

By Senator Joyner

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1                   A bill to be entitled  
2           An act relating to the City of Tampa, Hillsborough  
3           County; amending chapter 23559, Laws of Florida, 1945,  
4           as amended; revising the General Employees' Pension  
5           Plan for the City of Tampa; revising the definitions  
6           of the terms "Salaries or Wages," "Employee," and  
7           "Military Service Time"; revising application of the  
8           term "Actuarial Equivalent"; defining the term  
9           "Limitation Year"; providing that all employee  
10          contributions to the pension fund after a certain date  
11          are mandatory and that the city shall pay such  
12          contributions to the fund on behalf of the employee;  
13          providing certain beneficiaries an option to roll over  
14          certain death benefits; providing for a refund of  
15          employee contributions; revising construction of the  
16          act; allowing DROP members the opportunity to elect an  
17          investment option, as determined by the board of  
18          trustees, to be applied to the participant's account  
19          for the plan year entering the DROP program and for  
20          each subsequent plan year; revising benefit  
21          limitations; revising requirements for distribution of  
22          benefits; providing a default distribution when a  
23          member fails to elect a distribution option; revising  
24          direct rollover options; revising the definitions of  
25          the terms "eligible rollover distribution," "eligible  
26          rollover plan," and "distributee"; providing an  
27          effective date.

28  
29   Be It Enacted by the Legislature of the State of Florida:

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30  
31 Section 1. Subsections (A), (E), (H), and (P) of section 4,  
32 subsection (A) of section 5, section 19, subsection (D) of  
33 section 22, subsections (A), (B), (D), (E), and (F) of section  
34 24, and sections 25 and 26 of chapter 23559, Laws of Florida,  
35 1945, as amended, are amended, and subsection (S) is added to  
36 section 4, subsection (C) is added to section 12, and subsection  
37 (C) is added to section 14 of that chapter, to read:

38 Section 4. Definitions.

39 (A) Salaries or Wages. Salaries or Wages for the purpose of  
40 this Act shall be the base amounts earned by the Employee, plus  
41 regular longevity bonuses, overtime, and shift premiums. Salary  
42 or Wages shall also include elective amounts that are excludible  
43 from the Employee's gross income under Sections 125 (including  
44 amounts that are not available to the Employee in cash in lieu  
45 of group health coverage because the Employee is unable to  
46 certify that he or she has other health coverage, but only if  
47 the Employer does not request or collect information regarding  
48 the Employee's other health coverage as part of the enrollment  
49 for the health plan); 403(b) (tax-sheltered annuity); 457  
50 (Section 457 plan); and 132(f)(4) of the Internal Revenue Code  
51 of 1986, as amended, and the regulations thereunder (the  
52 "Code"). Salaries or Wages shall exclude, ~~but exclusive of~~ other  
53 premiums, other than shift premiums, allowances, ~~or~~ special  
54 payments, or any casual nonrecurring or unpredictable bonuses;  
55 payments for unused accrued bona fide sick, vacation, or other  
56 leave; payments received by an Employee pursuant to a  
57 nonqualified unfunded deferred salary or wages plan; and  
58 severance pay that is paid after an Employee severs employment

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59 with the City. However, Salaries or Wages, as defined herein,  
60 earned but not paid to the Employee by the Employee's severance  
61 date with the City shall be considered Salary or Wages for Plan  
62 purposes. In addition to other applicable limitations set forth  
63 in the Plan, and notwithstanding any other provision of the Plan  
64 to the contrary, for Plan Years beginning on or after January 1,  
65 1996, the annual Salaries or Wages of each Employee taken into  
66 account under the Plan shall not exceed the annual compensation  
67 limit provided for in Section 401(a)(17) of the Code ~~the Omnibus~~  
68 ~~Budget Reconciliation Act of 1993 (the "OBRA 1993 Annual~~  
69 ~~Compensation Limit"). The OBRA 1993 Annual Compensation Limit is~~  
70 ~~\$150,000,~~ as adjusted by the Commissioner of the Internal  
71 Revenue Service for increases in the cost-of-living in  
72 accordance with Section 401(a)(17)(B) of the ~~Internal Revenue~~  
73 ~~Code of 1986, as amended (the "Code").~~ The cost-of-living  
74 adjustment in effect for a calendar year applies to any period,  
75 not exceeding 12 months, over which Salaries or Wages are  
76 determined (determination period) beginning in such calendar  
77 year. If a determination period consists of fewer than 12  
78 months, the ~~OBRA 1993 Annual Compensation Limit~~ will be  
79 multiplied by a fraction, the numerator of which is the number  
80 of months in the determination period, and the denominator of  
81 which is 12. ~~For Plan Years beginning on or after January 1,~~  
82 ~~1996, any reference in this Plan to the limitation under Section~~  
83 ~~401(a)(17) of the Code shall mean the OBRA 1993 Annual~~  
84 ~~Compensation Limit set forth in this provision.~~ The limitation  
85 on Salaries or Wages for an "eligible Employee" shall not be  
86 less than the amount which was allowed to be taken into account  
87 hereunder as in effect on July 1, 1993. "Eligible Employee" is

