HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 1333	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Local Government Affairs Subcommittee; Ingram	116 **Y's**	1 **N's**
COMPANION BILLS:	N/A	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/HB 1333 passed the House on April 24, 2015, and subsequently passed the Senate on April 29, 2015.

The Firefighters' Relief and Pension Fund of the City of Pensacola (Fund) was established by the Legislature in 1941. Each firefighter employed by the City of Pensacola is a Fund participant.

The bill amends the formula utilized for calculating cost of living increases and retirement benefits for certain members. The bill makes changes to the structure of automatic retirement provisions. The bill provides additional benefits for widow(er)s and dependents. The bill provides additional protections for benefits from the legal process. In addition, the bill creates definitions and removes definitions that are no longer in use.

The bill is projected to decrease the City of Pensacola's annual contributions to the Fund by $579,595 in Fiscal Year 2015-2016 and 2016-2017. The bill is also expected to reduce the Fund's Unfunded Actuarial Accrued Liability by $3,374,292. The changes made by this bill are the result of a collective bargaining agreement between the City of Pensacola and International Association of Firefighters Local 707.

The bill was approved by the Governor on June 10, 2015, ch. 2015-206, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Firefighter Pensions: Marvin B. Clayton Firefighters Pension Trust Fund Act
Local firefighter pension plans[1] in are governed by ch. 175, F.S., the Marvin B. Clayton Firefighters Pension Trust Fund Act (Clayton Act).[2] Originally enacted in 1939, the Clayton Act encouraged cities to create firefighter pension plans by providing access to premium tax revenues. The Clayton Act sets forth minimum benefits and standards for municipal firefighter pensions, which cannot be reduced by municipalities; however, the benefits provided by a local law plan may vary from the provisions in the Clayton Act so long as the minimum standards are met.[3]

Florida Protection of Public Employee Retirement Benefits Act
The Florida Constitution prohibits any increase in retirement or pension benefits for a publicly funded plan, unless the increase has made or concurrently makes provision for funding the increase on an actuarially sound basis.[4] The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act), Part VII of ch. 112, F.S., implements the provisions of Art. X, s. 14, Florida Constitution.[5] The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds.[6]

Local governments are prohibited from agreeing to a proposed change in retirement benefits if the plan administrator did not issue a statement of actuarial impact of the proposed change before both the adoption of the change by the governing body of the local government and the last public hearing about the proposed change.[7] This statement must also be furnished to the Division before the local government can agree to the change.[8] The statement must indicate whether the proposed change complies with Art. X, s. 14, Florida Constitution and with s. 112.64, F.S. (concerning the administration of pension funds and the amortization of any unfunded actuarial liability).[9]

Firefighters Relief and Pension Fund of the City of Pensacola
The Firefighters' Relief and Pension Fund of the City of Pensacola (Fund or Plan) was established by the Legislature in 1941.[10] The act governing the Fund was most recently amended in 2000.[11] As of September 30, 2014, the Plan has 93 active members, 160 retired members, and 21 members in DROP.[12] As of September 30, 2013, the Plan had $106,296,804 in total assets and $16,161,541 in unfunded actuarial accrued liability.[13] Normal retirement age is 52 years of age for those with at least ten years of service, and any age for those with at least 26 years of service.[14]

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[1] *See* Department of Management Services, *Local Government Annual Reports*, Appendix I, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last visited May 4, 2015) (chart showing retirement plans offered by municipalities in the state) (herein DMS Local Government Reports).
[2] S. 175.025, F.S.
[3] S. 175.021(2), F.S.
[4] Art. X, s. 14, Fla. Const.
[5] S. 112.61, F.S.
[6] S. 112.62, F.S.
[7] S. 112.63(3), F.S.
[8] *Id*.
[9] *Id*.
[10] Ch. 41-21483, Laws of Fla.
[11] Ch. 2000-468, Laws of Fla.
[12] DMS Local Government Reports, p. 13 of Appendix F.
[13] DMS Local Government Reports, p. 15 of Appendix A.
[14] DMS Local Government Reports, p. 50 of Appendix B.

