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 General Government Appropriations Committee

BILL: SB 2106

INTRODUCER: Senator Ring

SUBJECT: Municipal Police Pension Plans

DATE: April 13, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Favorable**
2.	Wilson	Wilson	GO	**Favorable**
3.	McVaney	DeLoach	GA	**Favorable**
4.			WPSC	
5.				
6.				

I. Summary:

This bill allows closed local law pension plans with five or fewer members under the Municipal Police Officers' Retirement Trust Fund to use state premium tax revenues to repay any advance payments made by the municipality to purchase annuities to fund accrued liabilities.

The bill provides that these plans will not be deemed to be "fully funded" until the full cost of the advanced payment has been repaid to the municipality.

This bill may have a significant impact on the revenues deposited into the General Revenue Fund.

This bill substantially amends section 185.35, Florida Statutes.

II. Present Situation:

The Marvin B. Clayton Firefighters Pension Trust Fund Act and the Marvin B. Clayton Police Officers Pension Trust Fund Act

The Marvin B. Clayton Firefighters Pension Trust Fund Act and the Marvin B. Clayton Police Officers Pension Trust Fund Act, located in ch. 175 and 185, F.S., respectively, declare a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters and municipal police officers, in implementing the provisions of Art. X, s.14 of the State Constitution. Pursuant to ss. 175.021(1) and 185.01(1), F.S., 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.[1] The Division of Retirement within the Department of Management Services is the primary state agency responsible for administrative oversight, including monitoring for actuarial soundness, of the funds in the Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Fund.[2]

Municipal Police Officers' Retirement Trust Fund

The Police Officers' Retirement Trust Fund is funded through an excise tax on casualty insurance policies that amount to up to 0.85 percent of the gross receipts on premiums for policies issued within the municipality boundary.[3] This excise tax is payable to the Department of Revenue (DOR) and the net proceeds are transferred to the appropriate fund at the Division of Retirement. In 2008, premium tax distributions to municipalities from the Police Officers' Retirement Trust Fund amounted to $63.96 million.[4]

Additional revenues for both funds come from a five percent employee contribution through salary, employer contributions, and fines for employees violating board rules and regulations, and other sources.[5]

Insurance Premium Tax

Each qualified insurer must pay an annual tax on specified insurance premiums received during the preceding calendar year.[6] 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 one percent on annuity policies or contracts, to be distributed into the General Revenue Fund. Pursuant to s. 624.51055, F.S., 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.[7] Each time a municipality that is currently not imposing the tax enacts an ordinance to impose the tax, a credit is taken by the insurer against the tax paid to the DOR for deposit into the General Revenue Fund.

Board of Trustees

The Municipal Police Officers' Retirement Trust Fund is administered by a local governing board of trustees that is created in participating cities and special fire control districts and subject to the regulatory oversight of the Division of Retirement.[8] The membership of the board consists of five members: two residents, two police officers or firefighters selected through the active

[1] *See* ss. 175.021(1) and 185.01(1), F.S., (2006).
[2] *See* ss. 175.121 and 185.10, F.S.
[3] Section 185.08, F.S.
[4] 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_2008.pdf (last visited on March 14, 2010).
[5] *See* ss. 175.091(1)(a)-(g) and 185.07(1)(a)-(g), F.S.
[6] Section 624.509(1), F.S.
[7] Section 624.51055, F.S., ("There 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 …").
[8] *See* ss. 175.061 and 185.05, F.S.

membership, and one member selected by the other four members and approved by the appropriate governing body pro forma that are subject to two-year terms.

Section 185.06, F.S., provides the board of trustees with 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. Under current law, if the trust fund is not sufficient to provide entitled benefits, any additional contributions necessary to maintain the plan actuarial soundness, must be paid by the municipality.[9]

Actuarial Soundness and Minimum Funding Standards

Article X, s. 14 of the State Constitution requires public retirement benefits to be funded on a sound actuarial basis.

> SECTION 14: State retirement systems benefit changes.- A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.[10]

The Florida Protection of Public Employee Retirement Benefits Act, located in Part VII of ch. 112, F.S., provides minimum operation and funding standards for public employee retirement plans. The legislative intent of this act is to "prohibit the use of any procedure, methodology, or assumptions, the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current tax payers."[11]

III. Effect of Proposed Changes:

Section 1 amends s. 185.35(1), F.S., to allow insurance premium tax revenues to be used to repay an advance payment from a municipality which used funds to purchase an annuity to fund the accrued liabilities of the pension plan. This will apply only in a closed plan that has fewer than five active members where police services have been transferred or merged with another governmental agency. This section also states that these plans will not be deemed "fully funded" until the full cost of the advanced payment has been repaid to the municipality.[12]

Section 2 provides an effective date of July 1, 2010.

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[9] Section 185.07(1)(d), F.S., *See also* s. 185.04, F.S., stating that, "For 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".

[10] Art. X, section 14 of the Florida Constitution.

