

# 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 654

SPONSOR: Governmental Oversight and Productivity Committee, Senator Fasano and others

SUBJECT: Firefighter and Municipal Police Pensions

DATE: December 10, 2003      REVISED: \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE  | ACTION        |
|----|---------------|----------------|------------|---------------|
| 1. | <u>Wilson</u> | <u>Wilson</u>  | <u>GO</u>  | <u>Fav/CS</u> |
| 2. | _____         | _____          | <u>AGG</u> | _____         |
| 3. | _____         | _____          | <u>AP</u>  | _____         |
| 4. | _____         | _____          | _____      | _____         |
| 5. | _____         | _____          | _____      | _____         |
| 6. | _____         | _____          | _____      | _____         |

**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. Each participating local taxing jurisdiction must provide the 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 the DOR by July 1 of each year. The 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 bill amends ss. 175.351 and 185.35, F.S., to further define the term “extra benefits” for purposes of authorized uses of premium tax reserves. “Extra benefits” are defined 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 bill appropriates \$300,000 from the General Revenue Fund to the DOR as a one-time expense for creating the original databases and to support the implementation process. It is the intent of the Legislature that the databases be available for use in determining the allocation of premiums for the 2004 insurance premium tax return due March 1, 2005.

This bill substantially amends the following sections of the Florida Statutes: ss. 175.1015, 185.085, 175.351, 185.35, 175.061, and 185.05.

## 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 enacted 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 chapters 175 and 185, F.S. Responsibility for overseeing and monitoring these plans is assigned to 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.<sup>1</sup>

### 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 percent 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 required to compile the information received from the insurance agent, report the premiums, and pay the excise tax on its annual insurance premium tax return. The 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. The DOR also provides the insurance premium tax return data for the Firefighters' Pension Trust Fund to the Division of Retirement in the DMS.

Section 185.08, F.S., authorizes each municipality with a Police Officers' Pension Trust Fund to assess an excise tax of 0.85 percent 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 conducted within the corporate limits of such municipality. The insurance company is then required to compile the information, report the premiums, pay the excise tax on its annual insurance premium tax return. The DOR processes each insurer's insurance premium tax return and, based solely on the information in the insurance premium tax

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<sup>1</sup> From Petition to Challenge Agency Statements Defined as Rules, Case No. 02-3610RU, Sept. 10, 2002.

return, distributes the dollars collected to the Police Officers' Pension Trust Fund. The DOR also provides the insurance premium tax return data for the Police Officers' Pension Trust Fund to the Division of Retirement.

The Department of Revenue is responsible for the collection of the funds from the insurers. The Office of Insurance Regulation is responsible for the audit of these excise taxes, and bills the insurer for the cost of the audits.<sup>2</sup> The Division of Retirement is responsible for all other state administration and activities related to these trust funds.

The Division of Retirement 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 of Retirement states that there is no statutorily-mandated methodology for insurers to use for reporting premium taxes. The Department of Revenue 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. Insurers are subject to examination by the Office of Insurance Regulation pursuant to ss. 624.316 and 624.3161, F.S. The examination may include examination of affairs, transactions, accounts, and records related to the insurer.

#### **“Extra Benefits”**

Sections 175.351(1) and 185.35(1), F.S., require 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, and 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 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 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)*.<sup>3</sup>

Five cities with firefighter and police pension plans have challenged the Division of Retirement's interpretation and administration of ss. 175.351(1) and 185.35(1), F.S. The Florida League of Cities contends that the division's “non-rule policy enlarges, modifies, or contravenes specific

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<sup>2</sup> Effective January 7, 2003, the Office of Insurance Regulation, under the Financial Services Commission, was created. The office is responsible for all activities concerning insurers, including rates (and other specified activities). [ss. 2 and 4, ch. 2002-404, L.O.F.] Prior to this effective date, the Department of Insurance was responsible for regulating insurers.

