

STORAGE NAME: h1589a.go
DATE: April 21, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS - LOCAL LEGISLATION**

BILL #: HB 1589
RELATING TO: City of Pensacola (General Pension and Retirement Fund)
SPONSOR(S): Representative Maygarden and others
COMPANION BILL(S): None

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

- (1) COMMUNITY AFFAIRS YEAS 10 NAYS 0
 - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill repeals and re-creates the City of Pensacola General Pension and Retirement Fund.

This bill restates the existing provisions enacted by special act.

This bill changes several benefit provisions.

The Actuarial impact statement indicates a \$254,000 increase in annual pension expense for the City of Pensacola.

The Committee on Community Affairs adopted 2 amendments.

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.:

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.

Rewrite of The City of Pensacola General Pension Plan

Chapter 61-2655, Laws of Florida, as amended, created the current City of Pensacola General Pension and Retirement Fund. According to information provided by the sponsor, in the spring of 1998, a committee was formed to completely rewrite the General Pension Plan, incorporating changes requested by the City of Pensacola and the General Pension Board. The committee, made up of legal, human resources and finance employees responsible for plan administration, eliminated unnecessary language, rearranged remaining language in a more logical order, added a definitions section, and made several requested changes. The rewritten document, with only minor changes, was approved by the Employees Executive Committee, the General Pension Board, and the City Council.

B. EFFECT OF PROPOSED CHANGES:

This bill recreates the General Pension Plan for the City of Pensacola. This bill restates some of the existing provisions enacted by special act, and changes some benefit provisions as follows:

- Section 24 - Continues the surviving spouse's benefit in the event of remarriage; permits a refund to beneficiary of the member's contributions upon the member's death; provides that if there is no surviving spouse, then contributions are awarded to dependant children under the age of 18.
- Section 26 - Provides the existing cost of living benefit is provided regardless of actuarial experience. **There appears to be a technical error with the use of the word, biannual (which means occurring twice a year).** The act provides for a cost of living increase every two years, but uses the word biannual instead of biennial.
- **(Note: An amendment was adopted in Community Affairs correcting this error)**

- Section 34 - provides a \$56 monthly health insurance premium assistance for each covered general employee retiree participating in the city's group health insurance plan; provides that all amounts held in the city's General Pension Medical Account allocated for such premium assistance payments will be transferred to the Fund no later than December 31, 1999.

C. LAWS OF FLORIDA/FLORIDA STATUTES AFFECTED:

Repeals and replaces ch. 61-2655, Laws of Florida, as amended; repeals ch. 20061, Laws of Florida, 1939, as amended; ch. 27816, Laws of Florida, 1951, as amended; ch. 20409, Laws of Florida, 1953, as amended; and ch. 29410, Laws of Florida, 1953, as amended.

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?

No.

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

No.

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

There are some compensation changes which benefit employees or their families.

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

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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

No.

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

No.

4. Individual Freedom:

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

No.

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

No.

5. Family Empowerment:

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

The bill does not purport to provide services to families or children.

(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?

No.

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:

The bill does not create or change a program providing services to families or children.

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 - Recreates the General Pension and Retirement Fund for Pensacola. The following sections, identified as Section 1, through Section 38, are the specific sections within the General Pension and Retirement Fund document. Their provisions are as follows:

Section 1 - Creates the "General Pension and Retirement Fund" (Fund) for the city of Pensacola, providing for retirement, disability, and death benefits for general city employees; provides that the Fund is to be used exclusively for the benefit of the members, their dependants, or their beneficiaries; provides that the Fund continues to exist exclusively for the purposes provided by this act and related legislation.

Section 2 - Provides definitions for "act", "actuary", "average monthly salary", "bank of national repute", "beneficiary", "best 2 years", "board of trustees, "the board or the general pension board", "city", "city council", "code", "credited service years or credited years of service", "dependent", "dependent children", "disability", "ECUA", "General Pension and Retirement Fund, general pension plan, or the plan", "investment bank of national repute", "line of duty", "major fraction of a year", "member of a plan", "nonemployment", "normal retirement or early retirement", "plan", "plan administrator", "pensioner", "permanent full-time employee", "refund of contributions", "retiree", "salary", "service under the plan", "spouse", "surviving spouse", and "vested member or vesting right".

