

2015 Police and Firefighter Pension Law
Enrolled CS/SB 172 (Senators Bradley and Ring)
Chapter No. 2015-39, Laws of Florida
Summary Document and Worksheet
Updated 10/20/2016

[Note: If your city wants to conduct an analysis of how the law may specifically affect your city, please do not rely solely on this summary document. Rather, please use the actual language in the Florida Statutes for an analysis. The Florida Statutes are available at the Legislature’s website: www.leg.state.fl.us]

Important Dates:

- The law applies to collective bargaining agreements entered into on or after July 1, 2015, and for non-collectively bargained for service on or after October 1, 2015.
- A city that does not have a union for its police officers or firefighters must include a “defined contribution plan component” in its plan by October 1, 2015 (further explained below).

A. Broad Concept:

In its broadest terms, the new law can best be described as a law that positions two parties, cities and police and firefighter unions (or police/firefighter plan members if there is no union), in the collective bargaining process over the use of insurance premium tax revenues for retirement benefits. The goal of the law is to encourage the parties to “mutually consent” on the use of insurance premium tax revenues for retirement benefits. However, if the parties cannot reach “mutual consent,” the law provides a fairly complicated process on the required use of insurance premium tax revenues. This process is designed to discourage not reaching mutual consent, or stated in the affirmative, is designed to encourage mutual consent. For the parties to understand their relative bargaining strengths and weaknesses under the law, each party will likely desire to determine its position if there is no mutual consent and the statutory insurance premium tax revenue distribution process is engaged.

The law is designed to establish a two-step process regarding the use of insurance premium tax revenues (“IPTR”) for pensions operated under Chapters 175 (fire) and 185 (police), Florida Statutes. The law allows cities and unions (or police/fire plan members if there is no union) to “mutually consent” to the use of IPTR for retirement benefits, including any accumulation of tax revenues not yet used for retirement benefits. If “mutual consent” is achieved, the other provisions of the law relating to any required use of IPTR are **NOT** applicable; rather the parties have “mutually consented” until the next collective bargaining cycle or until “mutual consent” is revoked. The law is structured to encourage “mutual consent” on the use of IPTR during the collective bargaining process.

If, however, “mutual consent” cannot be achieved, there is a statutory “default” process or a reversion to a statutory IPTR distribution process (further explained below). The “default” or statutory IPTR distribution process is very complicated and potentially costly to the city or police/fire pension plan members depending on the particular circumstances in each city.

Understanding the new law will require concepts under a 1999 law to be cast off or forgotten. For instance, the old law relating to defining an “extra benefit” and requiring a portion of IPTR to be used for “extra benefits” is removed. There is also no longer a comparison of police or fire pension benefits to general employee pension benefits. Rather, the new law focuses on complying with the statutory minimum benefits and minimum standards, with limited exceptions, under Chapters 175 and 185, Florida Statutes.

- B. Mutual Consent: Effective 10/1/2015 for non-collectively bargained for service or for the next collective bargaining agreement entered into on or after 7/1/2015:
1. Cities and unions (or police/fire plan members if there is no union) are allowed to “mutually consent” to the use of IPTR, including any accumulation of tax revenue not yet used or allocated for retirement benefits. If “mutual consent” is achieved, IPTR are **NOT** subject to the statutory IPTR distribution process. Under “mutual consent,” statutory minimum benefits and minimum standards would have to be met. However, if as of 10/1/2012 a plan did not meet a minimum benefit level, the plan could continue under “mutual consent” and not have to increase the benefit up to the minimum benefit level. [Special act plans (approximately 8 cities) and supplemental plan municipalities (as defined in statute includes approximately 15 cities) are considered to have mutually consented as of 7/1/2015]. See section 175.351(1)(g) and section 185.35(1)(g), Florida Statutes.
 2. If the parties cannot reach “mutual consent” on the use of IPTR, a statutory IPTR distribution process or “default” is automatically engaged (further explained below in E. “No Mutual Consent”).
- C. Minimum Benefits: The concept of “base” or a 1999 level of pension benefits is removed from law. The statutory minimum benefits and minimum standards must be met except as specifically provided in the law (further explained below). All current statutory minimum benefit levels stay the same, except for the accrual or multiplier rate. Effective 7/1/2015:
1. The 2.0 % minimum accrual or multiplier rate is raised to 2.75%. However, for any plan below 2.75% on 7/1/2015, the law does **NOT** require the plan to come up to 2.75%, and the existing accrual or multiplier rate can remain the same. For any plan above 2.75%, the accrual or multiplier rate can be reduced down to 2.75%. See section 175.162(2) and section 185.16(2), Florida Statutes. (Approximately 84% of police/ fire pension plans have a 3% or higher accrual rate.)
 2. Numerous plans contain some form of maximum benefit cap, such as, for example, providing that a benefit cannot exceed 80 percent of average final compensation or that a benefit cannot exceed \$80,000 a year. These maximum benefit caps are allowed to stay at the existing level even if the maximum benefit cap results in an effective benefit below 2.75 percent.
- D. Defined Contribution Plan Component: Effective 10/1/2015 for non-collectively bargained for service or for the next collective bargaining agreement entered into on or after 7/1/2015, the law requires each pension plan to incorporate a “defined contribution plan component,” or “share plan,” along with the current “defined benefit plan component.” Therefore, each plan will incur an administrative expense in adding a defined contribution plan component to its existing plan. However, the creation of the “defined contribution plan component” is simply an administrative step, and depending upon if there is “mutual consent” or not on the use of IPTR, the defined contribution

