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**MEMORANDUM**

TO: All Firefighter and Police Officer Pension Boards

FROM: Christiansen & Dehner, P.A.

DATE: May 29, 2015

RE: Senate Bill 172 (Chapter 2015-39, Laws of Florida)

**Introduction**

Last week, Governor Scott approved Senate Bill 172 (hereinafter "SB 172") which substantially amended Chapters 175 and 185, Florida Statutes. SB 172 passed unanimously through the Florida Senate and nearly unanimously through the Florida House of Representatives, following several years of bipartisan cooperation by Senators Bradley, Ring and Gaetz. The following memo is a high-level summary and does not necessarily cover all detailed provisions in the 44 page bill.

While SB 172 is effective July 1, 2015, the premium tax provisions do not take effect until entering into the next collective bargaining agreement. For non-collectively bargained service SB 172 is effective October 1, 2015. We expect that several questions will need to be answered by the Division of Retirement in the coming months. We encourage Boards to work with their actuary, union and plan sponsor to translate and apply SB 172's requirements to your plan. It is noteworthy that the default provisions of SB 172 are flexible and may be modified by mutual consent of the parties in the next collective bargaining agreement.

Boards are encouraged to place this item on the agenda for their next Board meeting. In particular, Boards that only meet quarterly will need to establish an administrative expense budget at their summer board meeting, effective October 1.

### *New Definitions*

The following new definitions apply to both firefighter and police plans, as amended by Sections 175.032 and 185.02.

**"Base premium tax revenues"**: For a local law plan in effect on October 1, 2003, the revenues received by a municipality for the 2002 calendar year. For a local law plan created between October 1, 2003, and March 1, 2015, inclusive, the revenues received by a municipality based upon the tax collections during the second calendar year of participation.

**"Minimum benefits"**: means the benefits specified in Sections 175.021-175.341 and Sections 175.361-175.401 for firefighter plans and Sections 185.01-185.341 and Sections 185.37-185.50 for police plans.

**"Minimum standards"**: means the standards specified in Sections 175.021-175.401 for firefighter plans and Sections 185.01-185.50 for police plans.

**"Special benefits"**: means benefits provided in a defined contribution plan component of a local law plan into which deposits, if any, of premium taxes are paid pursuant to Section 175.351 and 185.35.

**"Compensation" or "Salary"**: For police plans the definition of compensation or salary has been clarified to provide that overtime is no longer a required minimum benefit for police.

### *Detailed Accounting Report & Administrative Expense Budget*

New Sections 175.061(8) and 185.05(8) require that all firefighter and police Boards of Trustees shall provide a detailed accounting report and operate under an administrative expense budget as follows:

Detailed Accounting Report: The Board shall provide a detailed accounting report of its expenses for each fiscal year to the plan sponsor and the Department of Management Services. The Board is also required to make the report available to each member of the plan and post the report on the Board's website, if the Board has a website. It is suggested that future summary plan descriptions be amended to indicate that the detailed accounting report is available upon request. The report must include all administrative expenses that, for purposes of this subsection, are expenses relating to any legal counsel, actuary, plan administrator, and all other consultants, and all travel and other expenses. This requirement is likely effective on July 1, 2015.

Administrative Expense Budget: The Board shall operate under an administrative expense budget each fiscal year. A copy of the budget shall be provided to the plan sponsor and made available to plan members before the beginning of the fiscal year. If the Board amends the administrative expense budget, the Board must provide a copy of the amended budget to the plan sponsor and make available a copy of the amended budget to plan members. The new administrative expense budget must be prepared and made available prior to October 1, 2015.

### **Minimum 2.75% Multiplier**

Effective July 1, the new minimum multiplier is 2.75%. Plans with a multiplier less than 2.75% are grandfathered and need not raise their multiplier in effect on July 1, 2015. If the multiplier is raised to 2.75% (or higher), the grandfathered plan may not thereafter decrease the multiplier to less than 2.75%.

### **Requirement to Create Share Plan/Supplemental Defined Contribution Plan**

SB 172 requires that each plan sponsor must create a share plan/supplemental defined contribution plan (hereinafter "share plan") within the local law plan for the payment of special benefits. The new share plan must be adopted upon entering into a collective bargaining agreement on or after July 1, 2015, or by October 1, 2015, for non-collectively bargained service. Depending upon the application of Section 175.351 and 185.35 to your plan, the new share plan may or may not receive any funding. Any share plan in existence on March 1, 2015, shall be deemed to be a defined contribution plan in compliance with Sections 175.351(6) and 185.35(6).

