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THE CITY'S DEFINED BENEFIT PENSION PLANS (B)

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.

Hear a presentation and recommendations from staff.