



# MEMORANDUM

Office of the City Attorney

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**TO:** MAYOR AND CITY COMMISSION  
**FROM:** CITY ATTORNEY  
**SUBJECT:** The City's Defined Benefit Pension Plans

**DATE:** June 16, 2011

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Recommendation: Hear a presentation and recommendations from staff.

On Wednesday, May 4, 2011, the Florida Legislature passed Senate Bill 1128 (SB 1128), an act relating to public pension plans. Among other things, SB 1128 requires defined benefit pension plans sponsored by a local government to calculate pension benefits in a certain manner on or after July 1, 2011.

At its meeting on May 19, 2011, the City Commission authorized this Office to prepare and the Clerk to advertise an ordinance amending the City's pension plans to bring them into compliance with SB 1128 contingent upon this bill becoming law. First reading was scheduled for June 16, 2011 and second reading was scheduled for a special meeting to occur before July 1, 2011. The Clerk subsequently scheduled a special meeting for a second reading on June 28, 2011.

As of June 7, 2011, SB 1128 was not yet law. However, the Municipal Police Officers and Firefighters' Retirement Trust Funds Office, a section of the State of Florida's Division of Retirement, issued interpretive guidance on SB 1128's application to municipal police officer and firefighter pension plans on May 31, 2011. This guidance is attached as backup to this agenda item. In relevant part, the guidance provides the following:

For Chapters 175 & 185 plans, if some of the police and firefighters are represented by a collective bargaining agent, then the effective date [of SB 1128] is the date of entry into the first CBA entered into on or after July 1, 2011 for all police and firefighters regardless of whether they are members of the collective bargaining unit or not.

The Division of Retirement issued this interpretive guidance despite the plain language of SB 1128 which provides that "[f]or noncollectively bargained service earned on after July 1, 2011, or for service earned under a collective bargaining agreements entered into on or after July 1, 2011, . . . when calculating retirement benefits, up to 300 hours per year in overtime compensation may be included, . . . but payments for accrued unused sick or annual leave may not be included."

The Division of Retirement's interpretive guidance has for all practical purposes concluded that the service of members outside of bargaining units (for example, service earned by a manager, administrative, or professional employee, or MAPs) is "earned under a collective

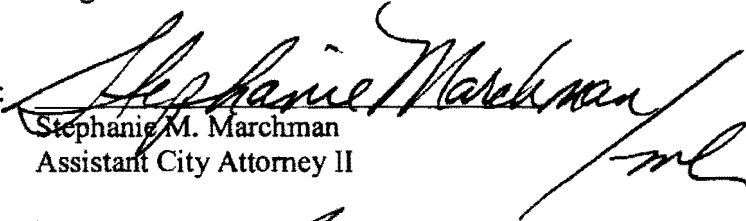
bargaining agreement” even though the City never bargained terms of conditions of employment, including pension benefits, with these employees because they were not members of a bargaining unit and the terms of conditions of employment for these employees are not covered by any collective bargaining agreement.


The City Attorney’s Office called the Division of Retirement to obtain the basis for its position, and the Division of Retirement’s rationale was twofold. First, Chapters 175 and 185 require all police officers and firefighters in a pension plan governed by those Chapters to be offered benefits under that plan in a nondiscriminatory or uniform manner. In other words, there cannot be tiered benefits in the plan -- all members must be treated uniformly. Second, the Office reasoned that because non-union members receive the same benefits as union members whose benefits are collectively bargained, the non-union members’ benefits are effectively bargained for under SB 1128.

Due to the Division of Retirement’s position on the effective date of SB 1128 for 175/185 plans, the City Attorney’s Office submitted a written request to the Division asking whether its interpretive guidance on SB 1128’s effective date for 175/185 plans would also apply to the City’s General Pension Plan. In other words, since non-union members (or MAPs) receive the same benefits in the General Pension Plan as union members (CWA and ATU), does this effectively mean that non-union members’ benefits are collectively bargained for under SB 1128, thereby not requiring the City to amend its pension plan by July 1, 2011 to bring it into compliance with SB 1128? As recent as June 6, 2011, the Division of Retirement responded that the City may use a uniform effective date for all plan members, deferred until the date of entry into the next collective bargaining agreement after July 1, 2011.

