be paid by the municipality.[19]

Disability Presumption

Any conditions or impairments of health suffered by firefighters or police officers that are caused by tuberculosis, hypertension, or heart disease, and that result in total or partial disability or

13 Section 185.02, F.S.
14 Section 624.509(1), F.S.
15 Section 624.51055, F.S., states, "[t]here is allowed a credit of 100 percent of … However, such credit may not exceed 75 percent of the tax due under s. 624.509(1) after deducting such tax deductions for … credits for taxes paid under ss. 175.101 and 185.08 …"
16 *See* ss. 175.061 and 185.05, F.S.
17 *Id.*
18 *See* ss. 175.071 and 185.06, F.S.
19 *See* ss. 175.091(1)(d) and 185.07(1)(d), F.S.; *see also* ss. 175.051 and 185.04, F.S., stating, "[f]or any municipality, chapter plan, local law municipality, or local plan under this chapter, actuarial deficits, if any, arising under this chapter are not the obligation of the state".

death, are presumed to have been accidental and suffered in the line of duty unless contrary evidence is presented.[20] Firefighters and police officers are required to submit to and successfully pass a physical examination.[21] This physical examination must be taken prior to entering into service.

Provisions regarding disability presumptions are applicable to any state or local employee who is employed as a law enforcement officer, correctional officer, correctional probation officer, or firefighter.[22]

Effect of Proposed Changes

Compensation and Salary
The bill redefines the terms “compensation” and “salary” contained in ss. 175.032 and 185.02, F.S. The bill limits the inclusion of payments for overtime compensation, up to 300 hours per year, in the calculation of retirement benefits as specified in the local plan or the collective bargaining agreement, effective July 1, 2011. Unused sick and annual leave may not be included in the calculation. The bill extends these requirements to general employees in local pension plans.

Pension Plan Member Contributions
The bill also allows municipalities, special fire control districts, chapter plans, local law municipalities, local law special fire control districts, and local law plans to increase member contribution rates without providing greater benefits. This member contribution increase must be approved by the collective bargaining representative or by a majority of the members if there is not a collective bargaining representative.

Board of Trustees
The bill allows a municipality, by ordinance, to change its representation on the board of trustees responsible for operating the local law plan. However, the change may not reduce the membership percentages of firefighters, police officers, and municipal representatives.

Financial Rating
The bill requires the Department of Management Services (DMS) to develop a plan for creating standardized ratings for classifying the financial strength of all local government pension plans. Factors to be considered when developing the plan include:

- The plan’s current and future unfunded liabilities;
- The plan’s net asset value, managed returns, and funded ratio;
- Metrics related to the sustainability of the plan;
- Municipal bond ratings for the local government, if applicable;
- Whether the local government has reduced contribution rates to the plan when the plan has an actuarial surplus; and
- Whether the local government uses any actuarial surplus in the plan for obligations outside of the plan.

DMS must submit the plan to the Governor, President of the Senate, Speaker of the House of Representatives, and Chief Financial Officer by January 1, 2012.

[20] Sections 175.231 and 185.34, F.S.
[21] *Id.*
[22] Section 112.18, F.S.

Task Force on Public Employee Disability Presumptions

The bill creates the Task Force on Public Employee Disability Presumptions (Task Force) to develop findings and issue recommendations on the disability presumptions in ss. 112.18, 175.231, and 185.34, F.S. Members of the Task Force must be appointed on or before July 15, 2011, and must hold its first meeting on or before August 15, 2011. It is composed of eight members as follows:

- Three members appointed by the President of the Senate, one of whom must be an attorney who primarily represents plaintiffs in pension plan issues, one must be a representative of organized labor and a member of a pension plan under chapter 175, F.S., and one must be from the Florida Association of Counties;
- Three members appointed by the Speaker of the House of Representatives, one of whom must be an attorney who primarily represents defendants in pension plan issues, one must be a representative of organized labor and a member of a pension plan under chapter 185, F.S., and one must be from the Florida League of Cities;
- A member employed by the Division of Retirement and appointed by the Governor; and
- A member employed by the Department of Financial Services and appointed by the Chief Financial Officer.

The Task Force must address issues, including, but not limited to:

- Data related to the operation of the statutory disability presumptions, and the fiscal impact on public employers in the areas of pensions and workers' compensation.
- The manner in which other states handle disability presumptions, and the fiscal impact on public employers.
- Proposals for changes to the existing disability presumptions.
- Evidentiary standards and burdens of proof for overcoming statutory disability presumptions, and whether consideration of risk factors and epidemiological data relating to nonwork-related conditions unique to an individual employee, such as blood cholesterol, body mass index, history of tobacco and alcohol use, and other medical conditions or behaviors that are associated with the diseases or conditions listed in disability presumptions, are appropriate for consideration.

The Task Force must submit a report to the Governor, Chief Financial Officer, President of the Senate, and Speaker of the House of Representatives by January 1, 2012. The report must include the findings of the Task Force and recommendations for legislative action during the 2012 regular session. The Task Force is dissolved once the report is submitted.

The bill designates the Department of Financial Services to provide administrative support for the Task Force. The members of the Task Force will not receive compensation for their service, but will receive reimbursements for travel expenses and per diem.

Actuarial Requirements

The bill requires DMS to post a fact sheet for each pension plan that contains the plan's most current actuarial data, minimum funding requirements, and a five-year history of each local plan's funded ratio on its website. Local plans must provide a link on their website to the DMS website.

The bill revises the actuarial reporting requirements to require each pension plan to disclose the present value of its accrued vested, nonvested, and total benefits as adopted by the Financial Accounting Standards Board, using the Florida Retirement System's assumed rate of return. This is to promote the comparability of actuarial data between local plans.

The bill prohibits the use of an actuarial or cash surplus for expenses outside of any plan. Additionally, it prohibits a local government sponsor of a pension plan from reducing contributions required to fund the normal cost of the plan.

Miscellaneous Provisions
The bill provides a statement of important state interest.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See "Fiscal Comments."

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill has an unknown fiscal impact on the Division of Retirement. The Division is required to develop a plan for creating standardized ratings for classifying the financial strength of local government pension plans.

The bill has a fiscal impact on the Department of Financial Services due to the requirement that the department provide administrative support for the Task Force on Public Employee Disability Presumptions. In addition members of the task force are entitled to reimbursement for per diem and travel expenses. The total fiscal impact is unknown at this time.

Finally, the bill could have a positive fiscal impact on local pension plans as a result of the change to the definition of "compensation" and "salary". Creating a cap of 300 hours per year for overtime used in the calculation of retirement benefits and excluding the inclusion of unused sick and annual leave could reduce the cost to local governments for purposes of funding their retirement plans.