

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1025 Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County

SPONSOR(S): Government Accountability Committee; Ingram

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	12 Y, 0 N	Darden	Miller
2) Oversight, Transparency & Administration Subcommittee	13 Y, 0 N	Moore	Harrington
3) Government Accountability Committee	22 Y, 0 N, As CS	Darden	Williamson

SUMMARY ANALYSIS

The Firefighters' Relief and Pension Fund of the City of Pensacola (Fund) was established by the Legislature in 1941. Each firefighter employed by the City of Pensacola is a Fund participant.

The bill removes certain limitations on the types of pay included in determining a firefighter's compensation for firefighters entering the Fund on or after June 10, 2015, placing those members on the same footing as other Fund members, except that overtime pay is not included. The bill revises the treatment of partial years in calculating years of service.

The bill prohibits cost of living increases for Fund participants entering the Deferred Retirement Option Plan on or after June 10, 2015. The bill also removes a provision enabling the Civil Service Board of the City of Pensacola to determine if a firefighter has reached the mandatory retirement age of 70. Lastly, the bill updates references to city departments, incorporates the date a previous revision was signed into law, and provides a severability clause.

The Economic Impact Statement submitted with the bill states that it is projected to have no fiscal impact.

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 plans are governed by ch. 175, F.S., the Marvin B. Clayton Firefighters Pension Trust Fund Act (Clayton Firefighters Pension Act).¹ Originally enacted in 1939, the Clayton Firefighters Pension Act encouraged cities to create firefighter pension plans by providing access to premium tax revenues. The Clayton Firefighters Pension Act sets forth minimum benefits and standards for municipal firefighter pensions, which cannot be reduced by municipalities; however, the benefits provided by a local law plan may vary from the provisions in the Clayton Firefighters Pension Act so long as the minimum standards are met.

Local firefighter pension plans created pursuant to the Clayton Firefighters Pension 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);²
- Employee contributions;³
- Other revenue sources;⁴ and
- Mandatory payments by the city of the normal cost of the plan.⁵

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.⁶ 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 2015, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$73.8 million.⁷

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.⁸ 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.⁹

The default employee contribution under the Clayton Firefighters Pension Act is five percent of salary, but the percentage may be adjusted.¹⁰ 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

¹ Section 175.025, F.S.

² Section 175.091(1)(a), F.S.

³ Section 175.091(1)(b), F.S.

⁴ Section 175.091(1)(c), (e)-(g), F.S.

⁵ Section 175.091(1)(d), F.S.

⁶ Section 175.101, F.S.

⁷ Department of Management Services, *Firefighters' 2015 Premium Tax Distribution Calculation*, available at http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/facts_and_figures (last accessed Mar. 6, 2017).

⁸ See s. 175.071, F.S.

⁹ See s. 175.341(1), F.S.

¹⁰ Section 175.091(1)(b), F.S.

salary.¹¹ Rates may also be 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.¹²

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.¹³ 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.¹⁴ The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds.¹⁵

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.¹⁶ This statement must also be furnished to the Division before the local government can agree to the change.¹⁷ 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).¹⁸

Firefighters' Relief and Pension Fund of the City of Pensacola

The Firefighters' Relief and Pension Fund of the City of Pensacola (Fund) was established by the Legislature in 1941.¹⁹ The act governing the Fund was most recently amended in 2015.²⁰ As of September 30, 2016, the Fund has 86 active members, 161 retired members, and 30 members in the Deferred Retirement Option Plan (DROP).²¹ As of October 1, 2015, the Fund had \$108,697,588 in total assets and \$15,297,740 in unfunded actuarial accrued liability.²² Normal retirement age is 52 years of age for those with at least ten years of service and any age for those with at least twenty-five years of service.²³

The Fund currently assumes 7.75 percent annual growth of its assets.²⁴ During the 2015-16 fiscal year, the Fund saw a 7.54 percent growth in the actuarial value of its assets and a 1.56 percent decline in the market value of its assets.

¹¹ Section 175.091(2)(a), F.S.

¹² Section 175.091(2)(b), F.S.

¹³ Art. X, s. 14, Fla. Const.

¹⁴ Section 112.61, F.S.

¹⁵ Section 112.62, F.S.

¹⁶ Section 112.63(3), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Chapter 41-21483, Laws of Fla.

²⁰ Chapter 2015-206, Laws of Fla.

²¹ Department of Management Services, *Florida Local Government Retirement Systems 2016 Annual Report*, p. 12 of Appendix F, available at

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports (last accessed Mar. 6, 2017) (herein DMS Local Government Reports).

²² DMS Local Government Reports, p. 15 of Appendix A.

²³ DMS Local Government Reports, p. 50 of Appendix B.

²⁴ DMS Local Government Reports, p. 16 of Appendix E.