Although the Division of Retirement’s interpretive guidance appears to be inconsistent with the plain language of SB 1128, the Division is charged with interpreting Chapters 175 and 185 and its interpretation will be given deference by the courts.

Based on the foregoing, staff is seeking direction from the City Commission as to whether to move forward with amendments to the City’s defined pension plans at this time, or whether such changes should be made after the amendments can be collectively bargained.

Prepared by:   
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Approved and Submitted by:   
Marion J. Radson,  
City Attorney



REPLY TO: TALLAHASSEE

## MEMORANDUM

TO: Local Government Clients

FROM: Jim Linn and Glenn E. Thomas

DATE: June 1, 2011

RE: Division of Retirement Notice Concerning SB 1128

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Yesterday the Division of Retirement distributed a Notice intended to provide information concerning SB 1128, which makes several changes to local government pension plans effective July 1, 2011. SB 1128 has not yet been presented to the Governor for approval. The Notice provides an indication as to how the Division will interpret certain provisions of SB 1128. Changes to Chapter 112 apply to all public pension plans in Florida; whereas change to Chapters 175 and 185 apply only to police and firefighter plans participating in those Chapters. The Notice is attached.

### Overtime and Unused Leave

SB 1128 limits what may be included in compensation for purposes of determining retirement benefits. A new subsection (11) is added to Section 112.66, Florida Statutes, reading as follows:

(11) For noncollectively bargained service earned on or after July 1, 2011, or for service earned under collective bargaining agreements entered into on or after July 1, 2011, when calculating retirement benefits, a defined benefit pension system or plan sponsored by a local government may include up to 300 hours per year of overtime compensation as specified in the plan or collective bargaining agreement, but may not include any payments for accrued unused sick leave or annual leave. For those members whose terms and conditions of employment are collectively bargained, this subsection is effective for the first agreement entered into on or after July 1, 2011.

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SB 1128 made similar changes to the definition of compensation for firefighters and police officers under Chapters 175 and 185.

Under the Division of Retirement's interpretation of the above language, "payments for overtime greater than 300 hours per year or accrued unused annual or sick leave accrued with service earned before the 'effective date' may still be included in compensation for pension purposes, as provided in the plan document or collective bargaining agreement, even if the payment is not actually made until on or after the 'effective date'."

#### **Plan Sponsor Contributions Relating to Normal Cost**

SB 1128 also amends Chapter 112 to prohibit a local government sponsor of a pension plan from reducing contributions required to fund the normal cost of the plan. According to the Division, even if the actuarially required contribution is less than the normal cost, employer contributions must at least equal the normal cost. This change in funding will require actuarial review and must be funded in accordance with chapter 60T-1.004 (4), Florida Administrative Code, which provides that the minimum funding requirement must begin no later than the first day of the next fiscal year for the plan.

#### **Board of Trustees**

SB 128 amends Chapters 175 and 185 to provide for changes to membership on pension boards of police officer and firefighter pension plans. According to the Division, this change would only affect those local law plans in effect on June 30, 1986 having a higher than 40% employee representation on the board. For these boards, a city may now change the city representative on the board. The City representative must continue to be a resident of the municipality and the change may not reduce the membership percentage of firefighters or police officers serving on the board.

#### **Employee Contribution Increases**

SB 1128 amends Chapters 175 and 185 to permit an increase in employee contributions without an increase in benefits. As of the "effective date," employee contributions to police officer and firefighter pension plans may be increased by consent of the members' collective bargaining unit, or if none, by majority consent of the police officers and firefighters. In the plain language of the Division, "Increases in employee contributions are no longer contingent upon providing greater benefits."

#### **Collectively Bargained Benefits & Non-collectively Bargained Benefits – Effective Date**

The Division provided the following guideline for determining the effective dates of changes to Chapters 112, 175 and 185:

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- Where plan members are represented by a collective bargaining agent (whether or not the agreement includes pension benefits), these provisions are effective on the date of entry into the first agreement entered into on or after July 1, 2011.
- For Chapter 175 and 185 plans, if some of the police officers and firefighters are represented by a collective bargaining agent, then the effective date is the date of entry into the first agreement entered into on or after July 1, 2011 for all police and firefighters, regardless of whether or not they are members of the collective bargaining unit.
- In cities/districts where the members are not represented by a collective bargaining agent, the effective date shall be July 1, 2011.

