

**HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS**

**BILL #:** HB 1165

City of Tampa, Hillsborough County

**SPONSOR(S):** Ambler

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 2766

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	<u>Military &amp; Local Affairs Policy Committee</u>	<u>13 Y, 0 N</u>	<u>Fudge</u>	<u>Hoagland</u>
2)	<u>Government Operations Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3)	<u>Economic Development &amp; Community Affairs Policy Council</u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

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**SUMMARY ANALYSIS**

The City of Tampa General Employees' Pension Plan provides retirement benefits for all permanent city employees.

The bill amends the Plan to amend various definitions; grants non-spouse beneficiaries the option to rollover all or a portion of a death benefit to an inherited IRA under certain circumstances; provides for rollover of employee contribution refunds; authorizes DROP participants to select investment options; requires certain provisions to be construed in accordance with IRS Code; and establishes eligible rollover distribution provisions.

The bill is effective October 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

The City of Tampa General Employees' Pension Plan provides retirement benefits for all permanent city employees.

##### **Section 14, Art. X, State Constitution/Public Retirement and Pensions**

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

##### **Part VII, Ch. 112, F.S./Actuarial Soundness of Retirement Systems**

Part VII, ch. 112, F. S., the "Florida Protection of Public Employee Retirement Benefits Act," was adopted by the Legislature to implement the provisions of s. 14, art. X, State Constitution. This law establishes minimum standards for operating and funding public employee retirement systems and plans. The act is applicable to all units of state, county, special district and municipal governments participating in or operating a retirement system for public employees which is funded in whole or in part by public funds.

Section 112.63, F.S., provides that no unit of local government shall agree to a proposed change in retirement benefits unless the administrator of the system, prior to adoption of the change by the governing body, and prior to the last public hearing thereon, has issued a statement of the actuarial impact of the proposed change upon the local retirement system, consistent with the actuarial review, and has furnished a copy of such statement to the Division of Retirement, Department of Management Services. Such statement also is required to indicate whether the proposed changes are in compliance with s. 14, art. X, State Constitution, and with s. 112.64, F.S., which relates to administration of funds and amortization of unfunded liability.

##### **Effect of Proposed Changes**

The bill makes changes to the plan to comply with federal requirements. The following definitional changes are made:

- “salaries or wages” – adds elective amounts that are excludible from the employee’s gross income under section 125 (cafeteria plan); excludes payments for unused accrued bona fide sick, vacation or other leave, payments to nonqualified unfunded deferred salary plan, or severance pay after employee leaves employment with city; revises annual compensation limits;
- “Employee” – excludes independent contractors
- “Military Service Time”—applies to members rehired after military leave service time prior to December 12, 1994; complies with applicable provisions of Heroes Earnings Assistance and Relief Tax Act (“HEART Act”).
- “Limitation Year”—defined as Plan Year.

In addition, employee contributions are mandatory and “picked up” by the city pursuant to section 414(h) of the Code. Non-spouse beneficiaries are given the option to rollover all or a portion of a death benefit to an inherited IRA if the distribution is an eligible rollover. If the member fails to elect a distribution option, the employee contribution refunds will be rolled over to an IRA designated by the board of trustees. The act will be construed in accordance with general law and federal tax code. Limitations on the amounts of benefits are tied to specified plan years.

DROP participants may elect the investment of DROP funds at either a rate reflecting the Fund’s net investment performance, as determined by the Board of Trustees, or a rate reflecting low-risk variable rate selected annually by the Board in its discretion.

**B. SECTION DIRECTORY:**

Section 1: Amends various definitions of the Plan; grants non-spouse beneficiaries the option to rollover all or a portion of a death benefit to an inherited IRA; provides for rollover of employee contribution refunds; and authorizes DROP participants to select investment options.

Section 2: Provides an effective date of October 1, 2010.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? January 16, 2010.

WHERE? In *The Tampa Tribune*, a daily newspaper published in Hillsborough County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

### C. DRAFTING ISSUES OR OTHER COMMENTS:

The Actuarial Statement of Fiscal Soundness prepared by the Department of Management Services provides:

1. This bill affects neither the Florida Retirement System nor the System's Trust Fund.
2. This bill complies with the requirements of Article X, Section 14 of the Constitution.
3. This bill satisfies the actuarial cost impact provisions of Chapter 112, Part VII, F.S.
4. One issue of concern is the change to Section 4(A) which defines "Salary or Wages" to include members' deferrals into the City's Section 457 as compensation for plan purposes. Since we have been informed that this particular language is only a clarification and not a change in practice, we confirm there will be no material impact on the City's funding requirement due to this bill.

The Statement also indicates that the change in definition of "Employee" appears to bind future actions of the legislature or federal agencies and may not be enforceable. The Statement cites to *Vizcaino v. Microsoft*<sup>1</sup> in which Microsoft improperly classified a large number of temporary workers as independent contractors and denied them access to the company's 401(k) plans and Employee Stock Purchase Plan. Although the workers signed employment agreements stating they were independent contractors and not employees, they failed to qualify as employees under the IRS's "20 factor test".

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>1</sup> 173 F.3d 713 C.A. 9 (Wash.), 1999.