

1 A bill to be entitled
 2 An act relating to the City of Tampa, Hillsborough County;
 3 amending chapter 23559, Laws of Florida, 1945, as amended,
 4 the General Employees' Pension Plan for the City of Tampa;
 5 revising definitions for "Salaries or Wages," "Employee,"
 6 and "Military Service Time"; providing a definition for
 7 "Limitation Year"; providing that all employee
 8 contributions to the pension fund are mandatory and that
 9 the city shall pay such contributions to the fund on
 10 behalf of the employee; providing non-spouse beneficiaries
 11 an option to rollover death benefits; providing for refund
 12 of employee contributions; revising construction of the
 13 act; revising benefit limits; revising requirements for
 14 distribution of benefits; providing a default distribution
 15 when a member fails to elect a distribution option;
 16 revising direct rollover options; providing an effective
 17 date.

18
 19 Be It Enacted by the Legislature of the State of Florida:

20
 21 Section 1. Subsections (A), (E), and (H) of section 4,
 22 subsection (A) of section 5, section 19, subsections (A), (B),
 23 and (F) of section 24, and sections 25 and 26 of chapter 23559,
 24 Laws of Florida, 1945, as amended, are amended, and subsection
 25 (S) is added to section 4, subsection (C) is added to section
 26 12, and subsection (C) is added to section 14 of that chapter,
 27 to read:

28 Section 4. Definitions.

29 (A) Salaries or Wages. Salaries or Wages for the purpose
 30 of this act shall be the base amounts earned by the Employee,
 31 plus regular longevity bonuses, overtime, and shift premiums.
 32 Salary or Wages shall also include elective amounts that are
 33 excludible from the Employee's gross income under Section 125
 34 (cafeteria plan) amounts that are not available to the Employee
 35 in cash in lieu of group health coverage because the Employee is
 36 unable to certify that he or she has other health coverage. Such
 37 deemed Section 125 compensation will be treated as an amount
 38 under Section 125 of the Code only if the Employer does not
 39 request or collect information regarding the Employees' other
 40 health coverage as part of the enrollment for the health plan;
 41 403(b) (tax-sheltered annuity); 457 (Section 457 plan); and,
 42 effective for Plan Years beginning on and after January 1, 2001,
 43 132(f) (4) (qualified transportation fringe benefit plan) of the
 44 Internal Revenue Code of 1986, and the regulations thereunder as
 45 amended (the "Code"). Salaries or Wages shall exclude: ~~but~~
 46 ~~exclusive of~~ other premiums, other than shift premiums,
 47 allowances, ~~or~~ special payments, or any casual nonrecurring or
 48 unpredictable bonuses; payments for unused accrued bona fide
 49 sick, vacation, or other leave; payments received by an Employee
 50 pursuant to a nonqualified unfunded deferred salary or wages
 51 plan; and severance pay that is paid after an Employee severs
 52 employment with the City. However, Salaries or Wages, as defined
 53 herein, earned but not paid to the Employee by the Employee's
 54 severance date with the City shall be considered Salary or Wages
 55 for Plan purposes. In addition to other applicable limitations
 56 set forth in the Plan, and notwithstanding any other provision

