

House Bill No. 1633

An act relating to the West Palm Beach Firefighters Pension Fund, City of West Palm Beach, Palm Beach County; amending chapter 24981 (1947), Laws of Florida, as amended; amending the definition of final average salary; amending the sources of revenue; amending the service pensions; amending the normal retirement benefit; amending the share account benefit; adding a BackDROP benefit; amending the beneficiary benefits; amending provisions related to the rollovers from other plans; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subparagraph 7. of paragraph (a) of subsection (1), paragraphs (a) and (b) of subsection (3), paragraph (a), subparagraphs 3., 5., and 6., of paragraph (j), and paragraph (k) of subsection (5), and subparagraph 1. of paragraph (b) of subsection (7) of section 17 of chapter 24981 (1947), Laws of Florida, as amended by chapter 2002-360, Laws of Florida, are amended, and paragraph (l) is added to subsection (5) of said section, to read:

Section 17. West Palm Beach Firefighters Pension Fund.—

(1) Creation of fund.—There is hereby created a special fund for the Fire Department of the City of West Palm Beach to be known as the West Palm Beach Firefighters Pension Fund. All assets of every description held in the name of the West Palm Beach Firemen's Relief and Pension Fund and in the name of the West Palm Beach Firefighters Pension Fund have been and shall continue to be combined.

(a) Definitions.—The following words or phrases, as used in this act, shall have the following meanings, unless a different meaning is clearly indicated by the context:

7. "Final average salary" means the average of the monthly salary paid a member in the ~~2 3~~ best years of employment, paid in and prior to the 23rd year of credited service. No active nonDROP member shall have any salary amounts paid prior to October 1, 2000, used in the calculation of final average salary. Those members whose final average salary would include salary amounts paid prior to October 1, 2000, shall use salary paid during the period from October 1, 2000, through September 30, 2001, to replace any salary amounts paid prior to October 1, 2000.

(3) Sources of revenue.—The financing of the Fund shall consist of the following sources of revenue:

(a) Taxes of insurance companies.—The moneys returned to the City as provided by chapter 175, Florida Statutes, shall be used to fund the share account benefit described in paragraph (5)(j). For the plan year October 1, 2003, through September 30, 2004, all of the chapter 175 funds received shall be utilized to offset the City's contributions for the cost of the purchase of extra benefits, less any amounts used to fund the share account benefits

for DROP members who do not convert in accordance with sub-subparagraph (5)(a)2.b. Beginning October 1, 2004, the chapter 175 moneys shall again be used in full to fund the share account benefits provided for in paragraph (5)(j). The City shall not opt out of participation in chapter 175, Florida Statutes, or any similar statutory enactment unless exigent circumstances exist, such as the bankruptcy of the City or changes or amendments to the statute regarding extra benefits by the Legislature. If any statutory changes are made by the Legislature, the City and the Board may renegotiate the impact of such changes, if necessary.

(b) Member contributions.—~~The member shall contribute 6.45 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after January 1, 2002, the member shall contribute 7.85 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after October 1, 2002, the member shall contribute 8.85 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after October 1, 2003, the member shall contribute 9.85 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after October 1, 2004, the member shall contribute 18.2 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after January 1, 2005, the member shall contribute 18.7 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. Effective the first full payroll period after January 1, 2006, the member shall contribute 19.2 percent of his or her salary to the Fund, which shall be deducted each pay period from the salary of each member in the Department. All amounts of member contributions that are deducted shall be immediately paid over to the Pension Fund. For contributions made before October 1, 2004, any contribution amount~~ The contribution increase over 6.85 percent is to be used to purchase eligibility for participation in the postretirement health insurance benefits; effective October 1, 2004, that amount will increase to 15.2 percent.

