

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1167 City of West Palm Beach, Palm Beach County

SPONSOR(S): Local Government Affairs Subcommittee; Kerner

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local Government Affairs Subcommittee	12 Y, 0 N, As CS	Darden	Miller
2) Government Operations Subcommittee	12 Y, 0 N	Harrington	Williamson
3) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The West Palm Beach Firefighters Pension Fund (Fund) was created by special act of the Legislature in 1947. Each firefighter employed by West Palm Beach Fire Rescue is a pension fund participant.

The bill amends the definition of “actuarial equivalent value” to mean the stated determination using an interest rate of 8.00 percent, rather than 8.25 percent, and the RP-2000 Mortality Table, rather than the 1983 Group Annuity Mortality Table for males.

The bill amends the special act creating the Fund to define “Fire Chief” and to provide the chief with modified pension benefits. The bill authorizes in-service distributions when the Fire Chief is retained after reaching normal retirement age.

The bill reduces the expected employee contribution and modifies the use of premium tax proceeds to lower “actual employee contribution” rates. The bill also modifies the share of premium tax proceeds allocated to share accounts and the options available to plan members in managing their share accounts. The bill adds additional options for employees who choose to participate in the BackDROP program.

The bill is projected to decrease the City of West Palm Beach’s contribution requirements to the Fund by \$2,163,589 in Fiscal Year 2015-2016 and \$800,000 in Fiscal Year 2016-2017. The changes made by this bill are the result of a collective bargaining agreement between the City of West Palm Beach and International Association of Firefighters Local 727.

This bill will take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Firefighter Pensions: Marvin B. Clayton Firefighters Pension Trust Fund Act

Local firefighter pension plans¹ are governed by ch. 175, F.S., the Marvin B. Clayton Firefighters Pension Trust Fund Act (Clayton Act).² Originally enacted in 1939, the Clayton Act encouraged cities to create firefighter pension plans by providing access to premium tax revenues. The Clayton Act sets forth minimum benefits and standards for municipal firefighter pensions, which cannot be reduced by municipalities; however, the benefits provided by local law plan may vary from the provisions in the Clayton Act so long as the minimum standards are met.

Local firefighter pension plans created pursuant to the Clayton Act are funded by four sources:

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);³
- Employee contributions;⁴
- Other revenue sources; and⁵
- Mandatory payments by the city of the normal cost of the plan.⁶

The premium tax is an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.⁷ It is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (Division). In 2013, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$74.7 million.⁸

To qualify for insurance premium tax dollars, plans must meet requirements found in ch. 175, F.S. Responsibility for overseeing and monitoring these plans is assigned to the Division; however, the day-to-day operational control rests with the local boards of trustees.⁹ The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., unless specifically authorized to vary from the law. If the Division deems that a firefighter pension plan created pursuant to ch. 175, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.¹⁰

The default employee contribution under the Clayton Act is five percent of salary, but may be adjusted.¹¹ A municipality or special fire control district may elect to make an employee's contributions, but the employee must still contribute at least 0.5 percent of his or her salary.¹² Rates may also be

¹ See Department of Management Services, *2014 Local Government Annual Report*, Appendix I, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (accessed 3/19/15) (chart showing retirement plans offered by municipalities in the state) (herein DMS Local Government Reports).

² S. 175.025, F.S.

³ S. 175.091(1)(a), F.S.

⁴ S. 175.091(1)(b), F.S.

⁵ S. 175.091(1)(c), (e)-(g), F.S.

⁶ S. 175.091(1)(d), F.S.

⁷ S. 175.101, F.S.

⁸ Department of Management Services, *Municipal Police and Fire Plans*, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (accessed 3/19/15).

⁹ See s. 175.071, F.S.

¹⁰ See s. 175.341(1), F.S.

¹¹ S. 175.091(1)(b), F.S.