plan component may never receive any funding. That is, the law does **NOT** require that the defined contribution plan component be funded in any manner to provide a defined contribution or “share” type benefit to police officers or firefighters, except in the instance where the parties cannot reach “mutual consent” on the use of IPTR, and the statutory IPTR distribution process or “default” is engaged. The law refers to defined contribution type benefits as “special benefits.” [Any required funding of the defined contribution plan component is further explained under E. “No Mutual Consent”.] See sections 175.032(8) and 175.351(6), and sections 185.02(9) and 185.35(6), Florida Statutes.

- E. No Mutual Consent: Effective 10/1/2015 for non-collectively bargained for service or for the next collective bargaining agreement entered into on or after 7/1/2015:

If there is no “mutual consent” (which means the city and union are basically at impasse over the use of insurance premium tax revenues for retirement purposes), IPTR distribution is subject to a statutory or “default” process. Insurance premium tax revenues are divided into various “pots” and the revenue must be used for specified purposes as explained below. Under “no mutual consent,” statutory minimum benefits and minimum standards must be met. [Please use the attached Worksheet to determine the statutory distribution process for your city.]

1. a. Base Premium Tax Revenue: For local law plans in effect on 10/1/2003, base premium tax revenue is the amount of IPTR received by a city for calendar year 2002 (cumulatively for all cities the amount of insurance premium tax revenue received for 2002 (Police, Fire, and Fire Supplemental) is approximately \$100.5 million), which must be used by the city to fund minimum benefits or other retirement benefits as determined by the city. The law provides for a revenue amount for plans created between 2003 and 2015. See sections 175.032(3) and 175.351(1)(a), and sections 185.02(3) and 185.35(1)(a), Florida Statutes.
- b. Additional Premium Tax Revenue is the amount of IPTR received by a city which exceeds base premium tax revenue. See section 175.032(1) and section 185.02(1), Florida Statutes. Under no mutual consent, additional premium tax revenues are divided into two amounts or “pots.”
2. The difference in the amount of additional premium tax revenue received for calendar years 2002 and 2012 (cumulatively, \$145 million (2012 amount) - \$100.5 million (base or 2002 amount)) equals approximately \$44.5 million, and is referred to herein as the “Gap amount”.
 - a. The Gap amount must be used to fund benefits in excess of the minimum benefits. [However, these benefit levels may be reduced when operating under the “default” process – as explained in #5 below.] If this amount of additional IPTR exceeds the full annual cost of benefits provided through the plan which are in excess of the minimum benefits, any additional IPTR amount in excess of the full annual cost is distributed 50% to the city, which must be used by the city to fund minimum benefits or other retirement benefits as determined by the city, and 50 percent to plan members as a “defined contribution” benefit. See section 175.351(1)(c) and section 185.35(1)(c), Florida Statutes.
3. Of the amount of additional insurance premium tax revenue that is above the amount received for calendar year 2012 (this is money above \$145 million that would be distributed in 2015 or in the future) and is referred to herein as the “Growth amount”:

