

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 1189 Firefighters' Relief and Pension Fund of the City of Pensacola, Escambia County

**SPONSOR(S):** Andrade and Salzman

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

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**FINAL HOUSE FLOOR ACTION:** 107 Y's      0 N's      **GOVERNOR'S ACTION:** Pending

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### SUMMARY ANALYSIS

HB 1189 passed the House on February 25, 2022, and subsequently passed the Senate on March 10, 2022.

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. As of September 30, 2021, the Fund has 110 active members, 178 retired members, and 12 members in the Deferred Retirement Option Plan.

The bill makes the following changes to the Fund:

- Removes separate alternative benefit options for firefighters hired on or after June 10, 2015, giving all firefighters the same alternative benefits options;
- Removes the requirement that a surviving spouse must remain unmarried to receive death benefits under the Fund; and
- Revises the definition of "compensation," "salary," and "earnings" to include a maximum of 300 hours of annual overtime pay, basic life support 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.

According to the Economic Impact Statement filed with the bill, the revisions to the Fund will increase costs by \$32,674.

Subject to the Governor's veto powers, the effective date of this bill is upon becoming a law.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### 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).<sup>1</sup> Originally enacted in 1939, the Clayton Firefighters Pension Act encouraged cities to create firefighter pension plans by providing access to premium tax revenues.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);<sup>2</sup>
- Employee contributions;<sup>3</sup>
- Other revenue sources;<sup>4</sup> and
- Mandatory payments by the city of the normal cost of the plan.<sup>5</sup>

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.<sup>6</sup> Insurers pay the tax 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 2019, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$98.1 million.<sup>7</sup>

To qualify for insurance premium tax dollars, plans must meet requirements found in the Clayton Firefighters Pension Act. 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.<sup>8</sup> The board of trustees must invest and reinvest the assets of the fund according to statute<sup>9</sup> unless specifically authorized to vary from the law. If the Division deems that a firefighter pension plan created pursuant to the Clayton Firefighters Pension Act is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.<sup>10</sup>

The default employee contribution under the Clayton Firefighters Pension Act is 5 percent of salary, but the percentage may be adjusted.<sup>11</sup> 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.<sup>12</sup> Rates may also be increased above 5 percent, subject to the consent of the members'

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<sup>1</sup> S. 175.025, F.S.

<sup>2</sup> S. 175.091(1)(a), F.S.

<sup>3</sup> S. 175.091(1)(b), F.S.

<sup>4</sup> S. 175.091(1)(c), (e)-(g), F.S.

<sup>5</sup> S. 175.091(1)(d), F.S.

<sup>6</sup> S. 175.101, F.S.

<sup>7</sup> Department of Management Services, *Firefighters' 2019 Premium Tax Distribution Calculation*, available at [https://employer.frs.fl.gov/forms/Fire\\_2019.pdf](https://employer.frs.fl.gov/forms/Fire_2019.pdf) (last visited Jan. 28, 2022).

<sup>8</sup> See s. 175.071, F.S.

<sup>9</sup> S. 175.071, F.S.

<sup>10</sup> See s. 175.341(1), F.S.

<sup>11</sup> S. 175.091(1)(b), F.S.

<sup>12</sup> S. 175.091(2)(a), F.S.

collective bargaining representative or, if none, by a majority consent of the firefighter members of the fund.<sup>13</sup>

### 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 plan has made or concurrently makes provision for funding the increase on an actuarially sound basis.<sup>14</sup> The Florida Protection of Public Employee Retirement Benefits Act (Benefits Act)<sup>15</sup> implements the provisions of art. X, s. 14 of the Florida Constitution.<sup>16</sup> The Benefits Act applies to all retirement or pension plans for public employees that are funded in whole or in part by public funds.<sup>17</sup>

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.<sup>18</sup> This statement must also be furnished to the Division before the local government can agree to the change.<sup>19</sup> The statement must indicate whether the proposed change complies with art. X, s. 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).<sup>20</sup>

### 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.<sup>21</sup> The act governing the Fund was most recently amended in 2015.<sup>22</sup> As of September 30, 2021, the Fund has 110 active members, 178 retired members, and 12 members in the Deferred Retirement Option Plan.<sup>23</sup> As of September 30, 2021, the Fund had \$126.7 million in total assets and \$8.9 million in unfunded actuarial accrued liability.<sup>24</sup> Normal retirement age is 52 years of age for those with at least 10 years of service and any age for those with at least 25 years of service.<sup>25</sup>

The Fund currently assumes 7.75 percent annual growth of its assets.<sup>26</sup> During the 2020-21 fiscal year, the Fund saw an 8.61 percent growth in the actuarial value of its assets and an 11.12 percent growth in the market value of its assets.

### *Alternative Retirement Options*

Firefighters may select from a menu of alternative retirement income streams or benefits of equivalent actuarial value to the standard retirement, including:

- A larger monthly payment, payable only for the firefighter's lifetime;
  - A smaller monthly payment payable for the joint lifetime of the firefighter and a joint beneficiary;
- or

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<sup>13</sup> S. 175.091(2)(b), F.S.

<sup>14</sup> Art. X, s. 14, Fla. Const.

<sup>15</sup> Part VII of ch. 112, F.S.

<sup>16</sup> S. 112.61, F.S.

<sup>17</sup> S. 112.62, F.S.

<sup>18</sup> S. 112.63(3), F.S.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> Ch. 21482, Laws of Fla. (1941).

