HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 229 City of Tampa, Hillsborough County
SPONSOR(S): Young
TIED BILLS: **IDEN./SIM. BILLS:** SB 752

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Community & Military Affairs Subcommittee	13 Y, 0 N	Nelson	Hoagland
2) State Affairs Committee	15 Y, 0 N	Meadows	Hamby

SUMMARY ANALYSIS

The General Employees' Pension Plan for the City of Tampa was created by special act of the Florida Legislature in 1945. This plan is not part of the Florida Retirement System.

HB 229 amends the Tampa General Employees' Pension Plan. It revises definitions for: "salaries or wages," "employee," "military service time," "actuarial equivalent," and "limitation year." The bill also makes revisions to provisions relating to:

- employee contributions;
- death benefits;
- refund of contributions;
- reemployment of retired employees;
- construction of the special act;
- the deferred retirement option program;
- limitations on amounts of benefits;
- the latest date for commencement of benefits; and
- direct rollovers.

These changes are designed to allow the plan to comply with federal requirements. The bill also makes several technical changes, and provides an effective date of October 1, 2011.

According to the Actuarial Statement of Fiscal Soundness prepared by the Department of Management Services, Division of Retirement, there will be no material impact on the City's funding requirement as a result of the bill.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

State Constitution: Public Retirement and Pension Systems
Section 14, Art. X of the State Constitution provides that a governmental unit responsible for a retirement or pension system supported wholly or partially by public pension funds may not, after January 1, 1977, provide an increase in benefits to members or beneficiaries without concurrent provisions for funding the increase on a sound actuarial basis.

Florida Statutes: Actuarial Soundness of Retirement Systems
Part VII of 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 of the 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 a unit of local government may not 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 furnished a copy of such statement to the Division of Retirement, Department of Management Services. The statement also is required to indicate whether the proposed changes are in compliance with s. 14, Art. X of the State Constitution, and with s. 112.64, F.S., which relates to the administration of funds and amortization of unfunded liability.

Pursuant to s. 11(a)(21), Art. III of the State Constitution, s. 112.67, F.S., prohibits special laws in conflict with the requirements of the Act.

City of Tampa General Employees' Pension Plan
The General Employees' Pension Plan for the City of Tampa was created by special act of the Florida Legislature. Chapter 23559, L.O.F. (1945), as amended, provides the authority for the plan. This plan is not part of the Florida Retirement System. The plan's fund is administered by a seven-member board of trustees that approves pension benefits and manages the assets of the fund.

The plan has two divisions: Division A and Division B. Division A consists of those employees hired prior to October 1, 1981. Division B consists of those employees hired on or after October 1, 1981, and former Division A employees who elected to participate in Division B. The following chart depicts the major differences between Division A and Division B.

Topic	Division A	Division B
Vesting Period	Minimum of 6 years	Minimum of 6 years
Normal Retirement Age	55	62
Employee Contributions	7% of salary pretax to Retirement Fund, no contribution to Social Security	7.65% of salary to Social Security, no contribution to Retirement Fund
City Contributions	% needed to maintain adequate funding for benefits	% needed to maintain adequate funding for benefits plus 7.65% of salary to Social Security
Monthly Pension Calculation	.02 x average monthly salary over the highest 3 of the last 6 years of service x years of service plus .005 x average monthly salary over the highest 3 of the last 6 years of service x years of service over 15 years	.012 x average monthly salary over the highest 3 of the last 6 years of service x years of service for City pension. Contact the Social Security Office on Social Security's benefits.
Deferred Retirement	Retirement at an age younger than 55 with 6 or more years of service and a monthly pension starting at age 55	Retirement at an age younger than 62 with 6 or more years of service and a monthly pension starting at age 62
Death Benefits	Widow(er) receives 75%, 50% on remarriage. Children under age 18 receive $100.00 per month.	Spouse on day employee retirees receives 50%. Contact the Social Security Office on Social Security's benefits
Deferred Retirement Option Program (DROP) Benefits	DROP accumulations for a maximum of 7 years provided requirements for longevity retirement have been met	DROP accumulations for a maximum of 7 years provided requirements for longevity retirement or early retirement have been met
Cost-Of-Living Adjustment	2.2% every January 1st	1.2% every January 1st
Disability Retirement	Retirement at an age younger than 55. Participant's monthly pension checks start immediately irregardless of his or her age. Has to be based on a total and permanent disablement.	Retirement at an age younger than 62. Participant's monthly pension checks start immediately irregardless of his or her age. Has to be based on a total and permanent disablement.

