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DATE: March 7, 1997

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

BILL #: HB 655

RELATING TO: City of West Palm Beach (Police Pension and Relief Fund)

SPONSOR(S): Representative Frankel

COMPANION BILL(S): None

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

- (1) COMMUNITY AFFAIRS
 - (2) FINANCE AND TAXATION
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

HB 655 amends the pension plan for West Palm Beach police officers, known as the "West Palm Beach Police Pension Fund," found in section 16 of the West Palm Beach Charter.

The bill provides a definition for "compensation" which reflects language in the police union's contract. The bill also does away with the payment of benefits option which allows for a member to direct that an annuity be purchased with the balance of the account, rather than being paid in monthly installments from the pension fund. The bill allows members of the Deferred Retirement Option Plan (DROP) to take a loan of 50% of the balance of their DROP account. The bill excludes from disability pensions any injury or disease sustained by the member prior to coming to work for the city.

This bill also revises the investment section of the pension fund to calculate percentages invested in preferred stocks, common stocks and mutual funds according to the cost value of the fund, rather than the market value of the fund. Finally, this bill amends the section of the West Palm Beach Police Pension Fund entitled "internal revenue code limits" to reflect 1996 changes to the Federal Income Tax Code.

The attached Economic Impact Statement indicates minimal fiscal impact on the police pension fund.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

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.

Chapters 175 and 185, Florida Statutes

Local police and firefighter pension and retirement plans are reviewed by the Retirement Administrator of Municipal Police Officers' & Firefighters' Retirement Funds of the Bureau of Local Retirement Systems, State Division of Retirement. The statutory authority for this program is in chapters 175 and 185, Florida Statutes. The program was established to provide a uniform retirement system for the benefit of firefighters and police officers. The retirement systems or plans are to be managed, administered, operated and funded in such a manner as to maximize the protection of the Municipal Police Officers' Retirement Trust Fund and the Firefighters' Pension Trust Funds.

Chapters 175 and 185, Florida Statutes, currently provide that investments of pension plans governed under these chapters shall not exceed, in the aggregate, at cost, 30 percent of the pension fund's assets in investments of common or capital stock. There is an exception. The trustees of a pension plan may vary the investment procedures **through a municipal ordinance or a special act of the Legislature**. In that event the municipality is not required to comply with the aggregate equity investment provisions of section 175.071(1)(b) or section 185.06(1)(b), Florida Statutes.

The paragraph goes on to stipulate that investments may not be made in any stocks, bonds, or other securities owned or controlled by a government other than that of the United States. The standards do not allow investments in foreign stocks.

Provisions of the Local Law Plan

Several miscellaneous provisions of the local law plan are addressed:

- ◆ The present pension plan definition of "salary" is the fixed monthly compensation paid to a member including items customarily included as compensation. The definition does not include lump sum payments for accumulated leave.
- ◆ The plan provides that members normally receive a lump-sum payment of the entire balance of the member's individual share account. However, the member may elect to receive the benefits over a 3 years period in annual installments or in monthly installments over the lifetime of the member or until the entire balance is exhausted. The fund's actuary determines the amount to be paid. Alternatively, the member may request the account balance be used to purchase an annuity to be paid monthly. The first payment must be approved by the Board. The annuity must be purchased from an insurer licensed to sell such annuities in Florida.
- ◆ Currently, under the plan's Deferred Retirement Option Plan (DROP), a member may select between three payout options upon termination of employment: The member may:
 - take the DROP account balance in a lump sum payment;
 - take payment in three equal annual installments; or
 - take a lifetime annuity, paid monthly.

Monthly installments may be paid over the lifetime of the member or until the entire balance is exhausted. The monthly amount is determined by the fund's actuary in accordance with selections made by the member on a form prescribed by the Board. The first payment must be approved by the Board. The annuity must be purchased from an insurer licensed to sell annuities in Florida.

Currently, there is no loan program available based on a member's funds in the Deferred Retirement Option Plan.

- ◆ Federal law at 42 U.S.C. section 12112 prohibits discrimination in employment against individuals with disabilities. Section 12112(b)(4) defines discrimination as excluding or denying equal jobs or **benefits** on the basis of a disability. Accordingly, the West Palm Beach Police Pension Fund must offer *non-duty* disability benefits equally to employees with disabilities. However, individuals hired with a disability are not covered for that disability for purposes of a *duty* disability benefit.
- ◆ An employee retirement plan qualified as an Internal Revenue Code (IRC) section 401(a) "qualified plan" is entitled to favorable tax treatment. For example, contributions made in accordance with the plan document are generally currently deductible. However, participants will not include these contributions into income

until the time they receive a distribution from the plan, at which time special income averaging rates for lump sum distributions may serve to reduce the tax liability. In some cases, taxation may be further deferred by rollover to another qualified plan or individual retirement arrangement. Finally, plan earnings may accumulate free of tax. Employee retirement plans that fail to satisfy the requirements under IRC section 401(a) are not entitled to favorable tax treatment.

