

CHAMBER ACTION

1 The Local Government Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the City of West Palm Beach, Palm Beach
7 County; amending chapter 24981 (1947), Laws of Florida, as
8 amended; revising provisions relating to the West Palm
9 Beach Firefighters Pension Fund; revising definition of
10 the term "final average salary"; revising provisions
11 relating to permissible investments; revising provisions
12 relating to the BackDROP; providing for loans from the
13 BackDROP; clarifying provisions relating to benefits of
14 the surviving spouse of a member who dies in line of duty;
15 providing an effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 17 of chapter 24981 (1947), Laws of
20 Florida, as amended by chapters 2002-360, 2003-347, and 2004-
21 462, Laws of Florida, is amended to read:

22 Section 17. West Palm Beach Firefighters Pension Fund.--

HB 777

2005
CS

23 (1) Creation of fund.--There is hereby created a special
 24 fund for the Fire Department of the City of West Palm Beach to
 25 be known as the West Palm Beach Firefighters Pension Fund. All
 26 assets of every description held in the name of the West Palm
 27 Beach Firemen's Relief and Pension Fund and in the name of the
 28 West Palm Beach Firefighters Pension Fund have been and shall
 29 continue to be combined.

30 (a) Definitions.--The following words or phrases, as used
 31 in this act, shall have the following meanings, unless a
 32 different meaning is clearly indicated by the context:

33 1. "Actuarial equivalent value," "actuarial equivalence,"
 34 or "single sum value" means the stated determination using an
 35 interest rate of 8.25 percent per year and the 1983 Group
 36 Annuity Mortality Table for males.

37 2. "Beneficiary" means any person who is not at retirement
 38 but who is entitled to receive a benefit from the West Palm
 39 Beach Firefighters Pension Fund or the West Palm Beach Firemen's
 40 Relief and Pension Fund, as applicable.

41 3. "Board of Trustees" or "Board" means the Board of
 42 Trustees provided for in this act.

43 4. "City" means the City of West Palm Beach, Florida.

44 5. "Department" means the Fire Department of the City.

45 6. "Enrolled actuary" means an actuary who is enrolled
 46 under Subtitle C of Title III of the Employee Retirement Income
 47 Security Act of 1974 and who is a member of the Society of
 48 Actuaries or the American Academy of Actuaries.

49 7. "Final average salary" means the average of the monthly
 50 salary paid a member in the 2 best years of employment, paid in

HB 777

2005
CS

51 and prior to the 23rd year of credited service. No active
 52 nonDROP member shall have any salary amounts paid prior to
 53 October 1, 2000, used in the calculation of final average
 54 salary. Those members whose final average salary would include
 55 salary amounts paid prior to October 1, 2000, shall use salary
 56 paid during the period from October 1, 2000, through September
 57 30, 2001, to replace any salary amounts paid prior to October 1,
 58 2000. The replacement salary from October 1, 2000, through
 59 September 30, 2001, may range anywhere between 2 weeks and 104
 60 weeks, but shall only be enough salary as is sufficient to
 61 replace the salary paid prior to October 1, 2000. The
 62 replacement salary amounts from October 1, 2000, to September
 63 30, 2001, shall be prorated based upon an annual salary.

64 8. "Firefighter" means any person employed in the
 65 Department who is certified as a firefighter as a condition of
 66 employment in accordance with the provisions of section 633.35,
 67 Florida Statutes.

68 9. "Fund" or "Pension Fund" means the West Palm Beach
 69 Firefighters Pension Fund or the West Palm Beach Firemen's
 70 Relief and Pension Fund, as applicable.

71 10. "Member" means any person who is included in the
 72 membership of the Fund in accordance with paragraph (h).

73 11. "Pension" means a monthly amount payable from the Fund
 74 throughout the future life of a person, or for a limited period
 75 of time, as provided in this act.

76 12. "Qualified health professional" means a person duly
 77 and regularly engaged in the practice of his or her profession
 78 who holds a professional degree from a university or college and

HB 777

2005
CS

79 | has had special professional training or skill regarding the
80 | physical or mental condition, disability, or lack thereof, upon
81 | which he or she is to present evidence to the Board.

82 | 13. "Qualified public depository" means any bank or
83 | savings association organized and existing under the laws of
84 | Florida and any bank or savings association organized under the
85 | laws of the United States that has its principal place of
86 | business in Florida, or has a branch office which is authorized
87 | under the laws of Florida or the United States to receive
88 | deposits in Florida, that meets all of the requirements of
89 | chapter 280, Florida Statutes, and that has been designated by
90 | the Treasurer of the State of Florida as a qualified public
91 | depository.

92 | 14. "Retirant" or "retiree" means any member who retires
93 | with a pension payable from the Fund.

94 | 15. "Retirement" means a member's withdrawal from City
95 | employment with a pension payable from the Fund.

96 | 16. "Salary" means:

97 | a. The fixed monthly compensation paid to a firefighter
98 | and shall include those items that have been included as
99 | compensation in accordance with past practice. However, the term
100 | shall not be construed to include lump sum payments for
101 | accumulated leave.

102 | b. On and after October 1, 2001, "salary," for the purpose
103 | of pension contributions, shall be defined as payments made to a
104 | firefighter by the City for: regular hours worked; step-up pay;
105 | longevity pay; all authorized leave time, which includes
106 | compensatory time used, earned personal leave used, emergency

HB 777

2005
CS

107 | leave used, sick leave used, sick leave pay bank used, vacation
 108 | time used, holiday time used, emergency leave, bereavement
 109 | leave, and administrative leave; certification pay, which
 110 | includes paramedic, hazardous material technician, special
 111 | operations, dive rescue, fire service instructor, fire
 112 | inspector, and SWAT certification pay; fire inspector standby
 113 | pay; educational bonus incentive; pay received from the City
 114 | during military training; and sick leave conversion when such
 115 | leave is converted during the course of active employment. The
 116 | definition of "salary" specifically excludes any lump sum
 117 | payments for accumulated leave such as that received upon final
 118 | payoff. Employees who are specifically excluded from bargaining
 119 | unit recognition as set forth in Article 2, but who are members
 120 | of the West Palm Beach Firefighters Pension Fund, shall continue
 121 | to make contributions on management incentive benefits. This
 122 | definition of compensation shall not include any duty employment
 123 | that is performed for other than the City of West Palm Beach per
 124 | Article 31, Salary Plan.

125 | 17. "Service," "credited service," or "service credit"
 126 | means the total number of years, and fractional parts of years,
 127 | of employment of any member in the employ of the Department,
 128 | omitting intervening years and fractional parts of years of
 129 | service when the member was not employed by the City. However,
 130 | no member shall receive credit for years, or fractional parts of
 131 | years, of service for which the member has withdrawn his or her
 132 | contributions to the Fund, unless the member repays into the
 133 | Fund the contributions withdrawn, with interest, within 60
 134 | months after reemployment. Further, a member may voluntarily

HB 777

2005
CS

135 | leave his or her contributions in the Fund for a period of 5
 136 | years after leaving the employ of the Department, pending the
 137 | possibility of his or her being rehired by the Department and
 138 | remaining employed for a period of not less than 3 years,
 139 | without losing credit for the time he or she has participated
 140 | actively as a firefighter. If he or she does not remain employed
 141 | for a period of at least 3 years as a firefighter with the
 142 | Department upon reemployment, within 5 years his or her
 143 | contributions shall be returned without interest in accordance
 144 | with paragraph (5)(i). In determining the aggregate number of
 145 | years of service of any member, the time spent in the military
 146 | service of the United States or United States Merchant Marine by
 147 | the member on leave of absence from the Department for such
 148 | reason shall be added to the years of service, provided such
 149 | time shall not exceed 5 years. Further, to receive credit for
 150 | such service the member must return to employment as a
 151 | firefighter of the City within 1 year after the date of release
 152 | from such active service.

153 | (b) Gender and number.--The masculine gender includes the
 154 | feminine, and words of the singular with respect to persons
 155 | shall include the plural and vice versa.

156 | (c) Board of Trustees created.--There is hereby created a
 157 | Board of Trustees, which shall be solely responsible for
 158 | administering the West Palm Beach Firefighters Pension Fund and
 159 | the West Palm Beach Firemen's Relief and Pension Fund. The Board
 160 | shall be a legal entity, with the power to bring and defend
 161 | lawsuits of every kind, nature, and description, and shall be
 162 | independent of the City to the extent required to accomplish the

HB 777

2005
CS

163 intent, requirements, and responsibilities provided for in this
 164 act and applicable law. The Board shall consist of five
 165 trustees, as follows:

166 1. Two legal residents of the City, who shall be appointed
 167 by the City. Each resident-trustee shall serve as a trustee for
 168 a period of 2 years, unless sooner replaced by the City, at
 169 whose pleasure he or she shall serve, and may succeed himself or
 170 herself as trustee.

171 2. Two full-time firefighters shall be elected by a
 172 majority of the firefighters who are members of the Fund.
 173 Elections shall be held under such reasonable rules and
 174 regulations as the Board shall from time to time adopt. Each
 175 member-trustee shall serve as a trustee for a period of 2 years,
 176 unless he or she sooner ceases to be a firefighter in the employ
 177 of the Department, whereupon the members shall choose a
 178 successor in the same manner as the original appointment. Each
 179 member-trustee may succeed himself or herself as trustee.

180 3. A fifth trustee shall be chosen by a majority of the
 181 other four trustees. This fifth person's name shall be submitted
 182 to the City, which shall, as a ministerial duty, appoint such
 183 person to the Board as a fifth trustee. The fifth person shall
 184 serve as trustee for a period of 2 years, and may succeed
 185 himself or herself as trustee.

186 (d) Board vacancy; how filled.--In the event a trustee
 187 provided for in subparagraph (c)2. ceases to be a firefighter in
 188 the employ of the Department, such trustee shall be considered
 189 to have resigned from the Board. In the event a trustee provided
 190 for in subparagraph (c)2. shall resign, be removed, or become

HB 777

2005
CS

191 | ineligible to serve as a trustee, the Board shall, by
 192 | resolution, declare the office of trustee vacated as of the date
 193 | of adoption of said resolution. If such a vacancy occurs in the
 194 | office of trustee within 90 days of the next succeeding election
 195 | for trustee, the vacancy shall be filled at the next regular
 196 | election for the next term; otherwise, the vacancy shall be
 197 | filled for the unexpired portion of the term by the members in
 198 | the same manner as an original appointment. In the event a
 199 | trustee provided for in subparagraph (c)1. or subparagraph (c)3.
 200 | shall resign, be removed, or become ineligible to serve as a
 201 | trustee, the Board shall, by resolution, declare the office of
 202 | trustee vacated as of the date of adoption of said resolution. A
 203 | successor for the unexpired portion of the term shall be chosen
 204 | in the same manner as an original appointment.

205 | (e) Board meetings; quorum; procedures.--The Board shall
 206 | hold meetings regularly, at least once in each quarter year, and
 207 | shall designate the time and place thereof. At any meeting of
 208 | the Board, three trustees shall constitute a quorum. Each
 209 | trustee shall be entitled to one vote on each question before
 210 | the Board and at least three concurring votes shall be required
 211 | for a decision by the Board at any of its meetings. The Board
 212 | shall adopt its own rules of procedure and shall keep a record
 213 | of its proceedings. All public records of the Fund shall be kept
 214 | and maintained as required by law. All meetings of the Board
 215 | shall be open to the public and shall be held as required by
 216 | law.

217 | (f) Board chair.--The Board shall elect a chair from among
 218 | the trustees.

HB 777

2005
CS

219 (g) Board secretary.--The Board shall elect a secretary
220 from among the trustees. The secretary shall keep a complete
221 minute book of the actions, proceedings, and hearings of the
222 Board.

223 (h) Membership.--All firefighters and all who hold a
224 position of firefighter in the employ of the Department shall be
225 members in the Fund. All firefighters, including the chief, who
226 were in the employ of the Department as of April 30, 1959, shall
227 be given credit for service rendered in the employ of the
228 Department prior to May 1, 1959. New members to the Fund are
229 required to undergo a physical examination for purposes of
230 determining preexisting conditions. This physical examination
231 shall be conducted in conjunction with the City's postoffer,
232 preemployment physical examination. The Board's medical director
233 shall review the results of this physical examination and
234 provide notice to the Board and the member of any abnormal
235 findings of the examination. This physical examination will be
236 used for the purposes of establishing a physical profile of the
237 member for determining preexisting conditions and presumptive
238 illnesses as provided for in subsection (6). After review, if
239 further physical examination is required, such examination shall
240 be conducted at Board expense.