The Fund currently assumes eight percent annual growth on its assets.[15] During the most recent fiscal year report on file with the Department of Management Services, the Fund returned 8.60 percent growth in the actuarial value of its assets and 13.90 percent growth in the market value of its assets.[16]

Basis of Compensation

The Plan calculates average monthly earnings for determining retirement benefits by looking at the two best years of the last five of service.[17] Members receive a pension amount equal to:[18]

- 75 percent of the first $200.00 of compensation;
- 70 percent of the next $100.00 of compensation;
- 65 percent of any compensation over the above amounts.

Firefighters reaching 26 years of service receive 75 percent of their final average monthly compensation.

Cost of Living Increases

The Plan provides for a cost of living increase since July 1, 1999 equal to the lesser of the increase in the Bureau of Labor Statistics' Consumer Price Index U (CPI-U) or three percent.[19]

Automatic Retirement

The Plan requires mandatory retirement at age 70 for firefighters.[20] If the firefighter dies and the firefighter's surviving spouse is the firefighter's sole designated beneficiary, distributions to the surviving spouse must begin by December 31 of the calendar year immediately following the calendar year in which the firefighter died, or the calendar year in which the firefighter would have reached 70 1/2 years of age, whichever is later.[21] Payments to the spouse increase by an annual percentage rate that does not exceed an index of all prices issued by the Bureau of Labor Statistics.[22]

Retirement after Ten Years of Service

A firefighter with at least 10 years of service is eligible for pension benefits as long as he or she has not withdrawn his or her contributions from the Fund or, if he or she has withdrawn his or her contributions, returned the contributions with eight percent interest per year from the date of withdrawal.[23] The amount of this benefit is equal to the amount provided in ch. 41-21483, s. 5(a), Laws of Florida, as amended, multiplied by his or her number of years of service.[24]

Benefits to Widows, Widowers, and Dependents

Upon the death of a retired firefighter, his or her widow(er) is entitled to a pension benefit equal to 75 percent of what the pensioner would have been entitled to if he or she had retired as of the date of death, considering the retired firefighter's years of service and amount of compensation, but without

[15] DMS Local Government Reports, p. 16 of Appendix E.
[16] *Id*.
[17] Ch. 41-21483, s. 5(a), Laws of Fla., as amended.
[18] *Id*.
[19] Ch. 41-21483, s. 6(a), Laws of Fla., as amended.
[20] Ch. 41-21483, s. 8, Laws of Fla., as amended.
[21] *Id*.
[22] *Id*.
[23] Ch. 41-21483, s. 10, Laws of Fla., as amended.
[24] *Id*.

regard to his or her age.[25] A widow(er) who married the firefighter after retirement and less than three years before the pensioner's death is not entitled to benefits.[26]

If a person eligible for benefits under the Plan is survived by one or more legitimate children, each child is entitled to a share of the benefits.[27] If a widow(er) survives and is unmarried, the child receives benefits equal to 12 percent of the firefighter's annual salary and the benefits are paid to the child's parent or guardian, to use for the child's benefit.[28] If a widow(er) remarries or does not survive, the child receives benefits equal to 18 percent of the firefighter's annual salary.[29] The child benefit terminates at 18 years of age and the total sum of these benefits may not exceed 65 percent of the prevailing wage for the rank the deceased firefighter held at the time of his or her death.[30]

Any benefits provided by the Fund to a widow(er) terminate upon the recipient's death.[31] The benefits provided also terminate upon remarriage, unless the deceased firefighter is preceded by one or more legitimate children, who may then be entitled to 10 dollars per month for each child, in no event to exceed 40 dollars a month for support as a family.[32] Pension benefits terminated by remarriage may be restored by the Board of Trustees of the Fund (Fund Board), if the marriage ends due to death or divorce.[33]

Protection from Legal Process

Pensions, contributions, and other benefits under the Fund are exempted from state, county, and municipal tax.[34] These benefits are not subject to execution, attachment, or any other form of legal process.[35] The benefits are also unassignable.[36] State law requires local law plans such as the Fund to protect member benefits from the legal process.[37]

Rollover Contributions

Fund members or their deceased surviving spouse may elect to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan, at a time and in a manner selected by the Fund's administrator.[38] "Eligible rollover distribution" and "eligible retirement plan" are not currently defined in the act.