B. EFFECT OF PROPOSED CHANGES:

This bill amends several provisions of the West Palm Beach Police Pension Plan special act, including:

- adding a definition for "compensation" which reflects language in the police union's contract;
- deleting the payment of benefits option which allows for a member to direct that an annuity be purchased with the balance of the account, rather than being paid in monthly installments from the pension fund. Currently, no member has exercised the option of purchasing an annuity with the account balance;
- allowing members of the Deferred Retirement Option Plan (DROP) to take a loan of 50% of the balance of their DROP account;
- excluding from disability pensions any injury or disease sustained by the member prior to coming to work for the city;
- revising the investment section of the pension fund to calculate percentages invested in preferred stocks, common stocks and mutual funds according to the *cost* value of the fund, rather than the *market* value of the fund;
- amending the section of the West Palm Beach Police Pension Fund entitled "internal revenue code limits" to reflect 1996 changes to the Federal Income Tax Code.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Chapter 11305, Laws of Florida, 1925, created the original West Palm Beach Police Pension and Relief Fund within the original charter for the City of West Palm Beach. Subsequent amendments to that act are found in chapter 16759, Laws of Florida, 1933; chapter 18983, Laws of Florida, 1937; chapter 21623, Laws of Florida, 1941; and chapter 22510, Laws of Florida, 1943.

In 1947, the original charter for the City of West Palm Beach was repealed and the City was recreated under a new charter established by chapter 24981, Laws of Florida, 1947. Section 10 of that act established the West Palm Beach Police Pension and Relief Fund, a pension plan for the city's police officers. This section was renumbered as section 16 and substantially revised by chapter 31368, Laws of Florida, 1955. Since then, the section has been further amended by chapters 57-1946, 61-2994, 65-2379, 73-656, 76-503, 79-579, 84-541, 85-505, 86-361, 87-516, 88-505, 93-373, 95-478, and 96-526, Laws of Florida. In 1988, the fund was renamed the "West Palm Beach Police Pension Fund."

D. APPLICATION OF PRINCIPLES:

1. Less Government:

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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?

Not applicable.

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

Not applicable.

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

Not applicable.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

3. Personal Responsibility:

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

Not applicable.

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

Not applicable.

4. Individual Freedom:

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

Not applicable.

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

Not applicable.

5. Family Empowerment:

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

Not applicable.

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

Not applicable.

(2) Who makes the decisions?

Not applicable.

(3) Are private alternatives permitted?

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

E. SECTION-BY-SECTION ANALYSIS:

Section 1-- defines "compensation" to include regular hours worked, overtime payments, hazardous duty pay, holiday pay, educational supplements, longevity pay, specialized assignment pay, and any payments for approved leave; excludes lump sum payments for accumulated leave such as accrued vacation leave, accrued sick leave and accrued personal leave.

Section 2-- deletes the provision allowing a member to use his account balance to purchase an annuity.

Section 3-- deletes the provision allowing a member to use his account balance from the DROP plan to purchase an annuity, and adds a provision allowing a member of the DROP program to take a loan for up to 50% of the account balance. A spouse's consent is required of married members.

Section 4-- excludes from disability pensions benefits, benefits received based on any injury or disease sustained by the member before coming to work with the city.

Section 5-- changes the method of computing the total amount of the fund that has been invested in preferred stocks, common stocks, or mutual funds to *cost* value (rather than the *market* value) of the fund at the end of each reporting period.

Section 6-- provides for retroactive application of subsection (29) of section 16 of chapter 24981, Laws of Florida, 1947, as amended, to be effective January 1, 1995, to state that a members' annual benefit may not exceed one hundred and twenty thousand dollars, deletes the provision stating that the annual benefit may only be the lesser of ninety thousand dollars per year or one hundred percent of the average annual compensation for the member's three highest paid consecutive years, deletes the definition of the "average annual compensation for a member's three highest paid consecutive years" and provides conforming changes to the paragraph.

Section 7-- provides for an effective date of upon becoming a law, except the provisions of Section 6 are retroactive to January 1, 1995.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 10, 1997

WHERE? The Palm Beach Post, Palm Beach County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN? Not applicable.

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

The Local Retirement Systems Office of the Florida Division of Retirement commented that the Division has no problem with the bill, provided the recommendations made on page 2, Schedule IV of their analysis are incorporated into the bill. Those recommendations are incorporated in proposed Amendment #2 and provide that the current provision regarding

market value remain in the special act. Also a statement should be included to the effect that "investment experience producing a market value percent exceeding the stated limit does not arbitrarily mean assets are to be liquidated to satisfy the limit."

The bill has no impact on the Florida Retirement System.

In addition:

House Rule 92(a), provides that "if a committee determines that a local bill may be enacted into law under the authority of a local governing body, that committee shall not report the bill to the Clerk." The purposes of this local bill could be accomplished by a local ordinance *but* would require that the special acts related to the police pension plan be repealed by the Legislature and be converted to local ordinances.

The ordinances are then subject to modification or repeal by the local governing body as are other local ordinances. The entire contents of the act remain in full force and effect during the conversion process.

Therefore, it appears House Rule 92(a) does not apply to this bill.

The provisions of Section 4 of the bill were not properly advertised in the newspaper and would potentially create a deficient ad for this bill. Amendment #1 to the bill provides for removal of this provision.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Two amendments are recommended and agreed to by the sponsor:

Amendment #1 Removes Section 4 of the bill that provides that employees with disabilities are not entitled to a *duty* disability pension if the disability is a result of injury or disease sustained by the member before coming to work with the city.

Amendment #2 Incorporates recommendation of the Local Retirement Systems Office of the Florida Division of Retirement regarding the plan's equity investments by reinstating market value as the value on which to base the percentage of the funds equities investments. The amendment also raises the limit of funds that can be invested in equities from 60 to 70 percent.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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