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88 an individual who was a participant in the Plan before the first  
89 Plan Year beginning after December 31, 1995. ~~Commencing for~~  
90 ~~earnings paid the first pay date after October 1, 2005, all~~  
91 ~~mandatory Employee Contributions to the Fund shall be picked up~~  
92 ~~and paid by the City. Such contributions, although designated as~~  
93 ~~Employee Contributions, shall be paid by the City in lieu of~~  
94 ~~contributions by the Employee. The contributions so assumed~~  
95 ~~shall be treated as tax-deferred Employer "pickup" contributions~~  
96 ~~pursuant to Section 414(h) of the Internal Revenue Code. Members~~  
97 ~~shall not have the option of receiving the contributed amounts~~  
98 ~~directly instead of having such contributions paid by the City~~  
99 ~~to the Fund.~~

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

115 (H) Military Service Time. For members rehired after leave  
116 to provide military service prior to December 12, 1994, in

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

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146 periods prescribed by the USERR Act, and must comply the  
147 ~~Employee complies~~ with the Employee contribution requirements  
148 prescribed by the USERR Act. The maximum service credit for  
149 uniformed service shall be 5 years or such other time period as  
150 may be prescribed by the USERR Act. Effective as of the dates  
151 reflected in the Heroes Earnings Assistance and Relief Tax Act  
152 ("HEART Act"), the Plan must comply with all applicable  
153 provisions of the HEART Act.

154 (P) Actuarial Equivalent. The Actuarial Equivalent of an  
155 Employee's Accrued Pension shall be determined by basing  
156 mortality on the 1983 Group Annuity Mortality Table for Males  
157 with female ages set back 6 years and post-disablement mortality  
158 upon 80 percent of the 1965 Railroad Board Ultimate Mortality  
159 Table, or such other mortality tables as are in compliance with  
160 the Code. This subsection does not apply to Plan Limitation  
161 Years beginning after December 31, 2008.

162 (S) Limitation Year. The limitation year shall be the Plan  
163 Year.

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

166 (A) Employee Contributions. Division A Employees.  
167 Commencing for earnings paid beginning with the first pay date  
168 after January 1, 2005, all Employee contributions to the Fund  
169 shall be mandatory Employee contributions and shall be picked up  
170 and paid by the City on behalf of the member. Such contributions  
171 shall be made by Employees in an amount equal to ~~There shall be~~  
172 ~~a contribution of~~ 7 percent of all Salaries or Wages of all  
173 Employees participating in this Fund, which shall be deducted  
174 from said Salaries or Wages by the Director of Finance, before

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175 the same are paid, as long as the Employee continues in the  
176 Service of the City of Tampa, regardless of the number of years  
177 of Service with the City. Such contributions, although  
178 designated as Employee contributions, shall be paid by the City  
179 in lieu of contributions by the Employee. The contributions so  
180 assumed shall be treated as tax-deferred Employer "pick-up"  
181 contributions pursuant to Section 414(h) of the Code. Members  
182 shall not have the option of receiving the contributed amounts  
183 directly instead of having such contributions paid by the City  
184 to the Fund.