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57 | of the Plan to the contrary, for Plan Years beginning on or
58 | after January 1, 1996, the annual Salaries or Wages of each
59 | Employee taken into account under the Plan shall not exceed the
60 | annual compensation limit provided for in Section 401(a)(17) of
61 | the Code ~~the Omnibus Budget Reconciliation Act of 1993 (the~~
62 | ~~"OBRA 1993 Annual Compensation Limit"). The OBRA 1993 Annual~~
63 | ~~Compensation Limit is \$150,000, as adjusted by the Commissioner~~
64 | ~~of the Internal Revenue Service for increases in the cost-of-~~
65 | ~~living in accordance with Section 401(a)(17)(B) of the Internal~~
66 | ~~Revenue Code of 1986, as amended (the "Code"). The cost-of-~~
67 | ~~living adjustment in effect for a calendar year applies to any~~
68 | ~~period, not exceeding 12 months, over which Salaries or Wages~~
69 | ~~are determined (determination period) beginning in such calendar~~
70 | ~~year. If a determination period consists of fewer than 12~~
71 | ~~months, the annual compensation ~~the OBRA 1993 Annual~~~~
72 | ~~Compensation~~ limit will be multiplied by a fraction, the
73 | numerator of which is the number of months in the determination
74 | period, and the denominator of which is 12. For Plan Years
75 | beginning on or after January 1, 1996, any reference in this
76 | Plan to the limitation under Section 401(a)(17) of the Code
77 | shall mean the OBRA 1993 Annual Compensation Limit set forth in
78 | this provision. The limitation on Salaries or Wages for an
79 | "eligible Employee" shall not be less than the amount which was
80 | allowed to be taken into account hereunder as in effect on July
81 | 1, 1993. "Eligible Employee" is an individual who was a
82 | participant in the Plan before the first Plan Year beginning
83 | after December 31, 1995. Commencing for earnings paid the first
84 | pay date after October 1, 2005, all mandatory Employee

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85 Contributions to the Fund shall be picked up and paid by the
86 City. Such contributions, although designated as Employee
87 Contributions, shall be paid by the City in lieu of
88 contributions by the Employee. The contributions so assumed
89 shall be treated as tax-deferred Employer "pickup" contributions
90 pursuant to Section 414(h) of the Internal Revenue Code. Members
91 shall not have the option of receiving the contributed amounts
92 directly instead of having such contributions paid by the City
93 to the Fund.

94 (E) Employee. For the purposes of this Act, "employee"
95 shall mean an employee covered or qualified to be covered under
96 either Division A or Division B of this Plan. An employee
97 covered by this Plan shall include all employees whether full
98 time, part-time or temporary, who have taken the physical
99 examination required by Section 18. Employees whose Salaries or
100 Wages are paid pursuant to a federal grant-in-aid program are
101 included in this Act only when the federal government pays the
102 employer's contribution. Casual laborers are excluded from this
103 definition as are employees covered by other City pension plans.
104 Any individual who is an independent contractor, or who performs
105 services for the City under an agreement that identifies the
106 individual as an independent contractor, is excluded from the
107 Plan even if a governmental agency retroactively reclassifies
108 such individual as an Employee.

109 (H) Military Service Time. For Members rehired after leave
110 to provide military service prior to December 12, 1994, in
111 computing Service allowance for retirement, creditable Service
112 shall, at the option of the Employee, include any service which

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113 interrupted employment with the Employer, not to exceed a period
114 of 3 years, in any of the armed services of the United States
115 during time of war, upon condition that within 90 days from the
116 date of reinstatement of such Employee now or hereafter serving
117 in the armed forces, or within 90 days from the effective date
118 of this act for those Employees already reinstated, such
119 Employee shall exercise such option by filing written notice
120 thereof with the Board of Trustees and, if a Division A
121 employee, shall within the 12 ensuing months pay into the
122 retirement fund an amount equal to the aggregate contributions
123 such Employee would have made had such Employee not served in
124 the armed forces, based upon the Salary or Wages being earned at
125 the time of entering the armed services, and if any such
126 Employee shall fail to exercise such option within the time and
127 in the manner hereinabove prescribed, such period of military
128 service shall not thereafter be allowed as creditable Service,
129 but shall not be deemed a break in such Employee's Continuous
130 Service eligibility period. Members rehired on or after December
131 12, 1994, ~~Notwithstanding the foregoing, an Employee~~ shall be
132 credited with service for purposes of vesting and benefit
133 accrual under the Plan for his or her service in the uniformed
134 service (as defined in the Uniformed Services Employment and
135 Reemployment Rights Act of 1994 (the "USERR Act") ~~upon being~~
136 ~~granted leave by the Employer for such uniformed service~~ and
137 termination from employment as an Employee with the Employer,
138 provided that the Employee must return to his or her employment
139 as an Employee with the Employer within the time periods
140 prescribed by the USERR Act; and the Employee complies with the