241 (i) Compensation.--The trustees of the Fund shall not
242 receive any compensation for their services as such, but may
243 receive expenses and per diem as provided by law.

244 (2) Professional and clerical services.--

HB 777

2005
CS

245 (a) Pension administrator.--The pension administrator of
246 the Fund shall be designated by the Board and shall carry out
247 its orders and directions.

248 (b) Legal counsel.--The City Attorney shall give advice to
249 the Board in all matters pertaining to its duties in the
250 administration of the Fund whenever requested, shall represent
251 and defend the Board as its attorney in all suits and actions at
252 law or in equity that may be brought against it, and shall bring
253 all suits and actions in its behalf that may be required or
254 determined by the Board. However, if the Board so elects, it may
255 employ independent legal counsel at the Fund's expense for the
256 purposes set forth in this act.

257 (c) Actuary.--The Board shall designate an enrolled
258 actuary, who shall be its technical advisor and who shall
259 perform such actuarial services as are required.

260 (d) Certified public accountant.--The Board shall employ,
261 at its expense, a certified public accountant to conduct an
262 independent audit of the Fund. The certified public accountant
263 shall be independent of the Board and the City.

264 (e) Additional professional, technical, or other
265 services.--The Board shall have the authority to employ such
266 professional, technical, or other advisors as required to carry
267 out the provisions of this act.

268 (3) Sources of revenue.--The financing of the Fund shall
269 consist of the following sources of revenue:

270 (a) Taxes of insurance companies.--The moneys returned to
271 the City as provided by chapter 175, Florida Statutes, shall be
272 used to fund the share account benefit described in paragraph

HB 777

2005
CS

273 (5)(j). For the plan year October 1, 2003, through September 30,
274 2004, all of the chapter 175 funds received shall be utilized to
275 offset the City's contributions for the cost of the purchase of
276 extra benefits, less any amounts used to fund the share account
277 benefits for DROP members who do not convert in accordance with
278 sub-subparagraph (5)(a)2.b. Beginning October 1, 2004, the
279 chapter 175 moneys shall again be used in full to fund the share
280 account benefits provided for in paragraph (5)(j). The City
281 shall not opt out of participation in chapter 175, Florida
282 Statutes, or any similar statutory enactment unless exigent
283 circumstances exist, such as the bankruptcy of the City or
284 changes or amendments to the statute regarding extra benefits by
285 the Legislature. If any statutory changes are made by the
286 Legislature, the City and the Board may renegotiate the impact
287 of such changes, if necessary.

288 (b) Member contributions.--Effective the first full
289 payroll period after October 1, 2003, the member shall
290 contribute 9.85 percent of his or her salary to the Fund, which
291 shall be deducted each pay period from the salary of each member
292 in the Department. Effective the first full payroll period after
293 October 1, 2004, the member shall contribute 18.2 percent of his
294 or her salary to the Fund, which shall be deducted each pay
295 period from the salary of each member in the Department.
296 Effective the first full payroll period after January 1, 2005,
297 the member shall contribute 18.7 percent of his or her salary to
298 the Fund, which shall be deducted each pay period from the
299 salary of each member in the Department. Effective the first
300 full payroll period after January 1, 2006, the member shall

HB 777

2005
CS

301 contribute 19.2 percent of his or her salary to the Fund, which
 302 shall be deducted each pay period from the salary of each member
 303 in the Department. All amounts of member contributions that are
 304 deducted shall be immediately paid over to the Pension Fund. For
 305 contributions made before October 1, 2004, any contribution
 306 amount over 6.85 percent is to be used to purchase eligibility
 307 for participation in the postretirement health insurance
 308 benefits; effective October 1, 2004, that amount will increase
 309 to 15.2 percent.

310 (c) City contributions.--The City shall contribute to the
 311 Fund annually an amount which, together with the contributions
 312 from the members and other income sources as authorized by law,
 313 will be sufficient to meet the normal cost of the Fund and to
 314 fund the actuarial deficiency over a period of not more than 40
 315 years, provided that the net increase, if any, in unfunded
 316 liability of the Fund arising from significant amendments or
 317 other changes shall be amortized within 30 plan years.

318 (d) Gifts, etc.--All gifts, bequests, and devises when
 319 donated for the Fund.

320 (e) Interest from deposits.--All accretions to the Fund by
 321 way of interest or dividends on bank deposits or otherwise.

322 (f) Other sources.--All other sources of income now or
 323 hereafter authorized by law for the augmentation of the Fund.

324 (4) Custodian of funds.--All moneys and securities of the
 325 Fund may be deposited with the cash management coordinator of
 326 the City, acting in a ministerial capacity only, who shall be
 327 bonded and shall be liable in the same manner and to the same
 328 extent as he or she is liable for the safekeeping of funds for

HB 777

2005
CS

329 | the City. However, any funds and securities so deposited with
 330 | the cash management coordinator shall be kept in a separate fund
 331 | by the cash management coordinator or clearly identified as
 332 | funds and securities of the Fund. In lieu thereof, the Board
 333 | shall deposit the funds and securities in a qualified public
 334 | depository designated by the Board. The cash management
 335 | coordinator or other depository shall receive all moneys due
 336 | said Fund from all sources whatsoever. All tax revenue received
 337 | pursuant to the provisions of chapter 175, Florida Statutes,
 338 | shall be deposited into the Fund no more than 5 days after
 339 | receipt. Member contributions withheld by the City on behalf of
 340 | a member shall be deposited into the Fund immediately.

341 | (a) Disbursements from the Fund.--The Board may issue
 342 | drafts upon the Fund pursuant to this act and rules and
 343 | regulations prescribed by the Board, provided that such drafts
 344 | shall be issued in accordance with generally accepted accounting
 345 | procedures, American Institute of Certified Public Accountants
 346 | guidelines, and rules of the State of Florida Auditor General.
 347 | All such drafts shall be consecutively numbered, signed by the
 348 | chair and secretary, and each draft shall, upon its face, state
 349 | the purpose for which it is drawn. For this purpose, the chair
 350 | and secretary shall be bonded. The Board shall retain such
 351 | drafts when paid, as permanent vouchers for disbursements made,
 352 | and no moneys shall be otherwise drawn from the Fund. Payments
 353 | from the Fund shall be made only upon a specific or general
 354 | motion or resolution previously adopted by the Board authorizing
 355 | such payment or payments.

HB 777

2005
CS

356 (b) Investment of moneys.--The Board shall have the power
 357 and authority to invest and reinvest the moneys of the Fund, and
 358 to hold, purchase, sell, assign, transfer, and dispose of any
 359 securities and investments held in said Fund. The aim of the
 360 investment policies shall be to preserve the integrity and
 361 security of Fund principal, to maintain a balanced investment
 362 portfolio, to maintain and enhance the value of Fund principal,
 363 and to secure the maximum total return on investments that is
 364 consonant with safety of principal, provided that such
 365 investments and reinvestments shall be limited to the following:

366 1. Direct obligations of the United States Government or
 367 any agency thereof and debentures and other evidences of
 368 indebtedness which are fully guaranteed by the United States
 369 Government or any agency thereof for the payment of principal
 370 and interest.

371 2. Direct obligations of the State of Florida.

372 3. In debt securities, preferred and common stocks and
 373 mutual fund shares subject to the limitations set forth in this
 374 section.

375 4. In time or savings accounts of a national bank, a state
 376 bank insured by the Bank Insurance Fund, a savings and loan
 377 association to the extent that deposits are guaranteed by the
 378 Savings Association Insurance Fund which is administered by the
 379 Federal Deposit Insurance Corporation, or a state or federally
 380 chartered credit union whose share accounts are insured by the
 381 National Credit Union Share Insurance Fund.

382 5. Of the total Fund principal in the pension or
 383 retirement system, including the amounts deposited in banks or

HB 777

2005
CS

384 associations, the total thereof invested in preferred stocks
 385 shall not aggregate more than 5 percent, and the total amount
 386 thereof invested in common stocks and mutual fund shares shall
 387 not aggregate more than 70 percent. Percentages shall be based
 388 on market value at the end of each reporting period (September
 389 30).

390 6. In real property or real estate investments, such
 391 investments shall not aggregate more than 15 percent of the
 392 market value of the total Fund principal in the pension or
 393 retirement system.

394 7. In derivative investments and futures, such investments
 395 shall not aggregate more than 10 percent of the market value of
 396 the total Fund principal in the pension or retirement system.

397 8. Any investments permitted by sections 112.661 and
 398 215.47(1)-(8), (10), and (16), Florida Statutes, up to the
 399 limits stated therein.

400 9. The following minimum standards shall govern the
 401 eligibility of securities for purchase as investments:

402 a. All corporate and association securities and mutual
 403 fund shares shall be issued by a corporation or other legal
 404 person, incorporated or otherwise, organized within the United
 405 States and domiciled therein to the extent required by section
 406 175.071(1)(b), Florida Statutes.

407 b. Not more than 10 percent of the total Fund principal at
 408 market value shall be invested in any one issuing company other
 409 than obligations of the United States or an agency thereof.

410 c. ~~All bonds, stocks, or other evidence of indebtedness~~
 411 issued or guaranteed by a corporation shall be listed on any one

HB 777

2005
CS

412 or more of the major ~~recognized national~~ stock exchanges. ~~and~~,
 413 In the case of bonds ~~only~~, at a minimum, 80 percent of bonds
 414 purchased for the Fund shall hold a rating in one of the four
 415 highest classifications by a major rating service. Said bonds
 416 and preferred stocks that are convertible into common stocks
 417 shall be considered common stocks and the purchase of same shall
 418 be limited by the provisions of subparagraph 5.

419 d. The Board shall engage the services of professional
 420 investment counsel to assist and advise the trustees in the
 421 performance of their duties.

422 e. At least once every 3 years, the Board shall retain an
 423 independent consultant professionally qualified to evaluate the
 424 performance of its professional money manager or investment
 425 counsel. The independent consultant shall make recommendations
 426 to the Board at its next regularly scheduled meeting.

427 (c) Maximum of cash not invested.--No more than 10 percent
 428 of the assets of the Fund shall be held in cash or in
 429 noninterest-bearing deposits.

430 (d) Administrative expenses.--The administrative expenses
 431 of the Fund shall be paid by the Fund.

432 (e) Restrictions on the use of assets of Fund.--The assets
 433 of the Fund shall be used only for the payment of benefits and
 434 other disbursements authorized by this act and shall be used for
 435 no other purpose.

436 (5) Service pension.--

437 (a) Normal retirement.--

438 1. Any member who is actively employed on and after
 439 October 1, 2003, excluding members in the DROP, who has attained

HB 777

2005
CS

440 age 50 years and who has acquired 15 or more years of service
441 credit; who has attained age 55 years and who has acquired 10 or
442 more years of service credit; or who has acquired 26 years of
443 service credit without regard to age shall, upon application
444 filed with the Board, be retired and shall be entitled to a
445 monthly pension for the remainder of his or her life equal to
446 the greater of the following:

447 a. Four percent of final average salary times credited
448 service subject to a maximum of 92 percent of final average
449 salary. However, in all cases, members shall be entitled to at
450 least 2 percent per year of credited service; or

451 b. The sum of the following:

452 (I) Two and one-half percent of final average salary
453 multiplied by the number of years, and fraction of a year, of
454 service credit to a maximum of 26 years of service, and 2
455 percent of his or her final average salary multiplied by the
456 number of years, and fraction of a year, in excess of 26 years
457 of service, for all years of service earned through September
458 30, 1988; and

459 (II) Two percent of final average salary multiplied by the
460 number of years, and fraction of a year, of service credit
461 earned on and after October 1, 1988.

462 2. Any member who is actively employed by the Department
463 on and after October 1, 2003, and who is a member of the DROP on
464 or after that date, may elect one of the following transition
465 benefits by making a written election within 45 days after the
466 effective date of this special act on a form provided by the
467 Board of Trustees. The right to elect the transition benefits

HB 777

2005
CS

468 contained in sub-subparagraph b. shall terminate if no written
469 election is made within 45 days after the effective date of this
470 act. In the event a member does not submit a timely written
471 election, the member shall be deemed to have elected the
472 transition benefits contained in sub-subparagraph a. below:

473 a. Retain member's original monthly retirement benefit,
474 DROP account balance, and share account balance. DROP members
475 who select this transition benefit may continue to participate
476 in the DROP until the end of the original DROP term. Additional
477 allocations to the share account shall be made in accordance
478 with the provisions of paragraph (j).