185 Section 12. Death Benefits.

186 (C) When the designated beneficiary, as defined in Section  
187 401(a)(9)(E) of the Code, is not the Employee's spouse  
188 (including, without limitation, a child, parent, or sibling),  
189 distributions made after December 31, 2006, from Division A and  
190 Division B shall be made in accordance with Section 402(c)(11)  
191 of the Code, and such designated beneficiary shall have the  
192 option to roll over all or a portion of his or her death benefit  
193 via a direct trustee-to-trustee transfer to an inherited  
194 individual retirement account, as defined in Section  
195 408(d)(3)(c) of the Code, provided such distribution meets the  
196 definition of an eligible rollover distribution as defined in  
197 Section 26 of this Act.

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

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

201 Section 19. Construction. This Act shall be liberally  
202 construed in accordance with general law and the federal tax  
203 code, and if any part or portion thereof be declared invalid, or

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204 the application thereof to any person, circumstance, or thing is  
205 declared invalid, the validity of the remainder of this Act  
206 shall not be affected thereby.

207 Section 22. Deferred Retirement Option Program.  
208 Notwithstanding any other provisions of this Act, and subject to  
209 the provisions of this section, the Deferred Retirement Option  
210 Program, hereinafter referred to as the DROP, is an option under  
211 which an eligible member may elect, commencing on October 1,  
212 1999, to have the member's pension benefits calculated as of a  
213 certain date prior to retirement, and accumulate benefits plus  
214 the investment return pursuant to this section during the DROP  
215 calculation period. Participation in the DROP does not guarantee  
216 employment for the DROP calculation period, as defined in this  
217 section.

218 D. Interest and administrative costs. Interest shall  
219 accumulate annually ~~at a rate reflecting the Fund's net~~  
220 ~~investment performance~~, whether positive or negative, during the  
221 DROP calculation period, less the cost of administering the  
222 DROP, all of which shall be determined by the Board of Trustees.  
223 A DROP participant shall have the opportunity to elect, as  
224 provided in this subsection, an investment option to be applied  
225 to such DROP participant's account for the Plan Year when  
226 entering the DROP and for each subsequent Plan Year. In such  
227 election, the DROP participant shall choose to have interest  
228 accumulate annually, whether positive or negative, at either (i)  
229 a rate reflecting the Fund's net investment performance, as  
230 determined by the Board of Trustees, or (ii) a rate reflective  
231 of a low-risk variable rate selected annually by the Board of  
232 Trustees in its sole discretion. Each election must be made at



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233 such time, on such forms, and in such manner as the Board of  
234 Trustees may determine in its sole discretion. If a DROP  
235 participant fails to make a valid election upon entering the  
236 DROP, the Fund interest rate shall be applied as provided in (i)  
237 herein. If a DROP participant fails to make a valid election in  
238 a subsequent Plan Year, the election for the then-current Plan  
239 Year shall be applied.

240 Section 24. Limitations on Amounts of Benefits.

241 (A) For Plan Years ending after December 31, 2001, benefits  
242 for an Employee under this Plan, when expressed as a benefit  
243 payable annually in the form of a straight life annuity without  
244 regard to the death benefit or any other ancillary benefit,  
245 shall not at any time within the limitation year exceed the  
246 limits provided under Section 415(b) of the Code ~~\$90,000~~.

247 (B)1. The ~~\$90,000~~ limitation set forth in subsection (A)  
248 shall be actuarially reduced in accordance with regulations  
249 prescribed by the Secretary of the Treasury for any retirement  
250 benefit that may begin before an Employee attains age 62, by  
251 adjusting such benefit so that it is equivalent to such a  
252 benefit beginning at age 62. For Plan Years ending before  
253 January 1, 2002, and repealed for Plan Years ending thereafter,  
254 the reduction shall not reduce the ~~\$90,000~~ limitation set forth  
255 in subsection (A) to less than (a) \$75,000 if the benefit begins  
256 at or after age 55, or (b) if the benefit begins before age 55,  
257 the equivalent of the \$75,000 limitation for age 55.

258 2. If any retirement benefit begins after the Employee  
259 attains age 65, the ~~\$90,000~~ limitation set forth in subsection  
260 (A) shall be adjusted (based upon an interest rate assumption of  
261 5 percent) in accordance with regulations prescribed by the

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262 Secretary of the Treasury, by adjusting such benefit so that it  
263 is equivalent to such benefit beginning at age 65.

