

**STORAGE NAME:** h1665a.ca

**DATE:** April 19, 2000

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
COMMUNITY AFFAIRS  
ANALYSIS - LOCAL LEGISLATION**

**BILL #:** HB 1665

**RELATING TO:** Orlando Fire Dept. Pension Fund

**SPONSOR(S):** Representative Posey and others

**TIED BILL(S):** None

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

- (1) GOVERNMENTAL OPERATIONS (PRC) YEAS 5 NAYS 0
  - (2) COMMUNITY AFFAIRS (PRC) YEAS 7 NAYS 0
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

The bill amends the City of Orlando Firefighters' Pension Fund.

The bill amends the plan relating to a cost-of-living increase for members and beneficiaries, with the actuarial cost being borne by members. The plan is amended to include a Deferred Retirement Option Plan (DROP) and to provide for an employer "pick up" of member contributions in compliance with the Internal Revenue Code.

The bill creates an Optional Retirement Benefit Plan in an attempt to meet the minimum statutory requirements; the proposed changes, however, are contrary to the provisions of law as such "alternative compliance" proposals were rejected by the 1999 Legislature.

This bill, as amended, appears to meet constitutional and statutory provisions. The contribution rate is increased 3.33%, of which 2.50% will be paid by increased member contributions.

**See Part VI, AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES section, for the effect of the amendments traveling with the bill. Four amendments were adopted by the Committee on Governmental Operations. The first amendment removes section 6, creating the optional retirement benefit plan, from the bill. The second and third amendments correct typographical errors. The fourth amendment removes the current language in section 7 and replaces it with language authorizing the City of Orlando to amend the pension plan to the limited extent necessary to obtain tax qualification of the plan under the Internal Revenue Code; this amendment also authorizes the City of Orlando to amend the pension plan to the extent necessary to comply with the minimum standards and benefit levels required by Chapter 175, Florida Statutes, in order for the plan to receive funding from the Police and Firefighters' Premium Tax Trust Fund.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                             |   |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. 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, Florida Statutes, 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, Florida Statutes]

Section 112.665(1)(c), Florida Statutes, provides that the Division of Retirement shall:

Cooperate with local retirement systems or plans on matters of mutual concern and provide technical assistance to units of local government in the assessment and revision of retirement systems or plans;

Section 112.67, Florida Statutes, prohibits special acts which conflict with the provisions of part VII of chapter 112, Florida Statutes:

112.67 Special acts prohibited.--Pursuant to s. 11(a)(21), Article 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.

### **Deferred Retirement Option Plan (DROP)**

DROP is an optional retirement plan different from the normal service retirement because it is designed to allow the participant to accumulate a lump cash sum amount for retirement. Under DROP, the participant makes a decision to determine base retirement benefit rates, yet continue to work. At the end of the DROP period, the participant must terminate employment. The participant can then receive payment of the accumulated DROP benefits as a lump sum, direct roll-over or combined lump sum and roll-over.

### **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.

### **City of Orlando Firefighters Pension Fund**

Chapter 23444, Laws of Florida, 1945, created a special fund for the Fire Department of the City of Orlando. This chapter has been subsequently amended, by local bill, as needed to keep the act relating to the fund current.

The pension plan does not currently include a Deferred Option Retirement Plan (DROP) option for its employees. Member contributions are currently taxable and there is no optional retirement benefit plan.

Section 175.351, Florida Statutes, provides that for any municipality, etc., to participate in the distribution of the premium tax pursuant to section 175.101, Florida Statutes, local law plans must meet the minimum benefits and minimum standards set forth in this chapter. However, local law plans in effect on October 1, 1998, shall be 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 minimal benefit provisions, as subsequent additional premium tax revenues become available they shall be used to provide extra benefits to firefighters.

#### **C. EFFECT OF PROPOSED CHANGES:**

This bill adds a Deferred Retirement Option Plan (DROP) option which is considered an enhancement to the pension plan and will provide employees with a benefit that is not currently available. The implementation of the "pick up" provision allows employees to make pre-tax employee contributions to the pension plan and is considered a benefit enhancement. The addition of the Optional Retirement Benefit Plan is an attempt to meet the minimum requirements of s. 175.351, Florida Statutes, as amended by the 1999 Legislature; the proposed changes, however, are contrary to the provisions of law as such "alternative compliance" proposals were rejected by the 1999 Legislature.