479 b. Convert the member's original monthly benefit and DROP
480 balance to a new monthly benefit and BackDROP. In order to be
481 entitled to this benefit, the member must cease membership in
482 the DROP program. The new converted benefits will not be paid
483 until the member has terminated employment. The conversion of
484 the member's benefits shall be based on the following:

485 (I) Original monthly benefit conversion: A DROP member is
486 entitled to a conversion of the original monthly benefit in an
487 amount equal to 4 percent for each year of credited service
488 excluding the BackDROP period with a 2-year final average
489 salary. The 2-year final average salary shall be determined
490 based on a 24-month period with the highest average prior to the
491 number of full years of BackDROP (selected by the member in
492 accordance with sub-sub-subparagraph II). No final average
493 salary shall be included in a monthly benefit calculation for
494 which a member has received a BackDROP payment.

HB 777

2005
CS

495 (II) BackDROP conversion: The DROP member is entitled to a
 496 lump sum payment equal to the new monthly benefit annualized
 497 times a period of whole years as selected by the member up to a
 498 maximum of 5. ~~The DROP member may select zero years.~~ The
 499 BackDROP benefit will be paid interest at the rate of 8.25
 500 percent less expenses, compounded annually.

501
 502 The 4-percent benefit accrual factor in sub-subparagraph 1.a. is
 503 contingent on and subject to the adoption and maintenance of the
 504 assumptions set forth in subsection (23). If such assumptions
 505 are modified by legislative, judicial, or administrative agency
 506 action, and the modification results in increased City
 507 contributions to the Pension Fund, the 4-percent accrual factor
 508 in sub-subparagraph 1.a. shall be automatically decreased
 509 prospectively, from the date of the action, to completely offset
 510 the increase in City contributions. However, in no event shall
 511 the benefit accrual factor in sub-subparagraph 1.a. be adjusted
 512 below 3.5 percent. To the extent that the benefit accrual factor
 513 is less than 4 percent, the supplemental pension distribution
 514 calculation under paragraph (d) shall be adjusted for employees
 515 who retire on or after October 1, 1998, and those employees who
 516 were members of the DROP on October 1, 1998. The adjustment
 517 shall be to decrease the minimum return of 8.25 percent needed
 518 to afford the supplemental pension distribution, when the amount
 519 of the reduction is zero if an employee has been credited with
 520 16 or more years with the 3-percent benefit accrual factor or
 521 1.25 percent if an employee has been credited with no more than
 522 a 2.5-percent benefit accrual factor. If an employee has been

HB 777

2005
CS

523 credited with less than 16 years at the 3-percent benefit
524 accrual factor, then the accumulated amount over 2.5 percent for
525 each year of service divided by .5 percent divided by 16
526 subtracted from 1 multiplied by 1.25 percent is the reduction
527 from 8.25 percent. An example of the calculation of the minimum
528 return for supplemental pension distribution as described above
529 is set forth in Appendix B to the collective bargaining
530 agreement between the City of West Palm Beach and the West Palm
531 Beach Association of Firefighters, Local 727-IAFF, October 1,
532 2003-September 30, 2006.

533 (b) Vested deferred retirement.--A member who leaves the
534 employ of the Department with 10 or more years of credited
535 service who is not eligible for any other retirement benefit
536 under this act shall be entitled to the applicable pension
537 provided for in paragraph (a) or paragraph (c). Payment of this
538 pension shall begin the first day of the calendar month
539 following the month in which the member's application is filed
540 with and accepted by the Board on or after attainment of age 50
541 years. If applicable, the amount of the pension shall be
542 determined in accordance with paragraph (c).

543 (c) Early retirement.--Any member may retire from the
544 service of the Department as of the first day of any calendar
545 month which is prior to the member's normal retirement date but
546 subsequent to the date as of which the member has both attained
547 the age of 50 and has been a member of this Fund for 10
548 continuous years. In the event of early retirement, the monthly
549 amount of retirement income shall be computed as described in
550 paragraph (a), taking into account his or her credited service

HB 777

2005
CS

551 to the date of actual retirement and his or her final average
552 salary as of such date. The amount of retirement income shall be
553 actuarially reduced to take into account the member's younger
554 age and earlier commencement of retirement income benefits. The
555 early retirement reduction shall be 3 percent for each year by
556 which the member's age at retirement preceded the member's
557 normal retirement age.

558 (d) Supplemental pension distribution.--

559 1.a. The actuary for the Pension Fund shall determine the
560 rate of investment return earned on Pension Fund assets during
561 the 12-month period ending each September 30. The rate
562 determined shall be the rate reported in the most recent
563 actuarial report submitted pursuant to part VII of chapter 112,
564 Florida Statutes.

565 b. The actuary for the Pension Fund shall determine the
566 actuarial present value, as of September 30, of future pension
567 payments to eligible persons, as described in subparagraph 3.,
568 who are then being paid a pension. The actuarial present values
569 shall be calculated using an interest rate of 7 percent per year
570 compounded yearly and a mortality table as approved by the Board
571 of Trustees and as used in the most recent actuarial report
572 submitted pursuant to part VII of chapter 112, Florida Statutes.

573 c. A distribution amount shall be determined as of each
574 September 30. For distributions made after October 1, 1998,
575 there shall be two different calculations to determine the
576 distribution amount. For those employees who retire on or after
577 October 1, 1998, or who are part of the DROP on or after October
578 1, 1998, the distribution amount shall be equal to factor (i)

HB 777

2005
CS

579 | for each applicable member multiplied by the sum of factor (ii)
580 | and the positive difference, if any, between factor (iii) and
581 | 8.25 percent. For those employees who have retired before
582 | October 1, 1998, except as provided in this sub-subparagraph,
583 | the distribution amount shall be equal to factor (i) for each
584 | applicable member multiplied by the sum of factor (ii) and the
585 | positive difference, if any, between factor (iii) and 7 percent.
586 | For purposes of both calculations, factor (i) is the actuarial
587 | present value determined in sub-subparagraph 1.b. for the
588 | respective group. Factor (ii) is one-half of the investment
589 | return rate in sub-subparagraph 1.a. in excess of 9 percent.
590 | Factor (iii) is the rate of investment return in sub-
591 | subparagraph 1.a., not to exceed 9 percent. The distribution
592 | amount shall not exceed accumulated net actuarial experience
593 | from all pension liabilities and assets. If the net actuarial
594 | experience is favorable, cumulatively, commencing with the
595 | experience for the year ended September 30, 1985, after offset
596 | for all prior supplemental distributions, the supplemental
597 | distribution may be made. If the net actuarial experience is
598 | unfavorable, cumulatively, commencing with the experience for
599 | the year ended September 30, 1985, after offset for all prior
600 | supplemental distributions, no supplemental distribution may be
601 | made, and the City must amortize the loss until it is offset by
602 | cumulative favorable experience.

603 |
604 | If an actuarial report submitted as provided in this paragraph
605 | is not state accepted prior to distribution, and if a deficiency
606 | to the Pension Fund results, the deficiency shall be made up

Page 22 of 69

HB 777

2005
CS

607 | from the next available supplemental pension distribution,
 608 | unless sooner made up by agreement between the Board of Trustees
 609 | and the City. No such deficiency shall be permitted to continue
 610 | for a period of greater than 3 years from the date of payment of
 611 | the supplemental pension distribution which resulted in the
 612 | deficiency.

613 | 2. The Board of Trustees shall determine annually if there
 614 | is to be a supplemental pension distribution. The supplemental
 615 | pension distribution is that portion of the distribution amount,
 616 | as defined in sub-subparagraph 1.c., to be distributed to
 617 | eligible persons.

618 | 3. Eligible persons are:

- 619 | a. Pensioners.
- 620 | b. Surviving spouses.
- 621 | c. Surviving dependent children.
- 622 | d. Surviving dependent parents.
- 623 | e. Pensioners' estates for the year following death only.

624 |
 625 | Eligible persons are initially eligible if they have been in
 626 | receipt of a pension for at least 1 year on the first
 627 | distribution date following their retirement. A survivor
 628 | beneficiary of a deceased retired member shall be considered to
 629 | have been in receipt of a pension for at least 1 year if at
 630 | least 12 monthly pension payments have been made on account of
 631 | the retirement. A surviving spouse may count the retirement
 632 | period, if any, of the deceased member toward the 1-year
 633 | requirement. Surviving spouses, children, and parents and
 634 | retired members who receive pension adjustments under the prior

HB 777

2005
CS

635 | escalator clause are not eligible for the supplemental pension
636 | distribution.

637 | 4. The supplemental pension distribution dates shall be
638 | the April 1 following the effective date of this subsection and
639 | each April 1 thereafter. Each eligible person shall be paid his
640 | or her allocated portion of the applicable supplemental pension
641 | distribution amount from the preceding September 30. A
642 | pensioner's estate is entitled to a pro rata share of the
643 | deceased retiree's supplemental pension distribution based on
644 | the number of months that the deceased retiree received a
645 | pension during the year ending the September 30 prior to the
646 | pensioner's death after initial eligibility.

647 | 5. Each supplemental pension distribution amount shall be
648 | allocated among the eligible persons in the proportion that an
649 | eligible person's supplemental pension distribution points bears
650 | to the aggregate amount of supplemental pension distribution
651 | points of all eligible persons. An eligible person shall be
652 | credited with supplemental pension distribution points as
653 | follows:

654 | a. Three and eighty-five hundredths of a point multiplied
655 | by the service credit of the member at the time of retirement or
656 | prior to death; however, in the computation of the supplemental
657 | pension distribution due the in-line-of-duty pensioner, the
658 | maximum service credit of 26 years shall be used.

659 | b. Maximum service credit shall be 26 years.

660 | c. Allocations for surviving spouses and surviving
661 | dependent children who are eligible to receive supplemental
662 | pension distributions shall be 75 percent of the years of

HB 777

2005
CS

663 service earned by the pensioner. Allocations for duty death
664 beneficiaries (surviving spouse and surviving children) shall be
665 based upon 75 percent of 26 years of service.

666 (e) Payment of benefits.--

667 1. First payment.--Service pensions shall be payable on
668 the first day of each month. The first payment shall be payable
669 on the first day of the month coincident with or next following
670 the date of retirement, or death, provided the member has
671 completed the applicable age and service requirements.

672 2. Last payment.--The last payment shall be the payment
673 due next preceding the member's death, except that payments
674 shall be continued to the designated beneficiary or
675 beneficiaries if a 10-year certain benefit, a joint and survivor
676 option, or beneficiary benefits, as applicable, are payable.

677 (f) Normal form of retirement income.--

678 1. Married member.--The normal form of retirement benefit
679 for a married member or for a member with a dependent child or
680 children or parent or parents shall be a service pension and
681 beneficiary benefits. The service benefit shall provide monthly
682 payments for the life of the member. Thereafter, beneficiary
683 benefits shall be paid as provided in subsection (7).

684 2. Unmarried member.--The normal form of retirement
685 benefit for an unmarried member without a dependent child or
686 children or parent or parents shall be a 10-year certain
687 benefit. This benefit shall pay monthly benefits for the
688 member's lifetime. In the event the member dies after his or her
689 retirement but before receiving retirement benefits for a period
690 of 10 years, the same monthly benefit shall be paid to the

HB 777

2005
CS

691 beneficiary or beneficiaries as designated by the member for the
 692 balance of such 10-year period or, if no beneficiary is
 693 designated, to heirs at law, or estate of the member, as
 694 provided in section 175.181, Florida Statutes.

695 (g) Optional forms of retirement income.--

696 1.a. In the event of normal, early, or disability
 697 retirement, in lieu of the normal form of retirement income
 698 payable as specified in paragraph (a), paragraph (b), paragraph
 699 (c), or subsection (6) and in lieu of the beneficiary benefits
 700 as specified in subsection (7), a member, upon written request
 701 to the Board and subject to the approval of the Board, may elect
 702 to receive a retirement income of equivalent actuarial value
 703 payable in accordance with one of the following options:

704 (I) Lifetime option.--A retirement income of a larger
 705 monthly amount, payable to the member for his or her lifetime
 706 only.