<sup>3</sup> DMS Bill Analysis for SB 330, January 28, 2003, p. 2.

provisions contained in chapters 175 and 185, Florida Statutes.”<sup>4</sup> The division is currently pursuing an administrative rule to implement its interpretation of the provision.

### III. Effect of Proposed Changes:

**Sections 1 and 2** create ss. 175.1015 and 185.085, F.S. Subsection (2) of ss. 175.1015 and 185.085, F.S., require the 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 which reference published standards established by the American National Standards Institute, the Federation of Tax Administrators, and the Multistate Tax Commission.

Each participating local taxing jurisdiction must provide the 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 the DOR by July 1 of each year. The 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. The DOR is also required to finalize the annual database and post it on a website by November 1.

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, the 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.

Subsection (1) of ss. 175.1015 and 185.085, F.S., provide that 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 the 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 subsection (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 the 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.

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<sup>4</sup> From Petition to Challenge Agency Statements Defined as Rules, Case No. 02-3610RU, Sept. 10, 2002.

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

Subsection (5) of ss. 175.1015 and 185.085, F.S., authorize the DOR to adopt rules 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 2004, and including the amounts reported for 2005, 2006, and 2007 (ending on January 1, 2008), so that no city receives less revenue than the revenue reported for calendar year 2004 from automobile casualty insurance policies for Police Officers’ Pension Funds. If there are insufficient increases in state premium tax revenues to fund the guaranteed 2004 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, 2005, so that the total amount reported for the municipality is received and additional consideration is given to this factor in determining the pro-rated amount for all other cities.

**Sections 3 and 4** amend, respectively, 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 its current administration of this provision. However, this policy is currently under challenge by the Florida League of Cities.<sup>5</sup>

**Sections 5 and 6** amend, respectively, ss. 175.061 and 185.05, F.S., to permit individual plan boards of trustees to authorize post-retirement payroll deductions through the plan administrator when requested by the employee for the payment of retiree benefits, the payment of the certified bargaining agent, and the making of any payments required by law.

**Section 7** appropriates \$300,000 from the General Revenue Fund to the DOR as a one-time expense for 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, 2006.

**Section 8** provides a statement of important state interest in conformance with the provisions of s. 18, Art. VII, State Constitution.

**Section 9** provides an effective date upon becoming a law.

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<sup>5</sup> Petition to Challenge Agency Statements Defined as Rules, Case No. 02-3610RU, Sept. 10, 2002.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

See “Extra Benefits Provided by Local Governmental Entities,” under the Government Section Impact (Section V) of the analysis.

**B. Public Records/Open Meetings Issues:**

Article I, s. 24(a) of the State Constitution, provides that

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder...

Section 1. of the bill (page 5, lines 4-9) provides that

The Department of Revenue shall furnish the annual database on magnetic or electronic media to any insurance company or vendor that requests the database for the sole purpose of assigning insurance premiums to the proper local taxing jurisdiction for the excise tax imposed under this chapter.

By limiting access to the annual database to a copy that is provided only to insurance companies and vendors for the specific purpose of assigning insurance premiums, this provision limits the right of the public under Art. I, s. 24(a) of the State Constitution, to inspect or copy a public record. A public record is defined by s. 119.011(1), F.S., to mean

...all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The bill specifically authorizes and directs the Department of Revenue, which is an agency as defined by Art. I, s. 24 of the State Constitution and by s. 119.011(2), F.S., to create the database. As such, the database is made in connection with the official business of the agency, and is a public record. A limitation on access to that database is an exemption to public records requirements. Pursuant to Art. I, s. 24(c) of the State Constitution, an exemption must be created in a separate bill, must state the public necessity for exemption, and must pass the Legislature by a two-thirds vote of each house.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Subsections (1) and (2) of this bill provide 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.

This bill provides that insurers that do not use DOR’s database, or that do not exercise due diligence in applying DOR’s database, are subject to a 0.5 percent penalty on the portion of the premium pertaining to any insured risk that is improperly assigned.

