HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 133 Firefighter and Municipal Police Pensions
SPONSOR(S): Sansom
TIED BILLS: **IDEN./SIM. BILLS:** SB 330

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance		Cheek	Schulte
2) State Administration			
3) Finance and Tax			
4) Commerce & Local Affairs Apps. (sub)			
5) Appropriations			

SUMMARY ANALYSIS

Chapters 175 and 185, F.S., provide funding for municipal and special district firefighters' and police officers' pension plans. Chapter 175, F.S., provides an incentive -- access to premium tax revenues -- to Florida cities to encourage them to establish retirement plans for firefighters. Chapter 185, F.S., sets up a similar funding mechanism for municipal police officers. 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.

The bill:

- Creates an electronic database and requires the Department of Revenue (DOR) to adopt rules 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 2007, 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.

- 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.*

- Provides a $300,000 non-recurring appropriation from the General Revenue Fund to the Department of Revenue to develop an electronic database to assign property and casualty insurance policies and authorize two annual appropriations from the Police and Firefighter's Premium Tax Trust Fund: (1) under chapter 175, F.S., an amount not to exceed $50,000, sufficient to pay DOR the expenses for the administration of the database required by Section 1 of the bill; and (2) under chapter 185, F.S., an amount not to exceed $50,000, to pay the DOR for the expenses to administer the database required in Section 3 of the bill. The two appropriations are adjusted annually by the lesser of a 5-percent increase or the percentage of growth in the total collections.

The bill provides a $300,000 appropriation from the General Revenue Fund and has an indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[x]	N/A[]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

The Department of Revenue (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 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.

The bill also requires DOR to adopt rules necessary to administer the new statutes, and it specifies that these rules must include procedures and forms.

B. EFFECT OF PROPOSED CHANGES:

Background

Municipal and Special District Firefighters' and Police Officers' Pension Plans

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 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.

Firefighters' Pension Trust Funds

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. DOR 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.

Police Officers' Pension Trust Funds

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. DOR 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 that appropriately identify 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 that 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.

Changes to Current Law

The Local Taxing Jurisdiction Data Base

HB 133 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.

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. The department 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 posit it on a website by November 1.

Once final, the database may not be updated 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, the department must furnish the annual database on magnetic or electronic media to any insurance company or vendor who requests it, for the purpose of making allocations under chapters 175 and 185, F.S.

If an insurance company exercises due diligence in employing that database provided by DOR, it shall be held harmless from any liability for taxes, interest, and penalties, which would otherwise be due solely as a result of an assignment of an insured property to an incorrect local taxing jurisdiction. Due diligence includes: assigning policies based on the department'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.

All insurers subject to chapters 175 and 185, F.S., are held harmless from any liability for taxes, 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

However, for the excise tax under s. 185.08, F.S. (police officers'), use of the database, or any other methodology or formula in any year after January 1, 2004, may not result in a distribution to a participating municipality of less than the amount distributed to such participating municipality for calendar year 2003, unless the total proceeds to be distributed to the participating municipalities are less than the total amount distributed for 2003. If the total amount to be distributed for the tax year is greater than the total amount distributed for 2003, each municipality shall initially be distributed that amount received for calendar year 2003; and the remaining amount will be distributed proportionately to those municipalities with a current year amount that is greater than the amount distributed for 2003. If a new municipality elects to participate under chapter 185, F.S., after January 1, 2004, such municipality shall receive the total amount reported for such municipality for the current year, and the amount shall not be included in the computations above for municipalities that elect to participate prior to January 1, 2004. These distribution computations expire on January 1, 2007.

Additional Premium Tax Revenues used for "Extra Benefits"

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.

In 1999, the Legislature substantially revised the laws governing retirement plans for firefighters and police officers. The Legislature decreed insurance tax revenues exceeding the amount received in 1997 could be used by the cities only to fund extra benefits provided to firefighters and police officers. It defined extra benefits to mean retirement benefits greater than those provided to the cities' general employees. The change did not concern most cities at the time because they already provided firefighters and police officers with retirement benefits that exceeded those provided to general employees.

Earlier this year, the Division adopted a policy that states that cities cannot use the insurance tax revenues to fund extra benefits unless the extra benefits were adopted after March 12, 1999, the effective date of the revisions to state law. Therefore, cities that granted their firefighters and police officers extra benefits prior to March 12, 1999, must increase property taxes and other local tax revenues to fund these extra benefits, rather than continue to use the insurance tax revenues. The cities allege there is no legal authority for the Division's policy.

HB 133 provides that "extra benefits" means the additional premium tax revenues in addition to those in existence for firefighters and police officers, respectively, on March 12, 1999. Therefore, imposing the March 12, 1999, date would mean that if a city provided extra pension benefits to its police officers or firefighters on March 11, 1999, it could no longer use additional premium tax revenues to fund these benefits, but would have to use other city tax dollars or funds. However, if the city provided extra pension benefits to its police officers or firefighters on March 13, 1999, then the city could use additional premium tax revenues to fund the benefits.

