

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 Fiscal Policy

BILL: CS/SB 172

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bradley and others

SUBJECT: Local Government Pension Reform

DATE: March 25, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	<u>Pace</u>	<u>Hrdlicka</u>	<u>FP</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 172 substantially amends provisions specifying how insurance premium tax revenues must be used in police and firefighter pension plans. Historically, insurance premium tax revenues equal to the amount received in 1997 by a particular plan were used to fund the minimum benefits specified in chs. 175 or 185, F.S., and other retirement benefits. Any insurance premium tax revenues received by a plan in excess of the 1997 threshold were to fund minimum benefits, additional retirement benefits, and defined contribution plans under certain specified situations. The bill authorizes deviation from the historical use of insurance 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 minimum annual benefit accrual rate from 2.0 percent to 2.75 percent, subject to certain exceptions.

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 3, 2015.

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

The overall costs or savings from the 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 revenues or expenditures.

II. Present Situation:

Background

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 police officers. All municipal and special district firefighters and all municipal police officers retirement trust fund systems or plans established pursuant to chs. 175 or 185, F.S., must be managed, administered, operated, and funded to maximize the protection of firefighters' and police officers' pension trust funds.²

In 1939, the Legislature enacted ch. 175, F.S., to encourage cities to establish firefighter retirement plans by providing cities with the incentive of access to insurance premium tax revenues.³ Fourteen years later, the Legislature enacted ch. 185, F.S., to provide a similar funding mechanism for municipal police officers retirement plans. Special fire control districts became eligible to participate under ch. 175, F.S., in 1993.⁴

The Division of Retirement (division) within the DMS administers benefits to 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 chs. 175 or 185, F.S., by reference.⁵ 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.⁶ 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.⁷ If the division deems that a firefighter or police pension plan created pursuant to chs. 175 or 185, F.S., is not in compliance with those chapters, the sponsoring municipality could be denied its distribution of insurance premium tax revenues.⁸

¹ See chs. 175 and 185, F.S.

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

³ The insurance premium tax is tax imposed on insurance premiums and paid by insurance companies. Insurance premium tax revenue is distributed to Municipal Firefighters' Pension Fund and the Municipal Police Officers' Retirement Fund, the Insurance Regulatory Trust Fund, and General Revenue.

⁴ See Department of Management Services, Overview, History of Chapter 175/185 Program, available at, http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/overview (last visited March 21, 2015).

⁵ Sections 175.032(2) and 185.02(3), F.S.

⁶ Sections 175.032(11) and 185.02(10), F.S.

⁷ The division is responsible for administrative oversight of funds, including monitoring for actuarial soundness; see ss. 175.341(1) and 185.23(1), F.S.

⁸ Sections 175.341(1) and 185.23(1), F.S.

Funding

Four sources provide funding for these police officer and firefighter pension plans:

- The 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 (fines, gifts, and interest earnings); and
- Mandatory payments by the city of the normal cost of the plan.⁹

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 funds the Firefighters’ Pension Trust Fund of each participating municipality or special fire control district.¹⁰ The insurers pay the tax to the Department of Revenue (DOR), and the net proceeds are transferred to the appropriate fund at the division.¹¹ In 2013, insurance premium tax distributions to municipalities and special fire districts from the Firefighters’ Pension Trust Fund amounted to \$74.7 million.¹²

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.¹³ 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.¹⁴ In 2013, insurance premium tax distributions to municipalities from the Police Officers’ Retirement Trust Fund amounted to \$64.9 million.¹⁵

The table below shows the aggregate amount of insurance premium taxes distributed to the firefighter and police pension plans during the last 17 years.¹⁶

Year	Premium Taxes Distributed to Chapter 175 Plans (Firefighter)	Premium Taxes Distributed to Chapter 185 Plans (Police)
1997	\$26,841,000	\$41,030,000
1998	\$29,469,000	\$41,218,000
1999	\$30,116,000	\$42,104,000
2000	\$30,902,000	\$43,600,000
2001	\$34,765,000	\$48,652,000
2002	\$40,044,000	\$54,556,000
2003	\$44,731,000	\$61,545,000

⁹ Sections 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.

¹⁰ Section 175.101(1), F.S.

¹¹ See s. 175.121(1), F.S.

¹² Department of Management Services, *Firefighters' 2013 Insurance premium tax Distribution Calculation*, available online at: https://www.rol.frs.state.fl.us/forms/Fire_2013.pdf (last visited March 21, 2015).

¹³ See s. 185.08(1)(a), F.S.

¹⁴ See s. 185.10(1), F.S.

¹⁵ Department of Management Services, *Police Officers' 2013 Insurance premium tax Distribution Calculations*, available online at: https://www.rol.frs.state.fl.us/forms/Police_2013.pdf (last visited March 21, 2015).

¹⁶ Department of Management Services, *Data & Graph of Distribution Amounts*, available online at: https://www.rol.frs.state.fl.us/forms/Aggregate_Data.pdf (last visited March 21, 2015).

