

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: CS/HB 1135 West Palm Beach Police Pension Fund of the City of West Palm Beach, Palm Beach County

SPONSOR(S): Local, Federal & Veterans Affairs Subcommittee; Willhite

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	11 Y, 0 N	Darden	Miller
2) Oversight, Transparency & Administration Subcommittee	14 Y, 0 N	Moore	Harrington
3) Government Accountability Committee			

SUMMARY ANALYSIS

The West Palm Beach Police Pension Fund (Fund) was established by the Legislature in 1947. Each police officer employed by West Palm Beach is a Fund participant.

The bill modifies the special act creating the Fund to:

- Revise formulas for calculating retirement benefits to provide a uniform method of calculating benefits based on dates of service;
- Specify powers for the Board of Trustees of the Fund;
- Require a pre-employment physical to screen for pre-existing conditions;
- Provide for the repayment of withdrawn funds in the event an officer is rehired or reinstated;
- Establish an alternative benefit payment method known as a ten year certain option;
- Revise the payment of death benefits for members in the Deferred Retirement Option Plan;
- Add an actuarial equivalence calculation to the death benefit received by a surviving spouse who was not married to the Fund member on the member's date of retirement; and
- Limit the purchase of service for prior police or military service to five years.

The bill implements an agreement reached by the City of West Palm Beach and the union representing the city's police officers.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Police Pensions: Marvin B. Clayton Police Officers Pension Trust Fund Act

Local police pension plans are governed by ch. 185, F.S., the Marvin B. Clayton Police Officers Pension Trust Fund Act (Clayton Police Pension Act).¹ Originally enacted in 1939, the Clayton Police Pension Act encouraged cities to create police pension plans by providing access to premium tax revenues. The Clayton Police Pension Act sets forth minimum benefits and standards for municipal police pensions, which cannot be reduced by municipalities; however, the benefits provided by a local plan may vary from the provisions in the Clayton Police Pension Act so long as the minimum standards are met.

Local police pension plans created pursuant to the Clayton Police 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 0.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality.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 from the Police Officers' Pension Trust Fund amounted to \$72.6 million.⁷

To qualify for insurance premium tax dollars, plans must meet the requirements found in ch. 185, 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. 185.06, F.S., unless specifically authorized to vary from the law. If the Division determines that a police pension plan created pursuant to ch. 185, 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 Act is five percent of salary, but the percentage may be adjusted.¹⁰ A municipality may elect to make an employee's contributions, but the employee must still contribute at least 0.5 percent of his or her salary.¹¹ Rates may also be increased above five

¹ Section 185.015, F.S.

² Section 185.07(1)(a), F.S.

³ Section 185.07(1)(b), F.S.

⁴ Section 185.07(1)(c), (e)-(g), F.S.

⁵ Section 185.07(1)(d), F.S.

⁶ Section 185.08, F.S.

⁷ 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 (last accessed Mar. 6, 2017).

⁸ See s. 185.06, F.S.

⁹ Section 185.23(1), F.S.

¹⁰ Section 185.07(1)(b), F.S.

¹¹ Section 185.07(2)(a), F.S.

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

West Palm Beach Police Pension Fund

The West Palm Beach Police Pension Fund (Fund or Plan) was established by the Legislature in 1947.¹⁹ The act governing the Fund was most recently amended in 2012.²⁰ As of September 30, 2016, the Fund has 241 active members, 214 retired members, and 36 members in the Deferred Retirement Option Plan (DROP).²¹ As of October 1, 2015, the Fund had \$263,834,220 in total assets and \$56,666,324 in unfunded actuarial accrued liability.²² Normal retirement age is 55 years of age for those with at least ten years of service, 50 years of age for those with at least twenty years of service, and any age for those with at least twenty-five years of service.²³

The Fund currently assumes 8 percent annual growth of its assets.²⁴ During the 2015-16 fiscal year, the Fund saw a 10.40 percent growth in the actuarial value of its assets and a 2.10 percent decline in the market value of its assets.