707 (II) Joint and survivor option.--A retirement income of a
 708 modified monthly amount, payable to the member during the joint
 709 lifetime of the member and a dependent joint pensioner
 710 designated by the member, and following the death of either of
 711 them, 100 percent, 75 percent, 66-2/3 percent, or 50 percent of
 712 such monthly amounts, payable to the survivor for the lifetime
 713 of the survivor.

714 b. The member, upon electing any option of this paragraph,
 715 shall designate the joint pensioner or beneficiary or
 716 beneficiaries to receive the benefit, if any, payable in the
 717 event of his or her death, and will have the power to change
 718 such designation from time to time; but any such change shall be

HB 777

2005
CS

719 deemed a new election and shall be subject to approval by the
720 Board. Such designation shall name a joint pensioner or one or
721 more primary beneficiaries where applicable. If a member has
722 elected an option with a joint pensioner or beneficiary and his
723 or her retirement income benefits have commenced, he or she may
724 thereafter change the designated joint pensioner or beneficiary
725 only twice.

726 c. The consent of a member's joint pensioner or
727 beneficiary to any such change shall not be required. However,
728 the spouse of a married member must consent to any election to
729 waive a joint and survivor benefit by signing the election form
730 before a notary public. The spouse's written consent must
731 acknowledge the effect of such a waiver. Consent of the spouse
732 shall not be required if the spouse cannot be located, or for
733 such other circumstances as may be prescribed by the Secretary
734 of the Treasury of the United States. Any consent by a spouse
735 shall be effective only with respect to such spouse.

736 d. The Board may request such evidence of the good health
737 of the joint pensioner that is being added as it may require;
738 and the amount of the retirement income payable to the member
739 upon the designation of a new joint pensioner shall be
740 actuarially redetermined, taking into account the age and sex of
741 the former joint pensioner, the new joint pensioner, and the
742 member. Each such designation shall be filed with the Board. In
743 the event that no designated beneficiary survives the member,
744 such benefits as are payable in the event of the death of the
745 member subsequent to his or her retirement shall be paid as
746 provided in subparagraph (h)2.

Page 27 of 69

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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HB 777

2005
CS

747 2. Retirement income payments shall be made under the
748 option elected in accordance with the provisions of this
749 paragraph and shall be subject to the following limitations:

750 a. If a member dies prior to his or her normal retirement
751 date or early retirement date, whichever first occurs,
752 retirement benefits shall be paid in accordance with subsection
753 (7).

754 b. If the designated beneficiary or beneficiaries or joint
755 pensioner dies before the member's retirement, the option
756 elected shall be canceled automatically and a retirement income
757 of the normal form and amount shall be payable to the member
758 upon the member's retirement as if the election had ~~has~~ not been
759 made, unless a new election is made in accordance with the
760 provisions of this paragraph or a new beneficiary is designated
761 by the member prior to retirement.

762 c. If a member continues in the employ of the Department
763 after meeting the age and service requirements set forth in
764 paragraph (a) or paragraph (c) and dies prior to the member's
765 actual retirement, and while an option made pursuant to this
766 subparagraph is in effect, monthly retirement income payments
767 shall be paid, under the option, to a beneficiary or
768 beneficiaries designated by the member in the amount or amounts
769 computed as if the member has retired under the option on the
770 date on which the member's death occurred.

771 3. No member may make any change in his or her retirement
772 option after the date of cashing or depositing the first
773 retirement check.

774 (h) Designation of beneficiary.--

HB 777

2005
CS

775 | 1. Each member may, on a form provided for that purpose,
776 | signed and filed with the Board, designate a beneficiary or
777 | beneficiaries to receive the benefit, if any, which may be
778 | payable in the event of the member's death; and each designation
779 | may be revoked by such member by signing and filing with the
780 | Board a new designation of beneficiary form. However, after the
781 | benefits have commenced, a retirant may change his or her
782 | designation of joint annuitant or beneficiary only twice. If the
783 | retirant desires to change his or her joint annuitant or
784 | beneficiary, the retirant shall file with the Board a notarized
785 | notice of such change either by registered letter or on a form
786 | as provided by the Board. Upon receipt of a completed change of
787 | joint annuitant form or such other notice, the Board shall
788 | adjust the member's monthly benefit by the application of
789 | actuarial tables and calculations developed to ensure that the
790 | benefit paid is the actuarial equivalent of the present value of
791 | the member's current benefit.

792 | 2. Absence or death of beneficiary.--If a deceased member
793 | fails to name a beneficiary in the manner prescribed in
794 | subparagraph 1., or if the beneficiary or beneficiaries named by
795 | a deceased member predecease the member, the beneficiary
796 | benefits, if any, which may be payable with respect to such
797 | deceased member may be paid, in the discretion of the Board to:

798 | a. The spouse or dependent child or children of the
799 | member;

800 | b. The dependent living parent or parents of the member;
801 | or

802 | c. The estate of the member.

Page 29 of 69

HB 777

2005
CS

803 (i) Refund of contributions.--In the event a member leaves
 804 the employ of the Department or dies with less than 10 years of
 805 credited service, and no service pension, disability pension, or
 806 beneficiary benefit is payable, the contributions made by him or
 807 her to the Fund shall be refunded, without interest (less any
 808 disability payments paid to the member), to the member or, in
 809 the event of death, to the beneficiary or to the member's
 810 estate.

811 (j) Chapter 175, Florida Statutes, share accounts.--

812 1. Individual member accounts.--A separate account shall
 813 be established and maintained in each member's name effective on
 814 or after October 1, 1988.

815 2. Share account funding.--

816 a. Each individual member account shall be credited with a
 817 pro rata share of all of the moneys received from chapter 175,
 818 Florida Statutes, tax revenues in June 1988 and thereafter.

819 b. In addition, any forfeitures as provided in
 820 subparagraph 5. shall be credited to the individual member
 821 accounts in accordance with the formula set forth in
 822 subparagraph 3.

823 3. Annual allocation of accounts.--

824 a. Moneys shall be credited to each individual member
 825 account in an amount directly proportionate to the number of pay
 826 periods for which the member was paid compared to the total
 827 number of pay periods for which all members were paid, counting
 828 the pay periods in the calendar year preceding the date for
 829 which chapter 175, Florida Statutes, tax revenues were received.
 830 For the fiscal year beginning October 1, 2003, and ending

HB 777

2005
CS

831 September 30, 2004, share account allocations shall only be made
 832 to DROP members who elect not to convert in accordance with sub-
 833 subparagraph (5)(a)2.b. For purposes of determining the pro rata
 834 share for those share account allocations during the fiscal year
 835 beginning October 1, 2003, and ending September 30, 2004, the
 836 pay periods of all active firefighters, including DROP members,
 837 shall be used. Share account allocations made on and after
 838 October 1, 2004, shall be made to each individual share account.

839 b. At the end of each fiscal year (September 30), each
 840 individual account shall be adjusted to reflect the earnings or
 841 losses resulting from investment, as well as reflecting costs,
 842 fees, and expenses of administration.

843 c. Effective October 1, 2002, vested participants have the
 844 option to select one of three methods to credit investment
 845 earnings to their account. The method may be changed each year
 846 effective October 1; however, the method must be elected prior
 847 to October 1. The methods are:

848 (I) The investment earnings or losses credited to the
 849 individual member accounts shall be in the same percentage as
 850 are earned or lost by the total investment earnings or losses of
 851 the Fund as a whole, unless the Board dedicates a separate
 852 investment portfolio for chapter 175, Florida Statutes, share
 853 accounts, in which case the investment earnings or losses shall
 854 be measured by the investment earnings or losses of the separate
 855 investment portfolio;

856 (II) A fixed annual rate of 8.25 percent; or

857 (III) A percentage of the share account assets to be
 858 credited with earnings or losses in accordance with sub-sub-

HB 777

2005
CS

859 | subparagraph (I) and a corresponding percentage of the share
 860 | account assets credited in accordance with sub-sub-subparagraph
 861 | (II). The combined total percentage invested under this sub-sub-
 862 | subparagraph must equal 100 percent.

863 | d. Costs, fees, and expenses of administration shall be
 864 | debited from the individual member accounts on a proportionate
 865 | basis, taking the cost, fees, and expenses of administration of
 866 | the Fund as a whole, multiplied by a fraction, the numerator of
 867 | which is the total assets in all individual member accounts and
 868 | the denominator of which is the total assets of the Fund as a
 869 | whole. The proportionate share of the costs, fees, and expenses
 870 | shall be debited from each individual member account on a pro
 871 | rata basis in the same manner as chapter 175, Florida Statutes,
 872 | tax revenues are credited to each individual member account
 873 | (i.e., based on pay periods).

874 | e. If the entire balance of the individual member account
 875 | is withdrawn before September 30 of any year, there shall be no
 876 | adjustment made to that individual member account to reflect
 877 | either investment earnings or losses or costs, fees, and
 878 | expenses of administration.

879 | 4. Eligibility for benefits.--Any member who terminates
 880 | employment with the City, upon the member's filing an
 881 | application with the Board, shall be entitled to 100 percent of
 882 | the value of his or her individual member account, provided the
 883 | member meets any of the following criteria:

884 | a. The member is eligible to receive a service pension as
 885 | provided in this subsection;

HB 777

2005
CS

886 b. The member has 5 or more years of credited service and
887 is eligible to receive either:

888 (I) A nonduty disability pension as provided in paragraph
889 (6)(a); or

890 (II) Beneficiary benefits for nonduty death as provided in
891 paragraph (7)(a); or

892 c. The member has any credited service and is eligible to
893 receive either:

894 (I) A duty disability pension as provided in paragraph
895 (6)(c); or

896 (II) Beneficiary benefits for death in the line of duty as
897 provided in paragraph (7)(b).

898 5. Forfeitures.--Any member who has less than 10 years of
899 credited service and who is not eligible for payment of benefits
900 after termination of employment with the City shall forfeit his
901 or her individual member account. The amounts credited to said
902 individual member account shall be redistributed to the other
903 individual member accounts in the same manner as chapter 175,
904 Florida Statutes, tax revenues are credited (i.e., based on pay
905 periods). However, the assets shall first be used to ensure that
906 the former member's refund of contributions has not actuarially
907 adversely impacted the payment for the extra benefits. If there
908 has been an adverse impact, the shortfall shall be made up first
909 before the amounts are reallocated to active members.

910 6. Payment of benefits.--The normal form of benefit
911 payment shall be a lump sum payment of the entire balance of the
912 individual member account; or, upon the written election of the

HB 777

2005
CS

913 member, upon a form prescribed by the Board, payment may be made
914 either by:

915 a. Installments.--The account balance shall be paid out to
916 the member in three equal payments paid over 3 years, the first
917 payment to be made upon approval of the Board; or

918 b. Annuity.--The account balance shall be paid out in
919 monthly installments over the lifetime of the member or until
920 the entire balance is exhausted. The monthly amount paid shall
921 be determined by the Fund's actuary in accordance with
922 selections made by the member in a form provided by the Board.

923 7. Death of a member.--If a member dies and is eligible
924 for benefits from the individual member account, the entire
925 balance of the individual member account shall be paid in a lump
926 sum to the beneficiaries designated in accordance with paragraph
927 (h). If a member fails to designate a beneficiary or, if the
928 beneficiary predeceases the member, the entire balance shall be
929 paid in a lump sum in the following order:

930 a. To the spouse;

931 b. If there is no spouse or the spouse is not alive, to
932 the member's surviving child or children on a pro rata basis;

933 c. If there are no children or no child is alive, to the
934 member's parent or parents; or

935 d. If no parent is alive, to the estate of the member.

936 (k) Deferred Retirement Option Plan (DROP).--Effective
937 upon the ratification of the collective bargaining agreement
938 between the City of West Palm Beach and the West Palm Beach
939 Association of Firefighters, Local 727-IAFF, October 1, 2003-
940 September 30, 2006, no new members may enter into the DROP.

HB 777

2005
CS

941 Existing DROP members on the ratification date shall have the
 942 option to remain in the DROP for the remainder of their
 943 individual 5-year terms in accordance with the provisions of
 944 subparagraph (5)(a)2.

