

CHAPTER 2011-239

House Bill No. 229

An act relating to the City of Tampa, Hillsborough County; amending chapter 23559, Laws of Florida, 1945, as amended; revising the General Employees' Pension Plan for the City of Tampa; revising the definitions of the terms "Salaries or Wages," "Employee," and "Military Service Time"; revising application of the term "Actuarial Equivalent"; defining the term "Limitation Year"; providing that all employee contributions to the pension fund after a certain date are mandatory and that the city shall pay such contributions to the fund on behalf of the employee; providing certain beneficiaries an option to roll over certain death benefits; providing for a refund of employee contributions; revising the provision that addresses the reemployment of retired employees; revising construction of the act; allowing DROP members the opportunity to elect an investment option, as determined by the board of trustees, to be applied to the participant's account for the plan year entering the DROP program and for each subsequent plan year; revising benefit limitations; revising requirements for distribution of benefits; providing a default distribution when a member fails to elect a distribution option; revising direct rollover options; revising the definitions of the terms "eligible rollover distribution," "eligible rollover plan," and "distributee"; providing an effective date.

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

Section 1. Subsections (A), (E), (H), and (P) of section 4, subsection (A) of section 5, subsection (B) of section 16, section 19, subsection (D) of section 22, subsections (A), (B), (D), (E), and (F) of section 24, and sections 25 and 26 of chapter 23559, Laws of Florida, 1945, as amended, are amended, and subsection (S) is added to section 4, subsection (C) is added to section 12, and subsection (C) is added to section 14 of that chapter, to read:

Section 4. Definitions.

(A) Salaries or Wages. Salaries or Wages for the purpose of this Act shall be the base amounts earned by the Employee, plus regular longevity bonuses, overtime, and shift premiums. Salary or Wages shall also include elective amounts that are excludible from the Employee's gross income under Sections 125 (including amounts that are not available to the Employee in cash in lieu of group health coverage because the Employee is unable to certify that he or she has other health coverage, but only if the Employer does not request or collect information regarding the Employee's other health coverage as part of the enrollment for the health plan); 403(b) (tax-sheltered annuity); 457 (Section 457 plan); and 132(f)(4) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"). Salaries or Wages shall exclude, but exclusive of other premiums, other than shift premiums, allowances, or special payments, or any casual nonrecurring or unpredictable bonuses; payments for unused accrued bona fide sick,

vacation, or other leave; payments received by an Employee pursuant to a nonqualified unfunded deferred salary or wages plan; and severance pay that is paid after an Employee severs employment with the City. However, Salaries or Wages, as defined herein, earned but not paid to the Employee by the Employee's severance date with the City shall be considered Salary or Wages for Plan purposes. In addition to other applicable limitations set forth in the Plan, and notwithstanding any other provision of the Plan to the contrary, for Plan Years beginning on or after January 1, 1996, the annual Salaries or Wages of each Employee taken into account under the Plan shall not exceed the annual compensation limit provided for in Section 401(a)(17) of the Code the Omnibus Budget Reconciliation Act of 1993 (the "OBRA 1993 Annual Compensation Limit"). The OBRA 1993 Annual Compensation Limit is \$150,000, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost-of-living in accordance with Section 401(a)(17)(B) of the ~~Internal Revenue Code of 1986, as amended (the "Code")~~. The cost-of-living adjustment in effect for a calendar year applies to any period, not exceeding 12 months, over which Salaries or Wages are determined (determination period) beginning in such calendar year. If a determination period consists of fewer than 12 months, the OBRA 1993 Annual Compensation Limit will be multiplied by a fraction, the numerator of which is the number of months in the determination period, and the denominator of which is 12. ~~For Plan Years beginning on or after January 1, 1996, any reference in this Plan to the limitation under Section 401(a)(17) of the Code shall mean the OBRA 1993 Annual Compensation Limit set forth in this provision.~~ The limitation on Salaries or Wages for an "eligible Employee" shall not be less than the amount which was allowed to be taken into account hereunder as in effect on July 1, 1993. "Eligible Employee" is an individual who was a participant in the Plan before the first Plan Year beginning after December 31, 1995. ~~Commencing for earnings paid the first pay date after October 1, 2005, all mandatory Employee Contributions to the Fund shall be picked up and paid by the City. Such contributions, although designated as Employee Contributions, shall be paid by the City in lieu of contributions by the Employee. The contributions so assumed shall be treated as tax-deferred Employer "pickup" contributions pursuant to Section 414(h) of the Internal Revenue Code. Members shall not have the option of receiving the contributed amounts directly instead of having such contributions paid by the City to the Fund.~~

