

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 929 City of West Palm Beach, Palm Beach County

SPONSOR(S): Silvers

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

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|-----------|---------|--|
| 1) Local Administration & Veterans Affairs Subcommittee | 14 Y, 0 N | Leshko | Miller |
| 2) Government Operations Subcommittee | 16 Y, 0 N | Smith | Toliver |
| 3) State Affairs Committee | | | |

SUMMARY ANALYSIS

The West Palm Beach Police Pension Fund (Fund or Plan) was established by the Legislature in 1947. The act governing the Fund was amended in 2012, 2017, and 2018. As of September 30, 2021, the Fund had 264 active members, 244 retired members, and 27 members in the Deferred Retirement Option Plan. The Fund had \$400,055,406 in total assets and \$17,242,726 in unfunded actuarial accrued liability.

The bill provides an updated definition for the term "salary" that changes the members' collective bargaining representative to the Florida State Lodge, Fraternal Order of Police, Inc., Certified Unit No 1985 and Certified Unit No 1986.

The bill provides for retroactive application of a 3 percent benefit accrual rate for all years of a member's service between October 1, 2011 and October 1, 2017, provided that the member retires or enters DROP after the effective date of this act. The bill further clarifies that this retroactive application is not applicable to members who retired, including entry into DROP, prior to the effective date of this act.

The bill further provides that members are eligible to receive lump-sum payments for accumulated leave upon retirement, including entry into DROP, but not upon vested or non-vested termination.

The bill is anticipated to result in an increase in required employer contribution by \$322,970 in the first year. This employer contribution is expected to continue to increase gradually by approximately 3.65 percent of covered payroll in the absence of offsetting gains. Additionally, the bill is projected to increase long-term benefit payouts by the city by \$3,664,000, reflected in current dollars.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

Municipal police pension plans are governed by the Marvin B. Clayton Police Officers Pension Trust Fund Act (Clayton Act).¹ The Clayton Act was enacted to encourage cities to create police pension plans by providing access to premium tax revenues. The Clayton Act sets forth minimum benefits and minimum standards for the operation and funding of municipal police pensions, which cannot be reduced by local ordinance or by special act of the Legislature, or reduced or offset by any other local, state, or federal plan that includes police officers in its operation. These minimum benefits and minimum standards must be met before the plan or plan sponsor can receive premium tax revenues.²

Local police pension plans created pursuant to the Clayton Act are funded by four categories of sources:

- Net proceeds from an excise tax levied by a municipality upon casualty insurance companies (known as the premium tax);³
- Employee contributions;⁴
- Employer contributions;⁵ and
- Other revenue sources.⁶

The premium tax is an excise tax of 0.85 percent imposed on the gross receipts of premiums received by every insurer providing casualty insurance within the boundaries of the municipality.⁷ The tax is payable to the Department of Revenue, and then transferred to the appropriate fund at the Department of Management Services, Division of Retirement (Division).⁸

The default employee contribution under the Clayton Act is 5 percent of salary, but the percentage may be adjusted.⁹ 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.¹⁰ Rates may also be increased above 5 percent, subject to the consent of members' collective bargaining representative or, if none, by majority consent of the police officer members of the fund.¹¹

Florida Protection of Public Employee Retirement Benefits Act

The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act)¹² implements the provisions of article X, section 14 of the Florida Constitution.¹³ The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds, and requires

¹ S. 185.015, F.S.; *see generally* Ch. 185, F.S.

² S. 185.01(2), F.S.

³ Ss. 185.07(1)(a) and 185.08(1)(a), F.S.

⁴ S. 185.07(1)(b), F.S.

⁵ S. 185.07(1)(d), F.S.

⁶ S. 185.07(1)(c), (e)-(g), F.S. These include fines and forfeitures paid by police officers for rules violations, donations to the fund, interest and dividends paid on the funds by the bank, and other sources of income as authorized by law.

⁷ S. 185.08(1)(a), F.S.

⁸ Department of Management Services, *Municipal Police and Fire Plans Overview*, https://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans/overview (last visited Jan. 27, 2022).

⁹ Ss. 185.07(1)(b) and 185.07(2), F.S.

¹⁰ S. 185.07(2)(a), F.S.

¹¹ S. 185.07(2)(b), F.S.

¹² Ch. 112, Part VII, F.S.

¹³ S. 112.61, F.S.

that such retirement plans be managed, administered, operated, and funded in such a manner as to maximize the protection of public employee retirement benefits.¹⁴

The Florida Constitution prohibits any increase in retirement or pension benefits for a publicly-funded plan, unless the governmental unit providing the increase has made or concurrently makes provision for funding the increase on an actuarially sound basis.¹⁵

Additionally, local governments are prohibited from agreeing to a proposed change in retirement benefits if the plan administrator did not issue a statement of the actuarial impact of the proposed change on the local retirement system prior to 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 may agree to the change.¹⁷ The statement must indicate whether the proposed change complies with article X, section 14 of the 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 amended in 2012, 2017, and 2018.²⁰ As of September 30, 2021, the Fund had 264 active members, 244 retired members, and 27 members in the Deferred Retirement Option Plan (DROP).²¹ The Fund had \$400,055,406 in total assets and \$17,242,726 in unfunded actuarial accrued liability.²² Normal retirement age is 55 years of age for those with at least 10 years of service, 50 years of age for those with at least 20 years of service, and any age for those with at least 25 years of service.²³

The Fund currently assumes 7.25 percent annual growth of its assets.²⁴ During the 2019-2020 fiscal year, the Fund saw a 7.69 percent growth in the actuarial value of its assets and a 6.33 percent growth in the market value of its assets.²⁵

West Palm Beach Police Retirement Pension Calculation

Retirement benefits under the Plan are calculated using several methods based on both the member's years of service and dates of employment.²⁶ A member's benefit under the Plan must be at least 2.75 percent of final average salary for each year of service.