¹² S. 175.091(2)(a), F.S.

increased above five percent, subject to the consent of members' collective bargaining representative or, if none, by a majority consent of the firefighter members of the fund.¹³

Florida Protection of Public Employee Retirement Benefits Act

The Florida Constitution prohibits any increase in retirement or pension benefits for a publicly funded plan, unless the increase has made or concurrently makes provision for funding the increase on an actuarially sound basis.¹⁴ The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act), Part VII of ch. 112, F.S., implements the provisions of Art. X, s. 14, Florida Constitution.¹⁵ The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds.¹⁶

Local governments are prohibited from agreeing to a proposed change in retirement benefits if the plan administrator did not issue a statement of actuarial impact of the proposed change before both the adoption of the change by the governing body of the local government and the last public hearing about the proposed change.¹⁷ This statement must also be furnished to the Division before the local government can agree to the change.¹⁸ The statement must indicate whether the proposed change complies with Art. X, s. 14, Florida Constitution and with s. 112.64, F.S. (concerning the administration of pension funds and the amortization of any unfunded actuarial liability).¹⁹

West Palm Beach Firefighters Pension Fund

The Legislature created the West Palm Beach Firefighters Pension Fund (Fund or Plan) in 1947.²⁰ As of September 30, 2014, the Plan has 181 active and 188 retired members.²¹ As of September 30, 2013, the Plan had \$164,579,552 in total assets and \$76,292,316 in unfunded actuarial accrued liability.²² Plan members receive three percent of their final annual salary for each year of employment by the fire department.²³ Plan members are not entitled to benefits unless they have served for at least 10 years.²⁴ Normal retirement age under the Plan varies depending on the number of years of service:²⁵

- For 10 years of service, 55.
- For 15 years of service, 50.
- For 26 years of service, any age.

The Plan also provides disability benefits. Members injured in the line of duty are entitled to the greater of their accrued benefit or 65 percent of final annual salary.²⁶ Members disabled outside the line of duty are entitled to their accrued benefits if they have at least five years of service, with a minimum of 25 percent of the final annual salary if they have at least 10 years of service.²⁷ Members who die before normal retirement age also are entitled to benefits. Members who die in the line of duty are entitled to two-thirds of their highest 12-month salary of the top-step paygrade, while members who die outside the line of duty are entitled to two-thirds of their accrued benefit, if they have at least five years of service.²⁸

¹³ S. 175.091(2)(b), F.S.

¹⁴ Art. X, s. 14, Fla. Const.

¹⁵ S. 112.61, F.S.

¹⁶ S. 112.62, F.S.

¹⁷ S. 112.63(3), F.S.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Ch. 47-24981, Laws of Fla.

²¹ DMS Local Government Reports, p. 17 of Appendix F.

²² DMS Local Government Reports, p. 19 of Appendix A.

²³ DMS Local Government Reports, p. 67 of Appendix B.

²⁴ *Id.*

²⁵ *Id.*

²⁶ DMS Local Government Reports, p. 36 of Appendix B (con't) - Added Benefit Data.

²⁷ *Id.*

²⁸ *Id.*

The Plan currently assumes eight percent annual interest on its assets.²⁹ During the most recent fiscal year before the report, the Plan had actually seen 11.50 percent growth in the actuarial value of its assets and 19.30 percent growth in the market value of its assets.³⁰

Each member of the Plan is credited a pro rata share of the moneys received from the premium tax.³¹ Vested members may make an annual election of how to credit investment earnings for the upcoming year.³² Members may choose to receive:

- The percentage of profits or losses earned by the Fund as a whole,³³
- A fixed rate of 8.25 percent for members who reached normal retirement age on or before May 13, 2012, or have a calculated BackDROP date of on or before October 1, 2011, and a fixed rate of four percent after those dates,³⁴ or
- A mix of the above two options³⁵

The city funds the share accounts using the proceeds from the premium tax.³⁶ For specified years, however, the premium tax funds are instead directed to reducing employee contributions to the Fund to 13.1 percent.³⁷