(E) Employee. For the purposes of this Act, "Employee" shall mean an Employee covered or qualified to be covered under either Division A or Division B of this Plan. An Employee covered by this Plan shall include all Employees, whether full-time full-time, part-time, or temporary, who have taken the physical examination required by Section 18. Employees whose Salaries or Wages are paid pursuant to a federal grant-in-aid program are included in this Act only when the federal government pays the employer's contribution. Any individual who is an independent contractor, or who performs services for the City under an agreement that identifies the individual as an independent contractor, is excluded from the Plan even if a governmental agency retroactively reclassifies such individual as an

Employee. Casual laborers are excluded from this definition as are employees covered by other City pension plans.

(H) Military Service Time. For members rehired after leave to provide military service prior to December 12, 1994, in computing Service allowance for retirement, creditable Service shall, at the option of the Employee, include any service which interrupted employment with the Employer, not to exceed a period of 3 years, in any of the armed services of the United States during time of war, upon condition that within 90 days from the date of reinstatement of such Employee now or hereafter serving in the armed forces, or within 90 days from the effective date of this Act for those Employees already reinstated, such Employee shall exercise such option by filing written notice thereof with the Board of Trustees and, if a Division A Employee, shall within the 12 ensuing months pay into the retirement fund an amount equal to the aggregate contributions such Employee would have made had such Employee not served in the armed forces, based upon the Salary or Wages being earned at the time of entering the armed services, and if any such Employee shall fail to exercise such option within the time and in the manner hereinabove prescribed, such period of military service shall not thereafter be allowed as creditable Service, but shall not be deemed a break in such Employee's Continuous Service eligibility period. Members rehired on or after December 12, 1994, Notwithstanding the foregoing, an Employee shall be credited with service for purposes of vesting and benefit accrual under the Plan for his or her service in the uniformed service (as defined in the Uniformed Services Employment and Reemployment Rights Act of 1994, known as (the "USERR Act") upon being granted leave by the Employer for such uniformed service and termination from employment as an Employee with the Employer, provided that the Employee must return to his or her employment as an Employee with the Employer within the time periods prescribed by the USERR Act; and must comply the Employee complies with the Employee contribution requirements prescribed by the USERR Act. The maximum service credit for uniformed service shall be 5 years or such other time period as may be prescribed by the USERR Act. Effective as of the dates reflected in the Heroes Earnings Assistance and Relief Tax Act ("HEART Act"), the Plan must comply with all applicable provisions of the HEART Act.

(P) Actuarial Equivalent. The Actuarial Equivalent of an Employee's Accrued Pension shall be determined by basing mortality on the 1983 Group Annuity Mortality Table for Males with female ages set back 6 years and post-disablement mortality upon 80 percent of the 1965 Railroad Board Ultimate Mortality Table, or such other mortality tables as are in compliance with the Code. This subsection does not apply to Plan Limitation Years beginning after December 31, 2008.

(S) Limitation Year. The limitation year shall be the Plan Year.