264 (D) In accordance with Section 415(b)(5) of the Code, the  
265 ~~\$90,000~~ limitation in subsection (A), and the limitation in  
266 subsection (C), shall be multiplied by a fraction (not in excess  
267 of 1), the numerator of which is the number of the Employee's  
268 years of Service in the Plan (in the case of the ~~\$90,000~~  
269 limitation set forth in subsection (A)) or the number of the  
270 Employee's years of Service (in the case of the limitation set  
271 forth in subsection (C)) and the denominator of which, in either  
272 case, is 10.

273 (E) As of January 1 of each calendar year, the ~~\$90,000~~  
274 limitation set forth in subsection (A) shall be adjusted as and  
275 if permitted by the Secretary of the Treasury, and any such  
276 adjusted limitation shall become effective as the maximum dollar  
277 limitation under the Plan for that calendar year. The maximum  
278 dollar limitation for a calendar year, as so adjusted, shall  
279 apply to limitation years ending with or within such calendar  
280 year.

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

283 1. In the event that any Employee participates in both a  
284 defined benefit plan and a defined contribution plan maintained  
285 by the City, then the sum of the Defined Benefit Plan Fraction  
286 (as defined in Section 415(e) of the Code) and the Defined  
287 Contribution Plan Fraction (as defined in Section 415(e) of the  
288 Code) for any limitation year shall not exceed 1.0.

289 2. In the event that the sum of the Defined Benefit Plan  
290 Fraction and the Defined Contribution Plan Fraction exceeds 1.0,

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291 then the Board of Trustees shall take such actions, applied in a  
292 uniform and nondiscriminatory manner, as will keep the benefits  
293 and annual additions thereto for such Employees from exceeding  
294 these limits. Adjustments shall be made to this Plan before any  
295 adjustments shall be required to any other plans.

296 Section 25. Latest Date of Commencement of Benefits  
297 Required Distributions. The distribution of a member's benefit  
298 shall be made in accordance with the following requirements, and  
299 shall otherwise comply with Section 401(a)(9) of the Code and  
300 the regulations thereunder, as prescribed by the Commissioner in  
301 Revenue Rulings, Notices, and other guidance published in the  
302 Internal Revenue Bulletin, to the extent that said provisions  
303 apply to governmental plans under Section 414(d) of the Code.  
304 The distribution provisions of Section 401(a)(9) of the Code  
305 shall override any distribution options in the Plan inconsistent  
306 with Section 401(a)(9) of the Code:

307 (A) Any benefit paid to a member ~~an Employee~~ shall commence  
308 not later than the last to occur of:

309 1. April 1 of the year following the calendar year in which  
310 the member ~~Employee~~ retires; or

311 2. April 1 of the year immediately following the calendar  
312 year in which the member ~~Employee~~ reaches age 70 1/2.

313 (B) Distributions of members' benefits will be made in  
314 accordance with Sections 1.401(a)(9)-2. through 1.401(a)(9)-9.  
315 of the Code and such other rules thereunder as may be prescribed  
316 by the Secretary of the Treasury, to the extent that said  
317 provisions apply to governmental plans under Section 414(d) of  
318 the Code.

319 ~~(B) In the case of a benefit payable by reason of an~~

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320 ~~Employee's retirement or other termination of employment, in no~~  
321 ~~event shall payment extend beyond the life or life expectancy of~~  
322 ~~the Employee or the joint lives or life expectancies of the~~  
323 ~~Employee and the Employee's designated beneficiary. In the case~~  
324 ~~of an Employee who is receiving his or her pension benefit as of~~  
325 ~~the date of his or her death, the survivor portion of the~~  
326 ~~Employee's pension benefit shall be paid at least as rapidly as~~  
327 ~~under the method being used prior to the Employee's death.~~

328 (C) Notwithstanding anything contained herein to the  
329 contrary, payments under the Plan to a Beneficiary due to a  
330 member's death shall satisfy the incidental death benefit  
331 requirements and all other applicable provisions of Section  
332 401(a)(9)(G) of the Code, the regulations issued thereunder  
333 ~~(including Section 1.401(a)(9)-2 of the proposed Treasury~~  
334 ~~regulations)~~, and such other rules thereunder as may be  
335 prescribed by the Secretary of the Treasury, including IRS  
336 Notice 2007-7, to the extent that said provisions apply to  
337 governmental plans under Section 414(d) of the Code.