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

- For members with at least 12.5 years 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 service²⁷ earned between April 1, 1987 and September 30, 2011, plus 2.5 percent of the final average salary multiplied by years of service earned prior to April 1, 1987,

¹⁴ Ss. 112.61 and 112.62, F.S.

¹⁵ Art. X, s. 14, Fla. Const.

¹⁶ S. 112.63(3), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Ch. 47-24981, s. 10, Laws of Fla.

²⁰ Ch. 2012-259, 2017-207, and 2018-168, Laws of Fla.

²¹ Department of Management Services, *Florida Local Government Retirement Systems 2021 Annual Report*, Appendix F, p. 312, https://employer.frs.fl.gov/forms/2021_Local_Report.pdf (last visited Jan. 27, 2022).

²² *Id.* at Appendix A, p. 25.

²³ *Id.* at Appendix B, p. 87.

²⁴ *Id.* at Appendix E, p. 293.

²⁵ *Id.*

²⁶ Ch. 2018-168, s. 16(9)(a), Laws of Fla.

²⁷ Unless otherwise noted, the term "years of service" for the purpose of this section includes fractional years of service.

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.²⁸

- For members who had less than 12.5 years 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.²⁹
- 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; 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, 1988.³⁰

For service earned after October 1, 2011 and before October 1, 2017, retirement benefits are calculated using 2.68 percent of the member's final average salary multiplied by years of service up to a total of 26 years.³¹

For service after October 1, 2017, retirement benefits are calculated using 3 percent of the member's final average salary multiplied by 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.

Rollovers to the Fund

A member may roll over all or part of their interest in another qualified plan³² to the Fund provided all the following requirements are met:

- Some or all of the amount distributed from the other plan is rolled over to the Fund no later than the 60th day after distribution or, if the distributions are made in installments, no later than the 60th day after the last distribution was made;
- The amount rolled over to the Fund does not include any post tax contributions made by the member to the other plan;
- The rollover is made in cash;
- The member certifies the distribution is eligible for a rollover; and
- The assets that are rolled over may not be invested in the fixed rate option and are subject to the pro rata administrative and investment expenses of the Fund.³³

Additionally, members who are eligible to receive a lump-sum payment for accumulated leave payable upon separation and who have funds remaining after the contributions to the health savings account as required by the collective bargaining agreement shall have the remaining leave payment transferred to the Fund up to the amount permitted by law.³⁴

Effect of Proposed Changes

²⁸ Ch. 2018-168, s. 16(9)(a)2., Laws of Fla.

²⁹ Ch. 2018-168, s. 16(9)(a)3., Laws of Fla.

³⁰ Ch. 2018-168, s. 16(9)(a)4., Laws of Fla.

³¹ Ch. 2018-168, s. 16(9)(a)1., Laws of Fla.

³² Including from an individual retirement account qualified under s. 408 of the Internal Revenue Code when the retirement account was merely used as a conduit for funds from another qualified plan and including direct transfers from another qualified retirement plan or an Internal Revenue Code s. 457 plan. Ch. 2012-259, s. 16(31)(a), Laws of Fla.

³³ Ch. 2012-259, s. 16(31)(a), Laws of Fla.

³⁴ Ch. 2012-259, s. 16(31)(b), Laws of Fla. (amounts transferred under this section shall remain invested in the Fund for a period of not less than a year).

The bill provides an updated definition for the term “salary” that changes the members’ collective bargaining representative to the Florida State Lodge, Fraternal Order of Police, Inc., Certified Unit No 1985 and Certified Unit No 1986.

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The bill further provides that members are eligible to receive lump-sum payments for accumulated leave upon retirement, including entry into DROP, but not upon vested or non-vested termination.

The bill is anticipated to result in an increase in required employer contribution by \$322,970 in the first year. This employer contribution is expected to continue to increase gradually by approximately 3.65 percent of covered payroll in the absence of offsetting gains. Additionally, the bill is projected to increase long-term benefit payouts by the city by \$3,664,000, reflected in current dollars.

B. SECTION DIRECTORY:

Section 1: Updates the definition for the term “salary;” provides retroactive application of a 3 percent benefit accrual rate for all years of service between October 1, 2011 and October 1, 2017, subject to certain limitations; and provides an update to when members are eligible to receive lump-sum payments for accumulated leave.

Section 2: Directs the Division of Law Review to replace the phrase “the effective date of this act” wherever it occurs in this act with the date this act becomes a law.

Section 3: Provides that the bill shall take effect upon becoming a law.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? November 11, 2021.

WHERE? *The Palm Beach Post*, a daily and Sunday newspaper, published in West Palm Beach and distributed in Palm Beach County, Martin County, and St. Lucie County, Florida.

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes No

D. ECONOMIC IMPACT STATEMENT FILED? Yes 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

None.