- a. 50% to city, which must be used by the city to fund minimum benefits or other retirement benefits as determined by the city.
 - b. 50% to plan members as a “defined contribution” benefit. See section 175.351(1)(b) and section 185.35(1)(b), Florida Statutes.
4. For any accumulations of additional IPTR that have not already been used or allocated to fund benefits in excess of the minimum benefits, 50% of the amount of accumulations must be used as a “defined contribution” benefit for plan members, and 50% must be applied to fund any unfunded actuarial liabilities of the plan. (There are several cities that still have insurance premium tax revenues not used for “extra benefits” prior to 2013 or have not otherwise been allocated, and under the statutory distribution process there would basically be a onetime distribution of these funds.) See section 175.351(1)(d) and section 185.35(1)(d), Florida Statutes.
 5. For plans that offer benefits in excess of the minimum benefits, the benefits may be reduced to the minimum benefit levels, as specified below. The amount of IPTR previously used to fund benefits in excess of the minimum benefits (this is the Gap amount of approximately \$44.5 million) is subject to a distribution. See section 175.351(1)(f) and section 185.35(1)(f), Florida Statutes.
 - a. For supplemental plans in effect on September 30, 2014 (these are defined contribution or “share” type plans, of which there have been 40-50 created by cities after 1999), the supplemental plan benefits cannot be reduced and the amount of additional IPTR that went to the supplemental plan for calendar year 2012 will continue to go to the supplemental plan (that is, the portion of the additional IPTR associated with this benefit is not subject to being re-distributed).
 - b. Any “defined benefit” type benefits, supplemental plan benefits not in effect on September 30, 2014, or other plan benefits in excess of the minimum benefits can be reduced by the city to the minimum benefit levels (e.g., COLA, DROP or any other benefit over the minimum). However, a plan would have to provide at least the minimum benefit levels, including the minimum accrual rate of 2.75% (or an effective benefit of at least 2.75 percent under a maximum benefit cap), before the city could reduce any other benefits down to the minimum benefit levels. Any IPTR previously used for the portion of the benefit that was reduced is subject to the following distribution:
 - I. 50% to the city, which must be used by the city to fund minimum benefits or other retirement benefits as determined by city.
 - II. 50% to plan members as a “defined contribution” benefit.
 6. For a plan created after March 1, 2015, 50% of insurance premium tax revenue goes to the city to fund defined benefit plan benefits, and 50% to members as a “defined contribution” benefit. See section 175.351(1)(e) and section 185.35(1)(e), Florida Statutes.
- F. Grandfather: A city that has implemented or proposed changes to its pension plan based upon the city’s reliance on an interpretation of Chapter 175(fire) or 185(police), Florida Statutes, by the Department of Management Services on or after August 14, 2012 and before March 3, 2015, may

continue with the implemented changes or continue to implement proposed changes. This reliance must be evidenced by a written collective bargaining proposal or agreement, or formal correspondence between the city and the Department of Management Services which describes the specific changes to the plan, with the initial proposal, agreement, or correspondence from the city dated before March 3, 2015. Provisions of the plan which do not meet the minimum benefits and minimum standards of the respective chapter may continue in effect until the earlier of October 1, 2018 or the effective date of a collective bargaining agreement that is contrary to the provisions in the plan. See section 175.351(7) and section 185.35(7), Florida Statutes.

- G. The law requires police or fire pension boards of trustees to adopt and operate under an administrative expense budget, and have an annual accounting performed. The annual accounting report must be posted to the board's website, if the board has a website. Administrative expenses include expenses relating to any legal counsel, actuary, plan administrator, and all other consultants, and all travel and other expenses paid to or on behalf of members of the board of trustees or anyone else on behalf of the plan. (This provision also applies to all special act plans created before May 27, 1939, which includes Jacksonville, Miami, Coral Gables and Miami Beach.) See section 175.061 (8) and section 185.05(8), Florida Statutes.
- H. The law clarifies that for police pension plans, the definition of "compensation" or "salary" under the plan could limit the use of overtime for plan purposes before July 1, 2011. See section 185.02(6), Florida Statutes.
- I. The law removes the definition of "extra benefits" and other provisions from the 1999 law requiring the provision of "extra benefits" using a portion of insurance premium tax revenues. There is no longer a comparison of police or fire pension benefits to general employee pension benefits. The law also removes the statutory basis for the Department of Management Services interpretation on the required use of insurance premium tax revenues (i.e., the "Naples Letter" interpretation). That is, the "Naples Letter" interpretation is effectively voided under the law (but see F. above on "Grandfather").
- J. Except as specifically noted in the law, it is effective 7/1/2015.