Actuarial Equivalent Value Calculation

Present Situation

The Plan calculates the "actuarial equivalent value" using an interest rate of 8.25 percent per year and the 1983 Group Annuity Mortality Table.²⁵

¹² Section 185.07(2)(b), F.S.

¹³ Article 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 47-24981, Laws of Fla.

²⁰ Chapter 2012-259, Laws of Fla.

²¹ Department of Management Services, *Florida Local Government Retirement Systems 2016 Annual Report*, p. 16 of Appendix F, available at

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

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

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

²⁴ DMS Local Government Reports, p. 21 of Appendix E.

²⁵ Chapter 47-24981, s. 16(2)(a), Laws of Fla., as amended.

Effect of Proposed Changes

The bill revises the calculation of the “actuarial equivalent value” to use an interest rate of 8 percent per year and the RP-2000 Mortality Table for annuitants with future improvements in mortality projected to 2017 using Scale BB, blending 90 percent male rates and 10 percent female rates for the member and 10 percent male rates and 90 percent female rates for the beneficiary. The base mortality rates are also subject to adjustment, with a 100 percent white collar adjustment for women and a 90 percent blue collar/10 percent white collar adjustment for men.

Final Average Salary

Present Situation

Final average salary for Plan members is calculated using the average monthly salary paid to a member in the member’s three best years of employment.²⁶ Overtime may be included in the calculation with the following limits:

- Before January 1, 2005, no limit;
- Between January 1, 2005 and January 1, 2013, up to 400 hours per year;
- After January 1, 2013, up to 300 hours per year.

Effect of Proposed Changes

The bill provides that as of the effective date of the bill, for purposes of determining final average salary, any lump sum payment made to a Plan member for retroactive pay may not be treated as a lump sum payment, but instead treated as if it was paid during the retroactive pay period.

Police Pension Fund Board of Trustees

Present Situation

The Fund is administered by a five-member Board of Trustees (Board).²⁷ The Board consists of two residents appointed by the city, two police officers elected by a majority of police officers who are Fund members, and a member chosen by a majority vote of the other four board members. Members of the Board serve two-year terms. The powers of the Board are not specified.

Effect of Proposed Changes

The bill extends the term of Board members to four years. The bill also provides a list of duties and responsibilities for the Board, including, but not limited to:

- Construing the provisions of the Plan and determining all questions arising thereunder;
- Determining all questions relating to eligibility and participation;
- Determining or having determined and certified the amount of all retirement allowances or other benefits;
- Receiving and processing all applications for participation and benefits and, where necessary, conducting hearings;
- Authorizing all payments whatsoever from the fund, and notifying the disbursing agent, in writing, or approving benefit payments and other expenditures arising through operation of the Plan;
- Making recommendations to the city commission and union regarding changes in the provisions of the Plan;
- Reviewing reports of and having meetings with the custodian and investment agents or advisors; requiring written reports from the custodian on fund assets and transactions on a monthly basis; requiring written and oral reports from the investment agents or advisors on at least an annual basis, such reports to reflect fund investment, performance, investment recommendations, and overall review of fund investment policies;

²⁶ Chapter 47-24981, s. 16(2)(g), Laws of Fla., as amended.

²⁷ Chapter 47-24981, s. 16(3), Laws of Fla., as amended.

- Maintaining the minutes and records of the proceedings and meetings of the Board;
- Making uniform rules and regulations and taking action as may be necessary to carry out the provisions of the Plan; and all decisions of the Board made in good faith must be final, binding, and conclusive on all parties; and
- Taking such other action as the Board deems necessary for the efficient management of the Plan.

Plan Membership

Present Situation

All police officers employed by West Palm Beach are members of the Fund.²⁸ A newly hired police officer is a member of the Fund from the date of the officer's employment. If an officer leaves the department, the officer's credited service is forfeited. If the officer later rejoins the department, the officer's service is restored if the officer returns to the Fund any amount the officer withdrew, with "regular interest" from the date of withdrawal to the date of repayment.