### **Compromise on Usage of Premium Taxes**

Perhaps the most far reaching feature of SB 172 is the underlying "compromise" regarding the use of premium tax revenues. We recommend that Boards request that their actuaries evaluate their premium tax status in light of the new definition of base premium tax revenue and the new calendar year 2012 threshold. An additional feature of this compromise provides that half of additional premium taxes received above the 2012 level must be split between special benefits paid into a share plan, with the other 50% being used by the plan sponsor to offset defined benefit plan costs. The parties are permitted to deviate from this default outcome by mutual consent.

Structurally, SB 172 establishes three separate outcomes for the use of premium tax revenue. First, share plans in existence on December 1, 2000 are exempt from SB 172. Second, the parties can mutually agree to use their premium taxes as they see fit. Third, if the parties do not mutually agree upon the use of premium tax revenue the default provisions in Section 175.351 and 185.35 are triggered as set forth below.

### **Default Use of Premium Tax Revenue**

SB 172 substantially amends Sections 175.351 and 185.35 as follows:

Effective upon entering into the next collective bargaining agreement (or October 1, 2015 for non-collectively bargained service):

- (a) Base premium tax revenues must be used to fund minimum benefits or other retirement benefits in excess of minimum benefits.

- (b) Of the additional premium tax revenues received that are in excess of the amount received for the 2012 calendar year, 50 percent must be used to fund minimum benefits or other retirement benefits in excess of the minimum benefits, and 50 percent must be placed in a share plan to fund special benefits.
- (c) Additional premium tax revenues not described in paragraph (b) must be used to fund benefits that are not included in the minimum benefits. If the additional premium tax revenues subject to this paragraph exceed the full annual cost of benefits provided through the plan which are in excess of the minimum benefits, any amount in excess of the full annual cost must be used as provided in paragraph (b).
- (d) Of any accumulations of additional premium tax revenues which have not been allocated to fund benefits in excess of the minimum benefits, 50 percent of the amount of the accumulations must be used to fund special benefits and 50 percent must be applied to fund any unfunded actuarial liabilities of the plan; provided that any amount of accumulations in excess of the amount required to fund the unfunded actuarial liabilities must be used to fund special benefits.

#### **Ability to Deviate from Premium Tax Allocation by Mutual Consent**

Yet another example of the underlying compromise reflected in SB 172 is the ability of the parties to deviate from the requirements of Sections 175.351 and 185.35 by mutual consent. Importantly, the use of premium tax revenues above the 2012 calendar year level, including any accumulations of additional premium tax revenues which have not been allocated to fund benefits in excess of minimum benefits, need not be allocated 50 - 50 as long as:

- (1) the plan sponsor and union mutually consent to use the premium tax differently, and
- (2) the plan continues to meet minimum benefits and minimum standards.

#### **Exemption for Share/Supplemental Plans in Existence on December 1, 2000**

Any share plan in existence on December 1, 2000 is grandfathered from the 50 - 50 premium tax split set forth in Section 175.351 and 185.35.

#### **Grandfathering of Amendments in Reliance on Naples Letters**

SB 172 prospectively reverses the Division of Retirement's August 12, 2012 Naples letter, but grandfatheres any plan amendments adopted on or before March 3, 2015 in reliance upon a "Naples letter". Changes to the local law plan which are otherwise contrary to minimum benefits and minimum standards 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 changes.

### Conclusion

SB 172 substantially amends Chapters 175 and 185. The legislation will have a different impact on different plans and will need to be carefully studied. All plans will need to comply with SB 172's expense reporting and budgeting requirements prior to the end of this fiscal year. The parties will have until the next collective bargaining agreement to decide whether or not to abide by SB 172's default provisions governing the use of premium tax revenue.

The following initial questions for your actuary and plan attorney will help facilitate the application of SB 172 to your plan:

- (1) Does your plan have any unallocated accumulations of additional premium tax revenue?
- (2) Does your plan have an existing share plan? Was it created prior to December 1, 2000?
- (3) Was your plan amended in reliance upon a "Naples letter"?
- (4) How much premium tax was received by your plan for the 2012 calendar year?
- (5) When does the current union contract expire?

We welcome any questions or comments and look forward to discussing this memo with you. Trustees should feel free to share this memo with their respective plan sponsor and union.

Thank you to Adam Levinson, Esq., with Klausner Kaufman Jensen & Levinson for the above legislative summary.