Certain plan members are eligible to take part in the Backwards Deferred Retirement Option (BackDROP) plan.³⁸ Members are not able to receive BackDROP benefits that are greater than the accumulation of 60 months of the monthly retirement benefit.³⁹ Members must terminate employment to receive the BackDROP payment.⁴⁰

When a Plan member elects to receive the BackDROP benefit, the member's retirement benefits are calculated as if the member had chosen to retire at a date more than 36 months, but not less than 60 months, earlier.⁴¹ The BackDROP benefit is paid as a lump sum, including 8.25 percent less expenses for members who reached normal retirement age on or before May 13, 2012, or have a calculated BackDROP date of on or before October 1, 2011, and four percent less expenses for retirements after May 13, 2012.⁴²

The lump sum received under BackDROP must be paid within six months,⁴³ except that employees who reached normal retirement age on or before May 13, 2012, or have a calculated BackDROP date of on or before October 1, 2011, may elect to be paid in installments or with an annuity.⁴⁴ Any BackDROP funds held by the city receive credit for investment earnings like standard benefits.⁴⁵

Members are allowed to transfer accumulated sick leave, vacation leave, and other leave payable to their Plan account.⁴⁶ For members who reached normal retirement age on or before May 13, 2012, or have a calculated BackDROP date of on or before October 1, 2011, the proceeds must be invested in the Fund for at least a year.⁴⁷ All other members must take a lump sum payment within six months.⁴⁸

²⁹ DMS Local Government Reports, p. 20 of Appendix E.

³⁰ *Id.*

³¹ Ch. 47-24981, s. 18(5)(j), Laws of Fla., as amended.

³² Ch. 47-24981, s. 18(5)(j)3.c, Laws of Fla., as amended.

³³ Ch. 47-24981, s. 18(5)(j)3.c(I), Laws of Fla., as amended.

³⁴ Ch. 47-24981, s. 18(5)(j) 3.c (II), Laws of Fla., as amended.

³⁵ Ch. 47-24981, s. 18(5)(j) 3.c(III), Laws of Fla., as amended.

³⁶ Ch. 47-24981, s. 18(3)(a), Laws of Fla., as amended.

³⁷ *Id.* The current version of the act specifies calendar years 2012, 2013, and 2014.

³⁸ Ch. 47-24981, s. 18(5)(k)(1), Laws of Fla., as amended. Plan members who are at least 58 years of age with 13 or more years of service, 53 years of age with 18 or more years of service, or any age with 26 years or more of service.

³⁹ Ch. 47-24981, s. 18(5)(k)(1)1.b, Laws of Fla., as amended.

⁴⁰ Ch. 47-24981, s. 18(5)(k)(1)1.d, Laws of Fla., as amended.

⁴¹ Ch. 47-24981, s. 18(5)(k)(1)2.a, Laws of Fla., as amended.

⁴² *Id.*

⁴³ Ch. 47-24981, s. 18(5)(k)(1)2.c, Laws of Fla., as amended.

⁴⁴ Ch. 47-24981, s. 18(5)(k)(1)2.c(I), Laws of Fla., as amended.

⁴⁵ Ch. 47-24981, s. 18(5)(k)(1)3, Laws of Fla., as amended.

⁴⁶ Ch. 47-24981, s. 18(21), Laws of Fla., as amended.

⁴⁷ Ch. 47-24981, s. 18(21)(b)4, Laws of Fla., as amended

Effect of Proposed Changes

Definition of Actuarial Equivalent Value

The bill amends the definition of “actuarial equivalent value,” “actuarial equivalence,” or “single sum value” to mean the stated determination using an interest rate of 8.00 percent, rather than 8.25 percent, and the RP-2000 Mortality Table, rather than the 1983 Group Annuity Mortality Table for males.

Fire Chief

The bill defines “Fire Chief” as the executive officer for the City of West Palm Beach Fire Department. It also amends the definition of “firefighter” and “membership” to provide that the Fire Chief has the option to elect to participate, or not, in the Plan.