Effect of Proposed Changes

The bill requires new members of the Fund to undergo a physical examination to determine if the officer has any preexisting conditions. This examination must occur as part of the post-offer, pre-employment physical examination required by the city. The Board's medical director must provide the Board with any abnormal findings discovered during the examination. The examination is used to establish a "physical profile" for the Plan member, determining preexisting conditions and presumptive illnesses. If additional physical examination is required by the Board after reviewing the findings, the examination must occur at the Board's expense.

The bill requires any member who rejoins the department to begin the process of returning withdrawals within one year of the date of rehire. If the member fails to do so, the credited service is forfeited and the time may only be eligible for purchase under other credit of service provisions. If a member made a withdrawal due to termination from employment and the member is later reinstated through the grievance and arbitration process, the member has the same time period for beginning to return withdrawals, but does not owe interest if the repayment process is started within one year of the date of reinstatement.

Retirement Pension Calculation

Present Situation

Retirement benefits under the Plan are calculated using several methods based on both the member's years of service and dates of employment.²⁹ A member's benefit under the Plan must be at least 2 percent of final average salary for each year of service.

For service after October 1, 2011, retirement benefits are calculated using 2.68 percent of the Plan member's final average salary per year and fractional parts of the years of service up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years of service in excess of 26 years.

Credit for service earned before October 1, 2011, is calculated as follows:

- For members with at least 12 years and 6 months of service as of October 1, 1999, and who were actively employed by the department on or after October 1, 1999, the greatest of:
 - 3 percent of final average salary multiplied by years of service³⁰ earned between April 1, 1987 and September 30, 2011, plus 2.5 percent of the final average salary multiplied by

²⁸ Chapter 47-24981, s. 16(6), Laws of Fla., as amended.

²⁹ Chapter 47-24981, s. 16(9)(a), Laws of Fla., as amended.

- years of service earned prior to April 1, 1987, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years;
 - 2.5 percent of final average salary multiplied by years of service up to 26 years, plus 1 percent of final average salary multiplied by years of service exceeding 26 years; or
 - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.
- For members with more than 12 years and 6 months of service, who had entered DROP on or before October 1, 1999, and who were actively employed with the department as of October 1, 1999, the greatest of:
 - 3 percent of final average salary multiplied by years of service earned in the 12 years and 6 months period to entering DROP, plus 2.5 percent of the final average salary multiplied by years of service prior to the date that was 12 years and 6 months prior to entering DROP, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years;
 - 2.5 percent of final average salary multiplied by years of service up to 26 years, plus 1 percent of final average salary multiplied by years of service exceeding 26 years; or
 - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.
- For members who had less than 12 years and 6 months of service and were actively employed by the department on or after October 1, 1999, the greatest of:
 - 3 percent of final average salary multiplied by years of service, earned up to September 30, 2011, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years;
 - 2.5 percent of final average salary multiplied by years of service up to 26 years, plus 1 percent of final average salary multiplied by years of service exceeding 26 years; or
 - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.
- For members who terminated employment, retired on a vested deferred benefit, or retired on or before October 1, 1999, the greater of:
 - 2.5 percent of final average salary multiplied by years of service, up to a total of 26 years, plus 1 percent of final average salary multiplied by the number of years in excess of 26 years.
 - The sum of 2.5 percent of final average salary multiplied by years of service for credited service earned through September 30, 1988, and 2 percent of the final average salary multiplied by years of service earned on or after October 1, 1988.

Effect of Proposed Changes

The bill amends two formulas for calculating credited service occurring before October 1, 2011. The bill requires credited service to be calculated as follows:

- For members with greater than or equal to twelve years and six months of service as of October 1, 1999, and who were actively employed by the department on or after October 1, 1999, 3 percent of final average salary multiplied by years of service earned between April 1, 1987, and September 30, 2011, plus 2.5 percent of the final average salary multiplied by years of service

³⁰ Unless otherwise noted, the term “years of service” for the purpose of this section includes fractional years of service.

earned prior to April 1, 1987, up to a total of 26 years, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years.³¹

- For members who had less than 12 years and 6 months of service and were actively employed by the department on or after October 1, 1999, 3 percent of final average salary multiplied by years of service, earned up to September 30, 2011, plus 1 percent of the final average salary multiplied by the number of years in excess of 26 years.³²

The bill eliminates a separate formula for members with more than 12 years and 6 months of service who had entered DROP on or before October 1, 1999, and were actively employed with the department as of October 1, 1999. The bill does not change the formula for a member who terminated employment, retired on a vested deferred benefit, or retired on or before October 1, 1999.

