

STORAGE NAME: h1765a.ca

DATE: April 16, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT - LOCAL LEGISLATION**

BILL #: HB 1765

RELATING TO: General Pension and Retirement Fund of the City of Pensacola, Escambia County

SPONSOR(S): Representative Maygarden and others

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMUNITY AFFAIRS YEAS 5 NAYS 0
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill changes several provisions of the City of Pensacola's general pension and retirement fund. Generally, the plan provides the following:

- ⇒ Opening the plan up to employees referred to as nonemployment employees and others;
- ⇒ A deferred retirement option plan (DROP) for employees, as long as city ordinance provides for it;
- ⇒ A buy back plan and conditions under which past employees may buy back into the plan.
- ⇒ Authority for the pension board to invest and reinvest assets of the retirement fund in certain institutions and investment strategies.
- ⇒ Confirms the pension plan to the IRS limitations of multiple plan participants ensuring that benefits payable under this plan must not exceed the allowable amount for governmental plans.
- ⇒ Excludes police department employees hired by the city on or after October 1, 1979, who are eligible to participate in the police officer's retirement fund.

According to the Division of Retirement's fiscal note, the impact statement estimates annual funding cost increase of approximately 0.31 percent of payroll (a city contribution increase from approximately \$942,000 to \$2,136,000 in 1994-95 dollars).

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

INTERNAL REVENUE CODE REQUIREMENTS

Substantial tax benefits accrue to pension plans that meet the qualification requirements of the Internal Revenue Code (IRC). Plan earnings are not taxed. At the same time, employer contributions to the plan are deductible. Finally, employees are not currently taxed on the amounts contributed on their behalf.

To be entitled to these tax benefits, plans must comply with very complex and detailed rules both in their structure and their operation. Many of these rules were designed to ensure that highly compensated employees do not reap the lion's share of plan benefits, or at least that the lower-paid employees get a fair share. The plan must be a definite written program, and it must be communicated to the employees. Permanence is required, and the plan must be for the exclusive benefit of employees. Some plans must provide for automatic survivor benefits for a participant's spouse. Contributions and benefits for individual employees cannot exceed certain limits. Plan benefits generally may not be assigned or alienated. A qualified pension plan is one that meets the requirements of IRC section 401, subject to implementing regulations, rulings, and other Internal Revenue Service guidelines.

Constitutional Provisions: Protection of Public Retirement and Pensions

Article X, Section 14, of the Florida Constitution provides that, after January 1, 1977, any governmental unit responsible for a retirement or pension system supported wholly or partially by public funds may not increase pension benefits for members or beneficiaries of that system unless the unit of government has previously funded or concurrently funds the benefit increase on a sound actuarial basis. Part VII of chapter 112, Florida Statutes, as described below, implements these provisions.

Chapter 112, Florida Statutes

Chapter 112, F.S., contains general provisions of law affecting state and local public officers and employees. Various parts of the chapter govern conditions of employment, retirement, death benefits, etc. Part VII, the "Florida Protection of Public Employee Retirement Benefits Act," establishes requirements for public pension plans to ensure that all state and local government retirement plans are:

... managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits. [s. 112.61, F.S.]

Section 112.67, F.S., prohibits special acts which conflict with the provisions of part VII of chapter 112, F.S.:

112.67 Special acts prohibited.--Pursuant to s. 11(a)(21), Art. III of the State Constitution, the Legislature hereby prohibits special laws or general laws of local application in conflict with the requirements of this part.

Provisions of the City of Pensacola's Local Law Plan

Several miscellaneous provisions of the local law plan are addressed:

Subsections (b), (c), (d), (e), and (f), of Section 3 have not been amended since the 1961 enabling act. They relate respectively to:

- ⇒ employees' ability to purchase benefits, over five years, in the pension fund;
- ⇒ employees' desire to participate in the pension fund must be indicated within 90 days of the effective date of the enabling act or the employee forfeits all right to participate in the pension fund;
- ⇒ the city's contribution to the employees' pension fund on behalf of each employee;
- ⇒ employees' death or disability benefits disbursement, prior to all contributions having been paid by the employee, allows the city to permit the deduction of the contribution from the monthly benefits payable to the employee's heirs; and
- ⇒ the city's physician and two senior nurses may indicate their desire to participate in the pension fund.

Section 4 relates to the age and employment requirements necessary for employees to qualify for benefits and establishes the pension benefit to be paid.

Section 5 provides conditions which establish vested rights to pension benefits and conditions applicable to withdrawal of contributions relative to a city reduction in force. Provides if employee withdraws contributions and subsequently returns to service, he/she shall have six months to repay the funds at eight percent interest compounded annually from the date of withdrawal.