Cost of Living Increases

The Fund provides for a cost of living increase for:²⁵

- The lesser of CPI-U²⁶ or 3 percent, for Fund participants who retired before June 10, 2015;
- The lesser of CPI-U or 2 percent, for Fund participants hired before June 10, 2015, but retiring after June 10, 2015; or
- The lesser of CPI-U or 1.25 percent, for Fund participants hired on or after June 10, 2015.

Fund members participating in DROP may receive cost of living increases while participating.

Mandatory Retirement

All firefighters employed by the City of Pensacola are required to retire upon reaching 70 years of age.²⁷ If there is any dispute over the firefighter's age, the Civil Service Board of the City of Pensacola is responsible for making the determination subject to a hearing requirement.

Definitions

"Actuarial equivalent" is defined for the purpose of the Fund as:²⁸

- An equality in value computed based on the 1971 Group Annuity Mortality Table and an interest rate equal to eight percent per year, for plan years before October 1, 2013, except for disability retirement payments;
- An equality in value computed based on the SSA-74 Mortality Table and an interest rate equal to eight percent per year for disability retirement payments for plan years before October 1, 2013; or
- An equality in value computed based on the RP 2000 Combined Healthy Mortality Table and an interest rate equal to eight percent per year, for plan years beginning on or after October 1, 2013.

"Compensation," "salary," and "earnings" are defined as the wages paid to a firefighter, including:²⁹

- Up to 300 hours per year of annual overtime pay for firefighters with ten or more years of service as of June 10, 2015; and
- Up to 200 hours per year of annual overtime pay for firefighters with less than ten years of service as of June 10, 2015.

For firefighters hired on or after June 10, 2015, overtime pay, station or watch captain pay, special duty pay, in-service sick leave redemption pay, bonuses, and lump-sum payments not paid at termination are not considered compensation for the purpose of calculating benefits.

The term "years of service" is defined as the aggregate number of years of service, including fractional parts of a year.³⁰ Military service is included in the calculation of years of service under certain conditions.

²⁵ Chapter 41-21483, s. 6, Laws of Fla., as amended.

²⁶ "CPI-U" is the Consumer Price Index for All Urban Consumers, issued by the United States Department of Labor on a monthly basis. For additional information, see <https://www.bls.gov/cpi/> (last accessed Mar. 6, 2017).

²⁷ Chapter 41-21483, s. 8, Laws of Fla., as amended.

²⁸ Chapter 41-21483, s. 30(b), Laws of Fla., as amended.

²⁹ Chapter 41-21483, s. 30(d), Laws of Fla., as amended.

³⁰ Chapter 41-21483, s. 30(n), Laws of Fla., as amended.

Effect of Proposed Changes

Cost of Living Increases

The bill states that Fund participants entering DROP on or after June 10, 2015, may not receive cost of living benefit increases during the period for which they are in DROP. The bill replaces the phrase “the effective date of the Act,” added by revisions in 2015, with the date those revisions became law (June 10, 2015).

Mandatory Retirement

The bill removes the authority of the Civil Service Board of the City of Pensacola to determine if a firefighter has reached the mandatory retirement age of 70.

Definitions

The bill revises the definition of “actuarial equivalent” for fund years beginning on and after October 1, 2013, by requiring the equality in value to be calculated based on “the most recent actuarial valuation.”

The bill amends the definition of “compensation,” “salary,” and “earnings” to expressly include overtime pay, station or watch captain pay, special duty pay, in-service sick leave redemption pay, bonuses, lump-sum payments not paid at termination, and any other payments required by law to be included in pension calculations. However, overtime pay is not included in compensation for firefighters hired on or after June 10, 2015, but all other types of compensation are included.

The bill amends the definition of “years of service” to only include fractional parts of a year if those portions are “major.” The bill defines a “major fractional part of a year” as six months and one day.

Other Changes

The bill removes references to the City of Pensacola’s Director of Finance and replaces them with the Chief Financial Officer of the city, reflecting a change in title.

The bill contains a severability clause, providing that if any provision of the bill is found invalid by a court of law due to a failure to provide a Fund participant with the minimum standards and benefits conferred by Ch. 175, F.S., or any other reason, the remaining provisions remain in effect.

Economic Impact

The Economic Impact Statement submitted with the bill states that it is projected to have no fiscal impact.

B. SECTION DIRECTORY:

Section 1: Amends provisions of ch. 1941-21483, Laws of Florida, governing the Firefighters’ Relief and Pension Fund of the City of Pensacola.

Section 2: Provides for severability of the act.

Section 3: Provides an effective date of upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? October 26, 2016.

WHERE? The *Pensacola News Journal*, a daily newspaper published in Escambia 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:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 13, 2017, the Government Accountability Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment added a severability provision to the bill.

This analysis is drafted to the committee substitute as passed by the Government Accountability Committee.