338 Section 26. Direct Rollovers.

339 (A) This section applies to distributions made on or after  
340 January 1, 1993. Notwithstanding any provision of the Plan to  
341 the contrary ~~that would otherwise limit a distributee's (as~~  
342 ~~defined below) election under this section, a distributee may~~  
343 elect, at the time and in the manner prescribed by the  
344 Commissioner of the Internal Revenue Service, to have any  
345 portion of an eligible rollover distribution (as defined below)  
346 paid directly to an eligible retirement rollover plan (as  
347 defined below) specified by the distributee in a direct rollover  
348 (as defined below). If a member fails to elect a distribution

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349 option as provided under Sections 14 and 22 of this Act, then  
350 such member's benefit shall be rolled over to an individual  
351 retirement account designated by the Board of Trustees, as  
352 defined in Section 6.

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

355 1. An "eligible rollover distribution" is any distribution  
356 of all or any portion of the balance to the credit of the  
357 distributee, except that an eligible rollover distribution does  
358 not include: any distribution that is one of a series of  
359 substantially equal periodic payments (not less frequently than  
360 annually) made for the life (or life expectancy) of the  
361 distributee or the joint lives (or joint life expectancies) of  
362 the distributee and the distributee's designated beneficiary, or  
363 for a specified period of 10 years or more; any distribution to  
364 the extent such distribution is required under Section 401(a)(9)  
365 of the Code; ~~7~~ and the portion of any distribution that is not  
366 includable in gross income (determined without regard to the  
367 exclusion for net unrealized appreciation with respect to  
368 employer securities). Notwithstanding the above, a portion of a  
369 distribution shall not fail to be an "eligible rollover  
370 distribution" merely because the portion consists of after-tax  
371 voluntary Employee contributions that are not includable in  
372 gross income. However, such portion may be transferred only to  
373 an individual retirement account or annuity described in Section  
374 408(a) or (b) of the Code or to a qualified defined contribution  
375 plan described in Section 401(a) or 403(a) of the Code that  
376 agrees to separately account for amounts transferred, including  
377 separately accounting for the portion of such distribution that

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378 is includable in gross income and the portion of such  
379 distribution that is not so includable.

380 2. An "eligible retirement rollover plan" is an individual  
381 retirement account described in Section 408(a) of the Code, an  
382 individual retirement annuity described in Section 408(b) of the  
383 Code, other than an endowment contract; an annuity plan  
384 described in Section 403(a) of the Code, or a qualified trust  
385 (an employees' trust) described in Section 401(a) of the Code  
386 that is exempt from tax under Section 501(a) of the Code; an  
387 annuity plan described in Section 403(a) of the Code; an  
388 eligible plan under Section 457(b) of the Code that is  
389 maintained by a state, a political subdivision of a state, or  
390 any agency or instrumentality of a state or political  
391 subdivision and that agrees to separately account for amounts  
392 transferred into such plan from this Plan; or an annuity  
393 contract described in Section 403(b) of the Code that accepts  
394 the distributee's eligible rollover distribution. However, in  
395 the case of an eligible rollover distribution to the surviving  
396 spouse, an eligible retirement rollover plan is an individual  
397 retirement account or individual retirement annuity.

398 3. A "distributee" includes the member or former member ~~an~~  
399 ~~Employee or former employee~~. In addition, the member's  
400 ~~Employee's~~ or former member's ~~employee's~~ surviving spouse and  
401 the member's ~~Employee's~~ or former member's ~~employee's~~ spouse or  
402 former spouse who is the alternate payee under a qualified  
403 domestic relations order, as defined in Section 414(p) of the  
404 Code, are distributees with regard to the interest of the spouse  
405 or former spouse.

406 4. A "direct rollover" is a payment by the Plan to the

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407 eligible retirement plan specified by the distributee.

408 Section 2. This act shall take effect October 1, 2010.