Optional Forms of Retirement Income

Present Situation

In addition to standard retirement benefit and the death benefit offered under the Plan, a member may submit a written request to the Board to receive an authorized alternative payment of equivalent actuarial value.³³ The request is subject to approval by the Board. The Plan currently features two authorized alternative payments:

- A larger monthly payment, payable to the member for the member's lifetime (lifetime option).
- A modified monthly amount, payable to the member during the joint lifetime of the member and a dependent joint pensioner designated by the member, in which the death of either the member or the dependent joint pensioner results in monthly payments of 50 percent, 66 2/3 percent, 75 percent, or 100 percent to the surviving party (joint and survivor option).

Effect of Proposed Changes

The bill creates a third authorized alternative payment known as a ten year certain option. If the ten year certain option is selected, the member receives normal retirement benefits, but the death benefit is replaced by payments to a designated beneficiary equal to 120 minus the number of payments received by the member at the time of the member's death. If the member has received 120 or more payments at the time of death, the beneficiary receives no benefit.

Deferred Retirement Option Plan (DROP)

Present Situation

Any member of the Plan who is eligible to receive a normal retirement pension may participate in DROP if the member meets the eligibility requirements and submits a form approved by the Board for that purpose.³⁴ A member may not participate in DROP beyond the time of attaining 30 years of service or for more than 5 years. Upon electing to enter DROP, a member no longer accrues additional benefits under the Plan, except for share account benefits under ch. 185, F.S.

When a member enters DROP, monthly retirement benefits that would have been payable to the member if the member had terminated employment on that date are paid into a DROP account and credited to the member. For deposits after October 1, 2002, a member may make an annual election to invest his or her DROP account funds with other assets of the Plan, receiving the same rate of return as those assets, or to receive a fixed interest rate.³⁵

³¹ This is the first formula listed for this class under current law.

³² This is the first formula listed for this class under current law.

³³ Chapter 47-24981, s. 16(9)(d), Laws of Fla., as amended.

³⁴ Chapter 47-24981, s. 16(13), Laws of Fla., as amended.

³⁵ For Plan members who reached normal retirement age on or before October 1, 2012, the fixed interest rate is 8.25 percent. For Plan members who reached normal retirement age after October 1, 2012, the fixed interest rate is 8 percent. If payment of the fixed interest rate results in a deficiency compared to the Plan's gross earnings, the fixed interest rate is reduced to 4 percent for that year.

Once a member leaves employment, the balance of the DROP account may be paid as:

- A lump sum;
- Installments over three years; or
- An annuity, paid until the death of the member or the account balance is zero.

Members may elect to defer payment, but must take a distribution by age 70 ½ as required by section 401(A)(9) of the Internal Revenue Code.

A beneficiary of a DROP participant who dies before payments from the DROP account are disbursed is treated in the same manner as a beneficiary receiving death benefits.

Effect of Proposed Changes

The bill removes the provision treating the beneficiary of a DROP participant who dies before payments from the DROP account are disbursed in the same manner as a beneficiary receiving death benefits. Instead, the entire balance of the DROP account must be paid out in a lump sum to the beneficiary, at the discretion of the beneficiary. However, if the beneficiary is the surviving spouse, the beneficiary may choose to not receive the distribution before the age of 70 ½. If the member has failed to designate a beneficiary, the entire balance of the DROP account will be converted to the name(s) of:

- Member's surviving children on a pro rata basis;
- If the member has no surviving children, the member's spouse;
- If the member has no surviving spouse, the member's surviving parents on a pro rata basis; or
- If none of the above are alive, the estate of the member.