Effect of Bill

Financial Overview

The Economic Impact Statement submitted with the bill states the bill is projected to decrease the City of Pensacola's annual contributions to the Fund by $579,595 in Fiscal Year 2015-2016 and 2016-

[25] Ch. 41-21483, s. 13(a), Laws of Fla., as amended.
[26] Ch. 41-21483, s. 13(b), Laws of Fla., as amended.
[27] *Id.*
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] Ch. 41-21483, s. 15, Laws of Fla., as amended.
[32] *Id.*
[33] Ch. 41-21483, s. 13(a), Laws of Fla., as amended.
[34] Ch. 41-21483, s. 19, Laws of Fla., as amended.
[35] *Id.*
[36] *Id.*
[37] S. 175.241, F.S.
[38] Ch. 41-21483, s. 28, Laws of Fla., as amended.

2017.[39] The bill is also expected to reduce the Fund's Unfunded Actuarial Accrued Liability by $3,374,292.[40]

The changes made by this bill are the result of a collective bargaining agreement between the City of Pensacola and International Association of Firefighters Local 707.

Basis of Compensation

The average monthly earnings formula changes under the bill for firefighters with less years of service. For firefighters with twenty or more years of service as of the effective date of this act, the current formula of looking at the best two of the last five years remains in place. For those with less than 20 years of service as of the effective date of the act, the calculation for average monthly earnings will look to the last five years of service in their entirety.

The bill also provides a pension benefit for firefighters who have reached the age of 50 and have at least 10 years of continuous service. These members are entitled to pension benefits, reduced by three percent for every year the firefighter's retirement date precedes 55 years of age and actuarially adjusted to account for the earlier commencement of benefits.

The bill provides that firefighters disabled in the line of duty are entitled to the greater of their accrued benefit or 42 percent of average monthly salary. This benefit is paid to the firefighter for the greater of 10 years or the remainder of his or her life. Firefighters with at least 10 years of service who suffer a total and permanent disability outside the line of duty would receive the greater of their accrued benefits or 25 percent of their average monthly salary.

The bill provides a floor of two percent of average final compensation times the firefighter's years of credited service as the amount payable when a firefighter dies on or after the normal retirement date. If a firefighter dies after his or her normal retirement date, but before collecting benefits for 10 years and is not survived by a spouse, the bill provides that the monthly benefit is paid to his or her beneficiary(s) for the remainder of the 10 year period. The bill contains a substantively similar provision if a firefighter is working after his or her normal retirement date, but has not yet retired. In that case, the firefighter's pension is calculated as if the date of death was the retirement date.

The bill also allows a firefighter to select from a menu of alternative retirement income streams or benefits of equivalent actuarial value, such as:

- A larger monthly amount, payable only for the firefighter's lifetime;
- A lower monthly amount payable for the joint lifetime of the firefighter and a joint beneficiary;
- Any other amount or form that the Fund Board sees as best meeting the circumstances of the retired firefighter.

A firefighter may change the selected joint beneficiary but only with approval from the Fund Board. If the payment of benefits to the firefighter and the joint beneficiary have already commenced, the joint beneficiary must still be alive at the time of the change. The firefighter does not need the consent of the joint beneficiary to make the change, but the Fund Board may request evidence of the joint beneficiary's health status. After the selection of a new joint beneficiary, the Fund Board will recalculate benefits payment to provide actuarial equivalence. The bill provides that if no designated beneficiary survives the firefighter, the death benefit shall be paid to the estate of the firefighter as an actuarial equivalent lump sum.

[39] Economic Impact Statement for HB 1333 (2015).
[40] *Id*.

The bill states that the spousal benefits for any firefighter hired on or after the effective date of this act are equal to the benefit payment options provided under the Florida Retirement System for Special Risk Class, elected as follows:

- A monthly benefit payment to the firefighter for the firefighter's lifetime only;
- A decreased monthly benefit payment for the firefighter's lifetime or ten years (if the firefighter dies before 10 years, the Fund pays the benefit to beneficiary for the remainder of the 10 years);
- A decreased monthly benefit payment during the joint lifetime of a firefighter and a joint annuitant, continuing for the lifetime of both parties in the same amount; or
- A decreased monthly benefit payment during the joint lifetime of a firefighter and a joint annuitant, continuing for the lifetime of both parties, but paying the surviving party an amount equal to 66 and two-thirds percent the amount payable during the joint lifetime.