Section 5. Contributions. The Pension Fund shall consist of moneys derived from the following sources:

(A) Employee Contributions. Division A Employees. Commencing for earnings paid beginning with the first pay date after January 1, 2005, all Employee contributions to the Fund shall be mandatory Employee contributions and shall be picked up and paid by the City on behalf of the member. Such contributions shall be made by Employees in an amount equal to There shall be a contribution of 7 percent of all Salaries or Wages of all Employees participating in this Fund, which shall be deducted from said Salaries or Wages by the Director of Finance, before the same are paid, as long as the Employee continues in the Service of the City of Tampa, regardless of the number of years of Service with the City. Such contributions, although designated as Employee contributions, shall be paid by the City in lieu of contributions by the Employee. The contributions so assumed shall be treated as tax-deferred Employer “pick-up” contributions pursuant to Section 414(h) of the Code. Members shall not have the option of receiving the contributed amounts directly instead of having such contributions paid by the City to the Fund.

Section 12. Death Benefits.

(C) When the designated beneficiary, as defined in Section 401(a)(9)(E) of the Code, is not the Employee’s spouse (including, without limitation, a child, parent, or sibling), distributions made after December 31, 2006, from Division A and Division B shall be made in accordance with Section 402(c)(11) of the Code, and such designated beneficiary shall have the option to roll over all or a portion of his or her death benefit via a direct trustee-to-trustee transfer to an inherited individual retirement account, as defined in Section 408(d)(3)(c) of the Code, provided such distribution meets the definition of an eligible rollover distribution as defined in Section 26 of this Act.

Section 14. Refund of Contributions Contribution.

(C) Refund of Employee contributions shall be paid in accordance with Section 26 of this Act.

Section 16. Reemployment of Retired Employees Employee. Upon the employment of any person in Division A or Division B who shall have retired under the pension or retirement Plan and shall be receiving pension payments, such person shall resume his participation in the Plan, shall not be entitled to receive pension payments during or for the period of such additional Service, the period of such retirement shall not constitute a break in Service, and the period of such retirement shall not be allowed as creditable Service. The monthly pension payable when such officer or person is eligible to receive a pension shall consist of the sum of (A) and (B) below, provided that the total pension shall not be less than \$100 per month after 25 years of Service.

(A) The monthly pension he was receiving immediately prior to the commencement of his additional Service; plus

(B) One and ~~two-tenths~~ ~~one-tenths~~ percent of his Average Monthly Salary at the end of his period of additional Service multiplied by the number of years of additional Service, provided, however, that this additional benefit shall not be payable before the age of 62 years.

Section 19. Construction. This Act shall be liberally construed in accordance with general law and the federal tax code, and if any part or portion thereof be declared invalid, or the application thereof to any person, circumstance, or thing is declared invalid, the validity of the remainder of this Act shall not be affected thereby.

Section 22. Deferred Retirement Option Program. Notwithstanding any other provisions of this Act, and subject to the provisions of this section, the Deferred Retirement Option Program, hereinafter referred to as the DROP, is an option under which an eligible member may elect, commencing on October 1, 1999, to have the member's pension benefits calculated as of a certain date prior to retirement, and accumulate benefits plus the investment return pursuant to this section during the DROP calculation period. Participation in the DROP does not guarantee employment for the DROP calculation period, as defined in this section.

D. Interest and administrative costs. Interest shall accumulate annually at a rate reflecting the ~~Fund's net investment performance~~, whether positive or negative, during the DROP calculation period, less the cost of administering the DROP, all of which shall be determined by the Board of Trustees. A DROP participant shall have the opportunity to elect, as provided in this subsection, an investment option to be applied to such DROP participant's account for the Plan Year when entering the DROP and for each subsequent Plan Year. In such election, the DROP participant shall choose to have interest accumulate annually, whether positive or negative, at either (i) a rate reflecting the Fund's net investment performance, as determined by the Board of Trustees, or (ii) a rate reflective of a low-risk variable rate selected annually by the Board of Trustees in its sole discretion. Each election must be made at such time, on such forms, and in such manner as the Board of Trustees may determine in its sole discretion. If a DROP participant fails to make a valid election upon entering the DROP, the Fund interest rate shall be applied as provided in (i) herein. If a DROP participant fails to make a valid election in a subsequent Plan Year, the election for the then-current Plan Year shall be applied.