2004	\$48,515,000	\$62,224,000
2005	\$53,460,000	\$64,326,000
2006	\$60,500,000	\$65,619,000
2007	\$69,982,000	\$65,308,000
2008	\$67,152,000	\$63,961,000
2009	\$70,530,000	\$59,426,000
2010	\$70,122,000	\$57,469,000
2011	\$71,744,000	\$59,615,000
2012	\$72,471,000	\$62,608,000
2013	\$74,705,000	\$64,869,000

Minimum Benefit Levels

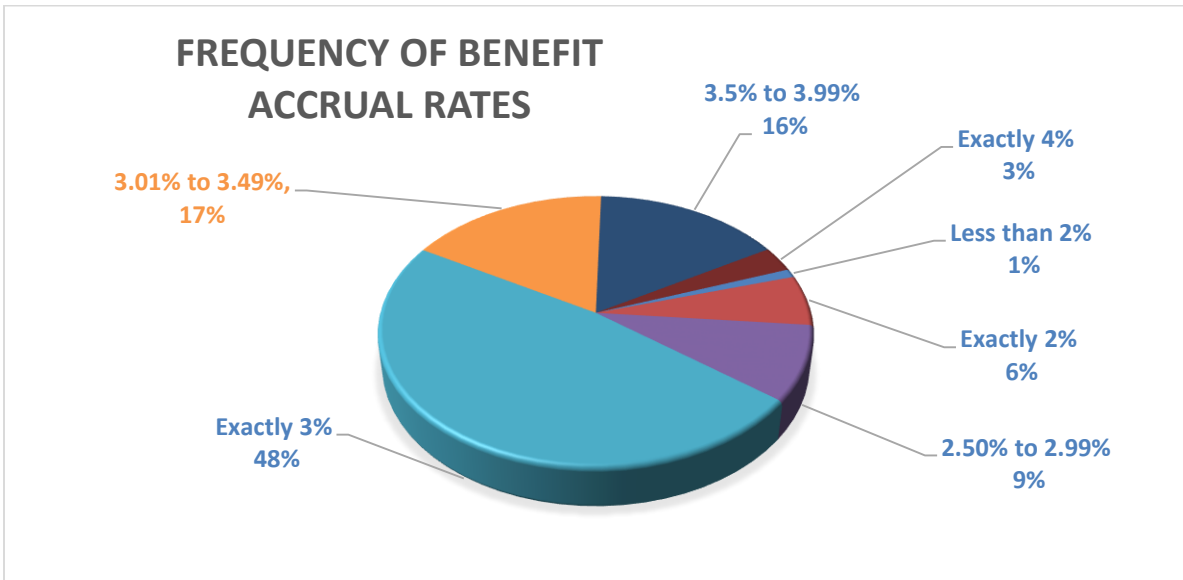
Chapters 175 and 185, F.S., specify certain “minimum benefits” that must be provided in firefighter and police plans,¹⁷ summarized in relevant part below:

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 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.

The chapter law plans adopt the statutory minimum benefits for their plans. The local law plans have broad discretion to establish the benefit levels, including benefit accrual rates. The chart below shows the frequency of the benefit accrual rates used by the various firefighter and police

¹⁷ Sections 175.032, 175.162, 175.191, 185.02, 185.16, and 185.18, F.S.

pension plans.¹⁸ A 3 percent annual accrual rate is by far the most frequently used rate – similar to the benefit accrual rate used by the Florida Retirement System for the Special Risk Class membership.



Historical Interpretation of the Law

In 1999, the Legislature passed legislation¹⁹ that made virtually all provisions of chs. 175 and 185, F.S., expressly applicable to all participating police officer and firefighter pension plans, except the local law plans established by special act of legislation before May 27, 1939 (the cities of Jacksonville, Coral Gables, Miami, and Miami Beach).²⁰ That legislation required all pension plans operating pursuant to these chapters to meet the specific “minimum benefit” standards and to use the insurance premium tax revenues for certain purposes. A plan was authorized to use on an annual basis the amount of insurance premium tax revenues received by the plan in 1997 to meet the costs of minimum benefits in effect on March 12, 1999.²¹ Each plan was required to use the insurance premium tax revenues received above the 1997 threshold to meet the costs of any statutory minimum benefits that were not funded as of March 12, 1999, or to fund “extra benefits.” 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, 1999.²²

Until August 2012, the division consistently interpreted the law to require that insurance 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

¹⁸ Department of Management Services, *Benefit Accrual Rate Chart (2013)*, available online at: https://www.rol.frs.state.fl.us/forms/Benefit_Accrual.pdf (last visited on March 21, 2015).

¹⁹ Chapter 99-1, L.O.F.

²⁰ Sections 175.351(3) and 185.35(3), F.S.

²¹ The division adopted a rule in 2003 establishing a prohibition against the use of premium tax revenues to fund extra benefits unless the extra benefits were adopted after March 12, 1999. The law was amended in 2004 to adopt the 2003 interpretation. House of Representatives Staff Analysis HB 251, March 8, 2004.

²² See ss. 175.351(2)(b) and 185.35(2)(b), F.S.

minimum benefits requirements, any additional insurance premium tax revenues had to be used 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.

