

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS
FINAL BILL ANALYSIS**

BILL #: CS/CS/HB 901 City of West Palm Beach, Palm Beach County
SPONSOR(S): Oversight, Transparency & Public Management Subcommittee; 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	12 Y, 0 N, As CS	Rivera	Miller
2) Oversight, Transparency & Public Management Subcommittee	13 Y, 0 N, As CS	Moore	Harrington
3) State Affairs Committee	19 Y, 0 N	Rivera	Williamson
FINAL HOUSE FLOOR ACTION: 116 GOVERNOR'S ACTION: 116			
Y's 0 N's Approved			

SUMMARY ANALYSIS

CS/CS/HB 901 passed the House on April 24, 2019, and subsequently passed the Senate on May 1, 2019.

The Marvin B. Clayton Firefighters Pension Trust Fund Act, enacted to encourage uniformity among local firefighter retirement systems, incentivizes municipalities and fire districts to conform their retirement plans to statutory minimum benefits and standards by providing access to state tax revenue. These requirements include a normal retirement benefit calculated with a minimum 2.75 percent benefit accrual factor per year of credited service.

The West Palm Beach Firefighters Pension Fund (Plan) was created in 1947 by the Legislature and serves as the retirement system for West Palm Beach firefighters. As of September 30, 2018, the Plan has 208 active members, 98 retired members, and 111 members in the Deferred Retirement Option Program. The Plan's normal retirement benefit has a minimum benefit accrual factor of 2 percent per year of credited service. However, the actual factor applied is 3 percent, which is contingent on the Plan adopting and maintaining actuarial assumptions, including an 8 percent assumed investment return rate.

The Plan includes an appeals process for applicants who are denied benefits. Formal rules of evidence and procedure do not apply under this process, but hearings must comply with the essential requirements of due process and law. Applicants may seek judicial review of a final order in circuit court.

The bill increases the Plan's normal retirement minimum benefit accrual factor to meet the statutory minimum of 2.75 percent. The bill decreases the assumed investment return rate of the Plan from 8 percent to 7.5 percent to maintain the Plan's 3 percent benefit accrual factor. The bill also modifies the Plan's appeal process, allowing the plan administrator to record a hearing and maintain the recording in addition to the separate record maintained by the pension secretary, and extending the five-day deadline for board action after a hearing to an unspecified reasonable time.

The bill was approved by the Governor on May 23, 2019, ch. 2019-174, L.O.F., and became effective on that date.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Florida Protection of Public Employee Retirement Benefits Act

A government responsible for a publicly funded retirement or pension system may not increase benefits without an actuarially sound funding scheme.¹ The “Florida Protection of Public Employee Retirement Benefits Act” (Benefits Act)² sets minimum standards for operating and funding public retirement or pension systems.³ Special laws conflicting with the Benefits Act are prohibited.⁴

The Benefits Act requires the Department of Management Services (DMS) to review local government retirement systems for compliance with the act⁵ and to submit annual reports on local government retirement systems to the President of the Senate and the Speaker of the House of Representatives.⁶ Additionally, DMS cooperates with local governments on matters of mutual concern and provides technical assistance on assessments and revisions of local government retirement systems and plans.⁷

Local governments cannot change a retirement or pension plan benefit without submitting a statement of the actuarial impact of the proposed change to DMS.⁸ The statement must indicate that the proposed change complies with Art. X, s. 14 of the Florida Constitution and s. 112.64, F.S., pertaining to the administration of funds and the amortization of unfunded liability.⁹

Marvin B. Clayton Firefighters Pension Trust Fund Act

The “Marvin B. Clayton Firefighters Pension Trust Fund Act” (Clayton Act) encourages uniformity among local firefighter retirement plans.¹⁰ The Clayton Act provides municipalities and special fire control districts access to premium tax revenues for establishing firefighter retirement plans that conform to the Benefits Act.¹¹

The Department of Revenue collects premium tax revenue¹² through an excise tax on insurance companies, corporations, or insurers holding property insurance policies within the boundaries of a participating municipality or district.¹³ Each local government must set up a trust fund to receive the tax

¹ See art. X, s. 14, Fla. Const.; s. 112.62, F.S.

² Ch. 112, part VII, F.S.

³ S. 112.61, F.S. See also s. 112.62, F.S.; art. X, s. 14, Fla. Const. Provisions of the statute supplement existing laws and local ordinances relating to covered retirement plans but prevail where there is a conflict of law.

⁴ See s. 112.67, F.S., and art. III, s. 11(a)(21), Fla. Const.

⁵ S. 112.665(1)(f), F.S.

⁶ S. 112.665(1)(d), F.S.

⁷ S. 112.665(1)(c), F.S.

⁸ Ss. 112.63(3), 121.021(4) and (7), F.S.

⁹ S. 112.63(3), F.S.

¹⁰ See s. 175.021, F.S.

¹¹ Special fire control districts were included under the Clayton Act in 1993. See DMS, *Overview, Legislative History of Chapter 175/185 Program*, available at:

http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/overview (last visited Mar. 21, 2019).

¹² S. 175.121, F.S.