Assume, for example, a city maintains a defined-benefit plan for its general employees that provides them a 2-percent benefit upon retirement and maintains a defined-benefit plan for its firefighters and police officers that provides them a 3-percent benefit upon retirement. Assume further the city provided the benefits prior to March 12, 1999. The cities allege the 1-percent difference in benefits between those provided to general employees and those provided to firefighters and police officers are extra benefits because they are benefits provided to firefighters and police officers that are greater than the benefits provided to general employees. Therefore, the cities assert they can use the insurance tax revenues to help fund the additional 1-percent benefit. On the other hand, under the Division of Retirement's policy, the city cannot use the insurance tax revenues to help fund the additional 1-percent benefit because the benefit was provided to the firefighters and police officers before March 12, 1999. Therefore, under the Division's policy, the cities must increase property taxes and other local tax revenues to fund the additional 1-percent benefit. According to the League of Cities, the chart below illustrates the fiscal impact on five cities:

"Extra Benefits" Fiscal Impact Since 1999	
City	**Fiscal Impact**
Casselberry	$286,849
Deerfield Beach	$190,967
Greenacres	$282,121
Kissimmee	$ 48,746
New Port Richie	$ 37,243

<u>Non-recurring and Recurring Appropriation</u>

Finally, the bill appropriates $300,000 to DOR for non-recurring expenses associated with developing the original database required by sections 1 and 3 of this act. It also provides legislative intent that the database be available for use in determining the allocation of premiums for the 2005 insurance premium tax return.

The bill also authorizes two annual appropriations: (1) from the Police and Firefighter's Premium Tax Trust Fund, an amount, not to exceed $50,000, sufficient to pay DOR the expenses for the administration of the database required by Section 1 of the bill; and (2) not to exceed $50,000, to pay DOR for the expenses to administer the database required in Section 3 of the bill. The two appropriations are adjusted annually by the lesser of a 5-percent increase or the percentage of growth in the total collections.

C. SECTION DIRECTORY:

Section 1: Creates s. 175.1015, F.S., - *Determination of local premium tax situs,* to provides that an insurance company required to report and remit the excise tax imposed under s. 175.101, F.S. (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: Amends s. 175.351, F.S., - *Municipalities and special fire control districts having their own pension plans for firefighters*, 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.

Section 3: Creates s. 185.085, F.S., - *Determination of local premium tax situs*, to provide 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.

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.

Through 2007, 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 2003, unless total tax proceeds to be distributed in any year are less than the total amount distributed in 2003. If total proceeds are greater than the amount distributed in 2003, the additional proceeds are distributed proportionately to those municipalities with a current year reported amount greater than the amount distributed to them in 2003. 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 4: Amends s. 185.35, F.S., - *Municipalities having their own pension plans for police officers,* 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.

Section 5: Appropriates $300,000 to DOR for non-recurring expenses associated with developing the original database required by sections 1 and 3 of this act. It also provides legislative intent that the database be available for use in determining the allocation of premiums for the 2005 insurance premium tax return.

Section 6: Provides that the act takes effect on January 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The bill requires a $300,000 appropriation from the General Revenue Fund to DOR for non-recurring expenses associated with developing the original database. The cost of administering the database will be annually appropriated from the Police and Firefighter's Premium Tax Trust Fund.

   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 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.

   The bill authorizes two annual appropriations from the Police and Firefighter's Premium Tax Trust Fund: one under chapter 175, F.S., an amount not to exceed $50,000, sufficient to pay the Department of Revenue the expenses for the administration of the database required by Section 1 of the bill; and the other under chapter 185, F.S., an amount not to exceed $50,000, to pay the Department of Revenue for the expenses to administer the database required in Section 3 of the bill. The two appropriations are adjusted annually by the lesser of a 5-percent increase or the percentage of growth in the total collections.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

According to the Florida League of Cities, imposing the March 12, 1999 date would mean that if a city provided extra pension benefits to its police officers or firefighters on March 11, 1999, it could no longer use additional premium tax revenues to fund these benefits, but would have to use other city tax dollars or funds. However, if the city provided extra pension benefits to its police officers or firefighters on March 13, 1999, the city could use additional premium tax revenues to fund the benefits. The distinction with this date penalizes cities that provided heightened pension benefits for its police officers and firefighters prior to March 12, 1999.

Expenditures:

Please see above.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 DOR 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.

D. FISCAL COMMENTS:

The bill has a non-recurring $300,000 fiscal impact on General Revenue to create the databases and two recurring annual appropriations, not to exceed $50,000, from the Police and Firefighters' Premium Tax Trust Fund to administer the data bases.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires that DOR adopt rules necessary to administer the new statutes; these rules must include procedures and forms.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOR, the clause in s. 175.1015(6), F.S. (pages 5-6, lines 150-152) and s. 185.085(7), F.S. (page 13, lines 379-381) may be confusing. DOR states that the insurers subject to the excise tax shall be held harmless for liabilities accruing before January 1, 2004, if the insurer collects and files its returns consistently with its filing prior to January 1, 2004. According to the department, the intent of this language is unclear.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.