(5) Service pension.—

(a) Normal retirement.—

1. Any member who is actively employed on and after October 1, 2003, excluding members in the DROP, who has attained age 50 years and who has acquired 15 or more years of service credit; who has attained age 55 years and who has acquired 10 or more years of service credit; or who has acquired 26 years of service credit without regard to age shall, upon application filed with the Board, be retired and shall be entitled to a monthly pension for the remainder of his or her life equal to the greater of the following:

a. Four percent of final average salary times credited service subject to a maximum of 92 percent of final average salary. However, in all cases,

members shall be entitled to at least 2 percent per year of credited service;
or

b. The sum of the following:

(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of service credit to a maximum of 26 years of service, and 2 percent of his or her final average salary multiplied by the number of years, and fraction of a year, in excess of 26 years of service, for all years of service earned through September 30, 1988; and

(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of service credit earned on and after October 1, 1988.

2. Any Member who is actively employed by the Department on and after October 1, 2003, and who is a member of the DROP on or after that date, may elect one of the following transition benefits by making a written election within 45 days after the effective date of this special act on a form provided by the Board of Trustees. The right to elect the transition benefits contained in sub-subparagraph b. shall terminate if no written election is made within 45 days after the effective date of this act. In the event a member does not submit a timely written election, the member shall be deemed to have elected the transition benefits contained in sub-subparagraph a. below:

a. Retain member's original monthly retirement benefit, DROP account balance, and share account balance. DROP members who select this transition benefit may continue to participate in the DROP until the end of the original DROP term. Additional allocations to the share account shall be made in accordance with the provisions of paragraph (j).

b. Convert the member's original monthly benefit and DROP balance to a new monthly benefit and BackDROP. In order to be entitled to this benefit, the member must cease membership in the DROP program. The new converted benefits will not be paid until the member has terminated employment. The conversion of the member's benefits shall be based on the following:

(I) Original monthly benefit conversion: A DROP member is entitled to a conversion of the original monthly benefit in an amount equal to 4 percent for each year of credited service excluding the BackDROP period with a 2-year final average salary. The 2-year final average salary shall be determined based on a 24-month period with the highest average prior to the number of full years of BackDROP (selected by the member in accordance with sub-sub-subparagraph II). No final average salary shall be included in a monthly benefit calculation for which a member has received a BackDROP payment.

(II) BackDROP conversion: The DROP member is entitled to a lump sum payment equal to the new monthly benefit annualized times a period of whole years as selected by the member up to a maximum of 5. The DROP

member may select zero years. The BackDROP benefit will be paid interest at the rate of 8.25 percent less expenses, compounded annually.

~~1.— Any member whose entry or reentry in the employment of the Department occurs after April 30, 1959, who has attained age 50 years and who has acquired 15 or more years of service credit or, effective for retirements after January 20, 2002, has 25 years of service credit without regard to age shall, upon application filed with the Board, be retired and shall be entitled to a monthly pension for the remainder of his or her life equal to the greater of the following, as applicable:~~

~~a.— For a member who is actively employed by the Department on or after October 1, 1998, or who is part of the DROP on or after October 1, 1998, 3 percent of his or her final average salary multiplied by the number of years, and fraction of a year, of service credit earned from and after October 1, 1982, plus 2-½ percent of his or her final average salary multiplied by the number of years, and fraction of a year, of service credit earned prior to October 1, 1982, provided that in no case shall the total monthly pension payable to any such member exceed 78 percent of his or her final average salary;~~

~~b.— For members who terminated employment, retired, or entered the DROP prior to October 1, 1998, except as provided in sub-subparagraph a., 2-½ percent of his or her final average salary multiplied by the number of years, and fraction of a year, of service credit, provided that in no case shall the total monthly pension payable to any member exceed 65 percent of his or her final average salary; or~~

~~e.— The sum of the following:~~

~~(I) Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of service credit to a maximum of 26 years of service, and 2 percent of his or her final average salary multiplied by the number of years, and fraction of a year, in excess of 26 years of service, for all years of service earned through September 30, 1988; and~~

~~(II) Two percent of final average salary multiplied by the number of years, and fraction of a year, of service credit earned on and after October 1, 1988.~~

~~2.— Any member whose entry or reentry in the employment of the Department occurs after April 30, 1959, and prior to July 1, 1977, may elect upon his or her retirement to receive a pension under the provisions of this subparagraph in lieu of subparagraph 1., as follows: Any member who has attained age 55 years and who has acquired 20 or more years of service credit shall, upon his or her application filed with the Board, be retired and, when so retired, shall be entitled to a monthly pension for the remainder of his or her life equal to the greater of the following:~~

