SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2334

SPONSOR: Comprehensive Planning Committee and Senator Lynn

SUBJECT: Municipal Police and Firefighter Pensions

DATE: April 7, 2003 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Fav/CS
2.			GO	
3.			FT	
4.			ATD	
5.			AP	
6.				

I. Summary:

This CS authorizes municipalities providing pension plans to firefighters and police officers pursuant to chapters 175 and 185, F.S., to "prefund" extra benefits and be reimbursed from future premium tax receipts. The reimbursement costs would include both the city's contributions plus interest at a rate agreed to by a certified bargaining agent, where applicable, or a majority of the firefighters or police officers.

This CS substantially amends the following sections of the Florida Statutes: 175.351 and 185.35.

II. Present Situation:

Historical Background
Chapters 175 and 185, F.S., provide funding for municipal and special district firefighters' and municipal police officers' pension plans. Chapter 175, F.S., was originally enacted in 1939 to provide an incentive -- access to premium tax revenues -- to Florida cities to encourage them to establish retirement plans for firefighters. Fourteen years later, in 1953, the Legislature followed suit with chapter 185, F.S., which sets up a similar funding mechanism for municipal police officers. Special fire control districts became eligible to participate under chapter 175 in 1993. Both chapters set up a "uniform retirement system" providing defined benefit retirement plans for firefighters/police officers and setting standards for operation and funding of these pension systems.

Pension plan funding comes from four sources: Net proceeds from an excise tax levied by the city upon property and casualty insurance companies (known as the "premium tax"); employee contributions; other revenue sources; and mandatory payments by the city of any extra amount needed to keep the plan solvent. To qualify for premium tax dollars, plans must meet requirements found in the chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans lies with the Division of Retirement of the Department of Management Services (DMS), but day-to-day operational control rests with local boards of trustees.

Most Florida firefighters and municipal law enforcement officers participate in these plans. Statewide, 175 cities have pension plans for firefighters subject to chapter 175, F.S., and 184 cities have pension plans for police subject to chapter 185, F.S.[1] The Bureau of Local Retirement in DMS reports that there are 223 cities participating under chapters 175 and 185, F.S., with 342 local law plans representing over 42,000 police officers and firefighters.[2]

Premium Tax Collections and Distributions

Section 175.101, F.S., authorizes each municipality or special fire control district with a Firefighters' Pension Trust Fund to assess an excise tax of 1.85% of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within its corporate limits. The insurance agent is required to identify the fire service provider on the property owner's application for insurance. The insurance company is then required to compile the information from the insurance agent and report the premiums and pay the excise tax on its annual insurance premium tax return. DOR processes each insurer's insurance premium tax return and, based solely on the information in the insurance premium tax return, distributes the dollars collected to the Firefighters' Pension Trust Fund. Also, DOR provides the insurance premium tax return data for the Firefighters' Pension Trust Fund to the Division of Retirement Services, DMS.

Section 185.08, F.S., authorizes each municipality with a Police Officers' Pension Trust Fund to assess an excise tax of 0.85% of the gross amount of receipts of premiums from policyholders on all premiums collected on automobile casualty insurance policies covering property within its corporate limits. The insurance company is required to keep accurate books and accounts of all such business done by it within the corporate limits of such municipality. The insurance company is then required to compile the information and report the premiums and pay the excise tax on its annual insurance premium tax return. DOR processes each insurer's insurance premium tax return and, based solely on the information in the insurance premium tax return, distributes the dollars collected to the Police Officers' Pension Trust Fund. Also, DOR provides the insurance premium tax return data for the Police Officers' Pension Trust Fund to the division.

DOR is responsible for the collection of the funds from the insurers. The Department of Insurance (DOI) is responsible for the audit of these excise taxes, and DOI bills the insurer for the cost of the audits. The Division of Retirement, DMS, is responsible for all other state administration and activities related to these trust funds.

