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DATE: February 12, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
ANALYSIS – LOCAL LEGISLATION**

BILL #: HB 1037
RELATING TO: Hillsborough Co./City Pension Fund
SPONSOR(S): Representative Murman and others

TIED BILL(S):

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 9 NAYS 0
 - (2) COUNCIL FOR SMARTER GOVERNMENT
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

This bill provides authority for the City of Tampa to enter into supplemental contracts with certain firefighter and police employees to allow those employees to “buy back” creditable service years that were lost by virtue of their inability to participate in the City’s firefighter and Police Pension Plan for a specific period of time.

The bill also provides for an adjustment of pension benefits to account for certain social security contributions made by the City.

The bill also provides for an effective date of June 1, 2002.

Pursuant to House Rule 5.6(a) “if a committee or council determines that the substance of a local bill may be enacted into law by ordinance of a local governing body, the committee or council shall not report the bill to the Clerk. However, if a local governing body would be required to call a referendum to enact the substance of a local bill into law, the committee or council may report the local bill.” Since, a referendum appears to be required by s. 161.021(4), F.S., House Rule 5.6(a) appears not to prohibit the committee from reporting this bill to the Clerk. (See Section IV.C. “OTHER COMMENTS”)

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill. (See section II.C. “EFFECT OF PROPOSED CHANGES:”.)

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:

State Constitution

Article X, Section 14, Florida Constitution, provides that a governmental unit responsible for any retirement or pension system supported wholly or partially by public pension funds may not after January 1, 1977, provide any increase in benefits to members or beneficiaries unless concurrent provisions for funding the increase in benefits are made on a sound actuarial basis.

Statutory Authority

The Legislature adopted Part VII, Chapter 112, F.S., to implement the provisions of Article X, Section 14, Florida Constitution. Part VII, Chapter 112, F.S., also establishes minimum standards for operating and funding public employee retirement systems and plans.

Local police and firefighter pension and retirement plans are reviewed by the Retirement Administrator of Municipal Police Officers and Firefighters Retirement Funds, of the Bureau of Local Retirement Systems, State Division of Retirement. Chapters 175 and 185, F.S. provide statutory authority for this program. 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 Funds and the Firefighters Pension Trust Funds.

City of Tampa Firefighters and Police Pension Fund

The Firefighters and Police Pension Fund for the City of Tampa was enacted through special act in 1933 (Ch. 16721, L.O.F.) Since that time, the act has been amended twenty-two times, through Chs. 21590 (1941), 22475 (1943), 23560 (1945), 23572 (1945), 23573 (1945), 23574 (1945), 23575 (1945), 23576 (1945), 23577 (1945), 23578 (1945), 24919 (1947), 24945 (1947), 24920 (1947), 26267 (1949), 26266 (1951), 27930 (1951), 74-613, 90-391, 91-379, 92-231, 98-515, and 2000-485, L.O.F.

Ch. 74-613, L.O.F., provided for a supplemental contract for police and firefighters who were previously participants of the City Pension Fund, or who might enter into a future pension contract with the City. Ch. 74-613, L.O.F., as amended, provides that any member of the City of Tampa's Firefighters and Police Pension Fund is eligible to receive a pension of twenty-five percent of the

member's average earnings for the first ten years of service, with an additional 2.5 percent of the member's average earnings for each additional year of service. The amount may not exceed a total pension of 100 percent of average earnings.

According to a February 6, 2002, telephone conversation with the Director, Intergovernmental Affairs, City of Tampa, this bill contains two main components.

1. "Buy Back": The first component provides authority for certain employees to "buy back" credible service years in the City's Firefighter and Police Pension Plan (F&P Plan) which years were lost while those employees were forced into the City's General Employees Pension Plan (GE). During the 1980's, individuals who joined the City firefighter or police forces and who were older than 30 years of age, or older, were required to join the City's General Employees Pension Plan (GE Plan) and were not allowed to join the City's Firefighter and Police Pension Fund (F&P Plan). The benefits paid under the F&P Plan are more desirable than those of the GE Plan. Subsequent to Federal litigation regarding the Age Discrimination Act of 1967 and the enactment of the Older Workers Benefit Protection Act, 57 City employees who occupied firefighter or police officer positions were permitted to transfer from the GE Plan to the F&P Plan. This bill allows those 57 individuals to "buy back" the lost years and achieve benefit credit for those years.