[1]

Effect of Proposed Changes

HB 229 amends ch. 23559, L.O.F. (1945), as amended, revising the General Employees' Pension Plan for the City of Tampa. According to the City, this update will allow the plan to comply with federal requirements.[2] Other changes were made to align the plan's terms with its present operation (such as deleting references to dollar limits that no longer apply, eliminating references to unnecessary terms, and adding definitions for existing terms), and additional language was added as the result of litigation concerning contract employees.

[1] Overview of the retirement plan from "The Retirement Plan for City of Tampa General Employees," published October 1, 2006.

[2] The City of Tampa General Employees Pension Plan is a "governmental plan" as defined in Title I and IV of the Employee Retirement Income Security Act of 1974 (ERISA) because it is "a plan established and maintained for employees by the Government of United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." A similar definition of "governmental plan" is found in the Internal Revenue Code. Although the plan is largely exempt from ERISA because of its governmental plan status, there is no such broad exemption from the Code, and the plan is required to comply with parts of the Code (and related regulations) concerning the income tax requirements which preserve the tax-favored status of both the plan's operations and the benefits accruing to plan participants. The Internal Revenue Service (IRS) permits qualified plans to operate under changed laws without constant amendment by providing a "remedial amendment period," whereby the plan follows the revised laws operationally but is only required to incorporate the changes by the end of the specified period. The plan's remedial amendment period for required changes generally ended on January 31, 2011. The IRS produces a "Cumulative List of Changes in Plan Qualification Requirements" to instruct plan sponsors of the amendments required in any remedial cycle. The list for the January 31, 2011, cycle was the basis for most of the changes in the amended plan. A retirement plan which fails to be amended to include the required modifications may not receive a favorable determination letter. More importantly, upon an IRS audit or other review, the plan sponsor could be forced to make the changes retroactively, and the non-amended plan conceivably could lose its tax-favored status entirely (although this penalty is highly unlikely with a governmental plan).

Definitions (Section 4)
The bill revises the definitions for:

- "Salaries or Wages" by including elective amounts that are excludible from the employee's gross income; and excluding payments for unused accrued bona fide sick, vacation or other leave, payments to a nonqualified unfunded deferred salary plan, or severance pay. This change is required by Section 401(a)(17) of the Internal Revenue Code following the enactment of the Economic and Growth Tax Relief Reconciliation Act of 2001.[3] The bill also updates references to annual compensation limits to align the plan's language with the federal Omnibus Budget Reconciliation Act.

- "Employee" by specifically excluding independent contractors, thereby clarifying that these individuals do not qualify for pension benefits.[4]

- "Military Service Time" to ensure compliance with the Uniformed Services Employment and Reemployment Rights Act of 1994[5] (by adding language that limits the provisions to members rehired on or after December 12, 1994), and the Heroes Earnings Assistance and Relief Tax Act by adding required language.

- "Actuarial Equivalent" by providing that this definition does not apply to plan limitation years beginning after December 31, 2008.

The bill also provides a new definition for "Limitation Year," defining that term as the "Plan Year." This term is required pursuant to Internal Revenue Code Section 415, and has been an undefined plan term.

Contributions (Section 5)
For "Division A" employees, the bill provides that, commencing with earnings paid beginning with the first pay date after January 1, 2005, employee contributions to the fund are mandatory and are paid by the City.[6] This language conforms to prior amendments that clarified that the City pays the mandatory employee contributions so that these contributions are "pre-tax." The practice is required in order that the City's contributions do not create taxable income to employees, and is specified by Internal Revenue Code Section 414(h). Previously, this language was contained in the plan's definition of "Salaries or Wages" with an October 1, 2005, starting date.[7]

Death Benefits (Section 12)
Non-spouse beneficiaries are given the option to rollover all or a portion of a death benefit to an inherited individual retirement account (IRA) after December 31, 2006, if the distribution is an eligible rollover.[8] If the member fails to elect a distribution option, the employee contribution refunds are rolled over to an IRA designated by the board of trustees. These updated options are required under Internal Revenue Code Section 402(c)(11), as amended by the Pension Protection Act of 2006.