Section 24. Limitations on Amounts of Benefits.

(A) For Plan Years ending after December 31, 2001, benefits for an Employee under this Plan, when expressed as a benefit payable annually in the form of a straight life annuity without regard to the death benefit or any other ancillary benefit, shall not at any time within the limitation year exceed the limits provided under Section 415(b) of the Code \$90,000.

(B)1. The ~~\$90,000~~ limitation set forth in subsection (A) shall be actuarially reduced in accordance with regulations prescribed by the

Secretary of the Treasury for any retirement benefit that may begin before an Employee attains age 62, by adjusting such benefit so that it is equivalent to such a benefit beginning at age 62. For Plan Years ending before January 1, 2002, and repealed for Plan Years ending thereafter, the reduction shall not reduce the ~~\$90,000~~ limitation set forth in subsection (A) to less than (a) \$75,000 if the benefit begins at or after age 55, or (b) if the benefit begins before age 55, the equivalent of the \$75,000 limitation for age 55.

2. If any retirement benefit begins after the Employee attains age 65, the ~~\$90,000~~ limitation set forth in subsection (A) shall be adjusted (based upon an interest rate assumption of 5 percent) in accordance with regulations prescribed by the Secretary of the Treasury, by adjusting such benefit so that it is equivalent to such benefit beginning at age 65.

(D) In accordance with Section 415(b)(5) of the Code, the ~~\$90,000~~ limitation in subsection (A), and the limitation in subsection (C), shall be multiplied by a fraction (not in excess of 1), the numerator of which is the number of the Employee's years of Service in the Plan (in the case of the ~~\$90,000~~ limitation set forth in subsection (A)) or the number of the Employee's years of Service (in the case of the limitation set forth in subsection (C)) and the denominator of which, in either case, is 10.

(E) As of January 1 of each calendar year, the ~~\$90,000~~ limitation set forth in subsection (A) shall be adjusted as and if permitted by the Secretary of the Treasury, and any such adjusted limitation shall become effective as the maximum dollar limitation under the Plan for that calendar year. The maximum dollar limitation for a calendar year, as so adjusted, shall apply to limitation years ending with or within such calendar year.

(F) The following is repealed for Plan Limitation Years beginning after December 31, 1999:

1. In the event that any Employee participates in both a defined benefit plan and a defined contribution plan maintained by the City, then the sum of the Defined Benefit Plan Fraction (as defined in Section 415(e) of the Code) and the Defined Contribution Plan Fraction (as defined in Section 415(e) of the Code) for any limitation year shall not exceed 1.0.

2. In the event that the sum of the Defined Benefit Plan Fraction and the Defined Contribution Plan Fraction exceeds 1.0, then the Board of Trustees shall take such actions, applied in a uniform and nondiscriminatory manner, as will keep the benefits and annual additions thereto for such Employees from exceeding these limits. Adjustments shall be made to this Plan before any adjustments shall be required to any other plans.

Section 25. Latest Date of Commencement of Benefits Required Distributions. The distribution of a member's benefit shall be made in accordance with the following requirements, and shall otherwise comply with Section 401(a)(9) of the Code and the regulations thereunder, as prescribed by the Commissioner in Revenue Rulings, Notices, and other

guidance published in the Internal Revenue Bulletin, to the extent that said provisions apply to governmental plans under Section 414(d) of the Code. The distribution provisions of Section 401(a)(9) of the Code shall override any distribution options in the Plan inconsistent with Section 401(a)(9) of the Code:

(A) Any benefit paid to a member ~~an Employee~~ shall commence not later than the last to occur of:

1. April 1 of the year following the calendar year in which the member ~~Employee~~ retires; or

2. April 1 of the year immediately following the calendar year in which the member ~~Employee~~ reaches age 70 1/2.

(B) Distributions of members' benefits will be made in accordance with Sections 1.401(a)(9)-2. through 1.401(a)(9)-9. of the Code and such other rules thereunder as may be prescribed by the Secretary of the Treasury, to the extent that said provisions apply to governmental plans under Section 414(d) of the Code.