Section 3 - Creates a pension board consisting of six members; provides that three members must be residents of Escambia County and appointed by the city council; provides that each appointment is for a term of 6 years; provides that one appointment must be made every 2 years, not later than the second regular meeting of the council in July; provides that the remaining three members consist of the current mayor of the city, or his appointed representative, and two active contributing participants of the Fund; provides that the two active participants are elected by a plurality vote; provides that each elected member takes office upon election for 2 years; provides the pension board is vested with the responsibility for the administration and operation of the Fund.

Section 4 - Requires each member to take and subscribe the oath of office required by the city charter; requires the board to elect one of its members as chairperson; requires the board to meet as often as is necessary; provides that a majority of the board constitutes a quorum.

Section 5 - Provides the pension board has the power to: adopt rules and regulations not inconsistent with this act; perform all the duties and enjoy all the rights and powers vested by law or ordinance; cause subpoenas to be issued; require attendance of witnesses; require the production of documents to determine entitlement; and employ required personnel.

Section 6 - Reserved.

Section 7 - Provides for membership requirements and exclusions.

Section 8 - Provides for Escambia County Utilities Authority provisions.

Section 9 - Provides for multiple plan participants; limits the maximum benefit payable to a participant under this plan to the amount allowable under section 414(d), of the code.

Section 10 - Provides for eligible rollover distributions.

Section 11 - Provides for designation of employee contributions.

Section 12 - Reserved.

Section 13 - Provides for separation from service and reemployment provisions.

Section 14 - Provides that if the law deems a period of service in the Armed Forces of the United States as continuous service of the city, it is so credited; requires any such member of the plan who has withdrawn contributions, to return the moneys to the fund; provides that the member must also pay into the fund all contributions the member would have been required to pay during the term the member was actively serving in the Armed Forces.

Section 15 - Provides that a pension for injury or illness is not awarded until determination of the disability; requires the city to comply with the Americans with Disabilities Act of 1990, as amended; provides rules for application, determination, awards, and reevaluation of disability pension.

Section 16 - Reserved.

Section 17 - Provides for normal retirement with 20 or more years of credited service under the plan.

Section 18 - Provides for early retirement at 25 years of credited service years under the plan when the member has attained age of 45.

Section 19 - Provides for normal retirement with less than 20 years of credited service under the plan.

Section 20 - Provides for the refund of contributions for workers with less than 10 years of service; provides exception for disability or death in the line of duty.

Section 21 - Provides for disability, injury or illness in line of duty.

Section 22 - Provides that if a member of the plan dies in the line of duty while employed, the deceased member's dependants or beneficiaries are eligible to receive benefits as provided for in section 21 and section 24.

Section 23 - Provides for disability injury or illness not in the line of duty.

Section 24 - Provides for other specific benefits.

Section 25 - Provides that no member of the plan shall be retired under this act while charges of misconduct are pending before the civil service board; requires that no application may be made, or acted upon until 30 days subsequent to the final determination of the charges.

Section 26 - Provides that cost-of-living increases paid pursuant to this act begin July 1, 1999, and are paid biannually thereafter; provides that each* *biannual* increase has an effective date of July 1; provides that such increase is equal to the increase in the CPI issued by the United States

Department of Labor since the date of the last cost-of-living increase which was granted pursuant to this section; provides that it may not be greater than 3 percent; provides that in the event that the United States Department of Labor ceases to issue a CPI, the board may utilize a CPI index that is the functional equivalent; requires that the period of April 1 of the last year to March 31 of the year in which the increase was given, be the period used for the calculation of the CPI. (*NOTE: a traveling amendment corrects *biannual*, to *biennial*)

Section 27 - Provides for a deferred retirement option plan (DROP).

Section 28 - Provides that nothing in this act shall operate to increase or diminish the amount of any pension now being paid by the city, or any other retirement benefits under the provisions of chapter 39-20061, L.O.F., and chapter 61-2655, L.O.F., as amended.

Section 29 - Provides that if any employee of the city is participating in the benefits provided by the act, they are entitled to any social security benefits and/or transferred compensation benefits as a city employee; provides that such amount shall not be deducted from the amount to which the employee is entitled.

Section 30 - Provides that the maximum benefit to be paid to any member shall not exceed the limitations in section 112.65, F.S.

Section 31 - Reserved.

Section 32 - Provides for the continuance of existing fund sources of revenue.