~~a.— Two percent of final average salary multiplied by the number of years, or fraction of a year, of service credit not to exceed 25 years, provided that in no case shall the total monthly pension payable to any member exceed 65 percent of his or her final average salary; or~~

b. ~~The sum of the following:~~

(I) ~~Two and one-half percent of final average salary multiplied by the number of years, and fraction of a year, of service credit to a maximum of 26 years of service, and 2 percent of final average salary multiplied by the number of years and fraction of a year in excess of 26 years of service, for all years of service earned through September 30, 1988; and~~

(II) ~~Two percent of final average salary multiplied by the number of years, and fraction of a year, of service credit earned on and after October 1, 1988.~~

The ~~4-percent~~ 3-percent benefit accrual factor in sub-subparagraph 1.a. is contingent on and subject to the adoption and maintenance of the assumptions set forth in subsection ~~(23)~~(22). If such assumptions are modified by legislative, judicial, or administrative agency action, and the modification results in increased City contributions to the Pension Fund, the ~~4-percent~~ 3-percent accrual factor in sub-subparagraph 1.a. shall be automatically decreased prospectively, from the date of the action, to completely offset the increase in City contributions. However, in no event shall the benefit accrual factor in sub-subparagraph 1.a. be adjusted below ~~3.5~~ 2.5 percent. To the extent that the benefit accrual factor is less than ~~4~~ 3 percent, the supplemental pension distribution calculation under paragraph (d) shall be adjusted for employees who retire on or after October 1, 1998, and those employees who were members of the DROP on October 1, 1998. The adjustment shall be to decrease the minimum return of 8.25 percent needed to afford the supplemental pension distribution, when the amount of the reduction is zero if an employee has been credited with 16 or more years with the 3-percent benefit accrual factor or 1.25 percent if an employee has been credited with no more than a 2.5-percent benefit accrual factor. If an employee has been credited with less than 16 years at the 3-percent benefit accrual factor, then the accumulated amount over 2.5 percent for each year of service divided by .5 percent divided by 16 subtracted from 1 multiplied by 1.25 percent is the reduction from 8.25 percent. An example of the calculation of the minimum return for supplemental pension distribution as described above is set forth in Appendix B to the collective bargaining agreement between the City of West Palm Beach and the West Palm Beach Association of Firefighters, Local 727-IAFF, ~~October 1, 2003-September 30, 2006~~ October 1, 1998-September 30, 2001.

(j) Chapter 175, Florida Statutes, share accounts.—

3. Annual allocation of accounts.—

a. Moneys shall be credited to each individual member account in an amount directly proportionate to the number of pay periods for which the member was paid compared to the total number of pay periods for which all members were paid, counting the pay periods in the calendar year preceding the date for which chapter 175, Florida Statutes, tax revenues were received. For the fiscal year beginning October 1, 2003, and ending September 30, 2004, share account allocations shall only be made to DROP members who elect not to convert in accordance with sub-subparagraph (5)(a)2.b. For

purposes of determining the pro rata share for those share account allocations during the fiscal year beginning October 1, 2003, and ending September 30, 2004, the pay periods of all active firefighters, including DROP members, shall be used. Share account allocations made on and after October 1, 2004, shall be made to each individual share account.

b. At the end of each fiscal year (September 30), each individual account shall be adjusted to reflect the earnings or losses resulting from investment, as well as reflecting costs, fees, and expenses of administration.

c. The investment earnings or losses credited to the individual member accounts shall be in the same percentage as are earned or lost by the total investment earnings or losses of the Fund as a whole, unless the Board dedicates a separate investment portfolio for chapter 175, Florida Statutes, share accounts, in which case the investment earnings or losses shall be measured by the investment earnings or losses of the separate investment portfolio.

d. Costs, fees, and expenses of administration shall be debited from the individual member accounts on a proportionate basis, taking the cost, fees, and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of which is the total assets in all individual member accounts and the denominator of which is the total assets of the Fund as a whole. The proportionate share of the costs, fees, and expenses shall be debited from each individual member account on a pro rata basis in the same manner as chapter 175, Florida Statutes, tax revenues are credited to each individual member account (i.e., based on pay periods).

e. If the entire balance of the individual member account is withdrawn before September 30 of any year, there shall be no adjustment made to that individual member account to reflect either investment earnings or losses or costs, fees, and expenses of administration.

