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## MEMORANDUM

**TO:** All Police and Fire Plans

**FROM:** Ronald J. Cohen, Brent J. Chudachek and Richelle Levy

**DATE:** July 24, 2015

**RE:** Recent Changes to Chapters 175 and 185

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Recently, the Florida legislature passed significant changes to Chapters 175 and 185. This Memorandum summarizes the changes for you.

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

We will first address action that you will need to take fairly soon in order to comply with the changes regarding an administrative expense report and a budget. These changes are contained in Chapters 175.061 and 185.05, Fla. Stat., which now requires the Board of Trustees to:

1. Provide a detailed accounting report of its expenses for each fiscal year to the plan sponsor and the Department of Management Services and 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. 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 paid to or on behalf of the members of the board of trustees or anyone else on behalf of the plan.

2. Operate under an administrative expense budget for each fiscal year, provide a copy of the budget to the plan sponsor, and make available a copy of the budget to plan members before the beginning of the fiscal year. If the board of trustees 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.

As the board of trustees, you will have to provide a detailed accounting report of your expenses to both the plan sponsor and to the Department of Management Services. The report must also be made available to each member of the plan and posted on the board's website, if you have one. While the law requires a "detailed accounting report," the amount of detail that is required is not set forth, but it must include expenses related to the actuary, plan administrator, legal counsel, and all other consultants and service providers. It must also include all travel and other expenses paid to or on behalf of the members of the board of trustees or the plan. This must be prepared after the close of this plan year, September 30, 2015.

The plan also needs to develop and operate under an administrative expense budget. **This must be done before the beginning of the next fiscal year (i.e. October 1, 2015).** The board is allowed to subsequently amend the expense budget, but must provide a copy of the administrative expense budget and any subsequent amended budget to the plan sponsor. It must also be made available to the plan members. If you have a plan website, we recommend that it be noted on the home page that the budget is available from the administrator upon request.

You should also be aware that there was legislation proposed that included a provision that the budget would have to be approved by the plan sponsor. No such provision is in the final legislation. There has been some talk that since the budget can be amended, it would be permissible to just get a rough idea of what the plan's yearly expenses might be and amend if needed. Despite the fact that it can be amended, we are recommending that each Board give careful consideration in developing the administrative budget, paying close attention to expenses for previous years, any built-in increases that may be expected through such things as service provider contracts, and anticipate potential increases in expenses, such as disability hearings or possible litigation. This administrative expense budget must be completed by September 30, 2015, and it should be on your next agenda.

*Use of Insurance Premium Tax Rebates*

*A. The Requirement That Each Plan have a Defined Contribution Component*

As you know, in order to participate in the Chapter 175 and 185 insurance premium tax rebate programs, the plan has to comply with certain provisions of law. One of the new provisions is a requirement to create a defined contribution component in the defined benefit plan. The defined contribution component does not have to be *funded*, but has to be created. A share plan qualifies as a defined contribution component. The law is effective July 1, but if there is a collective bargaining agreement in effect, the defined contribution component does not have to be enacted until entering into the first collective bargaining agreement that becomes effective on or after July 1, 2015. If there is no collective bargaining agreement, the defined contribution component must go into effect no later than October 1, 2015.

*B. New Minimum Multiplier*

There is also a new minimum multiplier of 2.75%. There are certain grandfathering provisions, but they do not apply because your multiplier is already in excess of 2.75%.

*C. The Naples Letter*

You may recall talk of the Naples letter, which substantially changed how certain plans could use the insurance premium tax rebate monies. It is essentially repealed, effective October 1, 2018. Plans that received a Naples letter, or otherwise relied on the Naples letter to change the use of the insurance premium tax rebate monies can continue to utilize the Naples letter, until 2018. This provision does not apply to this plan.

*D. Mutual Consent and the Use of Insurance Premium Tax Rebates*

The statute sets forth detailed methods of how the premium tax monies must be utilized in the future, if the parties cannot reach mutual consent on the use of those funds. The importance of mutual consent should not be understated. Only if the parties cannot reach mutual consent on the use of the money, will the default provisions concerning its use be applicable (these provision are quite complicated and are set forth below). Mutual consent can be reached by the members collective bargaining representative and the plan sponsor, or if there is no collective bargaining representative, by a majority of the firefighters/ police officers in the fund and the consent of the municipality. If your plan currently has an arrangement in place for the use of premium tax revenue, either through your Share Plan or otherwise, you are considered to have

already reached mutual consent. **If there is not an arrangement in place for the use of the insurance premium tax rebate money, and you do not have a collective bargaining agreement, you must provide for the use of that money by October 1, 2015.**

If you do not have mutual consent, the new law states that the money must be used in the following manner.

*E. Use of premium tax money in the absence of mutual consent.*

- If a municipality has a retirement plan for firefighters, police, or for firefighters and police officers if both are included, which in the opinion of the division meets minimum benefits and minimum standards, the board of trustees of the retirement plan must place the income from the premium tax in such plan for the sole and exclusive use of its firefighters, police, or for firefighters and police officers if both are included, where it shall become an integral part of that plan and be used to fund benefits as provided herein. Effective October 1, 2015, for noncollectively bargained service or upon entering into a collective bargaining agreement on or after July 1, 2015:

(a) The base premium tax revenues 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.

(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 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.

(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.

(e) For a plan created after March 1, 2015, 50 percent of the insurance premium tax revenues must be used to fund defined benefit plan component benefits, with the remainder used to fund defined contribution plan component benefits.

(f) If a plan offers benefits in excess of the minimum benefits, such benefits, excluding supplemental plan benefits in effect as of September 30, 2014, may be reduced if the plan continues to meet minimum benefits and minimum standards. The amount of insurance premium tax revenues previously used to fund benefits in excess of minimum benefits before the reduction, excluding the amount of any additional premium tax revenues distributed to a supplemental plan for the 2012 calendar year, must be used as provided in paragraph (b). However, benefits in excess of minimum benefits may not be reduced if a plan does not meet the minimum percentage amount of 2.75 percent of the average final compensation of a full-time firefighter, or police officer, or provides an effective benefit that is below 2.75 percent as a result of a maximum benefit limitation as described in ss. 175.162(2)(a) or 185.16(2)(b).