A beneficiary who has received a converted account has the right to name a successor beneficiary. Any designated beneficiary, except a member's surviving spouse, must take a distribution of the entire share account balance within 5 years.

Death Benefits

Present Situation

Upon the death of a Plan member, a death benefit may be paid to the member's surviving beneficiaries.³⁶ If the member has a surviving spouse, the spouse receives a pension equal to two-thirds of the member's pension for the remainder of his or her life. If the member does not have a surviving spouse, or if the surviving spouse dies and leaves an unmarried child under the age 18, each child receives a pro rata share of two-thirds of the member's pension until the child is adopted, marries, dies, or reaches the age of 18. If the member does not have a surviving spouse or children, but provides more than 50 percent of the support for a parent or parents, the parent may receive a pro rata share of two-thirds of the member's pension until death or remarriage.

The Board may choose to pay the equivalent actuarial value of any of the above monthly benefits as a lump sum to the beneficiary.

Effect of Proposed Changes

The bill clarifies that the death after retirement benefit is not available to Plan members who choose to receive an optional form of retirement income. The bill also states that for years of service earned after the effective date of the bill, a surviving spouse who was not married to the member at the time of the member's retirement may receive an actuarially reduced death benefit that takes into account the age of the surviving spouse.

³⁶ Chapter 47-24981, s. 16(17), Laws of Fla., as amended.

Service Credit for Other Law Enforcement or Military Service

Present Situation

Members may receive service credit for time spent as a police officer for another municipal, county, state, or federal law enforcement agency or as a member of the United States military, as long as the member contributes to the Fund the sum of:³⁷

- The amount the member would have been contributed, based on the member's salary and employee contribution rate in effect at the time the credited service is requested, had the member been a member of the system for the years to be credited;
- The amount actuarially determined, such that the crediting of service does not result in a cost to the fund; and
- The share of costs for all professional services rendered to the Board in connection with the purchase of the years of credited service.

The member may make a lump sum payment within 6 months after the request for credit, or payments may be made over the greater of the length of time being purchased or 5 years at an interest rate equal to the Fund's actuarial assumption. Years of service purchased in this matter may not be used for vesting and purchase is not allowed if the years of service in another system serve as the basis for a benefit or pension from that system. If a member becomes disabled and is awarded a benefit from the Plan, the member is not required to complete the buyback of years of service, but money already paid into the Plan is not refunded. If a member terminates employment before vesting, contributions must be refunded, including buyback contributions.

Effect of Proposed Changes

The bill places a 5 year cap on the years of service for prior police or military service which may be purchased.

Other Changes

The bill defines the term "accrued benefit" as the amount of a member's pension as of a specified date determined in accordance with the terms of the plan, whether or not the member is eligible to access it.

The bill removes a section concerning actuarial assumptions and makes conforming changes elsewhere in the act.

The bill clarifies that "Normal Retirement Age" for an officer with 25 years of credited service is whatever age the officer is when he or she reaches 25 years of credited service.

B. SECTION DIRECTORY:

Section 1: Amends ch. 1947-24981, Laws of Fla, concerning the West Palm Beach Police Pension Fund.

Section 2: Provides that the bill takes effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 28, 2016

WHERE? The *Palm Beach Post*, a daily newspaper published in Palm Beach County, Florida.

³⁷ Chapter 47-24981, s. 16(35), Laws of Fla., as amended.

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:

Lines 809-811 state that a Plan member may make payments for years of service of the greater of 5 years or the number of years to be purchased. Since the bill places a 5 year cap on the purchase of credit for years of service, this provision is no longer necessary.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 15, 2017, the Local, Federal & Veterans Affairs Subcommittee adopted a technical amendment and reported the bill favorably as a committee substitute. The amendment clarifies several provisions of the act that take effect upon the bill becoming a law.

This analysis is drawn to the bill as amended by the Local, Federal & Veterans Affairs Subcommittee.