¹³ S. 175.101, F.S.

revenues,¹⁴ but these trust funds are also funded by employee contributions, mandatory municipal payments to keep the plans solvent, and any other lawful revenue source.¹⁵

The Clayton Act requires retirement plans to comply with statutory minimum benefits and standards. Minimum requirements under the Clayton Act include the use of a benefit formula providing at least a 2.75 percent retirement benefit for each year of service for full-time firefighters,¹⁶ a 10-year vesting period for normal retirement eligibility,¹⁷ and a five-member board of trustees (board) to govern the plan.¹⁸

The Clayton Act requires the board to exercise powers and duties by majority vote.¹⁹ The board has the sole and exclusive responsibility to administer and operate the trust fund and carry out the provisions of the Clayton Act, but cannot modify retirement plan provisions without municipal or district approval.²⁰ Board actions on retirement claims are final if the board complies with its own rules and regulations.²¹

West Palm Beach Firefighters Pension Fund

The West Palm Beach Firefighters Pension Fund (Plan) was created in 1947 by special act of the Legislature²² and was most recently amended in 2015.²³ As of September 30, 2018, the Plan has 208 active members, 98 retired members, and 111 members in the Deferred Retirement Option Program.²⁴ The Plan's normal retirement age is either 55 with 10 years of credited service, 50 with 15 or more years of service, or any age with 26 years of credited service.²⁵

For plan members actively employed on or after October 1, 2003, the Plan's normal retirement benefit is based on a minimum benefit accrual factor of 2 percent per year of credited service. For firefighters retiring after May 13, 2012, the actual benefit accrual factor is 3 percent. For firefighters retiring on or before May 13, 2012, the actual benefit accrual factor was 4 percent.²⁶ The current 3 percent benefit accrual factor is contingent on the Plan maintaining certain actuarial assumptions,²⁷ including an 8 percent assumed investment rate of return.²⁸

The Plan allows applicants who have been denied benefits to appeal the denial within 20 days, and requires the Board to hold a hearing within 45 days of the request.²⁹ Hearing procedures must comply with the essential requirements of due process and law, but formal rules of evidence and civil

¹⁴ S. 175.041, F.S.

¹⁵ S. 175.091(1)(a)-(g), F.S.

¹⁶ S. 175.162, F.S.

¹⁷ S. 175.162(1)-(2), F.S. *See also* DMS, *Overview, Legislative History of Chapter 175/185 Program*, available at: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/overview (last visited Mar. 21, 2019).

¹⁸ S. 175.061(1), F.S.

¹⁹ S. 175.071, F.S. Two members of the board of trustees are chosen by the municipality or district, two members are chosen by a majority of covered firefighters, and the last is elected by the other trustees to serve two- or four-year terms. S. 175.061(1)(a), F.S. There is no limit on the number of terms a board member may serve.

²⁰ *Id.*

²¹ S. 175.071(3), F.S.

²² Ch. 24981, Laws of Fla. (1947), as amended.

²³ Ch. 2015-195, Laws of Fla.

²⁴ DMS, "2018 Local Government Annual Report," Appendix F, p. 16, available at https://www.rol.frs.state.fl.us/forms/Appendix_F.pdf (last visited on Mar. 21, 2019) (hereinafter DMS Local Government Report).

²⁵ Ch. 24981, s. 17(5), Laws of Fla., as amended by ch. 2004-462, s. 1, Laws of Fla.

²⁶ Ch. 24981, s. 17(5)(a)2., Laws of Fla., as amended by ch. 2012-260, s. 1, Laws of Fla.

²⁷ Ch. 24981, s. 17(5)(a)3., Laws of Fla., as amended by ch. 2012-260, s. 1, Laws of Fla.

²⁸ Ch. 24981, s. 17(22), Laws of Fla., as amended by ch. 2015-195, s. 1, Laws of Fla.

²⁹ Ch. 24981, s. 17(15), Laws of Fla. (1947), as amended by ch. 2012-260, s. 1, Laws of Fla.

procedure do not apply to the proceedings.³⁰ Hearings must be recorded and maintained by the pension secretary, and the Board must overturn or finalize the denial within five days of the first hearing.³¹ Applicants may seek judicial review of a final order in circuit court by filing a petition for writ of certiorari within 30 days.³²

Effect of Proposed Changes

The bill increases the Plan's minimum normal retirement benefit accrual factor to the statutory minimum of 2.75 percent per credited year of service. This increase does not appear to create retroactive benefits for firefighters that retired after October 1, 2003, because the increase is lower than the actual benefit accrual factors in place before and after May 31, 2012.

The bill also decreases the assumed investment return rate of the Plan from 8 percent to 7.5 percent retroactively, beginning October 1, 2018, to maintain the Plan's 3 percent accrual factor. The bill modifies the Plan's review procedures to:

- Allow the plan administrator, in addition to the pension secretary, to record a hearing and maintain the recording; and
- Change the deadline for board action after any hearing to a reasonable time, instead of a five-day limit.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The EIS projects expenditures of \$10,953 in FY 2019-2020 and \$11,048 in FY 2020-2021.

C. ECONOMIC IMPACT STATEMENT FILED? Yes No

D. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 20, 2018

WHERE? *The Palm Beach Post*, Palm Beach County, Florida

³⁰ *Id.*

³¹ Ch. 24981, s. 17(15)(c)-(d), Laws of Fla. (1947), as amended by ch. 2012-260, s.1, Laws of Fla.

³² Ch. 24981, s. 17(15)(g), Laws of Fla. (1947), as amended by ch. 2012-260, s. 1, Laws of Fla. *See* Fla. R. App. P. 9.030(c).

E. REFERENDUM(S) REQUIRED? Yes No

F. IF YES, WHEN?