The bill provides that if a firefighter dies before his or her normal retirement date, no retirement benefit will be paid, but beneficiaries will be entitled to the death benefits provided by ss. 13 or 14 of the Plan. If a designated beneficiary or joint pensioner dies before the firefighter's retirement date, benefits will revert to the default plan, as if the previous election had not been made, unless the firefighter makes a new beneficiary selection within 90 days of the death of the previous beneficiary.

Cost of Living Increases

The bill amends the fund's annual cost of living increase to:

- Retired before the effective date of this act: Lesser of CPI-U or three percent.
- Hired before the effective date of the act, but retired after the effective date of the act: Lesser of CPI-U or two percent.
- Hired on or after the effective date of the act: Lesser of CPI-U or 1.25 percent.

Automatic Retirement

The bill makes several changes of the act's automatic retirement provisions. The bill requires all Fund distributions to be made in compliance with Section 401(a)(9) of the Internal Revenue Code and the regulations promulgated thereunder.

The bill also sets distribution dates in the event the firefighter dies before distributions begin. It provides:

- If the firefighter's surviving spouse is not the firefighter's sole beneficiary, distributions begin by December 31 of the calendar year immediately following the calendar year in which the firefighter died.
- If there is no designated beneficiary as of September 30 of the year following the firefighter's death, the firefighter's entire interest will be distributed by December 31 of the calendar year containing the fifth anniversary of the firefighter's death.
- If the firefighter's surviving spouse was the firefighter's sole beneficiary, and the surviving spouse dies after the firefighter, but before distributions began, distributions must occur as if the surviving spouse were the firefighter.

The bill provides that a firefighter can request distribution of his or her interest in the form of an annuity or in a lump sum before distributions begin. If the distribution is made as an annuity, annuity payments must be received on a periodic basis with intervals no longer than one year apart and the distribution period cannot be longer than would be provided under other annuity provisions of the act. Payments under the annuity may either be non-increasing or will only increase:

- At an annual percentage rate that does not exceed an index of all prices issued by the Bureau of Labor Statistics;
- To the extent of the reduction in the amount of firefighter's payments to provide a survivor benefit to a beneficiary, where the beneficiary named has died or has been removed as the beneficiary;
- To provide cash refunds of firefighter contributions upon the firefighter's death; or
- To pay increased benefits as result of a Fund amendment.

The bill limits the benefits payable to a non-spouse beneficiary of a joint and survivor annuity to those that could have been payable to the firefighter under IRS regulations. If anyone other than firefighter's spouse is the sole designated beneficiary, a fixed-period annuity may not last for a period longer than would have been possible for the firefighter under IRS regulations. If the annuity begins before the firefighter reaches the age of 70, the distribution period is calculated based on age 70, then modified based on the distribution start year. If the firefighter's spouse is the sole designated beneficiary, a period annuity can extend to the longer of the firefighter's distribution period or the distribution period for a joint life and last survivor annuity.

The bill also establishes minimum distributions where the firefighter dies before the distribution date. The firefighter's entire interest is distributed to beneficiaries over a period not exceeding:

- If the annuity starting date is before the first distribution is required, the life expectancy of the designated beneficiary, determined using the beneficiary's age in the calendar year immediate preceding the calendar year of the firefighter's death.
- If the annuity starting date is after the first distribution is required, the life expectancy of the designated beneficiary, determined using the beneficiary's age in the calendar year in the year that contains the annuity's starting date.

Retirement after Ten Years of Service

The bill states the normal retirement age for purposes of the Fund is when a firefighter has reached 52 years of age and has at least 10 years of service, or has completed 25 years of service regardless of age. The bill states that a firefighter's pension is fully vested upon reaching normal retirement age.