141 Employee contribution requirements prescribed by the USERR Act.
 142 The maximum service credit for uniformed service shall be 5
 143 years or such other time period as may be prescribed by the
 144 USERR Act. Effective as of the dates reflected in the Heroes
 145 Earnings Assistance and Relief Tax Act ("HEART Act"), the Plan
 146 shall comply with all applicable provisions of the HEART Act.

147 (S) Limitation Year. The limitation year shall be the Plan
 148 Year.

149 Section 5. Contributions. The Pension Fund shall consist
 150 of moneys derived from the following sources:

151 (A) Employee Contributions. Division A Employees.
 152 Commencing for earnings paid, beginning with the first pay date
 153 after January 1, 2006, all Employee contributions to the Fund
 154 shall be mandatory employee contributions and shall be picked up
 155 and paid by the City on behalf of the Member. Such contributions
 156 There shall be made by Employees in an amount equal to a
 157 contribution of 7 percent of all Salaries or Wages of all
 158 Employees participating in this Fund, which shall be deducted
 159 from said Salaries or Wages by the Director of Finance, before
 160 the same are paid, as long as the Employee continues in the
 161 Service of the City of Tampa, regardless of the number of years
 162 of Service with the City. Such contributions, although
 163 designated as Employee contributions, will be paid by the City
 164 in lieu of contributions by the Employee. The contributions so
 165 assumed shall be treated as tax-deferred Employer "pick-up"
 166 contributions pursuant to Section 414(h) of the Code. Members
 167 shall not have the option of receiving the contributed amounts

168 directly instead of having such contributions paid by the City
 169 to the Fund.

170 Section 12. Death Benefits.

171 (C) In accordance with Section 402(c)(11)(A) of the Code,
 172 for distributions made after December 31, 2006, any non-spouse
 173 beneficiary, as defined in Section 401(a)(9)(E) of the Code,
 174 from Division A or Division B shall have the option to rollover
 175 all or a portion of his or her death benefit via a direct
 176 trustee-to-trustee transfer to an inherited individual
 177 retirement account, as defined in Section 408(d)(3)(c) of the
 178 Code, provided such distribution meets the definition of an
 179 eligible rollover distribution as defined in Section 26 of this
 180 Act.

181 Section 14. Refund of Contributions ~~Contribution~~.

182 (C) Refund of Employee contributions shall be paid in
 183 accordance with Section 26 of this Act.

184 Section 19. Construction. This Act shall be liberally
 185 construed in accordance with general law and the federal tax
 186 code, and if any part or portion thereof be declared invalid, or
 187 the application thereof to any person, circumstance or thing is
 188 declared invalid, the validity of the remainder of this Act
 189 shall not be affected thereby.

190 Section 24. Limitations on Amounts of Benefits.

191 (A) For Plan Years ending after December 31, 2001,
 192 benefits for an Employee under this Plan, when expressed as a
 193 benefit payable annually in the form of a straight life annuity
 194 without regard to the death benefit or any other ancillary

195 benefit, shall not at any time within the limitation year exceed
 196 the limits provided under Section 415(b) of the Code ~~\$90,000~~.

197 (B)1. The ~~\$90,000~~ limitation set forth in subsection (A)
 198 shall be actuarially reduced in accordance with regulations
 199 prescribed by the Secretary of the Treasury for any retirement
 200 benefit that may begin before an Employee attains age 62, by
 201 adjusting such benefit so that it is equivalent to such a
 202 benefit beginning at age 62. For Plan Years ending before
 203 January 1, 2002, and repealed for Plan Years ending thereafter,
 204 the reduction shall not reduce the ~~\$90,000~~ limitation set forth
 205 in subsection (A) to less than (a) \$75,000 if the benefit begins
 206 at or after age 55, or (b) if the benefit begins before age 55,
 207 the equivalent of the \$75,000 limitation for age 55.