The bill provides a “safe harbor” for insurers that exercise reasonable care in the assignment of an insured party’s premium to a local taxing jurisdiction provided that the insurance company complies with three elements of due diligence: the expenditure of reasonable resources for compliance; the maintenance of adequate internal controls; and the timely correction of errors.

**C. Government Sector Impact:**

**Implementation of Database**

On December 2, 2003, the Department of Revenue provided a revised fiscal impact regarding the creation and implementation of the database that will match the address locations of insured properties with corresponding municipality and fire control municipality or special district:

| <b>FISCAL IMPACT ON<br/>DEPARTMENT OF REVENUE</b>   | <b>(FY 04-05)</b> | <b>(FY 05-06)</b> | <b>(FY 06-07)</b> |
|---|-------------------|-------------------|-------------------|
| <b>RECURRING</b>                                    |                   | \$ 50,000         | \$50,000          |
| <b>FTE</b>  |                   |                   |                   |
| <b>Salaries</b>                                     |                   |                   |                   |
| <b>Expenses</b>                                     |                   | \$ 50,000         | \$ 50,000         |
| <b>NON-RECURRING</b>                                |                   |                   |                   |
| <b>Expenses</b>                                     | \$ 300,000        |                   |                   |
| <b>Operating Capital Outlay</b>                     |                   |                   |                   |
| <b>Other Personal Services</b>                      |                   |                   |                   |
| <b>TOTAL</b>  | \$ 300,000        | \$ 50,000         | \$ 50,000         |
| <b>Firefighter Supplemental<br/>Compensation TF</b> | \$ 300,000        | \$ 50,000         | \$ 50,000         |

The database will be updated annually for any changes relevant to the municipality or district. The database will also be accessed or downloaded by all casualty insurers and property insurers to reference for the proper allocation of the related excise tax. Establishment of a "local government unit" would be necessary. The unit will be responsible for maintaining these interactions with the database, providing technical support to insurers, and assisting jurisdictions with the update function. The database will be updated annually for any changes relevant to the municipality or district by current staff. The DOR includes \$300,000 for the one-time expense of creating the original database called for by this act and \$50,000 in continuing EDP expense for licensing fees.

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.

#### **Extra Benefits Provided by Local Governmental Entities**

This bill provides that local plans that provided extra benefits prior to March 12, 1999, would not be authorized to fund those extra benefits from increases in the premium tax revenues. Extra benefits provided by local plans after March 12, 1999, could continue to be funded by premium tax proceeds. This codifies the Division of Retirement current interpretation of what constitutes extra benefits and how premium tax proceeds may be used.

Five cities with firefighter and police pension plans have challenged the Division of Retirement's interpretation and administration of ss. 175.351(1) and 185.35(1), F.S. The Division of Administrative Hearings has issued an order finding the agency rules to be valid. The Florida League of Cities is appealing the ruling (Case Nos. 03-1117RP and 1D03-4556) to the First District Court of Appeal. The case is styled Florida League of Cities, Inc. et al. v. Department of Management Services et al.

According to the Florida League of Cities, this bill would have a significant fiscal impact on municipalities that provided extra benefits prior to March 12, 1999. In its fiscal impact report to the 2003 Legislature, the League reported its sample of 48 of approximately 348 police and fire plans estimated that this provision would have an annual fiscal impact of \$2 million.

In its November 21, 2003, bill analysis, the Division of Retirement reported that total monies available for distribution to qualifying plans in 2003 totaled \$94 million.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

The bill requires the Department of Revenue to maintain compliance with two named standards-setting organizations. The first of these, the American National Standards Institute, publishes recommended national database electronic formats for use by revenue generating



organizations. The second, the Multistate Tax Commission, is an association of several states, including the State of Florida through the Department of Revenue, which publishes similar recommended standards for tax- and revenue-collecting units of state government. The format named "FIPS 55-3" refers to the Federal Information Processing Standards adopted by the United States Census Bureau and developed by the National Institute of Standards and Technology. That format uniformly identifies geographic entities and named, populated places including units of local government.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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