"Extra Benefits"

Sections 175.351(1) and 185.35(1), F.S., requires that insurance premium tax revenues must be used to provide extra benefits in firefighter and police officer pension plans. However, local law plans in effect on October 1, 1998, are required to comply with the minimum benefit provisions

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[1] From Petition to Challenge Agency Statements Defined as Rules, Case No. 02-3610RU, Sept. 10, 2002.
[2] Bill Analysis for SB 2334, March 12, 2003, DMS.

of this chapter only to the extent that additional premium tax revenues become available to incrementally fund the cost of such compliance. When a plan is in compliance with such minimum benefit provisions, as subsequent additional premium tax revenues become available, they must be used to provide extra benefits. "Additional premium tax revenues" means revenues that exceed that amount received for calendar year 1997. The term "extra benefits" means benefits in addition to or greater than those provided to general employees of the municipality.

The Division of Retirement, DMS, currently administers ss. 175.351(1) and 185.35(1), F.S. As it relates to "extra benefits", the division interprets these provisions to require premium tax revenues to first meet any minimum benefit requirements and then, any subsequent increases must be used in their entirety to provide extra benefits in addition to or greater than those provided to general employees of the municipality and *that have been enacted after the effective date of Chapter 99-1, Laws of Florida (March 12, 1999).*[3]

Five cities with firefighter and police pension plans have challenged the division's interpretation and administration of ss. 175.351(1) and 185.35(1), F.S. The Florida League of Cities (FLC) contend that the division's "non-rule policy enlarges, modifies, or contravenes specific provisions contained in chapters 175 and 185, Florida Statutes."[4] The division is currently pursuing an administrative rule to implement their interpretation of the provision.

The City of New Smyrna Beach
The City of New Smyrna Beach reports that the city and unions representing the members of the fire and police department negotiated substantial improvements to their retirement plans, but are unable to implement plan improvements under existing law, as interpreted by the Division of Retirement. The City reports that it is a disservice to firefighters and police officers to require them to wait for benefit improvements until the full amount of additional premium taxes are available if the City is willing to advance the necessary funding.

III. Effect of Proposed Changes:

This CS authorizes certain municipalities providing pension plans to firefighters and police officers pursuant to chapters 175 and 185, F.S., to "prefund" extra benefits and be reimbursed from future premium tax receipts. The reimbursement costs would include both the city's contributions plus interest at a rate agreed to by a certified bargaining agent, where applicable, or a majority of the firefighters or police officers.

Section 1 amends s. 175.351, F. S., to allow certain municipalities to provide extra benefits to police officers prior to receipt of additional premium tax revenues. Municipalities are authorized to advance the difference between the actuarially determined costs of the extra benefits and the additional premium tax revenues. Thereafter, the municipality must annually advance the cost of the extra benefits until the growth in the available additional premium tax revenues is sufficient to fund the extra benefits. All additional premium tax revenues in excess of the cost of the benefit improvements are credited against the municipality's required contributions until the

[3] DMS Bill Analysis for SB 330, January 28, 2003, p. 2.
[4] From Petition to Challenge Agency Statements Defined as Rules, Case No. 02-3610RU, Sept. 10, 2002.

funds equal the funds advanced by the municipality to the plan with interest. Thereafter, all available additional premium tax revenues must be used to provide additional benefits.

However, prior to implementation, the Division of Retirement of DMS must determine that this pre-funding of extra benefits is in compliance with the requirements of part VII of chapter 112, F.S.

Section 2 amends s. 185.35, F.S., to allow certain municipalities to provide extra benefits to firefighters prior to receipt of additional premium tax revenues. Municipalities are authorized to advance the difference between the actuarially determined costs of the extra benefits and the additional premium tax revenues. Thereafter, the municipality must annually advance the cost of the extra benefits until the growth in the available additional premium tax revenues is sufficient to fund the extra benefits. All additional premium tax revenues in excess of the cost of the benefit improvements is credited against the municipality's required contributions until the funds equal the funds advanced by the municipality to the plan with interest. Thereafter, all available additional premium tax revenues must be used to provide additional benefits.

However, prior to implementation, the Division of Retirement of DMS must determine that this pre-funding of extra benefits is in compliance with the requirements of part VII of chapter 112, F.S.

Section 3 provides an effective date upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This CS could impact a city fiscally to the extent the city agrees to pre-fund extra benefits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.