945 1. Eligibility to participate in the DROP.--

946 a. Any member who is eligible to receive an early or
 947 normal retirement pension may participate in the DROP. Members
 948 shall elect to participate by applying to the Board of Trustees
 949 on a form provided for that purpose.

950 b. Election to participate shall be forfeited if not
 951 exercised within the first 35 years of combined credited
 952 service.

953 c. A member shall not participate in the DROP beyond the
 954 time of attaining 37 years of service and the total years of
 955 participation in the DROP shall not exceed 5 years. For example:

956 (I) Members with 32 years of credited service at the time
 957 of entry shall participate for only 5 years.

958 (II) Members with 33 years of credited service at the time
 959 of entry shall participate for only 4 years.

960 (III) Members with 34 years of credited service at the
 961 time of entry shall participate for only 3 years.

962 (IV) Members with 35 years of credited service at the time
 963 of entry shall participate for only 2 years.

964 d. Upon a member's election to participate in the DROP, he
 965 or she shall cease to be a member and shall no longer accrue any
 966 benefits under the Pension Fund, except for the benefits
 967 provided under paragraph (j) of this subsection, chapter 175,
 968 Florida Statutes, share accounts. For all Fund purposes, the

HB 777

2005
CS

969 member becomes a retirant, except that a DROP participant shall
 970 continue to receive shares of the chapter 175, Florida Statutes,
 971 money in accordance with paragraph (j), chapter 175, Florida
 972 Statutes, share accounts. The amount of credited service and
 973 final average salary shall freeze as of the date of entry into
 974 the DROP.

975 2. Amounts payable upon election to participate in the
 976 DROP.--

977 a. Monthly retirement benefits that would have been
 978 payable had the member terminated employment with the Department
 979 and elected to receive monthly pension payments shall be paid
 980 into the DROP and credited to the retirant. Payments into the
 981 DROP shall be made monthly over the period the retirant
 982 participates in the DROP, up to a maximum of 60 months.

983 b. Effective October 1, 2002, participants have the option
 984 to select one of three methods to credit investment earnings to
 985 their account. Investment earnings shall be credited on a
 986 quarterly basis. The method may be changed each year effective
 987 October 1; however, the method must be elected prior to October
 988 1. The methods are:

989 (I) Earnings using the rate of investment return earned on
 990 Pension Fund assets as reported by the Fund's investment
 991 monitor. DROP assets are commingled with the Pension Fund assets
 992 for investment purposes;

993 (II) A fixed rate of 8.25 percent; or

994 (III) A percentage of the DROP account assets to be
 995 credited with earnings or losses in accordance with sub-sub-
 996 subparagraph (I) and a corresponding percentage of the DROP

HB 777

2005
CS

997 account assets credited in accordance with sub-sub-subparagraph
 998 (II). The combined total percentage invested under this sub-sub-
 999 subparagraph must equal 100 percent.

1000
 1001 However, if a member does not terminate employment at the end of
 1002 participation in the DROP, interest credit shall cease on the
 1003 balance.

1004 c. No payments shall be made from the DROP until the
 1005 member terminates employment with the Department.

1006 d. Upon termination of employment, participants in the
 1007 DROP shall receive the balance of the DROP account in accordance
 1008 with the following rules:

1009 (I) Members may elect to begin to receive payment upon
 1010 termination of employment or defer payment of the DROP until the
 1011 latest day under sub-sub-subparagraph (III).

1012 (II) Payments shall be made in either:

1013 (A) Lump sum.--The entire account balance shall be paid to
 1014 the retirant upon approval of the Board of Trustees.

1015 (B) Installments.--The account balance shall be paid out
 1016 to the retirant in three equal payments paid over 3 years, the
 1017 first payment to be made upon approval of the Board of Trustees.

1018 (C) Annuity.--The account balance shall be paid out in
 1019 monthly installments over the lifetime of the member or until
 1020 the entire balance is exhausted. Monthly amount paid will be
 1021 determined by the Fund's actuary in accordance with selections
 1022 made by the member in a form provided by the Board of Trustees.

HB 777

2005
CS

1023 (III) Any form of payment selected by a member must comply
1024 with the minimum distribution requirements of the IRC 401(A)(9),
1025 and are subject to the requirements of subsection (19).

1026 (IV) The beneficiary of the DROP participant who dies
1027 before payments from DROP begin shall have the same right as the
1028 participant in accordance with subsection (7).

1029 e. Costs, fees, and expenses of administration shall be
1030 debited from the individual member accounts on a proportionate
1031 basis, taking the cost, fees, and expenses of administration of
1032 the Fund as a whole, multiplied by a fraction, the numerator of
1033 which is the total assets in all individual member accounts and
1034 the denominator of which is the total assets of the Fund as a
1035 whole.

1036 3. Loans from the DROP.--

1037 a. Availability of loans.--

1038 (I) Loans are available to members only after termination
1039 of employment, provided the member had participated in the DROP
1040 for a period of 12 months.

1041 (II) Loans may only be made from a member's own account.

1042 (III) There may be no more than one loan at a time.

1043 b. Amount of loan.--

1044 (I) Loans may be made up to a maximum of 50 percent of
1045 account balance.

1046 (II) The maximum dollar amount of a loan is \$50,000,
1047 reduced by the highest outstanding loan balance during the last
1048 12 months.

1049 (III) The minimum amount of a loan is \$5,000.

HB 777

2005
CS

1050 c. Limitation on loans.--Loans shall be made from the
1051 amounts paid into the DROP and earnings thereon.

1052 d. Term of ~~the~~ loan.--

1053 (I) A ~~The~~ loan must be for at least 1 year.

1054 (II) A ~~The~~ loan shall be for no longer than 5 years.

1055 e. Loan interest rate.--

1056 (I) The interest rate shall be fixed at the time the loan
1057 is originated for the entire term of the loan.

1058 (II) The interest rate shall be equal to the lowest prime
1059 rate published by the Wall Street Journal on the last day of
1060 each calendar quarter preceding the date of the loan
1061 application.

1062 f. Defaults of loans.--

1063 (I) A loan ~~Loans~~ shall be in default if 2 consecutive
1064 months of ~~months'~~ repayments are missed or if a total of 4
1065 months of ~~months'~~ repayments is ~~are~~ missed.

1066 (II) Upon default, the entire balance of the loan becomes
1067 due and payable immediately.

1068 (III) If a loan in default is not repaid in full
1069 immediately, the loan may be canceled and the outstanding
1070 balance treated as a distribution, which may be taxable.

1071 (IV) Upon default of a loan, a member shall not be
1072 eligible for additional loans.

1073 g. Miscellaneous provisions.--

1074 (I) All loans must be evidenced by a written loan
1075 agreement signed by the member and the Board of Trustees. The
1076 agreement shall contain a promissory note.

HB 777

2005
CS

1077 (II) A member's spouse must consent in writing to the
1078 loan. The consent shall acknowledge the effect of the loan on
1079 the member's account balance.

1080 (III) Loans shall be considered general assets of the
1081 Fund.

1082 (IV) Loans shall be subject to administrative fees to be
1083 set by the Board of Trustees.

1084 4. After-tax contributions to the DROP.--

1085 a. A member may make after-tax contributions to the DROP.
1086 The maximum amount that may be contributed is the lesser of:

1087 (I) The IRS 415(c) limit.

1088 (II) The amount allowable under IRC 401(m).

1089 b. After-tax contributions to the DROP shall earn interest
1090 in the same manner as set forth in sub-subparagraph 2.b.

1091 c. Distributions to members or their beneficiaries of
1092 after-tax contributions may be withdrawn at any time on or after
1093 termination of employment. However, payments must be made at
1094 least as promptly as required under subsection (19).

1095 d. Loans shall not be made against after-tax
1096 contributions.

1097 (1) Backwards Deferred Retirement Option Plan
1098 (BackDROP).--

1099 1. Eligibility to participate in the BackDROP.--

1100 a. Any member who has attained age 53 with 18 or more
1101 years of service, who has attained age 58 with 13 or more years
1102 of service, or who has acquired 26 years of service regardless
1103 of age may participate in the BackDROP. Members shall elect to
1104 participate by applying to the Board of Trustees on a form

HB 777

2005
CS

1105 provided for that purpose. A member may not participate in both
1106 the DROP and the BackDROP.

1107 b. Election to participate shall be forfeited if not
1108 exercised within the first 28 years of credited service.
1109 However, a member who is actively employed by the Department on
1110 October 1, 2003, may elect to participate in the BackDROP beyond
1111 the 28th year as follows: the member may elect to participate in
1112 the benefit for 3 full years in the 29th year of employment, for
1113 1 full year in the 30th year of employment, and after the 30th
1114 year of employment all elections to participate in the BackDROP
1115 end.

1116 c. A member shall not be eligible to receive a BackDROP
1117 benefit that is greater than an accumulation of 60 months of the
1118 monthly retirement benefit. A member shall not be eligible to
1119 receive a benefit which is less than an accumulation of 36
1120 months of the monthly retirement benefit, except for the
1121 reduction of benefits as defined in sub-subparagraph b.

1122 d. Member contributions shall continue throughout the
1123 period of employment and are not refundable for the BackDROP
1124 period.

1125 e. Members who elect to participate in the BackDROP must
1126 retire and terminate employment to be eligible for payment of
1127 the benefit.

1128 f. Any member who terminates employment by any means,
1129 including death, prior to attaining age 53 with 18 or more years
1130 of service or age 58 with 13 or more years of service or by
1131 acquiring 26 years of service is not eligible to participate in
1132 the BackDROP.

HB 777

2005
CS

1133 2. Benefits payable upon election to participate in the
1134 BackDROP.--

1135 a. Upon election to receive the BackDROP benefit, a
1136 member's retirement benefits will be calculated as if the member
1137 had chosen to retire and terminate employment at a date which is
1138 more than 36 months but less than 60 months ~~3, 4, or 5 whole~~
1139 ~~years~~ earlier. The number of months ~~years~~ to be applied is based
1140 upon the member's election. The monthly pension amount shall be
1141 multiplied by the number of months of BackDROP selected by the
1142 member, which shall be between 36 and 60 months, inclusive ~~36,~~
1143 ~~48, or 60, depending upon the member's election of 3, 4, or 5~~
1144 ~~years~~. The BackDROP benefit shall be calculated as a single sum,
1145 including interest at the rate of 8.25 percent less expenses,
1146 compounded annually for the period of BackDROP.

1147 b. No payments shall be made from the BackDROP until the
1148 member terminates employment with the Department.

1149 c. Upon termination of employment, participants in the
1150 BackDROP shall receive the balance of the BackDROP account in
1151 accordance with the following rules:

1152 (I) Members may elect to receive payment upon termination
1153 of employment or defer payment of the BackDROP until the latest
1154 day under sub-sub-subparagraph (III).

1155 (II) Payments shall be made in either:

1156 (A) A lump sum.--The entire account balance shall be paid
1157 to the retirant upon approval of the Board of Trustees.

1158 (B) Installments.--The account balance shall be paid out
1159 to the retirant in three equal payments paid over 3 years, the
1160 first payment to be made upon approval of the Board of Trustees.

HB 777

2005
CS

1161 (C) Annuity.--The account balance shall be paid out in
 1162 monthly installments over the lifetime of the member or until
 1163 the entire balance is exhausted. The monthly amount paid shall
 1164 be determined by the Fund's actuary in accordance with
 1165 selections made by the member in a form provided by the Board of
 1166 Trustees.

1167 (III) Any form of payment selected by a member must comply
 1168 with the minimum distribution requirements of the IRC 401(A)(9),
 1169 and are subject to the requirements of subsection (19).

1170 (IV) The beneficiary of the BackDROP member shall have the
 1171 same right as the participant in accordance with subsection (7).

1172 3. BackDROP earnings.--

1173 a. BackDROP members may select one of three methods to
 1174 credit investment earnings to their accounts. Investment
 1175 earnings shall be credited on a quarterly basis. The method may
 1176 be changed each year effective October 1; however, the method
 1177 must be elected prior to October 1. The methods are:

1178 (I) The BackDROP is credited with earnings and losses
 1179 using the rate of investment return earned on Pension Fund
 1180 assets as reported by the Fund's investment monitor. BackDROP
 1181 assets are commingled with the Pension Fund assets for
 1182 investment purposes;

1183 (II) A fixed rate of 8.25 percent; or

1184 (III) A percentage of the BackDROP account assets to be
 1185 credited with earnings or losses in accordance with sub-sub-
 1186 subparagraph (I) and a corresponding percentage of the BackDROP
 1187 account assets credited in accordance with sub-sub-subparagraph

HB 777

2005
CS

1188 (II). The combined total percentage invested under this sub-sub-
1189 subparagraph must equal 100 percent.