Section 33 - Requires the pension board to at all times maintain the general pension fund at an amount sufficient to meet its current liabilities; provides that if there is an excess, the pension board may request the city council to authorize the abatement of the 5.5 percent employee contributions deducted under subsection (2) of section 32 ; provides that if the current income of the fund becomes insufficient to meet its current liabilities (after the provision has been set apart for accumulations), the pension board shall certify this to the city manager; requires the city to provide from any source of revenue available, except that designated interest and sinking fund, a sufficient sum to meet such current liabilities without default; requires the city to fully fund any unfunded actuarially accrued liabilities arising under the Fund as a result of pension benefits earned by city employees while actively employed at the city.

Section 34 - Requires the fund to provide premium assistance for each covered general retiree participating in the city group health insurance plan in the amount of \$56 per month; requires the Fund to make payments to the city at least monthly in order to provide such premium assistance; provides that upon recommendation by the board of trustees, the city council may authorize a change in the monthly premium assistance paid to the city; requires that no later than December 31, 1999, all amounts held in the city's General Pension Medical Account allocated for such premium assistance payments be transferred to the Fund.

Section 35 - Reserved.

Section 36 - Provides the pension board with the power to invest and reinvest the assets of the Fund in (a) a time or savings account of a national bank, a state bank insured by the Federal Deposit Insurance Corporation, or a savings and loan association insured by the Federal Savings and Loan Insurance Corporation (b) obligations of the United States, (c) obligations of municipal authority, (d) bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, (e) commingled bank and insurance company temporary investment, stock, and bond funds, (f) commingled bank and insurance company real estate funds up to the maximum of 15% of assets at market value, (g) guaranteed insurance contracts, (h) foreign securities; authorizes the pension board and the city to contract with one or more investment banks of national repute; requires the city and the board to contract to provide procedures for selecting, entering into contracts, and terminating contracts with any such investment bank; authorizes the pension board to direct the plan administrator to act as the board's agent in handling the administrative details of contracting with the investment bank.

Section 37 - Reserved.

Section 38 - Reserved.

Section 2 -- Provides that if any portion of the act is held unconstitutional, invalid, inoperative, or void, it will not affect the remaining portions of the act.

Section 3 -- Repeals all laws and all parts of law in conflict with this act; repeals chapter 20061, L.O.F., 1939, as amended, chapter 27816, L.O.F., 1951, as amended, chapter 20409, L.O.F., 1953, as amended, chapter 29410, L.O.F., 1953, as amended, and chapter 61-2655, L.O.F., as amended.

Section 4 -- Provides an effective date of upon becoming law.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? January 31, 1999

WHERE? Pensacola News Journal

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

IV. COMMENTS:

Charles Slavin, Enrolled Actuary for the State of Florida Division of Retirement, Department of Management Services, provided the following comments:

Actuarial Statement of Fiscal Soundness:

1. This bill affects neither the Florida Retirement System (FRS) nor the FRS Trust Fund.
2. This bill complies with the requirements of Article X, Section 14 of the Constitution.
3. This bill complies with the requirements of Chapter 112, Part VII, Florida Statutes.
4. Explanation: This bill is a restatement of all currently applicable provisions of special acts enacted over the years, and includes several changes to the benefit provisions.

The State of Florida Division of Retirement also provided the following comments:

- The provisions for \$56 monthly health insurance premium assistance, in our opinion, will have to satisfy the requirements of the Internal Revenue Code Section 401(h).
- The definition of "average monthly salary" is confusing in that it refers to "total remuneration", a term which is not defined. The definition of "average monthly salary" could be strengthened by using the term "salary", which is a defined term, in lieu of the term "total remuneration."
- According to the plan's administrator, the cost of living increase provided for in section 26 of the bill is to be effectuated or paid every two years. Line 23, page 31, of the bill, however, states that the cost of living increase, "...shall be paid biannually..." While biannually can mean "biennial" according to Webster's Dictionary, the preferred term for something which occurs every two years is "biennial"; "biannual" typically connotes something which occurs twice per year.

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V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

At its meeting on April 14, 1999, the Committee on Community Affairs adopted the following two technical amendments:

Amendment # 1 - Clarifies the definition of "average monthly salary," by using the term salary, a term which is defined in the act, as opposed to total remuneration, a term which is not defined in the act.

Amendment # 2 - Corrects a reference in section 26 of the bill to biannual, and inserts the word biennial.

VI. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Aimee Diaz

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Russell J. Cyphers

Staff Director:

Jimmy O. Helms