If you have any questions concerning SB 1128 or any retirement-related matter, please contact us.

**Senate Bill 1128** made several changes to all Florida's local government defined benefit retirement plans with amendments to chapter 112, as well as the Municipal Police Officers' and Firefighters' Retirement Trust Fund plans operating under chapters 175 and 185.

Though this bill has not yet become law, we know you have many questions and want to present information to help you understand these changes.

Listed below are the key changes made in this legislation:

**Overtime, accrued vacation and sick leave payments for pension purposes**

Change applies to: all local plans – Chapter 112

- For service earned on or after the “effective date” (July 1, 2011, for non-collectively bargained service; or the date of entry into the first collective bargaining agreement (CBA) entered into on or after July 1, 2011, for collectively bargained service), a defined benefit plan may include up to 300 hours per year of overtime compensation, as specified in the plan or CBA, but may not include any payments for accrued unused sick or annual leave in the retirement calculation.

Payments for overtime greater than 300 hours per year or accrued unused annual or sick leave accrued with service earned before the “effective date” may still be included in compensation for pension purposes, as provided in the plan document or CBA, even if the payment is not actually made until on or after the “effective date”.

**Plan sponsor contributions relating to normal cost**

Change applies to: all local plans – Chapter 112

- Effective July 1, 2011, a local government sponsor of a defined benefit plan may not reduce contributions required to fund the normal cost of the plan. If the Actuarially Required Contribution is less than the normal cost, employer contributions must at least equal the normal cost.

This change in funding will require actuarial review and must be funded in accordance with chapter 60T-1.004(4), F.A.C. The minimum funding requirement must begin no later than the first day of the next fiscal year for the plan.

**Overtime, accrued vacation and sick leave payments for pension purposes (175/185 specific)**

Change applies to: local Police Officer and Firefighter pension plans – Chapters 175 & 185

- There are no changes to the definition of “compensation” or “salary” for service earned prior to the “effective date”.

- Police Plans continue to require 300 hours of overtime in the retirement calculation as a minimum benefit. Fire Plans may include up to 300 hours.
- For service earned on or after the “effective date”, a Chapter 175 or 185 plan may include up to 300 hours per year of overtime compensation, as specified in the plan or CBA, but may not include any payments for accrued unused sick or annual leave in the retirement calculation.

Payments for overtime greater than 300 hours per year or accrued unused annual or sick leave accrued with service earned before the “effective date” may still be included in compensation for pension purposes, as provided in the plan document or CBA, even if the payment is not actually made until on or after the “effective date”.

#### **Board of Trustees – makeup of the board of trustees**

Change applies to: local Police Officer and Firefighter pension plans – Chapters 175 & 185

- This amendment only applies to those local law plans in effect on June 30, 1986 having a higher than 40% employee representation on the board. For these boards that were grandfathered in under the amendments in 1986, the City may now change the designated municipal representative on the board. Such municipal representatives must continue to be residents of the municipality. This change may not reduce the membership percentage of firefighters, police officers, or the municipal representatives on the board.

#### **Employee Contribution increases**

Change applies to: local Police Officer and Firefighter pension plans – Chapters 175 & 185

- As of the “effective date”, employee contributions may be increased by consent of the members’ collective bargaining unit, or if none, by majority consent of the police officers and firefighters. Increases in employee contributions are no longer contingent upon providing greater benefits.

#### **Collectively Bargained Benefits & Non-collectively Bargained Benefits – Effective Date**

Change applies to: all local plans – Chapter 112, 175 & 185

- Where the members are represented by a collective bargaining agent (whether the CBA includes pension benefits or not) these provisions are effective on the date of entry into the first CBA entered into on or after July 1, 2011.

- For Chapters 175 & 185 plans, if some of the police and firefighters are represented by a collective bargaining agent, then the effective date is the date of entry into the first CBA entered into on or after July 1, 2011 for all police and firefighters regardless of whether they are members of the collective bargaining unit or not.
- In cities/districts where the members are not represented by a collective bargaining agent, the effective date shall be July 1, 2011.

If you have questions regarding these changes, please call the Municipal Police Officers' and Firefighters' Retirement Fund Office at (850) 922-0667 or toll free (877) 738-6737.