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 2164

SPONSOR: Finance and Taxation Committee and Senator Pruitt

SUBJECT: Firefighter and Municipal Police Pensions

DATE: March 11, 2002 REVISED: ____ ____ ____ ____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Johansen	FT	Favorable/CS
2.			CM	
3.				
4.				
5.				
6.				

I. Summary:

This committee substitute provides an electronic database to enable insurance companies to determine the situs of property and casualty insurance policies and provides certain safeguards for insurance companies that utilize the database. Through 2005, municipalities with police retirement plans under Chapter 185, F.S., are guaranteed at least as much revenue from the tax on casualty insurance premiums as they received in 2002, unless total collections from that source decrease. The bill amends ss. 175.351 and 185.35, F.S. to provide that "extra benefits" provided using additional premium tax revenues means benefits in addition to or greater than those provided to general employees of the municipality, *and in addition to those in existence for firefighters or police officers on March 12, 1999*. (Emphasis added) The bill also permits a retroactive qualification for supplemental benefit plan eligibility for the receipt of monies held in escrow by the Division of Retirement for the City of Tallahassee police and fire plan. Finally, the bill provides an appropriation for the Department of Revenue to develop an electronic database to assign property and casualty insurance policies.

This bill creates following sections of the Florida Statutes: 175.1015 and 185.085. It amends ss. 175.032, 175.351, 185.02, and 185.35, F.S.

II. Present Situation:

Chapters 175 and 185, F.S., provide funding for municipal and special district firefighters' and 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 Chapter 175, F.S., was originally enacted in 1939 to provide an incentive -- access to premium tax revenues -- to Florida cities to encourage them to establish retirement plans for firefighters.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.

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, but day-to-day operational control rests with local boards of trustees.

Section 175.101, F.S., authorizes each municipality or special district that has established a firefighters' pension trust fund to assess an excise tax of 1.85 percent of the gross receipts of premiums collected from property insurance policies covering property within its corporate limits. Each insurance agent is required to identify the fire service provider on the property owner's application for insurance and the insurance company is required to report the premiums and pay the excise tax on its annual premium tax return. The Department of Revenue processes each insurance premium tax return and keeps a separate account of all moneys collected for each municipality and special fire control district, based solely on information provided on the return. DOR distributes the funds collected to the Police and Firefighters Premium Tax Trust Fund in the Division of Retirement, from which the money is distributed annually to the municipalities and special fire control districts. The Department of Insurance is responsible for auditing these excise taxes, and insurance companies are billed for the cost of any audit.

Section 185.08, F.S., authorizes each municipality or special district that has established a police officers' pension trust fund to assess an excise tax of 0.85 percent of the gross receipts of premiums collected from casualty insurance policies covering property within its corporate limits. Each insurance agent is required to identify the municipality on the property owner's application for insurance and the insurance company is required to report the premiums and pay the excise tax on its annual premium tax return. The Department of Revenue processes each insurance premium tax return and keeps a separate account of all moneys collected for each municipality, based solely on information provided on the return. DOR distributes the funds collected to the Police and Firefighters Premium Tax Trust Fund in the Division of Retirement, from which the money is distributed annually to the municipalities. The Department of Insurance is responsible for auditing these excise taxes, and insurance companies are billed for the cost of any audit.

The General Appropriations Act of 2001 included a proviso to Specific Appropriation 2789 that created a Commission on the Situsing of Insurance Excise Taxes. This commission was directed to develop one or more methodologies which appropriately identifies the property location for the collection of excise taxes from insurers. The recommended methodologies were to provide for the distribution of the insurance premium tax in such a way that no municipality or special fire control district will receive in any year an amount less than it received in 2001, and that each qualified municipality or special fire control district would receive an amount of the insurance premium tax revenue which is equal to the percentage required in ss. 175.101 and 185.08, F.S. This commission was directed to submit a report to the Legislature by January 1, 2002, containing the results of its study and any recommendations. Until July 1, 2002, the Department of Insurance was directed not to take any action to audit insurers or finalize any pending audits of insurers with respect to the accuracy of coding the location of insured properties for premium tax purposes. This language was vetoed by the Governor and the commission was not formed.

Sections 175.351 and 185.35, F.S., provide minimum standards for pension plans to qualify for distributions of insurance premium tax revenue under s. 175.101 and 185.08, F.S. Once the minimum benefit provisions have been met, premium revenues that exceed the amount received for calendar year 1997 must be used for "extra benefits" which are defined as benefits in addition to or greater than those provided to general employees of the municipality. The Division of Retirement has interpreted this language to mean that any premium tax revenue in excess of the 1997 distribution must be used to improve benefits to police officers and firefighters.