Section 17 of the Plan relates to the power and authority of the pension board to invest and reinvest assets of the fund in various investment institutions and strategies.

Section 18A relates to conforming the pension plan benefits to the limitations relating to multiple plan participation required by section 415 of the IRS Code.

Section 19 relates to excluding officers and employees of the fire department for the City of Pensacola covered under the firemen's relief and pension fund.

B. EFFECT OF PROPOSED CHANGES:

This bill changes several provisions of the City of Pensacola's general pension and retirement fund. Those provisions are outlined in the Section-by-Section section of this research statement. Generally, the plan is provides for the following:

- ⇒ Opening the plan up to employees referred to as nonemployment employees and others.
- ⇒ A deferred retirement option plan (DROP) for employees, as long as city ordinance provides for it.
- ⇒ A buy back plan. The bill provides that separation from employment is referred to as nonemployment and does not include retirement or lay offs through a reduction in force The bill establishes conditions for paying back withdrawn

funds if an employee subsequently returns to service. Employees who are reemployed but not having been a member of the pension fund (except a retiree) may elect to buy back prior service as long as period of unemployment with the city was not due to nonemployment or layoff. The buy back must be completed within 6 months from date the city adopts the enabling ordinance and the funds are subject to 8 percent interest compounded annually. If a layoff period of nonemployment period extends for more than ten years, the employee or nonemployment employee is only entitled to a refund of his own contributions and not to any pension benefits.

- ⇒ Authority for the pension board to invest and reinvest assets of the retirement fund in certain institutions and investment strategies.
- ⇒ Conforms the pension plan to the IRS limitations of multiple plan participants and ensures that regardless of whether the cause of an annual benefit exceeding the allowable amount under section 415 of the IRS Code is attributable to multiple plan participation, benefits payable under this plan must not exceed the allowable amount for governmental plans.
- ⇒ Excludes police department employees hired by the city on or after October 1, 1979, who are eligible to participate in the police officer's retirement fund.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 61-2655, Laws of Florida, as amended by chapters 65-2090, 65-2096, 67-1899, 70-890, 72-654, 78-588, 79-552, 79-553, 83-500, 84-429, 87-531, 88-519, 92-246, and 96-506, Laws of Florida, create the City of Pensacola General Pension and Retirement Fund.

D. APPLICATION OF PRINCIPLES:

1. Less Government:

Not applicable.

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

(3) any entitlement to a government service or benefit?

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

(2) what is the cost of such responsibility at the new level/agency?

(3) how is the new agency accountable to the people governed?

2. Lower Taxes:

Not applicable.

a. Does the bill increase anyone's taxes?

b. Does the bill require or authorize an increase in any fees?

c. Does the bill reduce total taxes, both rates and revenues?

d. Does the bill reduce total fees, both rates and revenues?

e. Does the bill authorize any fee or tax increase by any local government?

3. Personal Responsibility:

Not applicable.

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

4. Individual Freedom:

Not applicable.

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

5. Family Empowerment:

Not applicable.

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

- (2) Who makes the decisions?

- (3) Are private alternatives permitted?

- (4) Are families required to participate in a program?

- (5) Are families penalized for not participating in a program?

- b. Does the bill directly affect the legal rights and obligations between family members?

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

- (2) service providers?

- (3) government employees/agencies?

E. SECTION-BY-SECTION RESEARCH:

Section 1: Amends subsection (a) of section 3 of chapter 61-2655, Laws of Florida, as amended, by removing language relating to seasonal or contractual employees or persons performing work partially funded by the city; excluding employees of the police department, hired after October 1, 1979

and eligible to participate in the police officer's retirement fund, from participating in the general pension fund for city employees who are members of the civil service system for the city.