5. Forfeitures.—Any member who has less than 10 years of credited service and who is not eligible for payment of benefits after termination of employment with the City shall forfeit his or her individual member account. The amounts credited to said individual member account shall be redistributed to the other individual member accounts in the same manner as chapter 175, Florida Statutes, tax revenues are credited (i.e., based on pay periods). However, the assets shall first be used to ensure that the former member's refund of contributions has not actuarially adversely impacted the payment for the extra benefits. If there has been an adverse impact, the shortfall shall be made up first before the amounts are reallocated to active members.

6. Payment of benefits.—The normal form of benefit payment shall be a lump sum payment of the entire balance of the individual member account; or, upon the written election of the member, upon a form prescribed by the Board, payment may be made either by:

a. Installments.—The account balance shall be paid out to the ~~member~~ retiree in three equal payments paid over 3 years, the first payment to be made upon approval of the Board; or

b. Annuity.—The account balance shall be paid out in monthly installments over the lifetime of the member or until the entire balance is exhausted. The monthly amount paid shall be determined by the Fund's actuary in accordance with selections made by the member in a form provided by the Board.

(k) Deferred Retirement Option Plan (DROP).—Effective upon the ratification of the collective bargaining agreement between the City of West Palm Beach and the West Palm Beach Association of Firefighters, Local 727-IAFF, October 1, 2003-September 30, 2006, no new members may enter into the DROP. Existing DROP members on the ratification date shall have the option to remain in the DROP for the remainder of their individual 5-year terms in accordance with the provisions of subparagraph (5)(a)2.

1. Eligibility to participate in the DROP.—

a. Any member who is eligible to receive an early or normal retirement pension may participate in the DROP. Members shall elect to participate by applying to the Board of Trustees on a form provided for that purpose.

b. Election to participate shall be forfeited if not exercised within the first 35 years of combined credited service.

c. A member shall not participate in the DROP beyond the time of attaining 37 years of service and the total years of participation in the DROP shall not exceed 5 years. For example:

(I) Members with 32 years of credited service at the time of entry shall participate for only 5 years.

(II) Members with 33 years of credited service at the time of entry shall participate for only 4 years.

(III) Members with 34 years of credited service at the time of entry shall participate for only 3 years.

(IV) Members with 35 years of credited service at the time of entry shall participate for only 2 years.

d. Upon a member's election to participate in the DROP, he or she shall cease to be a member and shall no longer accrue any benefits under the Pension Fund, except for the benefits provided under paragraph (j) of this subsection, chapter 175, Florida Statutes, share accounts. For all Fund purposes, the member becomes a retirant, except that a DROP participant shall continue to receive shares of the chapter 175, Florida Statutes, money in accordance with paragraph (j), chapter 175, Florida Statutes, share accounts. The amount of credited service and final average salary shall freeze as of the date of entry into the DROP.

2. Amounts payable upon election to participate in the DROP.—

a. Monthly retirement benefits that would have been payable had the member terminated employment with the Department and elected to receive monthly pension payments shall be paid into the DROP and credited

to the retirant. Payments into the DROP shall be made monthly over the period the retirant participates in the DROP, up to a maximum of 60 months.

b. Payments to the DROP earn interest using the rate of investment return earned on Pension Fund assets as reported by the Fund's investment monitor. DROP assets are commingled with the Pension Fund assets for investment purposes. However, if a member does not terminate employment at the end of participation in the DROP, interest credit shall cease on the current balance and on all future DROP deposits.

c. No payments shall be made from the DROP until the member terminates employment with the Department.

d. Upon termination of employment, participants in the DROP shall receive the balance of the DROP account in accordance with the following rules:

(I) Members may elect to receive payment upon termination of employment or defer payment of the DROP until the latest day under sub-subparagraph (III).

