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: SB 330

SPONSOR: Senators Pruitt and Fasano

SUBJECT: Firefighter and Municipal Police Pensions

DATE: February 22, 2003 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cooper	Yeatman	CP	Favorable
2.			BI	
3.			GO	
4.			FT	
5.			AGG	
6.			AP	

I. Summary:

Subject to legislative appropriation, this bill requires the Department of Revenue (DOR) to create and maintain databases for use by insurers that report and remit excise taxes on property insurance premiums or casualty insurance premiums; and redefines the term "extra benefits" for purposes of authorized uses of premium tax revenues.

This bill amends ss. 175.351 and 185.35, F.S., and creates ss. 175.1015 and 185.085 of the Florida Statutes.

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 Chapter 175, F.S., was originally enacted in 1939 to provide an incentive -- access to premium tax revenues -- to Florida cities to encourage them to establish retirement plans for firefighters.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 have cities 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]

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.

The Division of Retirement, DMS, states that cities and special districts report that the insurers are not accurately reporting such premiums and companies complain that they are subject to fines and penalties for improperly reporting premiums. The Division states that there is no statutorily-mandated methodology in place for insurers to sue in reporting premium taxes. DOR reports that the only penalty that may be imposed upon an insurer for failing to properly report whether a premium received insures a risk in a district that imposes this excise tax is the removal of the insurer's certificate of authority to write insurance in Florida.

[1] From Petition to Challenge Agency Statements Defined as Rules, Case No. 02-3610RU, Sept. 10, 2002.

“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 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).*[2]

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.”[3] The Division is currently pursuing an administrative rule to implement their interpretation of the provision.

III. Effect of Proposed Changes:

Subject to legislative appropriation, this bill requires DOR to create and maintain databases for use by insurers that report and remit excise taxes on property insurance premiums or casualty insurance premiums. In addition, the bill clarifies the term “extra benefits” for purposes of the premium tax uses.

Sections 1 and 2 creates ss. 175.1015 and 185.085, F.S. Subsections (2) of ss. 175.1015 and 185.085, F.S., require DOR, subject to legislative appropriation, to create and maintain a database for use by insurers that report and remit excise taxes on property insurance premiums or casualty insurance premiums. Database specifications are provided.

Each participating local taxing jurisdiction must provide DOR all the information needed to create and update the original database and each annual database. The information for an update must be provided to DOR by July 1 of each year. DOR is required to post each new annual database on the Internet by September 1 of each year, if possible, and allow the municipalities and fire control districts 30 days in which to review the database and provide corrections. Also, DOR is required to finalize the annual database and post it on a website by November 1.

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

Once final, the database may not be updated retroactively, and any discrepancies that are not settled by November 1 are not included in the final database (instead, the boundaries remain the same as in the previous year's database). In addition, DOR must furnish the annual database on magnetic or electronic media to any insurance company or vendor who requests it, for the purpose of making the allocations under chapters 175 and 185, F.S.

The information contained in the database is considered "conclusive" for the purposes of chapters 175 and 185, F.S., and the database is not an order, rule, or policy of general applicability. Also, each annual database is required to identify all changes from the previous version of the database.

Subsections (1) of ss. 175.1015 and 185.085, F.S., provide that property insurance companies will be held harmless from any tax, interest, or penalty liability which would otherwise be due solely as a result of an assignment of an insured property to an incorrect local taxing district, if the insurance company exercises due diligence in applying an electronic database provided by DOR. Companies that do not exercise due diligence are subject to a .5 percent penalty on the premium for each policy that is improperly assigned. "Due diligence" is defined in subsections (3) of both provisions as the "care and attention that is expected from and is ordinarily exercised by a reasonable and prudent person under the circumstances." Due diligence includes: assigning policies based on DOR's database; expending reasonable resources to accurately and reliably implement the use of the database; maintaining adequate internal controls to correctly include the location of the insured property in the proper address format; and, correcting errors in the assignment of addresses to local taxing jurisdictions within 120 days of discovering the error.

Subsections (4) of ss. 175.1015 and 185.085, F.S., annually appropriate moneys to pay the expenses of DOR in administering these new sections.

Subsections (5) of ss. 175.1015 and 185.085, F.S., authorize DOR to adopt rules to necessary to administer these sections.

Subsection (6) of s. 175.1015 and subsection (7) of s. 185.085, F.S., provide that all insurers subject to chapters 175 and 185, F.S., are held harmless from any liability for tax, interest or penalties related to the collection and remission of these taxes accruing before January 1, 2004 if the insurer reports the taxes consistent with filings for periods before January 1, 2004. Further, the insurer is not subject to examination under s. 624.316 or s. 624.3161, F.S., which would occur solely as a result of improperly assigning premiums to local taxing jurisdictions for periods prior to January 1, 2004.

Subsection (6) of s. 185.085, F.S., establishes a "grace" period beginning with the calendar year 2003, and including the amounts reported for 2004, 2005 and 2006 (ending on January 1, 2007), so that no city receives less revenue than the revenue reported for calendar year 2003 from automobile casualty insurance policies for Police Officers' Pension Funds. If there are insufficient increases in state premium tax revenues to fund the guaranteed 2003 amount, then each city will receive a pro-rated amount of the increase. A provision is also included for new plans that are enacted after January 1, 2004, so that they receive the total amount reported for their municipality and additional consideration is given to this factor in determining the pro-rated amount for all other cities.

Sections 3 and 4 amend ss 175.351 and 185.35, F.S., to further define the term "extra benefits" as those benefits enacted after the effective date of Chapter 99-1, L.O.F. (March 12, 1999), for firefighters and police officers respectively. The Division of Retirement, DMS, reports that this change is consistent with their current administration of this provision. However, this policy is currently under challenge by the Florida League of Cities.[4]

Section 5 appropriates $300,000 from the General Revenue Fund for DOR as a one-time expense of creating the original databases and to support the implementation process. The legislative intent is that the databases be available for use in determining the allocation of premiums for the 2004 insurance premium tax return due March 1, 2005.

Section 6 provides and effective date of January 1, 2004.

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:

This bill provides incentives for insurers who are obligated to collect and remit the tax under ss. 175.101 and 185.08, F.S., to use the electronic database created by the Department of Revenue to assign premiums to local jurisdictions.

C. Government Sector Impact:

DOR is directed to create an electronic database that will enable insurance companies to assign their property and casualty policies to the correct municipalities or special fire control districts. Municipalities and special fire control districts that impose assessments

[4] Petition to Challenge Agency Statements Defined as Rules, Case No. 02-3610RU, Sept. 10, 2002.

under ss. 175.101 and 185.05, F.S., will be assured of receiving the correct amount of revenue from these sources as insurance companies use the electronic database.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.