1190 b. Costs, fees, and expenses of administration shall be
1191 debited from the individual member BackDROP accounts on a
1192 proportionate basis, taking the cost, fees, and expenses of
1193 administration of the Fund as a whole, multiplied by a fraction,
1194 the numerator of which is the total of assets in all individual
1195 member accounts and the denominator of which is the total of
1196 assets of the Fund as a whole.

1197 4. Loans from the BackDROP.--

1198 a. Availability of loans.--

1199 (I) Loans are available to members only after termination
1200 of employment, provided the member had participated in the
1201 BackDROP for a period of at least 12 months.

1202 (II) Loans may only be made from a member's own account.

1203 (III) There may be no more than one loan at a time.

1204 b. Amount of loan.--

1205 (I) Loans may be made up to a maximum of 50 percent of
1206 account balance.

1207 (II) The maximum dollar amount of a loan is \$50,000,
1208 reduced by the highest outstanding loan balance during the last
1209 12 months.

1210 (III) The minimum amount of a loan is \$5,000.

1211 c. Limitation on loans.--Loans shall be made from the
1212 amounts paid into the BackDROP and earnings thereon.

1213 d. Term of loan.--

1214 (I) A loan must be for at least 1 year.

1215 (II) A loan shall be for no longer than 5 years.

HB 777

2005
CS

1216 e. Loan interest rate.--
 1217 (I) The interest rate shall be fixed at the time a loan is
 1218 originated for the entire term of the loan.
 1219 (II) The interest rate shall be equal to the lowest prime
 1220 rate published by the Wall Street Journal on the last day of
 1221 each calendar quarter preceding the date of the loan
 1222 application.
 1223 f. Defaults of loans.--
 1224 (I) A loan shall be in default if 2 consecutive months of
 1225 repayments are missed or if a total of 4 months of repayments is
 1226 missed.
 1227 (II) Upon default of a loan, the entire balance of the
 1228 loan becomes due and payable immediately.
 1229 (III) If a loan in default is not repaid in full
 1230 immediately, the loan may be canceled and the outstanding
 1231 balance treated as a distribution, which may be taxable.
 1232 (IV) Upon default of a loan, a member shall not be
 1233 eligible for additional loans.
 1234 g. Miscellaneous provisions.--
 1235 (I) All loans must be evidenced by a written loan
 1236 agreement signed by the member and the Board of Trustees. The
 1237 agreement shall contain a promissory note.
 1238 (II) A member's spouse must consent in writing to the
 1239 loan. The consent shall acknowledge the effect of the loan on
 1240 the member's account balance.
 1241 (III) Loans shall be considered general assets of the
 1242 Fund.

HB 777

2005
CS

1243 (IV) Loans shall be subject to administrative fees to be
1244 set by the Board of Trustees.

1245 5. After-tax contributions to the BackDROP.--

1246 a. A member may make after-tax contributions to the
1247 BackDROP. The maximum amount that may be contributed is the
1248 lesser of:

1249 (I) The IRS 415(c) limit.

1250 (II) The amount allowable under IRC 401(m).

1251 b. After-tax contributions to the BackDROP shall earn
1252 interest in the same manner as set forth in sub-subparagraph
1253 3.a.

1254 c. Distributions to members or their beneficiaries of
1255 after-tax contributions may be withdrawn at any time on or after
1256 termination of employment. However, payments must be made at
1257 least as promptly as required under subsection (19).

1258 d. Loans shall not be made against after-tax
1259 contributions.

1260 (6) Disability pensions, medical examinations, return to
1261 work, etc.--

1262 (a) Nonduty disability requirements.--Any member with 5 or
1263 more years of service credit who is regularly employed in the
1264 Department who becomes physically or mentally totally and
1265 permanently disabled by illness, disease, or injury to perform
1266 the duties of a firefighter shall, upon the member's application
1267 to the Board, be retired with a pension provided for in this
1268 paragraph, provided that after a medical examination of the
1269 member made by or under the direction of a medical committee,
1270 the medical committee reports to the Board, in writing, whether:

HB 777

2005
CS

1271 1. The member is wholly prevented from rendering useful
1272 and efficient service as a firefighter; and

1273 2. The member is likely to remain so disabled continuously
1274 and permanently.

1275

1276 The Board may admit and consider any other evidence that it
1277 deems appropriate. The final decision as to whether a member
1278 meets the requirements for a nonduty disability pension rests
1279 with the Board and shall be based on competent substantial
1280 evidence on the record as a whole.

1281 (b) Nonduty disability pension benefits.--Upon retirement
1282 on account of disability as provided in paragraph (a), a member
1283 shall receive a disability pension computed according to
1284 subparagraph (5)(a)1., notwithstanding that he or she might not
1285 have attained age 50 years and might not have 15 or more years
1286 of service credit. Further, if the member has at least 10 years
1287 of service credit, the disability pension shall not be less than
1288 25 percent of the member's average monthly salary at the time of
1289 disability. A disability retiree may select optional forms of
1290 benefits in accordance with paragraph (5)(g).

1291 (c) Duty disability requirements.--Any member who is
1292 regularly employed in the Department and who becomes physically
1293 or mentally totally and permanently disabled to perform the
1294 duties of a firefighter by reason of an injury or disease
1295 arising out of and in the course of the performance of his or
1296 her duties as a firefighter in the employ of the City, shall,
1297 upon his or her application to the Board, be retired with a
1298 disability pension provided for in this paragraph, provided that

HB 777

2005
CS

1299 after a medical examination of the member made by or under the
1300 direction of the medical committee, the medical committee
1301 reports to the Board in writing, whether:

1302 1. The member is wholly prevented from rendering useful
1303 and efficient service as a firefighter; and

1304 2. The member is likely to remain so disabled continuously
1305 and permanently.

1306

1307 The Board shall admit and consider any other evidence that it
1308 deems appropriate. Any condition or impairment of health of a
1309 member caused by tuberculosis, hypertension, heart disease,
1310 hepatitis, or meningococcal meningitis resulting in total
1311 disability or death shall be presumed to have been accidental
1312 and suffered in the line of duty unless the contrary is shown by
1313 competent evidence, provided such member shall have successfully
1314 passed a physical examination before entering into such service,
1315 which examination failed to reveal any evidence of such
1316 condition. In order to be entitled to the presumption in the
1317 case of hepatitis, meningococcal meningitis, or tuberculosis,
1318 the member must meet the requirements of section 112.181,
1319 Florida Statutes. The final decision as to whether a member
1320 meets the requirements for a disability pension rests with the
1321 Board, based on competent substantial evidence on the record as
1322 a whole.

1323 (d) Duty disability pension benefits.--Upon retirement on
1324 account of disability, as provided in paragraph (c), a member
1325 shall receive a monthly pension for the remainder of his or her
1326 life, equal to the greater of the following:

HB 777

2005
CS

- 1327 1. Sixty-five percent of the final average salary; or
 1328 2. The sum of the following:
 1329 a. Two and one-half percent of the member's final average
 1330 salary multiplied by the number of years, and fraction of a
 1331 year, of his or her service credit to a maximum of 26 years of
 1332 service, and 2 percent of his or her final average salary
 1333 multiplied by the number of years, and fraction of a year, in
 1334 excess of 26 years of service, for all years of service earned
 1335 through September 30, 1988; and
 1336 b. Two percent of the member's final average salary
 1337 multiplied by the number of years, and fraction of a year, of
 1338 his or her service credit earned on or after October 1, 1988.
 1339 (e) Medical committee.--The medical committee provided for
 1340 in this subsection shall consist of no less than two qualified
 1341 health professionals, one of whom shall be designated by the
 1342 Board and one by the member. If deemed necessary by the Board, a
 1343 third qualified health professional, selected by the two
 1344 committee members previously designated, may be named to the
 1345 medical committee. The medical committee shall report to the
 1346 Board the existence and degree of permanent physical impairment
 1347 of the member, if any, based upon the most recent edition of the
 1348 American Medical Association's Guide to the Evaluation of
 1349 Permanent Impairment, if applicable.
 1350 (f) Exclusions from disability pensions.--No disability
 1351 pension shall be payable, either as a duty disability pension or
 1352 as a nonduty disability pension, if the disability is a result
 1353 of:

HB 777

2005
CS

- 1354 | 1. Excessive and habitual use by the member of drugs,
1355 | intoxicants, or narcotics;
- 1356 | 2. Injury or disease sustained by the member while
1357 | willfully and illegally participating in fights, riots, or civil
1358 | insurrections or while committing a crime;
- 1359 | 3. Injury or disease sustained by the member while serving
1360 | in any armed forces;
- 1361 | 4. Injury or disease sustained by the member after his or
1362 | her employment has terminated;
- 1363 | 5. Injury or disease sustained by the member while working
1364 | for anyone other than the City and arising out of such
1365 | employment; or
- 1366 | 6. Injury or disease sustained by the member before coming
1367 | to work for the City. This exclusion applies to duty disability
1368 | applications only.
- 1369 | (g) Payment of disability pensions.--Monthly disability
1370 | retirement benefits shall be payable as of the date the Board
1371 | determines that the member was entitled to a disability pension;
1372 | however, the first payment shall actually be paid on the first
1373 | day of the first month after the Board determines such
1374 | entitlement. Any portion due for a partial month shall be paid
1375 | together with the first payment. If the member recovers from the
1376 | disability prior to his or her normal retirement date, the last
1377 | payment shall be the payment due next preceding the date of such
1378 | recovery or, if the member dies without recovering from his or
1379 | her disability, then the following shall apply:
- 1380 | 1. Married member.--Beneficiary benefits as set forth in
1381 | subsection (7) shall be paid if, at the time of death, the

HB 777

2005
CS

1382 member was married or had a dependent child or children or
1383 parent or parents; or

1384 2. Unmarried member with 10 years of service or
1385 more.--Payments shall be made until the member's death or the
1386 120th monthly payment, whichever is later; or

1387 3. Unmarried member with less than 10 years of
1388 service.--Payments shall be made until the member's death.

1389

1390 Any monthly retirement income payments due after the death of a
1391 disabled member shall be paid to the member's designated
1392 beneficiary or beneficiaries or the member's estate as provided
1393 in paragraph (5)(h) or subsection (7), as applicable.

1394 (h) Reexamination of disability retirant.--At least once
1395 each year during the first 5 years following a member's
1396 retirement on account of disability, and at least once in each
1397 3-year period thereafter, the Board shall require any disability
1398 retirant who has not attained age 50 to undergo a medical
1399 examination to be made by or under the direction of a physician
1400 designated by the Board. However, if a disability retirant has
1401 lost the firefighter certification, as required by Florida
1402 Statutes, then the reexamination is discretionary. If the
1403 retirant refuses to submit to the medical examination in any
1404 such period, his or her disability pension may be suspended by
1405 the Board until withdrawal of such refusal. If such refusal
1406 continues for 1 year, all of the retirant's rights in and to a
1407 disability pension may be revoked by the Board. If, upon medical
1408 examination of the retirant, the physician reports to the Board
1409 that the retirant is physically able and capable of performing

HB 777

2005
CS

1410 the duties of a firefighter in the rank held by him or her at
 1411 the time of retirement, the member shall be returned to
 1412 employment in the Department at a salary not less than the
 1413 salary of the rank last held by him or her, provided that return
 1414 to the employ of the Department shall be subject to the approval
 1415 of the Fire Chief. Should the retirant become employed by the
 1416 City, his or her disability pension shall terminate.

1417 (i) Return to work of a disability retirant; service
 1418 credit.--In the event a disability retirant is returned to
 1419 employment in the department, as provided in paragraph (h), his
 1420 or her service credit at the time of disability retirement shall
 1421 be restored to his or her credit. In the event he or she retired
 1422 under the provisions of paragraph (c), he or she shall be given
 1423 service credit for the period he or she was in receipt of a
 1424 disability pension. If he or she retired under the provisions of
 1425 paragraph (a), he or she shall not be given service credit for
 1426 the period he or she was in receipt of a disability pension.