The bill provides that if the City decides to retain the Fire Chief, the Fire Chief must not be required to terminate employment to be eligible for BackDROP participation at normal retirement. The bill authorizes in-service distributions when the Fire Chief is retained after reaching normal retirement.⁴⁹

Use of Chapter 175 Premium Tax Proceeds

The bill provides that a portion of the chapter 175, F.S., premium taxes must be used to reduce the employee contributions and the remainder must be allocated to the member share accounts. Specifically, it allocates premium tax proceeds received by the city, starting with calendar year 2015, as follows:

- 2015: 85 percent to reduce employee contributions, 15 percent to share accounts.
- 2016: 65 percent to reduce employee contributions, 35 percent to share accounts.
- 2017: 35 percent to reduce employee contributions, 65 percent to share accounts.
- 2018 and after: 100 percent to share accounts.

Employee Contributions

The bill reduces the expected employee contributions as follows:

- Currently: 25 percent.
- Calendar year 2015: 22 percent.
- Calendar year 2016: 20 percent.
- Calendar year 2017: 17 percent.
- Starting October 1, 2018: 13.1 percent.

The actual employee contribution rate, after the city applies premium tax receipts, remains at the current rate of 13.1 percent.⁵⁰ If premium tax proceeds are not sufficient to reduce employee contributions to 13.1 percent, the bill provides for the city to contribute the difference.

Investment Share Crediting

The bill removes the four percent fixed rate option effective October 1, 2015. After October 1, members will have the option to receive investment share credits equal to:

- The percentage of profits or losses earned by the Fund as a whole; or
- A percentage based on the profits and losses earned by the Fund as a whole, but with a ceiling of eight percent and a floor of zero percent.

⁴⁸ *Id.*

⁴⁹ The bill provides for in-service distributions to the Fire Chief in specified circumstances. It provides that the in-service distributions are in accordance with s. 401(a)(36) of the Internal Revenue Code (Code). Section 401(a)(36) of the Code provides that a pension plan does not fail to qualify under s. 401(a) solely because the plan provides that a distribution may be made to an employee who has attained age 62 and who has not separated from employment at the time of distribution. However, the IRS and Department of Treasury recently issued Notice 2012-29 (Notice) to announce their intent to issue guidance on specific provisions in the Code. Plans may rely on the Notice until the regulations are amended. According to counsel for the Board of Trustees for the Fund, the Plan is relying on the Notice, which expands the age-50 safe harbor provisions to plans wherein substantially all of the participants in the plan are qualified public safety employees. The Notice can be found online at: <http://www.irs.gov/Retirement-Plans/Guidance-on-Normal-Retirement-Age-Rules-for-Governmental-Plans> (last visited March 20, 2015).

⁵⁰ Except for January 1, 2018, to September 30, 2018. See III.C Drafting Issues or Other Comments.

BackDROP

Effective October 1, 2015, the bill allows:

- All Plan members to elect to take BackDROP payments as a lump sum, in installments, or as an annuity.
- Members who retire after October 1, 2015, and who do not have a calculated BackDROP date of October 1, 2011, can choose a BackDROP benefit ranging from one month to 60 months.

The bill maintains the parallel structure for BackDROP funds held by the city receiving credit for investment earnings like standard benefits, requiring Plan members utilizing this option to choose between the absolute percentage of profits or losses earned by the Fund as a whole, or subject to an eight percent ceiling and a zero percent floor.

The bill requires all members to leave transferred accumulated sick leave, vacation leave, and other leave in the Plan for at least a year.

B. SECTION DIRECTORY:

Section 1: Amends Ch. 47-24981, L.O.F., as amended, regarding the West Palm Beach Firefighters Pension Fund.

Section 2: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 19, 2014.

WHERE? *The Palm Beach Post*, a daily newspaper published in Palm Beach 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:

This bill does not provide authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 18, 2015, the Local Government Affairs Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute. The amendment corrects section numbering, removes unnecessary text, and underlines new text inadvertently marked as part of the current version of the act.

This analysis is drawn to the bill as amended.