<sup>22</sup> Ch. 2015-206, Laws of Fla.

<sup>23</sup> Department of Management Services, *Florida Local Government Retirement Systems 2021 Annual Report*, p. 13 of Appendix F, available at

[http://www.dms.myflorida.com/workforce\\_operations/retirement/local\\_retirement\\_plans/local\\_retirement\\_section/local\\_government\\_annual\\_reports](http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/local_retirement_section/local_government_annual_reports) (last visited Jan. 28, 2022) (herein DMS Local Government Reports).

<sup>24</sup> DMS Local Government Reports, p. 17 of Appendix A.

<sup>25</sup> DMS Local Government Reports, p. 44 of Appendix B1.

<sup>26</sup> DMS Local Government Reports, p. 16 of Appendix E.

- Any other amount or form that the Board of Trustees of the Fund (Fund Board) sees as best meeting the circumstances of the retired firefighter.<sup>27</sup>

A firefighter may change the selected joint beneficiary but only with approval from the Fund Board. If the payment of benefits to the firefighter and the joint beneficiary has already commenced, the change may only be made if the joint beneficiary is still alive.<sup>28</sup> The firefighter does not need the consent of the joint beneficiary to make the change, but the Fund Board may request evidence of the joint beneficiary's health status. After the selection of a new joint beneficiary, the Fund Board will recalculate benefit payments to provide actuarial equivalence. If no designated beneficiary survives the firefighter, the death benefit is paid to the estate of the firefighter as an actuarially equivalent lump sum.

The spousal benefits for any firefighter hired on or after June 10, 2015, are equal to the benefit payment options provided under the Florida Retirement System for Special Risk Class, elected as follows:

- A monthly benefit payment to the firefighter for the firefighter's lifetime only;
- A decreased monthly benefit payment for the firefighter's lifetime or 10 years (if the firefighter dies before 10 years, the Fund pays the benefit to beneficiary for the remainder of the 10 years);
- A decreased monthly benefit payment during the joint lifetime of a firefighter and a joint annuitant, continuing for the lifetime of both parties in the same amount; or
- A decreased monthly benefit payment during the joint lifetime of a firefighter and a joint annuitant, continuing for the lifetime of both parties, but paying the surviving party an amount equal to 66 and two-thirds percent of the amount payable during the joint lifetime.

If a firefighter dies before his or her normal retirement date, no retirement benefit will be paid, but beneficiaries will be entitled to the death benefits provided by ss. 13 or 14 of the act governing the Fund.<sup>29</sup> If a designated beneficiary or joint pensioner dies before the firefighter's retirement date, benefits revert to the default plan, as if the previous election had not been made, unless the firefighter makes a new beneficiary selection within 90 days of the death of the previous beneficiary.

### *Benefits to Surviving Spouses*

Upon the death of a retired firefighter, his or her surviving spouse is entitled to a pension benefit equal to 75 percent of what the pensioner would have been entitled to if he or she had retired as of the date of death, considering the retired firefighter's years of service and amount of compensation, but without regard to his or her age.<sup>30</sup> A surviving spouse who married the firefighter after retirement, and less than three years before the pensioner's death, is not entitled to benefits.<sup>31</sup>

Any benefits provided by the Fund to a surviving spouse terminate upon the recipient's death.<sup>32</sup> The benefits provided also terminate upon remarriage, unless the deceased firefighter is preceded by one or more legitimate children, who may then be entitled to \$10 per month for each child, in no event to exceed \$40 a month for support as a family.<sup>33</sup> Pension benefits terminated by remarriage may be restored by the Fund Board if the marriage ends due to death or divorce.<sup>34</sup>

### *Definitions*

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

<sup>27</sup> Ch. 21483, s. 5(n)(1), Laws of Fla. (1941), as amended.

<sup>28</sup> Ch. 21483, s. 5(n)(2), Laws of Fla. (1941), as amended.

<sup>29</sup> Ch. 21483, s. 5(n)(3), Laws of Fla. (1941), as amended.

<sup>30</sup> Ch. 21483, s. 13(a), Laws of Fla. (1941), as amended.

<sup>31</sup> Ch. 21483, s. 13(b), Laws of Fla. (1941), as amended.

<sup>32</sup> Ch. 21483, s. 15, Laws of Fla. (1941), as amended.

<sup>33</sup> *Id.*

<sup>34</sup> Ch. 41-21483, s. 13(a), Laws of Fla., as amended.

- Up to 300 hours per year of annual overtime pay for firefighters with ten or more years of service as of June 10, 2015;
- Up to 200 hours per year of annual overtime pay for firefighters with less than ten years of service as of June 10, 2015; and
- No annual overtime pay for firefighters hired on or after June 10, 2015.

**Effect of the Bill**

The bill removes separate alternative benefit options for firefighters hired on or after June 10, 2015, giving all firefighters the same alternative benefits options.

The bill removes the requirement that a surviving spouse must remain unmarried to receive death benefits under the Fund.

The bill revises the definition of “compensation,” “salary,” and “earnings” to include a maximum of 300 hours of annual overtime pay, basic life support 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.

**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 Economic Impact Statement filed with the bill states the revisions to the Fund made by the bill will increase costs by \$32,674.

C. ECONOMIC IMPACT STATEMENT FILED? Yes  No

D. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? December 5, 2021.

WHERE? The *Pensacola News-Journal*, a daily newspaper of general circulation published in Escambia County, Florida.

E. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