2. Social Security Adjustment: The second component of the bill provides for an adjustment of the Plan benefit payment to correct for City payment of employees' portion of the social security contribution. During the period of time that these 57 employees were in the GE Plan, both the City and the 57 employees made social security contributions. Because the F&P Plan provides an independent pension plan, the Social Security Administration (SSA) does not require contributions from either the employer or the employee. However, once an employee begins making social security contributions, the SSA does not allow discontinuance from the program even when the employee subsequently participates in an alternative pension plan such as the F&P Plan. Therefore, even after the 57 employees transferred into the F&P Plan, they and the City were required to continue making social security contributions. The end result is that upon retirement, these 57 employees would be entitled to receive a full pension benefit from the Plan and a full social security benefit. Other members of the F&P Plan would only receive Plan benefits, as they had not made social security contributions as F&P Plan members. Because the City made social security contributions for these 57 employees when they would not have been required to make such contributions had the employees never been in the GE Plan, this bill authorizes a means to adjust these employees Plan benefits to recoup the employer's portion of the social security contributions.

C. EFFECT OF PROPOSED CHANGES:

This bill allows the City to enter into a supplemental contract with the older workers. Describes the conditions, benefits and results of entering into such contract for the purchase of prior service.

The bill clarifies that certain elements of salary are not to be included for purposes of calculating service prior to October 16, 1992 in the General Employees' Plan; to the extent an employee purchases such creditable service under the Fire and Police Fund.

The bill clarifies that this act is only an enabling act, and that the benefits contained within it are contingent upon a contractual agreement through the collective bargaining process between the City and the respective bargaining agents for the firefighters and police officers.

The bill provides that the benefits provided in the act and the changes to the pension contract shall be made available to the members in a supplemental contract. This bill bars those employees

choosing not to participate in the option from deriving the benefit thereof, and requires that those choosing the option are responsible for making the appropriate contributions.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Authorizes the City of Tampa to enter into a supplemental contract with all active and contributing members of the City of Tampa Pension for Firefighters and Police Officers after the effective date of this bill. The bill amends the following sections of the City of Tampa Firefighters and Police Officers Pension Contract: ss. 7(A), (B), (C), s. 8(A), ss. 9(A) and (C), and creates s. 28; as follows:

- Section 7(A) relates to Plan members who have an aggregate of 10 years of service (as defined in s. 17 in specific departments) and have reached the age of 46 years.

Section 7(A) is amended to provide that, except as provided in s. 28(C), upon reaching social security normal retirement age, the pension benefit shall be reduced by an amount equal to the actual social security benefit earned by the member for employment (as deemed credible service under the contract) as a firefighter or police officer for the City. The section further provides that the effect of the reduction is that the sum of the benefit paid plus the social security benefit shall be equal to the amount otherwise payable under the contract. The section further provides that upon demand by the Board, each member shall authorize the Social Security Administration to release any information necessary to calculate such reduction. The section also prohibits the Board from making any benefit payment during such periods when the member willfully fails or refuses to authorize the release of such information.

- Section 7(B) relates to Plan members who have received or receives within or without the City any injury, disease or disability, which permanently incapacitates the member physically or mentally from regular and continuous duty.

Section 7(B) is amended to provide, except as provided in s. 28(C), the same reduction in pension benefit payment.

- Section 7(C) relates to Plan members who have completed 10 years of credible service and become permanently incapacitated, physically or mentally, from regular and continuous service as a result of an injury, disease or disability which is not incurred in the service of the City.

Section 7(C) is amended to provide, except as provided in s. 28(C), the same reduction in pension benefit payment.

- Section 8(A) relates to the widow or widower of a member of this Plan who was a Division B member of the General Employees Pension Plan prior to October 16, 1992 and who died from injuries or causes occurring while in the discharge of his duties.

Section 8(A) is amended to provide, except as provided in s. 28(C), the same reduction in pension benefit payment. However, if the widow or widower does not receive the member's accrued social security benefit, then there is no reduction in benefit payment.