(II) Payments shall be made in either:

(A) Lump sum.—The entire account balance shall be paid to the retirant upon approval of the Board of Trustees.

(B) Installments.—The account balance shall be paid out to the retirant in three equal payments paid over 3 years, the first payment to be made upon approval of the Board of Trustees.

(C) Annuity.—The account balance shall be paid out in monthly installments over the lifetime of the member or until the entire balance is exhausted. The monthly amount paid shall be determined by the Fund's actuary in accordance with selections made by the member in a form provided by the Board of Trustees.

(III) Any form of payment selected by a member must comply with the minimum distribution requirements of the IRC 401(A)(9), and are subject to the requirements of subsection (19).

(IV) The beneficiary of the DROP participant who dies before payments from DROP begin shall have the same right as the participant in accordance with subsection (7).

3. Loans from the DROP.—

a. Availability of loans.—

(I) Loans are available to members only after termination of employment, provided the member had participated in the DROP for a period of 12 months.

(II) Loans may only be made from a member's own account.

(III) There may be no more than one loan at a time.

b. Amount of loan.—

(I) Loans may be made up to a maximum of 50 percent of account balance.

(II) The maximum dollar amount of a loan is \$50,000, reduced by the highest outstanding loan balance during the last 12 months.

(III) The minimum amount of a loan is \$5,000.

c. Limitation on loans.—Loans shall be made from the amounts paid into the DROP and earnings thereon.

d. Term of the loan.—

(I) The loan must be for at least 1 year.

(II) The loan shall be no longer than 5 years.

e. Loan interest rate.—

(I) The interest rate shall be fixed at the time the loan is originated for the entire term of the loan.

(II) The interest rate shall be equal to the lowest prime rate published by the Wall Street Journal on the last day of each calendar quarter preceding the date of the loan application.

f. Defaults of loans.—

(I) Loans shall be in default if 2 consecutive months' repayments are missed or if a total of 4 months' repayments are missed.

(II) Upon default, the entire balance becomes due and payable immediately.

(III) If a loan in default is not repaid in full immediately, the loan may be canceled and the outstanding balance treated as a distribution, which may be taxable.

(IV) Upon default of a loan, a member shall not be eligible for additional loans.

g. Miscellaneous provisions.—

(I) All loans must be evidenced by a written loan agreement signed by the member and the Board of Trustees. The agreement shall contain a promissory note.

(II) A member's spouse must consent in writing to the loan. The consent shall acknowledge the effect of the loan on the member's account balance.

(III) Loans shall be considered general assets of the Fund.

(IV) Loans shall be subject to administrative fees to be set by the Board of Trustees.

4. After-tax contributions to the DROP.—

a. A member may make after-tax contributions to the DROP. The maximum amount that may be contributed is the lesser of:

(I) The IRS 415(c) limit.

(II) The amount allowable under IRC 401(m).

b. After-tax contributions to the DROP shall earn interest in the same manner as set forth in sub-subparagraph 2.b.

c. Distributions to members or their beneficiaries of after-tax contributions may be withdrawn at any time on or after termination of employment. However, payments must be made at least as promptly as required under subsection (19).

d. Loans shall not be made against after-tax contributions.

(1) Backwards Deferred Retirement Option Plan (BackDROP).—

1. Eligibility to participate in the BackDROP.—

a. Any member who has attained age 53 with 18 or more years of service, who has attained age 58 with 13 or more years of service, or who has acquired 26 years of service regardless of age may participate in the BackDROP. Members shall elect to participate by applying to the Board of Trustees on a form provided for that purpose. A member may not participate in both the DROP and the BackDROP.

b. Election to participate shall be forfeited if not exercised within the first 28 years of credited service. However, a member who is actively employed by the Department on October 1, 2003, may elect to participate in the BackDROP beyond the 28th year as follows: the member may elect to participate in the benefit for 3 full years in the 29th year of employment, for 1 full year in the 30th year of employment, and after the 30th year of employment all elections to participate in the BackDROP end.