Death Benefits for Survivors

The bill enables a retired firefighter to change his or her designation of a joint annuitant or beneficiary up to two times without approval by the Fund Board. Upon making this change, the Fund Board calculates the actuarial value that would have been paid to the previous beneficiary and calculates an actuarial equivalent for the new beneficiary. The retiree is responsible for the cost of this calculation and the request must be made in writing.

Benefits to Widows, Widowers, and Dependents

The bill provides that if the sum of the pension benefits received by the firefighter and his or her widow(er) was less than 10 years, the firefighter's pension benefits are paid to a beneficiary or beneficiaries of the firefighter's choice for the remainder of the 10 year period. This designation of a beneficiary must be made in writing and approved before by the Fund Board before the firefighter's death. The benefits provided by this provision are voided by the widow(er)'s remarriage.

Protection from Legal Process

The bill states that the sole purpose of Fund assets is to provide benefits for firefighters and their beneficiaries. The bill states that no amendment to the act creating the Fund may divert the Fund's assets for other purposes, including making the Fund's assets property of the City of Pensacola.

The bill adds additional protections for Plan benefits from the legal process. It provides that benefits are not subject to execution, garnishment, attachment, bankruptcy or other insolvency law, or any other process of law. The bill provides that benefits cannot be subject to assignment, pledge, or hypothecation.

The bill removes language protecting benefits from state, county, or municipal taxes.

Rollover Contributions

A distributee (firefighter, surviving spouse, the firefighter's spouse or former spouse entitled to benefits under a court order, and non-spouse beneficiaries for plan years beginning on or after January 1, 2007) may elect to have any or all of an eligible rollover distribution paid directly to an eligible retirement plan. The bill defines the term "eligible retirement plans" as including individual retirement accounts (IRA), individual retirement annuities, annuity plans, annuity contracts, deferred-compensation plans established under 26 U.S.C. 457, and Roth IRAs (for distributions made after December 31, 2007). If the distributee fails elect a distribution to an eligible retirement plan for a mandatory distribution greater than $1,000, the Fund Board will pay the distribution into an IRA of its choice.

Other Provisions

The bill adds an introductory section to the beginning of the act, explaining the purpose of the Fund and its compliance with various federal regulations.

The bill contains a provision requiring the Fund to credit Fund members for qualified military service subject to the provisions of the Uniformed Services Employment and Reemployment Rights Act of 1994 and the Heroes Earnings Assistance and Relief Tax Act of 2008, as of the effective dates of those laws.

The bill adds definitions for accrued benefit, actuarial equivalent, code, limitation year, plan, plan year, regulations, and years of service. The bill also amends the definitions of compensation, salary, and earnings, and removes several definitions no longer used in the act.

The bill provides that the maximum benefit a firefighter or other beneficiary may receive under the Plan is limited to the extent necessary to comply with provisions of the Internal Revenue Code.[41]

The bill provides that if the Fund is terminated for any reason, the benefits accrued by any member up to that point are immediately vested. The Fund Board is responsible for selecting the method used to distribute the benefits. If the Fund's assets are insufficient to cover the value of the vested benefits, the City of Pensacola is responsible for providing the difference. If the Plan's assets are in excess of the amount required to fund vested benefits, the City of Pensacola receives the excess funds. If the Fund Board or the City of Pensacola have not complied with these provisions within 24 months, DMS must terminate the plan in accordance with s. 175.361, F.S.
The bill states a firefighter or his or her beneficiary is required to forfeit benefits provided by the Fund to the extent mandated by the Florida Constitution or state law. Any forfeited funds are applied to reduce the City of Pensacola's contribution to the Fund.

II. FISCAL ANALYSIS, ECONOMIC IMPACT STATEMENT, & NOTICE/REFERENDUM

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

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[41] *See* 26 U.S.C. s. 415.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill is projected to decrease the City of Pensacola's annual contributions to the Fund by $579,595 in Fiscal Year 2015-2016 and 2016-2017. The bill is also expected to reduce the Fund's Unfunded Actuarial Accrued Liability by $3,374,292.

C. ECONOMIC IMPACT STATEMENT FILED? Yes [x] No []

D. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? February 16, 2015.

WHERE? *The Pensacola News Journal*, a daily newspaper published in Escambia County, Florida.

E. REFERENDUM(S) REQUIRED? Yes [] No [x]