- Section 2: Repeals subsections (b), (c), (d), (e), and (f) of section 3 of chapter 61-2655, Laws of Florida, as amended.
- Section 3: Creates Section 4A of chapter 61-2655, Laws of Florida, to provide a Deferred retirement option plan (DROP) for employees, by ordinance of the City; provides that an employee may remain in active service of the city until a date certain, fixed by contract, and have the accumulated retirement benefits held in an account until the employee separates from active service; provides that the ordinance may provide for forfeiture of the accumulated benefits or other penalty if the employee does not comply with the contract.
- Section 4: Amends subsection (a) of section 5 of chapter 61-2655, Laws of Florida, as amended, to provide that separation from employment is referred to as nonemployment; this provision does not include retirement or lay offs through a reduction in force; provides conditions to paying back withdrawn funds if subsequently returned to service; provides employees who are reemployed but not having been a member of the pension fund (except a retiree) may elect to buy back prior service as long as period of unemployment with the city was not due to nonemployment or layoff; provides the buy back be completed within 6 months from date the city adopts the enabling ordinance and the funds are subject to 8 percent interest compounded annually; provides that if a layoff period of nonemployment period extends for more than ten years, the employee or nonemployment employee is only entitled to a refund of his own contributions and not to any pension benefits.
- Section 5: Amends section 17 of chapter 61-2655, Laws of Florida, as amended, provides the pension board authority to invest and reinvest assets of the retirement fund in certain institutions and investment strategies; provides the Board may not invest more than 5 percent of its assets in common stock or capital stock of any one issuing company, the aggregate investment in any one issuing company may not exceed 5 percent of the outstanding capital stock of the company, the aggregate market value of its investments in common stocks may not exceed 75 percent of the assets of the fund, the aggregate market value its investments in all corporate securities may not exceed 80 percent of the assets of the fund.
- Section 6: Creates 17A of chapter 61-2655, Laws of Florida, as amended, to allow the pension board and the city of Pensacola to contract with one or more investment banks of national repute to act as agents and corporate trustees of the pension funds. The investment bank or banks have full investment powers subject to the provisions outlined in the amended section 17 (section 5 of this bill); provides that the city manager may act as the board's agent in administering the details of contracting with the investment bank(s); provides the city manager report to the pension board quarterly on the status of the pension funds and the board must review the report and direct

the city manager with respect to the contract status between the investment bank(s) and the pension board; and provides the authority in this section supersedes the investment authority provided in previous special acts.

Section 7 Amends section 18A of chapter 61-2655, Laws of Florida, as amended, to conform the pension plan to the IRS limitations of multiple plan participants and ensure that regardless of whether the cause of an annual benefit exceeding the allowable amount under section 415 of the IRS Code is attributable to multiple plan participation, benefits payable under this plan must not exceed the allowable amount for governmental plans.

Section 8: Amends section 19 of chapter 61-2655, Laws of Florida, as amended, to provide exclusion of police department employees hired by the city on or after October 1, 1979 and who are eligible to participate in the police officer's retirement fund.

Section 9: Creates section 20A of chapter 61-2655, Laws of Florida, as amended, to provide authority to allow additional members into the plan, by ordinance, both civil service employees and appointed employees who have not been members of the plan; provides that the plan administrator must determine the amount necessary for these additional members to buy back into the plan or have authorized amounts transferred from another qualified plan; provides that any transfer not jeopardize the tax-exempt status of the city's plan or create adverse tax consequences for the City of Pensacola; and provides that a charge of 8 percent interest compounded annually on the amount to buy into the plan be authorized

Section 10: Repeals all conflicting provisions of law.

Section 11: Provides an effective date of upon becoming a law.

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III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes [X] No []

IF YES, WHEN? February 23, 1997

WHERE? Pensacola News-Journal, Pensacola, Escambia County, FL

B. REFERENDUM(S) REQUIRED? Yes [] No [X]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [X] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [X] No []

IV. COMMENTS:

The Florida Division of Retirement, Bureau of Local Retirement Systems, offers the following comments on this bill:

The bill complies with the requirements of Article X, Section 14, State Constitution and Chapter 112, Part VII, Florida Statutes, except for the following comment:

An impact statement was not provided for the DROP (Section 2 of the bill). The city finance director commented, by phone, that it was his understanding that there is no cost for a DROP. We disagree. The finance director noted the bill gives the city the option of adopting a DROP. We will comment on the need for an impact statement in a letter to the city.

An impact statement was not provided for the aggregating of prior and current service for employees previously separated from city service for any reason (as compared to employees separated due to staffing reduction or other cause (not of employee's doing). Such crediting of prior service is used only for satisfying service requirements. We expect that cost for this benefit would not be material.

The impact statement provided for the "reopening" of the Fund for (future employees and to current non-member employees) was completed using the data, assumptions and methods as used for the 9/30/94 actuarial valuation. The statement clearly shows there is a material cost increase - covered payroll is more than doubled; and payrolls have increased since 1994. This agency has always agreed to the use of reasonably determined rates as of a date applied to payrolls as of a later date provided there has been no material change, in the interim, in the benefit structure or in the characteristics of the group which would mask an unfavorable cost-rate increase; and we don't perceive of any except possibly the unfunded actuarial accrued liability cost rate. It should be noted that the adoption of the "reopening" is at the city's option.

None of the preceding comments should preclude the bill's approval.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

A technical amendment to Section 10 of the bill was adopted by the Committee on Community Affairs on April 15, 1997. The amendment was necessary as the provision in the bill as introduced may contravene general law. The amendment clarifies this provision.

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VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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