1427 (j) Expenses of medical examinations for disability.--The
 1428 member shall be responsible for the expenses of the physician
 1429 the member designates for medical examinations required under
 1430 this subsection. Expenses for any other medical examinations
 1431 required under this subsection shall be paid by the Fund.

1432 (7) Beneficiary benefits.--

1433 (a) Death while in service; 5 years or more (nonduty).--In
 1434 the event a member with 5 or more years of service credit dies
 1435 while in the employ of the Department, and the Board finds his
 1436 or her death to have occurred as the result of causes arising
 1437 outside the performance of his or her duties as a firefighter in

HB 777

2005
CS

1438 the employ of the City, the following applicable pensions shall
1439 be paid:

1440 1. Surviving spouse's benefits.--The surviving spouse
1441 shall receive a pension equal to two-thirds of the pension the
1442 member would otherwise have been entitled to receive under
1443 paragraph (5)(a), as if the member had retired the day preceding
1444 the date of his or her death, notwithstanding that the member
1445 might not have met the age and service requirements for
1446 retirement as specified in subsection (5). Upon the surviving
1447 spouse's death, the pension shall terminate.

1448 2. Benefits for children, surviving spouse, etc.--In the
1449 event the deceased member does not leave a surviving spouse, or
1450 if the surviving spouse shall die, and the member leaves an
1451 unmarried child or children under age 18, each such child shall
1452 receive a pension of an equal share of the pension to which said
1453 member's surviving spouse was or would have been entitled. Upon
1454 any such child's adoption, marriage, death, or attainment of age
1455 18, the child's pension shall terminate and said child's pension
1456 shall be apportioned to the deceased member's remaining eligible
1457 children under age 18.

1458 3. Benefits for dependent parents.--In the event a member
1459 dies and does not leave a surviving spouse or children eligible
1460 to receive a pension provided for in subparagraphs 1. and 2.,
1461 and the member leaves a parent or parents whom the Board finds
1462 to have been dependent upon the member for 50 percent or more of
1463 their financial support, each such parent shall receive a
1464 pension of an equal share of the pension to which the member's
1465 surviving spouse would have been entitled. Upon any such

HB 777

2005
CS

1466 parent's remarriage or death, the parent's pension shall
1467 terminate.

1468 4. Estate.--In the event a member dies and does not leave
1469 a surviving spouse, children, or parents eligible to receive a
1470 pension provided for in subparagraph 1., subparagraph 2., or
1471 subparagraph 3., then the benefits remaining, if any, shall be
1472 paid to the member's estate.

1473 (b) Death in the line of duty.--In the event a member dies
1474 while in the employ of the Department, and the Board finds his
1475 or her death to be the natural and proximate result of causes
1476 arising out of and in the actual performance of duty as a
1477 firefighter in the employ of the City, the following applicable
1478 pensions shall be paid:

1479 1. Surviving spouse's benefits.--The surviving spouse
1480 shall receive a monthly pension equal to the greater of:

1481 a. Sixty-six and two-thirds of the member's highest 12
1482 months' salary or top step firefighter pay, whichever is
1483 greater; or

1484 b. The surviving spouse's share of the member's accrued
1485 benefit. Upon the surviving spouse's death, the pension shall
1486 terminate.

1487 2. Benefits for children, surviving spouse, etc.--In the
1488 event the deceased member does not leave a surviving spouse, or
1489 if the surviving spouse shall die, and the member leaves an
1490 unmarried child or children under age 18, each such child shall
1491 receive a pension of an equal share of the pension to which the
1492 member's surviving spouse was or would have been entitled. Upon
1493 any such child's adoption, marriage, death, or attainment of age

HB 777

2005
CS

1494 | 18, the child's pension shall terminate and said child's pension
1495 | shall be apportioned to the deceased member's remaining eligible
1496 | children under age 18.

1497 | 3. Benefits for dependent parents.--In the event a member
1498 | dies and does not leave a surviving spouse or children eligible
1499 | to receive a pension provided for in subparagraphs 1. and 2.,
1500 | and the member leaves a parent or parents whom the Board finds
1501 | to have been dependent upon the member for 50 percent or more of
1502 | their financial support, each such parent shall receive a
1503 | pension of an equal share of the pension to which said member's
1504 | surviving spouse would have been entitled. Upon any such
1505 | parent's remarriage or death, the parent's pension shall
1506 | terminate.

1507 | 4. Estate.--In the event a member dies and does not leave
1508 | a surviving spouse, children, or parents eligible to receive a
1509 | pension provided for in subparagraph 1., subparagraph 2., or
1510 | subparagraph 3., then the benefits remaining, if any, shall be
1511 | paid to the member's estate.

1512 | (c) Death after retirement.--Upon the death of a retirant,
1513 | the following applicable pensions shall be paid:

1514 | 1. Surviving spouse's benefits.--The surviving spouse
1515 | shall receive a pension equal to three-fourths of the retirant's
1516 | pension at the time of his or her death. Upon the surviving
1517 | spouse's death, the pension shall terminate.

1518 | 2. Benefits for children, surviving spouse, etc.--In the
1519 | event a deceased retirant does not leave a surviving spouse, or
1520 | if the surviving spouse shall die, and the retirant leaves an
1521 | unmarried child or children under age 18, each such child shall

HB 777

2005
CS

1522 receive a pension of an equal share of the pension to which the
 1523 retirant's surviving spouse was or would have been entitled.
 1524 Upon any such child's adoption, marriage, death, or attainment
 1525 of age 18, the child's pension shall terminate and said child's
 1526 pension shall be apportioned to the deceased retirant's
 1527 remaining eligible children under age 18.

1528 3. Benefits for dependent parents.--In the event a
 1529 retirant dies and does not leave a surviving spouse or children
 1530 eligible to receive a pension provided for in subparagraphs 1.
 1531 and 2., and the retirant leaves a parent or parents whom the
 1532 Board finds to have been dependent upon the retirant for 50
 1533 percent or more of their financial support, each such parent
 1534 shall receive a pension of an equal share of the pension to
 1535 which the retirant's surviving spouse would have been entitled.
 1536 Upon any such parent's remarriage or death, the parent's pension
 1537 shall terminate.

1538 4. Estate.--In the event a retirant dies and does not
 1539 leave a surviving spouse, children, or parents eligible to
 1540 receive a pension provided for in subparagraph 1., subparagraph
 1541 2., or subparagraph 3., then the benefits remaining, if any,
 1542 shall be paid to the retirant's estate.

1543 (8) Acceptance of pension no bar to subsequent work.--The
 1544 acceptance of a pension by a member upon retirement shall not
 1545 bar the member from engaging in any other business thereafter.

1546 (9) Pension not assignable or subject to garnishment.--The
 1547 pensions or other benefits accrued or accruing to any person
 1548 under the provision of this act and the accumulated
 1549 contributions and the cash securities in the Funds created under

HB 777

2005
CS

1550 | this act shall not be subject to execution or attachment or to
 1551 | any legal process whatsoever, and shall be unassignable.
 1552 | However, pursuant to a court support order, the Trustees may
 1553 | direct that the retirement benefits be paid for alimony or child
 1554 | support in accordance with rules and regulations adopted by the
 1555 | Board of Trustees.

1556 | (10) Transfer of funds.--All funds and assets previously
 1557 | owned and controlled by the West Palm Beach Firemen's Relief and
 1558 | Pension Fund are vested in the Board of this Fund.

1559 | (11) Ordinances applicable.--All ordinances of the City
 1560 | applicable to chapter 175, Florida Statutes, are hereby made
 1561 | applicable to this act with equal force and effect. No proposed
 1562 | change or amendment to this act shall be adopted without
 1563 | approval required by section 175.351(2), Florida Statutes.

1564 | (12) Existing benefits to continue.--This act, and any
 1565 | amendments thereto, shall not be construed to decrease the
 1566 | benefits payable to, or on account of, any member of the Fund.

1567 | (13) Workers' compensation offset.--The pension benefits
 1568 | payable under this act shall not be offset by workers'
 1569 | compensation benefits payable on account of the disability or
 1570 | death of a member except to the extent that the total of the
 1571 | pension benefits and workers' compensation benefits exceed the
 1572 | member's monthly average wage.

1573 | (14) Actuarial valuations.--The Fund shall be actuarially
 1574 | evaluated annually.

1575 | (15) Review procedures.--

1576 | (a) The applicant for benefits under this chapter may,
 1577 | within 20 days after being informed of the denial of his or her

HB 777

2005
CS

1578 request for pension benefits, appeal the denial by filing a
1579 reply to the proposed order with the pension's secretary. If no
1580 appeal is filed within the time period, then the proposed order
1581 shall be final.

1582 (b) The Board of Trustees shall hold a hearing within 45
1583 days after the receipt of the appeal. Written notice of the
1584 hearing shall be sent by certified mail return
1585 receipt/restricted to individual, to the applicant at the
1586 address listed on the application 10 days prior to the hearing.

1587 (c) The procedures at the hearing shall be as follows:

1588 1. All parties shall have an opportunity to respond, to
1589 present physical and testimonial evidence and argument on all
1590 issues involved, to conduct cross-examination, to submit
1591 rebuttal evidence, and to be represented by counsel. Medical
1592 reports and depositions may be accepted in lieu of live
1593 testimony at the Board's discretion.

1594 2. All witnesses shall be sworn.

1595 3. The applicant and the Board shall have an opportunity
1596 to question all witnesses.

1597 4. Formal rules of evidence and formal rules of civil
1598 procedure shall not apply. The proceedings shall comply with the
1599 essential requirements of due process and law.

1600 5. The record in a case governed by this subsection shall
1601 consist only of:

1602 a. A tape recording of the hearing, to be taped and
1603 maintained as part of the official files of the Board of
1604 Trustees by the pension's secretary.

1605 b. Evidence received or considered.

HB 777

2005
CS

1606 c. All notices, pleadings, motions, and intermediate
1607 rulings.

1608 d. Any decisions, opinions, proposed or recommended
1609 orders, or reports by the Board of Trustees.

1610 (d) Within 5 days after the first hearing, the Board shall
1611 take one of the following actions:

1612 1. Grant the pension benefits by overturning the proposed
1613 order by a majority vote.

1614 2. Deny the benefits and approve the proposed order as a
1615 final order after making any changes in the order the Board
1616 feels is necessary.

1617 (e) Findings of fact by the Board shall be based on
1618 competent, substantial evidence on the record.

1619 (f) Within 20 calendar days after rendering its order, the
1620 Board of Trustees shall send to the applicant, by certified mail
1621 return receipt/restricted to individual, a copy of the order.

1622 (g) The applicant may seek review of the order by the
1623 Board of Trustees by filing a petition for writ of certiorari
1624 with the circuit court within 30 days.

1625 (16) Lump sum payment of small retirement
1626 income.--Notwithstanding any provision of the Fund to the
1627 contrary, if the single sum value of the accrued retirement
1628 income is less than \$5,000 as of the date of retirement or
1629 termination of service, whichever is applicable, the Board of
1630 Trustees, in the exercise of its discretion, may specify that
1631 the actuarial equivalent of such retirement income be paid in
1632 lump sum.

HB 777

2005
CS

1633 (17) Pickup of employee contributions.--Effective the
 1634 first day of the first full payroll period of the first calendar
 1635 quarter following receipt of a favorable determination letter
 1636 from the Internal Revenue Service, the City shall pick up the
 1637 member contribution required by this section. The contributions
 1638 so picked up shall be treated as employer contributions in
 1639 determining tax treatment under the United States Internal
 1640 Revenue Code. The City shall pick up the member contributions
 1641 from funds established and available for salaries, which funds
 1642 would otherwise have been designated as member contributions and
 1643 paid to the Fund. Member contributions picked up by the City
 1644 pursuant to this subsection shall be treated for all other
 1645 purposes of making a refund of members' contributions, and for
 1646 all other purposes of this and other laws, in the same manner
 1647 and to the same extent as member contributions made prior to the
 1648 effective date of this subsection. The intent of this subsection
 1649 is to comply with section 414(H)(2) of the Internal Revenue
 1650 Code.

1651 (18) Internal Revenue Code limits.--

1652 (a) In no event may a member's annual benefit exceed
 1653 \$160,000, adjusted for cost of living in accordance with
 1654 Internal Revenue Code ("IRC") Section 415(d).