**D. SECTION-BY-SECTION ANALYSIS:**

- Section 1: Includes a technical amendment changing the term “firemen” and “firewomen” to “firefighters”; and clarifies that DROP participants are considered retirees for purposes of the plan.
- Section 2: Amends the cost of living (COLA) benefit to provide that firefighters retiring with 20 or more years of service shall receive a triennial adjustment starting three years after retirement or, in the case of DROP participants, three years after actual termination. Provides that members who terminate employment without being eligible for the COLA will not be entitled to any refund of the contributions they made to fund the benefit.
- Section 3: Clarifies the day of the month when a retirement benefit is to be paid.
- Section 4: Adds a Deferred Retirement Option Plan (DROP) provision. This provision allows a member who has elected to participate in the DROP, to receive a lump-sum payment, or other payment, in addition to a monthly pension, upon termination of employment.
- Section 5: Provides for the employer’s “pick up” of member contributions in compliance with section 414(h) of the Internal Revenue Code. This allows member contributions to be pre-tax contributions for federal income tax purposes.
- Section 6: Adds a new section in an attempt to alternatively comply with the minimum benefit provisions of section 175.351, Florida Statutes, by creating an “Optional Retirement Benefit Plan.” Such a provision is contrary to the provisions found in this section, as such “alternative compliance” proposals were rejected by the 1999 Legislature when it amended Chapter 175, Florida Statutes. Section 175.351, Florida Statutes, allows existing local law plans to incrementally meet the minimums as additional state moneys become available. The City of Orlando received \$129,840.21 in additional state moneys this year. Any minimum benefits or standards that can be provided at “no cost” or that can be made with the additional state premium tax revenue must be made. Consequently, an amendment is offered by the Committee on Governmental Operations to remove this section from the bill.
- Section 7: Allows the plan to be amended by local ordinance to the limited extent necessary to obtain tax qualification of the plan under the Internal Revenue Code.
- Section 8: Provides an effective date of October 1, 2000, for this bill. It should be noted that section 175.381, Florida Statutes, provides that those plans established by special act of the Legislature shall have until July 1, 2000, to comply with the provisions of this act.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? February 3, and 4, 2000

WHERE? The Orlando Sentinel

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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

Section 6 of this bill creates an optional retirement benefit plan in an attempt to alternatively comply with the minimum benefit provisions of chapter 175, Florida Statutes. Such a provision is contrary to the provisions found in current law, as such "alternative compliance" proposals were rejected by the 1999 Legislature when these minimum requirements were established. Therefore, section 6 should be removed from the bill as not complying with current law.

Mr. Charles Slavin, Actuary for the Local Retirement Section of the State of Florida Division of Retirement, Division of Management Services, provided the following comments:

**Actuarial Statement of Fiscal Soundness**

1. This bill complies with the requirements of Article X, Section 14 of the Constitution but a November 29, 1999 actuarial cost impact statement indicates that an increase of the contribution rate to 29.95% from 26.62%, a rate increase of 3.33% of which 2.5% will be paid by increased member contributions. Section 6 of the bill was not costed in the impact statement.

2. This bill complies with the provisions of Chapter 112, Part VII, Florida Statutes.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 12, 2000, the Committee on Governmental Operations adopted four amendments. The first amendment removes section 6, creating the optional retirement benefit plan, from the bill. The second and third amendments correct typographical errors. The fourth amendment removes the current language in section 7 and replaces it with language authorizing the City of Orlando to amend the pension plan to the limited extent necessary to obtain tax qualification of the plan under the Internal Revenue Code. This amendment also authorizes the City of Orlando to amend the pension plan to the extent necessary to comply with the minimum standards and benefit levels required by Chapter 175, Florida Statutes, in order for the plan to receive funding from the Police and Firefighters' Premium Tax Trust Fund. The local legislative body, however, must obtain prior agreement of the members and their collective bargaining agent, if any, should such required amendments change any plan benefits.

VI. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Russell J. Cyphers Jr.

Staff Director:

Russell J. Cyphers, Jr.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Kyle V. Mitchell

Staff Director:

Joan Highsmith-Smith