208 2. If any retirement benefit begins after the Employee
 209 attains age 65, the ~~\$90,000~~ limitation set forth in subsection
 210 (A) shall be adjusted (based upon an interest rate assumption of
 211 5 percent) in accordance with regulations prescribed by the
 212 Secretary of the Treasury, by adjusting such benefit so that it
 213 is equivalent to such benefit beginning at age 65.

214 (F) The following is repealed for Plan Limitation Years
 215 beginning after December 31, 1999:

216 1. In the event that any Employee participates in both a
 217 defined benefit plan and a defined contribution plan maintained
 218 by the City, then the sum of the Defined Benefit Plan Fraction
 219 (as defined in Section 415(e) of the Code) and the Defined
 220 Contribution Plan Fraction (as defined in Section 415(e) of the
 221 Code) for any limitation year shall not exceed 1.0.

222 2. In the event that the sum of the Defined Benefit Plan
 223 Fraction and the Defined Contribution Plan Fraction exceeds 1.0,
 224 then the Board of Trustees shall take such actions, applied in a
 225 uniform and nondiscriminatory manner, as will keep the benefits
 226 and annual additions thereto for such Employees from exceeding
 227 these limits. Adjustments shall be made to this Plan before any
 228 adjustments shall be required to any other plans.

229 Section 25. Latest Date of Commencement of Benefits
 230 Required Distributions.

231 (A) The distribution of a member's benefit shall be made
 232 in accordance with the following requirements, and shall
 233 otherwise comply with Section 401(a) (9) of the Code and the
 234 Regulations thereunder, as prescribed by the Commissioner in
 235 Revenue Rulings, Notices, and other guidance published in the
 236 Internal Revenue Bulletin, to the extent that said provisions
 237 apply to governmental plans under Section 414(d) of the Code.
 238 The distribution provisions of Section 401(a) (9) of the Code
 239 shall override any distribution options in the Plan inconsistent
 240 with Section 401(a) (9) of the Code:

241 1. Any benefit paid to a member ~~an Employee~~ shall commence
 242 not later than the last to occur of:

243 (a)1. April 1 of the year following the calendar year in
 244 which the member ~~Employee~~ retires; or

245 (b)2. April 1 of the year immediately following the
 246 calendar year in which the member ~~Employee~~ reaches age 70 1/2.

247 2. Distributions of members' benefits will be made in
 248 accordance with Sections 1.401(a) (9)-2. through 1.401(a) (9)-9.
 249 of the Code and such other rules thereunder as may be prescribed

250 by the Secretary of the Treasury, to the extent that said
 251 provisions apply to governmental plans under Section 414(d) of
 252 the Code.

253 ~~(B) In the case of a benefit payable by reason of an~~
 254 ~~Employee's retirement or other termination of employment, in no~~
 255 ~~event shall payment extend beyond the life or life expectancy of~~
 256 ~~the Employee or the joint lives or life expectancies of the~~
 257 ~~Employee and the Employee's designated beneficiary. In the case~~
 258 ~~of an Employee who is receiving his or her pension benefit as of~~
 259 ~~the date of his or her death, the survivor portion of the~~
 260 ~~Employee's pension benefit shall be paid at least as rapidly as~~
 261 ~~under the method being used prior to the Employee's death.~~

262 3.(C) Notwithstanding anything contained herein to the
 263 contrary, payments under the Plan to a Beneficiary due to a
 264 member's death shall satisfy the incidental death benefit
 265 requirements and all other applicable provisions of Section
 266 401(a)(9)(G) ~~401(a)(9)~~ of the Code, the regulations issued
 267 thereunder ~~(including Section 1.401(a)(9)-2 of the proposed~~
 268 ~~Treasury regulations)~~, and such other rules thereunder as may be
 269 prescribed by the Secretary of the Treasury, including IRS
 270 Notice 2007-7, to the extent that said provisions apply to
 271 governmental plans under Section 414(d) of the Code.