Re-interpretation of the Law

In response to a letter from the City of Naples in August 2012, the division advised that its historical 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 insurance premium tax revenues. In its response, the division advised that for local law plans in effect on October 1, 1998, the law compels the plan to provide minimum benefits only to the extent that those benefits can be funded with “additional insurance premium tax revenues.” Thus, for local law plans in effect on October 1, 1998, the division’s re-interpretation of the law requires chapter minimum benefits to be provided only to the extent that those benefits can be funded with insurance premium tax revenues received in excess of the amount received for calendar year 1997.²³

Under the new interpretation, it appears the division will allow the following actions to occur without impacting the distribution of insurance premium tax revenues:

- A plan sponsor may redirect, at its discretion, its 1997 level insurance premium tax revenues from funding minimum benefits to funding other non-pension retirement benefits;
- A plan sponsor may reduce plan pension benefits to the level that can be funded solely by those additional insurance premium tax revenues received in excess of the 1997 level;
- A plan sponsor may reduce its mandatory contribution that it was previously making to the plan to fund minimum benefits and to redirect those monies to other municipal purposes; and
- A plan sponsor may use its insurance premium tax revenues in excess of the 1997 threshold (previously restricted to fund “extra benefits” only) to fund any minimum benefits.

The division has subsequently provided this new interpretation to other inquiring cities. DMS has not adopted its original interpretation of the law nor its recent interpretation of the exact same statutory language as a rule.

Definition of Salary in Municipal Police Pension Plans

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.²⁴ 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

²³ Department of Management Services, *Letter to The Honorable John F. Sorey III*, August 14, 2012 (on file with the Senate Fiscal Policy Committee).

²⁴ Chapter 2011-216, L.O.F.

retirement benefits. Section 185.02(4), F.S., had the following definition before the 2011 amendment:

“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 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.²⁵

III. Effect of Proposed Changes:

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

²⁵ 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).

Definitions

(Sections 2 and 8)

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

Change of the Minimum Benefit Accrual Rate

(Sections 5 and 11)

The bill increases the minimum benefit accrual rate from 2.0 percent to 2.75 percent. Plans are permitted to deviate from this minimum benefit accrual rate if the plan is otherwise in compliance with the minimum benefits and minimum standards but provides a benefit accrual rate of less than 2.75 percent. In that instance, the plan must maintain, at a minimum, the benefit accrual rate that was in effect on July 1, 2015. If the plan subsequently increases the benefit accrual rate to 2.75 percent or greater, the plan may not later reduce the rate below 2.75 percent.

Use of Insurance premium tax revenues

(Sections 6 and 12)

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

- Base insurance premium tax revenues must be used to fund minimum benefits or other retirement benefits in excess of the minimum benefits.
- Of the additional insurance premium tax revenues received in excess of the amount received in calendar year 2012, 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.²⁶
- Additional insurance 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 insurance 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.

²⁶ Sections 2 and 8 define “special benefits” as benefits provided in a defined contribution plan.

- Of any accumulations of additional insurance premium tax revenues which have not been applied to fund benefits in excess of minimum benefits:
 - 50 percent of the accumulation must be used to fund special benefits; and
 - 50 percent must be used to fund any unfunded actuarial liabilities of the plan, provided that any amount of accumulations in excess of amount required to fund unfunded actuarial liabilities must be used to fund special benefits.
- For plans created after March 1, 2015, 50 percent of the insurance premium tax revenues must be used to fund defined benefit plan component 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, 2014, those plan benefits may be reduced if the plan continues to meet the minimum benefits and minimum standards in chs. 175 and 185, F.S., respectively. 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, 2014, 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 plan 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 chs. 175 or 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 of the members' collective bargaining representative (or a majority of the members of the fund) and the municipality (or special fire control district). 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, 2015, regarding the existing agreement on the use of insurance premium tax revenues.

The bill also requires plan sponsors to create defined contribution plan components within their plans by October 1, 2015, for noncollectively bargained services, upon entering into a collectively bargaining agreement on or after July 1, 2015, 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 insurance 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 insurance premium tax revenues in

this manner until the earlier of October 1, 2018, or the time when another collective bargaining agreement is negotiated addressing the benefits or use of revenues.

300 Hour Cap of Overtime for Benefit Purposes

(Section 8)

The bill amends the definition of “compensation” or “salary” in s. 185.02(4), F.S., relating to police officer retirement plans, to:

- Repeal 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.” Repealing 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 1, 3, 4, 7, 9 and 10)

The bill amends ss. 175.021, 175.071, 175.091, 185.01, 185.06, and 185.07, F.S., to make conforming changes.

Important State Interest

(Section 13)

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

Effective Date

(Section 14)

The bill takes effect July 1, 2015.

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 this bill 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.

VI. Technical Deficiencies:

None.

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.

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 Governmental Oversight and Accountability on January 21, 2015:
CS/SB 172 makes several technical changes to add clarity to the language and correct several scriveners' errors.

- B. **Amendments:**

None.