1655 (b) If a member has less than 10 years of service with the
 1656 City, the applicable limitation in paragraph (a) shall be
 1657 reduced by multiplying such limitation by a fraction, not to
 1658 exceed 1. The numerator of such fraction shall be the number of
 1659 years, or part thereof, of service with the City; the
 1660 denominator shall be 10 years.

HB 777

2005
CS

1661 (c) For purposes of this subsection, "annual benefit"
 1662 means a benefit payable annually in the form of a straight life
 1663 annuity with no ancillary or incidental benefits and with no
 1664 member or rollover contributions. To the extent that ancillary
 1665 benefits are provided, the limits set forth in paragraph (a)
 1666 shall be reduced actuarially, using an interest rate assumption
 1667 equal to the greater of 5 percent or the rate being used for
 1668 actuarial equivalence, to reflect such ancillary benefits.

1669 (d) If distribution of retirement benefits begins before
 1670 age 62, the dollar limitation as described in paragraph (a)
 1671 shall be reduced using an interest rate assumption equal to the
 1672 greater of 5 percent or the interest rate used for actuarial
 1673 equivalence; however, retirement benefits shall not be reduced
 1674 below \$75,000 if payment of benefits begins at or after age 55,
 1675 and not below the actuarial equivalent of \$75,000 if payment of
 1676 benefits begins before age 55. For a member with 15 or more
 1677 years of service with the City, the reductions described above
 1678 shall not reduce such member's benefit below \$50,000, adjusted
 1679 for cost of living in accordance with IRC Section 415(d), but
 1680 only for the year in which such adjustment is effective. If
 1681 retirement benefits begin after age 65, the dollar limitation of
 1682 paragraph (a) shall be increased actuarially by using an
 1683 interest assumption equal to the lesser of 5 percent or the rate
 1684 used for actuarial equivalence.

1685 (e) Compensation in excess of limitations set forth in
 1686 Section 401(a)(17) of the Internal Revenue Code shall be
 1687 disregarded. The limitation on compensation for an eligible
 1688 employee shall not be less than the amount which was allowed to

HB 777

2005
CS

1689 | be taken into account hereunder as in effect on July 1, 1993.
1690 | "Eligible employee" is an individual who was a member before the
1691 | first plan year beginning after December 31, 1995.

1692 | (19) Required distributions.--In accordance with IRC
1693 | Section 401(9)(C), any and all benefit payments shall begin by
1694 | the later of:

1695 | (a) April 1 of the calendar year following the calendar
1696 | year of the member's retirement date; or

1697 | (b) April 1 of the calendar year following the calendar
1698 | year in which the employee attains age 70 1/2.

1699 | (20) Miscellaneous requirements.--

1700 | (a) No benefit of any kind shall be payable from the
1701 | assets of the Pension Fund unless specifically provided for in
1702 | this act; however, the Board of Trustees, with the approval of
1703 | the City, may grant ad hoc benefits after a public hearing and
1704 | acceptance by the state of an actuarial impact statement
1705 | submitted pursuant to part VII of chapter 112, Florida Statutes.

1706 | (b) The City may not offset any part of its required
1707 | annual contribution by the Fund's assets except as determined in
1708 | an actuarial valuation, the report for which is determined to be
1709 | state accepted pursuant to part VII of chapter 112, Florida
1710 | Statutes.

1711 | (c) All provisions of this act and operations of the
1712 | Pension Fund shall be carried out in compliance with part VII of
1713 | chapter 112, Florida Statutes.

1714 | (d) False or misleading statements made to obtain
1715 | retirement benefits prohibited.--

HB 777

2005
CS

1716 1. It is unlawful for a person to willfully and knowingly
1717 make, or cause to be made, or to assist, conspire with, or urge
1718 another to make, or cause to be made, any false, fraudulent, or
1719 misleading oral or written statement or to withhold or conceal
1720 material information to obtain any benefit under this plan.

1721 2.a. A person who violates subparagraph 1. commits a
1722 misdemeanor of the first degree, punishable as provided in
1723 section 775.082 or section 775.083, Florida Statutes.

1724 b. In addition to any applicable criminal penalty, upon
1725 conviction for a violation of subparagraph 1., a participant or
1726 beneficiary of this plan may, in the discretion of the Board of
1727 Trustees, be required to forfeit the right to receive any or all
1728 benefits to which the person would otherwise be entitled under
1729 this Plan. For the purposes of this sub-subparagraph,
1730 "conviction" means a determination of guilt that is the result
1731 of a plea or trial, regardless of whether adjudication is
1732 withheld.

1733 (21) Rollover distributions.--

1734 (a) This subsection applies to distributions made on or
1735 after January 1, 1993. Notwithstanding any provision of the Plan
1736 to the contrary that would otherwise limit a distributee's
1737 election under this subsection, a distributee may elect, at the
1738 time and in the manner prescribed by the Board of Trustees, to
1739 have any portion of an eligible rollover distribution paid
1740 directly to an eligible retirement plan specified by the
1741 distributee in a direct rollover.

1742 (b)1. "Eligible rollover distribution" is any distribution
1743 of all or any portion of the balance to the credit of the

HB 777

2005
CS

1744 distributee, except that an eligible rollover does not include
1745 any distribution that is one of a series of substantially equal
1746 periodic payments (not less frequently than annually) made for
1747 the life (or life expectancy) of the distributee or the joint
1748 lives (or joint life expectancies) of the distributee and the
1749 distributee's designated beneficiary, or for a specified period
1750 of 10 years or more; any distribution to the extent such
1751 distribution is required under section 401(a)(9) of the Code;
1752 and the portion of any distribution that is not includable in
1753 gross income.

1754 2. "Eligible retirement plan" is an individual retirement
1755 account described in section 408(a) of the Code, an individual
1756 retirement annuity described in section 408(b) of the Code, an
1757 annuity plan described in section 403(a) of the Code, or a
1758 qualified trust described in section 401(a) of the Code that
1759 accepts the distributee's eligible rollover distribution.
1760 However, in the case of an eligible rollover distribution to the
1761 surviving spouse, an "eligible retirement plan" is an individual
1762 retirement account or individual retirement annuity.

1763 3. "Distributee" includes an employee or former employee.
1764 In addition, the employee's or former employee's surviving
1765 spouse and the employee's or former employee's spouse or former
1766 spouse who is entitled to payment for alimony and child support
1767 under a domestic relations order determined to be qualified by
1768 this Fund are distributees with regard to the interest of the
1769 spouse or former spouse.

1770 4. "Direct rollover" is a payment by the Plan to the
1771 eligible retirement plan specified by the distributee.

Page 64 of 69

HB 777

2005
CS

1772 (22) Rollovers from qualified plans.--

1773 (a) A member may roll over all or part of his or her

1774 assets in another qualified plan to his or her chapter 175,

1775 Florida Statutes, share account, provided all of the following

1776 requirements are met:

1777 1. Some or all of the amount distributed from the other

1778 plan is rolled over to this plan no later than the 60th day

1779 after distribution was made from the plan or, if distributions

1780 are made in installments, no later than the 60th day after the

1781 last distribution was made.

1782 2. The amount rolled over to the share account does not

1783 include any amounts contributed by the member to the plan on a

1784 posttax basis.

1785 3. The rollover is made in cash.

1786 4. The member certifies that the distribution is eligible

1787 for a rollover.

1788 5. Amounts which the Trustee accepts as a rollover to this

1789 Fund shall, along with any earnings allocated to the Trustee, be

1790 fully vested at all times.

1791

1792 The rollover may also be made to this plan from an individual

1793 retirement account qualified under Code Section 408 when the

1794 individual retirement was merely used as a conduit for funds

1795 from another qualified plan and the rollover is made in

1796 accordance with the rules provided in subparagraphs 1.-5.

1797 Amounts rolled over may be segregated from other Fund assets.

1798 The Trustee shall separately account for gains, losses, and

1799 administrative expenses on these rollovers as provided for in

HB 777

2005
CS

1800 paragraphs (5)(d) and (j). In addition, the Fund may accept the
 1801 direct transfer of a member's benefits from another qualified
 1802 retirement plan or Internal Revenue Code section 457 plan. The
 1803 Fund shall account for direct transfers in the same manner as a
 1804 rollover and shall obtain certification from the member that the
 1805 amounts are eligible for a rollover or direct transfer to this
 1806 Fund.

1807 (b) Transfer of accumulated leave.--

1808 1. Members eligible to receive accumulated sick leave,
 1809 accumulated vacation leave, or any other accumulated leave
 1810 payable upon separation shall have the leave transferred to the
 1811 Fund up to the amount permitted by law. Any additional amounts
 1812 shall be paid directly to the member. Members on whose behalf
 1813 leave has been transferred shall maintain the entire amount of
 1814 the transferred leave balance in the DROP or Share Account.

1815 2. If a member on whose behalf the City makes a
 1816 transferred leave balance to the Plan dies after retirement or
 1817 other separation, then any person who would have received a
 1818 death benefit had the member died in service immediately prior
 1819 to the date of retirement or other separation shall be entitled
 1820 to receive an amount equal to the transferred leave balance in a
 1821 lump sum. In the case of a surviving spouse or former spouse, an
 1822 election may be made to transfer the leave balance to an
 1823 eligible retirement plan in lieu of the lump sum payment.
 1824 Failure to make such an election by the surviving spouse or
 1825 former spouse within 60 days after the member's death shall be
 1826 deemed an election to receive the lump sum payment.

HB 777

2005
CS

1827 3. The Board, by rule, shall prescribe the method for
1828 implementing the provisions of this paragraph.

1829 4. Amounts transferred under this section shall remain
1830 invested in the Pension Fund for a period of not less than 1
1831 year.

1832 (23) Actuarial assumptions.--The following actuarial
1833 assumptions shall be used for all purposes in connection with
1834 this Fund, effective October 1, 1998:

1835 (a) The period for amortizing current, future, and past
1836 actuarial gains or losses shall be 20 years.

1837 (b) The assumed investment rate of return shall be 8.25
1838 percent.

1839 (24) Prior firefighter service.--Unless otherwise
1840 prohibited by law, the years, or fractional parts of years, that
1841 a member previously served as a firefighter with the City during
1842 a period of employment and for which accumulated contributions
1843 were withdrawn from the fund, or the years, and fractional parts
1844 of years, that a member served as a firefighter for this or any
1845 other municipal, county, or state fire department or district or
1846 any time served in the military service of the Armed Forces of
1847 the United States shall be added to the years of credited
1848 service, provided that the member contributes to the fund the
1849 sum that would have been contributed, based on the member's
1850 salary and the employee contribution rate in effect at the time
1851 that the credited service is requested, had the member been a
1852 member of this system for the years, or fractional parts of
1853 years, for which the credit is requested, plus the amount
1854 actuarially determined, such that the crediting of service does

HB 777

2005
CS

1855 | not result in any cost to the fund, plus payment of costs for
 1856 | all professional services rendered to the board in connection
 1857 | with the purchase of years of credited service.

1858 | (a) Payment by the member of the required amount may be
 1859 | made within 6 months after the request for credit and in one
 1860 | lump sum payment, or the member may buy back this time over a
 1861 | period equal to the length of time being purchased or 5 years,
 1862 | whichever is greater, at an interest rate which is equal to the
 1863 | Fund's actuarial assumption. A member may request to purchase
 1864 | some or all years of service.

1865 | (b) The credit purchased under this section shall count
 1866 | for all purposes, except vesting.

1867 | (c) In no event, however, may credited service be
 1868 | purchased pursuant to this section for prior service with any
 1869 | other municipal, county, or state fire department or district,
 1870 | if such prior service forms or will form the basis of a
 1871 | retirement benefit or pension from another retirement system or
 1872 | plan.

1873 | (d) In the event that a member who is in the process of
 1874 | purchasing service suffers a disability and is awarded a benefit
 1875 | from the plan, the member shall not be required to complete the
 1876 | buyback. However, contributions made prior to the date the
 1877 | disability payment begins will be retained by the Fund.

1878 | (e) If a member who has either completed the purchase of
 1879 | service or is in the process of purchasing service terminates
 1880 | before vesting, the member's contributions shall be refunded,
 1881 | including the buyback contributions.

HB 777

2005
CS

1882 | (f) A request to purchase service may be made at any time
1883 | during the course of employment; however, the buyback is a one-
1884 | time opportunity.
1885 | Section 2. This act shall take effect upon becoming a law.