~~(B) In the case of a benefit payable by reason of an Employee's retirement or other termination of employment, in no event shall payment extend beyond the life or life expectancy of the Employee or the joint lives or life expectancies of the Employee and the Employee's designated beneficiary. In the case of an Employee who is receiving his or her pension benefit as of the date of his or her death, the survivor portion of the Employee's pension benefit shall be paid at least as rapidly as under the method being used prior to the Employee's death.~~

(C) Notwithstanding anything contained herein to the contrary, payments under the Plan to a Beneficiary due to a member's death shall satisfy the incidental death benefit requirements and all other applicable provisions of Section 401(a)(9)(G) of the Code, the regulations issued thereunder (including Section 1.401(a)(9)-2 of the proposed Treasury regulations), and such other rules thereunder as may be prescribed by the Secretary of the Treasury, including IRS Notice 2007-7, to the extent that said provisions apply to governmental plans under Section 414(d) of the Code.

Section 26. Direct Rollovers.

(A) This section applies to distributions made on or after January 1, 1993. Notwithstanding any provision of the Plan to the contrary ~~that would otherwise limit a distributee's (as defined below) election under this section,~~ a distributee may elect, at the time and in the manner prescribed by the Commissioner of the Internal Revenue Service, to have any portion of an eligible rollover distribution (as defined below) paid directly to an eligible retirement rollover plan (as defined below) specified by the distributee in a direct rollover (as defined below). If a member fails to elect a distribution option as provided under Sections 14 and 22 of this Act, then such member's

benefit shall be rolled over to an individual retirement account designated by the Board of Trustees, as defined in Section 6.

(B) For purposes of this section, the following terms shall have the following meanings:

1. An “eligible rollover distribution” is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee’s designated beneficiary, or for a specified period of 10 years or more; any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; and the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities). Notwithstanding the above, a portion of a distribution shall not fail to be an “eligible rollover distribution” merely because the portion consists of after-tax voluntary Employee contributions that are not includable in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Section 408(a) or (b) of the Code or to a qualified defined contribution plan described in Section 401(a) or 403(a) of the Code that agrees to separately account for amounts transferred, including separately accounting for the portion of such distribution that is includable in gross income and the portion of such distribution that is not so includable.

2. An “eligible retirement rollover plan” is an individual retirement account described in Section 408(a) of the Code, an individual retirement annuity described in Section 408(b) of the Code, ~~other than an endowment contract; an annuity plan described in Section 403(a) of the Code, or a qualified trust (an employees’ trust) described in Section 401(a) of the Code that is exempt from tax under Section 501(a) of the Code; an annuity plan described in Section 403(a) of the Code; an eligible plan under Section 457(b) of the Code that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision and that agrees to separately account for amounts transferred into such plan from this Plan; or an annuity contract described in Section 403(b) of the Code that accepts the distributee’s eligible rollover distribution.~~ However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement rollover plan is an individual retirement account or individual retirement annuity.

3. A “distributee” includes ~~the member or former member an Employee or former employee.~~ In addition, the member’s Employee’s or former member’s employee’s surviving spouse and the member’s Employee’s or former member’s employee’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

4. A “direct rollover” is a payment by the Plan to the eligible retirement plan specified by the distributee.

Section 2. This act shall take effect October 1, 2011.

Approved by the Governor June 17, 2011.

Filed in Office Secretary of State June 17, 2011.