- Section 9(A) relates to the widow or widower of a member of this Plan who was a Division B member of the General Employees Pension Plan prior to October 16, 1992, and who died from non duty related causes,

Section 9(A) is amended to provide, except as provided in s. 28(C), the same reduction in pension benefit payment. However, if the widow or widower does not receive the member's accrued social security benefit, then there is no reduction in benefit payment.

- Section 9(C) relates to the widow or widower of a member who dies while receiving a retirement pension.

Section 9(C) is amended to provide except as provided in s. 28(C), the same reduction in pension benefit payment. However, no pension shall be allowed to any widow or widower unless she or he was married to the member prior to the date of the Plan member's retirement.

- Section 28 relates to the election to purchase past creditable service.

Section 28(A) provides that each firefighter and police officer who, on October 15, 1992, was a member of the GE Plan and who became a member of the F&P Plan for service on or after October 16, 1992, and who is a member of the Plan on or after June 1, 2002, may elect to purchase creditable service as a City firefighter or police officer if the employee makes certain notification to the City; submits a specific form; and makes payment into the Plan a sum of money equal to the aggregate employee contributions, plus interest, which the employee would have paid into the fund for the period of service being purchased.

Section 28(B) provides for the City to contribute into the Plan a like sum representing the employer's contribution for those service years.

Section 28(C) provides for the method of calculation of benefits related to the service years being purchased by the employee.

Section 28(D) provides for the Plan's Board of Trustees' rulemaking authority.

Section 2. Amends s. 21, ch. 23559 (1945), Laws of Florida, to provide clarifying language and creates s. 21(6). Section 21(6) provides that an effected benefits recipient's service prior to October 16, 1992, may not be included to calculate GE pension benefits to the extent that the recipient purchased service in the F&P Plan.

Section 3. Provides that the bill enables the City to enter into the supplemental contracts to provide for the benefits adjustments and the service "buy back" and that the bill is contingent upon a contractual agreement through the collective bargaining process between the City and certified bargaining agents.

Section 4. Provides authority for limitations on the "buy back" abilities of affected employees.

Section 5. Provides for the approval, ratification, validation and confirmation of the City of Tampa Firefighters and Police Officers Pension Contract as described by reference to the City of Tampa Code, effecting ordinances and enabling and amending legislation.

Section 6. Provides for an effective date of June 1, 2002.

III. NOTICE/REFERENDUM AND OTHER REQUIREMENTS:

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

December 18, 2001

WHERE?

The Times, an edition of *The St. Petersburg Times*

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:

Section 28(D) of s. 2 of the bill does provide rulemaking authority to the F&P Plan Board of Trustees.

C. OTHER COMMENTS:

According to the bill analysis of the Department of Management Services (DMS), the bill revises the City of Tampa Firefighters' and Police Officers' Pension Fund to provide for the inclusion of certain police and firefighters who were excluded from participation due to age, and were placed in the General Employees' Pension Plan. The DMS analysis noted no objections to this bill.

Section 166.021, F.S., provides for municipal powers consistent with s. 2(b), Art. VIII, State Constitution. Section 166.021(4), F.S., provides in relevant part:

However, nothing in this act shall be construed to permit any changes in a special law or municipal charter which affect...any rights of municipal employees, without the approval by referendum of the electors as provided in s. 166.031.

House Rule 5.6(a)

Pursuant to House Rule 5.6(a) "if a committee or council determines that the substance of a local bill may be enacted into law by ordinance of a local governing body, the committee or council shall not report the bill to the Clerk. However, if a local governing body would be required to call a referendum to enact the substance of a local bill into law, the committee or council may report the local bill." Since, a referendum appears to be required by s.

161.021(4), F.S., House Rule 5.6(a) appears not to prohibit the committee from reporting this bill to the Clerk.

House Rule 5.6(b)

Pursuant to House Rule 5.6(b), a local bill providing an exemption from general law may not be placed on the Special Order Calendar for expedited consideration. The provisions of House Rule 5.6(b) appear to apply to this bill. However, rules of statutory construction provides for a deference to the last expression of the Legislature; provides that the more specific provision applies before the general provision; and provides that one legislative body cannot bind a subsequent body. Therefore, it appears that the Legislature may have the inherent authority to enact this bill without respect to s. 166.021(4), F.S.

V. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VI. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

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