[11] Section 112.61, F.S.

[12] The Department of Management Services, defines "fully funded" to mean, "that the present value of all benefits, accrued, and projected, is less than the available assets and the present value of future members contributions and future plan sponsor contributions on an actuarial entry age cost funding basis". *See* Department of Management Service, *Fiscal Analysis of SB 2160* at 3 (March 15, 2010) (on file with the Senate Committee on Community Affairs).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

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:

In limited circumstances, premium tax revenue normally credited to the General Revenue Fund will be diverted to repay a municipality that purchased an annuity to fund accrued liabilities of the plan.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Management Services has raised the following issues:

- This bill only addresses municipal police pension plans without addressing similar provisions in ch. 175, F.S., pertaining to firefighter's pension plans. Chapters 175 and 185, F.S., currently have a relatively uniform application of laws pursuant to the Marvin B. Clayton Firefighters Pension Trust Fund Act and the Marvin B. Clayton Police Officers Pension Trust Fund Act.
- The provisions of this bill are in direct conflict with s. 185.04, F.S., stating that: "For 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."

- The amendments proposed in this bill will cause state premium tax revenues to continue to be paid to closed plans with a decreasing number of participants. This will have a negative impact on the General Revenue Fund.[13]

On March 30, 2010, the Department of Management Services was requested to provide a listing of plans affected by the bill and the magnitude. That list, displayed in table format below, presents all ch. 185 and 175, F.S., closed pension plans, even though the effect of the bill addresses only ch. 185, F.S., plans:

Local Government Pension Plans Affected by Annuitized Insurance Premium Tax Revenues[14]

Plan Sponsor	Police/Fire	Transfer Date	Employees	Share Plan?	2009 Monies
Arcadia	Fire	6-1-2006	3	No	$ 50,121
Cooper City	Fire	2-15-2004	21	No	$ 239,058
Cooper City	Police	2-15-2004	22	No	$ 220,258
Dade City	Fire	10-1-2003	6	No	$ 96,581
Dania Beach	Police	10-1-1988	0	No	$ 182,705
Deerfield Beach	Police	1-3-1990	10	Yes	$ 546,041
Frostproof	Police	1-1-2007	4	No	$ 25,879
Homestead	Fire	10-1-1978	1	No	$ 206,092
Lantana	Fire	10-1-1997	27	No	$ 102,587
North Miami Beach	Fire	1-1-1978	0	Yes	$ 271,278
Oakland Park	Police	7-2000	29	No	$ 244,010
Parkland	Police	3-1-2004	1	No (COLA)	$ 167,702
Pompano Beach	Police	9-1-1999	82	No	$ 876,446
Royal Palm Beach	Police	9-1-2006	6	Yes	$ 243,603
Sarasota	Fire	1-1-1996	45	No (Share)	$ 658,457
Tamarac	Police	7-1-1989	0	Yes	$ 457,635
Vero Beach	Fire	8-31-1991	0	No	$ 281,757
ALL FIRE			**103**		**$1,905,931**
ALL POLICE			**154**		**$2,964,279**

There are a number of uncertainties about the implementation of this change; some are a function of the nature of an annuity while others are the longer term consequences upon the attainment of fully funded status. An annuity is an insurance contract which provides regular payments in exchange for a principal sum. It is composed of an accumulation phase – in which amounts deposited are held with limited recourse for redemption without penalty – and a distribution phase – where the contracted amounts are paid over the remaining term. Annuities work in the opposite direction of insurance; an annuity assumes the beneficiary will terminate early while a traditional insurance contract profits from the expected longevity of the named insured. The

[13] The Department of Management Services, *Senate Bill 2106 Analysis* (March 15, 2010) (on file with the Senate Committee on Community Affairs).
[14] Electronic mail communication dated March 31, 2010 from the Department of Management Services; on file with the Governmental Oversight and Accountability Committee

annuity contract becomes attractive to the plan sponsor in these circumstances since there is a known unfunded liability associated with the remaining plan members and a predictable mortality experience. As defined benefit pension plans close to new hires they become more expensive to manage since earnings from investments cannot service all of the benefit demands and there are no investable contributions from new participants. Annuity contracts smooth out this experience and make fully funded status easier to attain in advance of the termination of the final pension participant or survivor.

That said, there are other considerations. There is nothing in the bill that restricts the usage of the insurance premium tax funds after the satisfaction of the pension benefit obligation. This frees the plan sponsor to use the remaining monies for extra benefits or to cover costs of its replacement plan, if any. These can constitute a windfall to the sponsor as it now has income and no obligations. This departs from the purpose of the insurance premium tax distribution to local government pension plans, namely, to fund benefits only to the extent that the ch. 175 and 185, F.S., plan sponsor had incurred them. The elimination of these benefit obligations implies that the plan sponsor should no longer be entitled to the receipt of insurance premium tax monies. This is a significant policy change.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

None.

B. Amendments:

None.