[3] Section 125 of the Internal Revenue Code covers health care and dependent care flexible spending accounts and the payment of pre-tax premiums under a health care plan; Section 403(b) is the available elective deferral plan; Section 457 covers the City's nonqualified deferred compensation plan; and Section 132(f) is available for pre-tax transportation plans. The references to pre-tax deferrals under these Code sections brings the plan into compliance with the Code and reinforces that pre-tax contributions to other benefit plans does not reduce a participant's compensation for purposes of calculating benefits under the plan.
[4] This change reportedly was made in response to *Vizcaino v. Microsoft*, 97 F.3d 1187 (9th Cir. 1996). See, III. Comments, C. Drafting Issues or Other Comments, of this analysis for additional discussion.
[5] This act was passed after the first Gulf War and intended to protect the rights of returning veterans, who increasingly were members of the National Guard or Reserve.
[6] These contributions are treated as tax-deferred employer "pick-up" contributions pursuant to Section 414(h) of the Internal Revenue Code.
[7] The City has indicated that this language updates the plan to reflect IRS rules and the application that was already in effect. Whether the effective date is October 1 (the first day of the plan year) or January 1 (the first day of the calendar period which begins the actuary's valuation), there is no impact to the plan. The revised language in no way changes the treatment of contributions by the city or employees. The October 1st date in the 2005 local bill may have been selected to match the effective date of the act. However, using the January 1st date (reflective of a tax year) will have no fiscal impact on the City as it is current practice.
[8] The term "eligible rollover distribution" is defined in Section 26 of the pension plan.

Refund of Contributions (Section 14)
A new paragraph is added by the bill, which provides that refund of employee contributions will be paid in accordance with Section 26 of the plan. This language merely provides an internal cross-reference.

Reemployment of Retired Employees (Section 16)
With regard to retired employees who are reemployed, the bill corrects a scrivener's error in previous bills in the formula for the monthly pension payable for eligible persons. Currently, the plan states that the formula uses the monthly pension the employee was receiving immediately prior to the commencement of additional service plus one and one-tenth of the average monthly salary at the end of the period of additional service, multiplied by the number of years of additional service. The calculation actually uses one and two-tenths of the average monthly salary.[9]

Construction (Section 19)
New language is added by the bill which provides that the act will be construed in accordance with general law and the federal tax code.

Deferred Retirement Option Program (Section 22)
The bill provides that 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 low-risk variable rate selected annually by the Board in its discretion. This provision is designed to afford DROP participants an option that reduces exposure to market fluctuations.

Limitations on Amounts of Benefits (Section 24)
The bill ties limitations on the amounts of benefits to specified plan years. Also, the bill specifies that distribution of a member's benefit be made in accordance with the Federal Tax Code. This avoids the current specific dollar limits in the plan that can change from year to year. The bill also recognizes the deletion of the "combined plan" benefit limits in 2000.

Latest Date of Commencement of Benefits (Section 25)
This section is amended to clarify and expand the minimum withdrawal of funds by beneficiaries by incorporating by reference Section 401(a)(9) of the Internal Revenue Code.

Direct Rollovers (Section 26)
This section is amended to provide for the automatic rollover of small distributions into an individual retirement account. This practice has been required since 2005 by Internal Revenue Code Section 401(a)(31)(B), and IRS Notice 2005-5. The change is necessary to keep the plan in compliance with that section, which provides that if a terminated employee's account balance is between $1,000 and $5,000, and the plan mandates a distribution of the account balance, the distribution must be made to an IRA unless the terminated employee directs otherwise.

The bill also makes several technical changes, and provides an effective date of October 1, 2011.

B. SECTION DIRECTORY:

Section 1: Amends ch. 23559, L.O.F. (1945), as amended, the General Employees' Pension Plan for the City of Tampa.

Section 2: Provides an effective date.

[9] According to an "Explanatory Memorandum" from the Hillsborough County Legislative Delegation, in 2005 (ch. 2005-326, L.O.F.) and 2006 (ch. 2006-346, L.O.F.), changes to the multiplier for the General Employees Pension Plan Division B members were approved by the Florida Legislature. These changes were inadvertently not applied to Section 16 (Reemployment of Retired Employees).

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes [x] No []

IF YES, WHEN? December 18, 2010.

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

B. REFERENDUM(S) REQUIRED? Yes [] No [x]

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached [] No []

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached [x] No []

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Drafting Issues

None.

Other Comments

The Actuarial Statement of Fiscal Soundness prepared by the Department of Management Services, Division of Retirement,[10] provides:

- This bill complies with the requirements of s. 14, Art. X of the State Constitution.
- This bill satisfies the actuarial cost impact provisions of part VII of ch. 112, F.S.
- Fiscal Note: One issue of concern is the change to Section 4(A) which defines "Salary or Wages" to include members' deferrals into the City's [plan] 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 change in definition of "employee" may not be enforceable. This provision in the bill would not allow the City to treat workers as independent contractors solely because the work is performed under an agreement that identifies an individual as such.

Reference *Vizcaino v. Microsoft*, wherein Microsoft Corporation was found to have 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 had signed employment agreements stating that they were independent contractors and not employees, it was

[10] Statement prepared by Joseph Edmonds, Enrolled Actuary, 08-3518, dated January 24, 2011.

concluded that having the workers sign such agreements did not make it so under the law if they otherwise failed to qualify under the IRS's "20 factor test."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not Applicable.