

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

This bill establishes a Special Risk Pension Fund and an additional funding source for pension benefits for correctional officers of the Duval County Office of Sheriff.

The bill will remove the correctional officers from the General Employee's Pension Plan and transfer all assets, accrued benefits, employee and employer contributions, plus interest, for all former and active correctional officers to the new Correctional Officers' Special Risk Pension Fund. The new plan would be established, administered, and maintained in like manner as provided in ch. 185, F. S. (for police officers) and as provided locally in their Police & Fire Pension Fund (City Code, Chapter 121).

The bill provides for an administrative surcharge of \$20 that shall be assessed on each person who is arrested and booked into a Jacksonville corrections facility. Such surcharge shall be used only to supplement the pension benefits for those correctional officers who are members of the new Fund.

Background

Currently, all correctional officers employed by the City of Jacksonville are participants in the City's General Employees' Pension Plan (the 1937 Pension Fund for the Employees of the City of Jacksonville) and receive the same benefits as provided to general employees of the City of Jacksonville. This is a defined benefit plan, which exceeds, in most cases, the minimum benefits found in ch. 185, F. S. Employees contribute 8% and any actuarial deficiency is made up by employer contributions.

The Chapter 185 plan and the Jacksonville Police & Fire Plan are defined benefit plans that provide minimum benefits to their members and are administered by a five-member board of trustees. The board is made up of two residents appointed by the City Council, two active employee members who are elected by the active employees of the plan, and a fifth member elected by the other four. The members elect a Chairman and a Secretary from among themselves. This board has the sole responsibility for the proper administration and operation of the pension plan. The ch. 185 plans, as well as the Jacksonville Police & Fire Plan are required to be maintained on an actuarially sound basis. Minimum employee contributions are required, with any remaining actuarial deficiency made up by employer contributions.

C. SECTION DIRECTORY:

Section 1. Amends s. 16.06 of ch. 92-341, L.O.F.

Section 2. Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN?

November 7, 2003

WHERE?

Daily Record, a daily newspaper (except Saturday and Sunday) published in Duval County.

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

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

The bill appears to raise an issue regarding a possible violation of due process rights, i.e., a person is being assessed a surcharge upon being arrested (no opportunity to be heard at a hearing before a court). The surcharge applies whether or not an individual is convicted.

Florida's Due Process Clause is found at Art. I, s. 9, and mirrors that contained in the Fourteenth Amendment of the federal constitution. The Fourth District Court of Appeals, in *State ex rel. Furman v. Searcy*, 225 So.2d 430, 433 (4th DCA Fla. 1969), stated that "[The government] is without right to deprive a person of life, liberty or property by an act having no reasonable relationship to any proper governmental purpose." Additionally, Art. I, s. 19, State Constitution, forbids the state from imposing costs on a criminal defendant until final judgment is rendered.

The Sponsor intends to offer a strike all amendment that appears to resolve these issues.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

Department of Management Services: The Department of Management Services¹ made the following two comments regarding the bill:

- a. This bill affects neither the Florida Retirement System nor the System's Trust Fund.

¹ Department of Management Services, 2004 Substantive Bill Analysis, HB 749, 2/6/04.

- b. This bill is neither affected by the requirements of Article X, Section 14 of the Constitution nor by the provisions of Chapter 112, Part VII, Florida Statutes.

Jose I. Fernandez²: Estimates the transfer of funds from the General Employees' Pension Fund (GEPF) into the Correctional Officers Pension Fund as of 1/1/04 at \$68 million. He noted that the City's normal contribution into the GEPF would decrease by approximately \$1.4 million per year with respect to the correctional officers. However, he also noted that those figures were based upon data used in 2003. The bill preamble notes that the City of Jacksonville, Office of the Sheriff, employs approximately 670 correctional officers. With that number of employees in the newly created fund, he estimated an increase in the assets (actuarial accrued liability) to be transferred to the new fund to be approximately \$80 million as of 1/1/04. Mr. Fernandez concluded that as long as the correctional officers' plan provides the same benefits as the current GEPF, the combined cost of the two separate plans should be comparable to the current GEPF.

IV. AMENDMENT/COMMITTEE SUBSTITUTE CHANGES

The Sponsor intends to offer a strike all amendment before the Committee on Local Government & Veterans' Affairs that accomplishes the following:

- Provides a mechanism for the refund or waiver of the \$20 administrative surcharge for those detainees 1) against whom charges are dropped or not pursued; 2) who are acquitted of the charges; 3) who are unable to pay due to indigency; or 4) who demonstrate a legal basis for relief from such payment.
- Provides that no detainee shall be detained, denied access to judicial process or legal counsel; or be subject to penalty solely because of non-payment of the administrative surcharge.

² Principal, Consulting Actuary, Mellon, A Financial Company, letter to Camille Cossa, Pension Administrator, City of Jacksonville, 3/16/04. (The letter is on file with the Committee.)