These sections also provide a cut-off date of January 1, 1977 for a municipality to qualify as a "supplemental plan municipality." A supplemental plan is a plan to which deposits are made to provide extra benefits to firefighters and police officers, in conjunction with a local law pension plan that meets minimum benefits and minimum standards prescribed in these chapters.

III. Effect of Proposed Changes:

Section 1. Creates s. 175.1015, F.S., which provides that an insurance company required to report and remit the excise tax imposed under s. 175.101 (which funds firefighters' pensions) is held harmless from taxes, interest, or penalties that arise from improperly assigning insured property if the insurance company exercises due diligence in using an electronic database created by DOR to assign the property. If, after due diligence, an insurance company is unable to assign an insured commercial property to a specific local taxing jurisdiction, the tax on those premiums shall be remitted using the same methodology the company used for calendar year 2001. An insurance company that does not use the electronic database, or exercise due diligence in the case of property that the insurer is unable to assign, is subject to a higher penalty for improperly assigned insured property.

This section also requires DOR, subject to legislative appropriation, to create and maintain a database that gives due and proper regard to any format that is approved by the American National Standards Institute's Accredited Committee X12 and that designates for each street address and address range in the state the local taxing jurisdiction in which the address is located and the code for each local taxing jurisdiction. This database must be updated annually. Each local taxing jurisdiction must provide DOR all information needed to create the database, including information about annexations and other boundary changes. The duties of insurance companies in exercising "due diligence" are prescribed, and an annual appropriation from the Police and Firefighter's Premium Tax Trust Fund of no more than $50,000, adjusted for inflation, is made to DOR to pay the expenses of administering the database. DOR is directed to adopt rules necessary to administer this section.

This section also provides that insurance companies are held harmless from mistakes in assigning insured property to local taxing jurisdictions before the effective date of the act, provided the company collects and reports the tax consistent with filings for periods before the effective date of the act.

Section 2. Creates s. 185.085, F.S., which provides that an insurance company required to report and remit the excise tax imposed under s. 185.08 (which funds municipal police officers' pensions) is held harmless from taxes, interest, or penalties that arise from improperly assigning insured property if the insurance company exercises due diligence in using an electronic database created by DOR to assign the property. If, after due diligence, an insurance company is unable to assign an insured commercial property to a specific local taxing jurisdiction, the tax on those premiums shall be remitted using the same methodology the company used for calendar year 2001. An insurance company that does not use the electronic database, or exercise due diligence in the case of property that the insurer is unable to assign, is subject to a higher penalty for improperly assigned insured property.

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Through 2005, municipalities with retirement plans under Chapter 185, F.S., are guaranteed a distribution from the tax on casualty insurance premiums at least as great as they received in 2002, unless total tax proceeds to be distributed in any year are less than the total amount distributed in 2002. If total proceeds are greater than the amount distributed in 2002, the additional proceeds are distributed proportionately to those municipalities with a current year reported amount greater than the amount distributed to them in 2002. Any municipality that adopts a plan under this chapter during any year subsequent to the effective date of this act shall receive the total amount reported for the current year for the municipality.

This section also provides that insurance companies are held harmless from mistakes in assigning insured property to local taxing jurisdictions before the effective date of the act, provided the company collects and reports the tax consistent with filings for periods before the effective date of the act.

Section 3. amends s. 175.032, F.S., to extend to December 1, 2000 from January 1, 1997, the period for eligibility for receipt of insurance premium tax monies for municipal and special district fire pension plans which use those monies for the support of supplemental benefits.

Section 4. amends s. 175.351, F.S., to provide that "extra benefits" provided using additional premium tax revenues means benefits in addition to those in existence for firefighters on March 12, 1999. It also extends to December 1, 2000 from January 1, 1997, the period for eligibility for receipt of insurance premium tax monies for municipal and special district fire pension plans which use those monies for the support of supplemental benefits.

Section 5. amends s. 185.02, F.S., to extend to December 1, 2000 from January 1, 1997, the period for eligibility for receipt of insurance premium tax monies for municipal police officer pension plans which use those monies for the support of supplemental benefits.

Section 6. amends s. 175.351, F.S., to provide that "extra benefits" provided using additional premium tax revenues means benefits in addition to those in existence for police officers on March 12, 1999. It also extends to December 1, 2000 from January 1, 1997, the period for eligibility for receipt of insurance premium tax monies for municipal police officer pension plans which use those monies for the support of supplemental benefits.

Section 7. appropriates $300,000 to DOR for nonrecurring expenses associated with developing the original database required by sections 1 and 2 of this act. It also provides legislative intent that the database be available for use in determining the allocation of premiums for the 2003 insurance premium tax return.

Section 4. Provides an effective date of January 1, 2003.

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. If the companies are unable to assign these premiums using the database they must exercise due diligence in assigning them.

C. Government Sector Impact:

The Department of Revenue 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 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.