c. A member shall not be eligible to receive a BackDROP benefit that is greater than an accumulation of 60 months of the monthly retirement benefit. A member shall not be eligible to receive a benefit which is less than an accumulation of 36 months of the monthly retirement benefit, except for the reduction of benefits as defined in sub-subparagraph b.

d. Member contributions shall continue throughout the period of employment and are not refundable for the BackDROP period.

e. Members who elect to participate in the BackDROP must retire and terminate employment to be eligible for payment of the benefit.

2. Benefits payable upon election to participate in the BackDROP.—

a. Upon election to receive the BackDROP benefit, a member's retirement benefits will be calculated as if the member had chosen to retire and terminate employment at a date which is 3, 4, or 5 whole years earlier. The number of years to be applied is based upon the member's election. The monthly pension amount shall be multiplied by 36, 48, or 60, depending upon the member's election of 3, 4, or 5 years. The BackDROP benefit shall be calculated as a single sum, including interest at the rate of 8.25 percent less expenses, compounded annually for the period of BackDROP.

b. No payments shall be made from the BackDROP until the member terminates employment with the Department.

c. Upon termination of employment, participants in the BackDROP shall receive the balance of the BackDROP account in accordance with the following rules:

(I) Members may elect to receive payment upon termination of employment or defer payment of the BackDROP until the latest day under sub-subparagraph (II).

(II) Payments shall be made in either:

(A) A lump sum.—The entire account balance shall be paid to the retiree upon approval of the Board of Trustees.

(B) Installments.—The account balance shall be paid out to the retiree in three equal payments paid over 3 years, the first payment to be made upon approval of the Board of Trustees.

(C) Annuity.—The account balance shall be paid out in monthly installments over the lifetime of the member or until the entire balance is exhausted. The monthly amount paid shall be determined by the Fund's actuary in accordance with selections made by the member in a form provided by the Board of Trustees.

(III) Any form of payment selected by a member must comply with the minimum distribution requirements of the IRC 401(A)(9), and are subject to the requirements of subsection (19).

(IV) The beneficiary of the BackDROP member shall have the same right as the participant in accordance with subsection (7).

3. BackDROP earnings.—

a. BackDROP members may select one of three methods to credit investment earnings to their accounts. Investment earnings shall be credited on a quarterly basis. The method may be changed each year effective October 1; however, the method must be elected prior to October 1. The methods are:

(I) The BackDROP is credited with earnings and losses using the rate of investment return earned on Pension Fund assets as reported by the Fund's investment monitor. BackDROP assets are commingled with the Pension Fund assets for investment purposes;

(II) A fixed rate of 8.25 percent; or

(III) A percentage of the BackDROP account assets to be credited with earnings or losses in accordance with sub-sub-subparagraph (I) and a corresponding percentage of the BackDROP account assets credited in accordance with sub-sub-subparagraph (II). The combined total percentage invested under this sub-sub-subparagraph must equal 100 percent.

b. Costs, fees, and expenses of administration shall be debited from the individual member BackDROP accounts on a proportionate basis, taking the cost, fees, and expenses of administration of the Fund as a whole, multiplied by a fraction, the numerator of which is the total of assets in all individual member accounts and the denominator of which is the total of assets of the Fund as a whole.

(7) Beneficiary benefits.—

(b) Death in the line of duty.—In the event a member dies while in the employ of the Department, and the Board finds his or her death to be the natural and proximate result of causes arising out of and in the actual performance of duty as a firefighter in the employ of the City, the following applicable pensions shall be paid:

1. Surviving spouse's benefits.—~~The surviving spouse shall receive a monthly pension equal to sixty-six and two-thirds three-fourths of the member's highest 12 months' salary or top step firefighter pay, whichever is greater duty disability pension the member would otherwise have been entitled to receive at the time of his or her death.~~ Upon the surviving spouse's death, the pension shall terminate.

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 17, 2004.

Filed in Office Secretary of State June 17, 2004.