272 Section 26. Direct Rollovers.

273 (A) This section applies to distributions made on or after
 274 January 1, 1993. Notwithstanding any provision of the Plan to
 275 the contrary ~~that would otherwise limit a distributee's (as~~
 276 ~~defined below) election under this section, a distributee may~~
 277 elect, at the time and in the manner prescribed by the

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278 Commissioner of the Internal Revenue Service, to have any
279 portion of an eligible rollover distribution (as defined below)
280 paid directly to an eligible retirement plan (as defined below)
281 specified by the distributee in a direct rollover (as defined
282 below). If a member fails to elect a distribution option as
283 provided under Sections 14 and 22 of this Act, then such
284 member's benefit shall be rolled over to an individual
285 retirement account designated by the Board of Trustees, as
286 defined in Section 6.

287 (B) For purposes of this section, the following terms
288 shall have the following meanings:

289 1. An "eligible rollover distribution" is any distribution
290 of all or any portion of the balance to the credit of the
291 distributee, except that an eligible rollover distribution does
292 not include: any distribution that is one of a series of
293 substantially equal periodic payments (not less frequently than
294 annually) made for the life (or life expectancy) of the
295 distributee or the joint lives (or joint life expectancies) of
296 the distributee and the distributee's designated beneficiary, or
297 for a specified period of 10 years or more; any distribution to
298 the extent such distribution is required under Section 401(a)(9)
299 of the Code, and the portion of any distribution that is not
300 includable in gross income (determined without regard to the
301 exclusion for net unrealized appreciation with respect to
302 employer securities). Notwithstanding the above, a portion of a
303 distribution shall not fail to be an "eligible rollover
304 distribution" merely because the portion consists of after-tax
305 voluntary Employee contributions that are not includable in

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306 gross income. However, such portion may be transferred only to
307 an individual retirement account or annuity described in Section
308 408(a) or (b) of the Code or to a qualified defined contribution
309 plan described in Section 401(a) or 403(a) of the Code that
310 agrees to separately account for amounts transferred, including
311 separately accounting for the portion of such distribution that
312 is includable in gross income and the portion of such
313 distribution that is not so includable.

314 2. An "eligible retirement rollover plan" is an individual
315 retirement account described in Section 408(a) of the Code, an
316 individual retirement annuity described in Section 408(b) of the
317 Code, other than an endowment contract, or an annuity plan
318 described in Section 403(a) of the Code, a qualified trust (an
319 employees' trust) described in Section 401(a) of the Code that
320 is exempt from tax under Section 501(a) of the Code, an annuity
321 plan described in Section 403(a) of the Code, an eligible plan
322 under Section 457(b) of the Code that is maintained by a state,
323 a political subdivision of a state, or any agency or
324 instrumentality of a state or political subdivision and that
325 agrees to separately account for amounts transferred into such
326 plan from this Plan, and an annuity contract described in
327 Section 403(b) of the Code that accepts the distributee's
328 eligible rollover distribution. However, in the case of an
329 eligible rollover distribution to the surviving spouse, an
330 eligible retirement plan is an individual retirement account or
331 individual retirement annuity.

332 3. A "distributee" includes the member or former member an
333 Employee or former employee. In addition, the member's

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334 ~~Employee's~~ or former member's ~~employee's~~ surviving spouse and
335 the member's ~~Employee's~~ or former member's ~~employee's~~ spouse or
336 former spouse who is the alternate payee under a qualified
337 domestic relations order, as defined in Section 414(p) of the
338 Code, are distributees with regard to the interest of the spouse
339 or former spouse.

340 4. A "direct rollover" is a payment by the Plan to the
341 eligible retirement plan specified by the distributee.

342 Section 2. This act shall take effect October 1, 2009.