

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 533 City of Tampa, Hillsborough County

SPONSOR(S): Raulerson

TIED BILLS: **IDEN./SIM. BILLS:** SB 586

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	17 Y, 0 N	Lukis	Rojas
2) State Affairs Committee	16 Y, 0 N	Harrington	Camechis

SUMMARY ANALYSIS

A retirement plan sponsor may seek a periodic determination from the Internal Revenue Service (IRS) that its plan is a “qualified plan” under s. 401(a) of the Internal Revenue Code. A qualified plan is entitled to favorable tax treatment. Contributions to a qualified plan are generally deductible and qualified plan earnings may accumulate tax free.

In response to the City of Tampa’s request, the IRS reviewed the City of Tampa’s General Employees’ Pension Plan (Plan) and found that in order to remain a “qualified plan,” the City of Tampa needed to amend its Plan to provide for full vesting of funded benefits if the Plan is terminated or discontinued. Currently, the Plan does not make any reference to mandatory vesting in such situations—if the Plan terminates, participants are at risk of losing accrued pension benefits.

HB 533 seeks to amend the Plan accordingly and specifies that “an Employee’s Pension Credit shall become nonforfeitable to the extent such Pension Credit is funded if the Plan is fully terminated or has a partial termination applicable to such Employee.” The IRS reviewed the bill and agreed that the proposed language would sufficiently render the Plan a “qualified plan.”

The economic impact statement form accompanying the local bill does not reflect any economic impact to the Plan or City of Tampa.

The bill would take effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

A retirement plan sponsor may seek a periodic determination in the form of a “favorable determination letter” from the Internal Revenue Service (IRS) to ensure that its plan is in accordance with the Internal Revenue Code and thereby avoid the possibility of future audit. More specifically, a favorable determination letter indicates that, in the opinion of the IRS, a retirement plan is a “qualified plan” under s. 401(a) of the Internal Revenue Code. In response to the City of Tampa’s request, the IRS reviewed the City of Tampa’s General Employees’ Pension Plan (Plan) and determined that the Plan must be amended to remain a “qualified plan” under s. 401(a) of the Internal Revenue Code.¹

Section 401(a) details many requirements for a qualified plan, including but not limited to the following:

- 1) that it be impossible for any part of the corpus or income of the plan to be used for purposes other than for the exclusive benefit of plan participants;²
- 2) that the plan does not discriminate between employees;³ and
- 3) that it provides minimum vesting requirements.⁴

A qualified plan under s. 401(a) of the Internal Revenue Code benefits employers and employees alike as such plans are entitled to favorable tax treatment. Contributions to a qualified plan are generally deductible and qualified plan earnings may accumulate tax free.⁵ Employee retirement plans that fail to satisfy the requirements under s. 401(a) of the Internal Revenue Code are not entitled to this type of favorable tax treatment.

At issue here is the Tampa Plan’s vesting requirements. After reviewing Tampa’s Plan, the IRS determined that to maintain qualified status, the City of Tampa’s Plan must provide for full vesting of funded benefits if the Plan is terminated or discontinued. The IRS relies on ss. 401(a)(4) and (7) of the Internal Revenue Code as it existed when the Employee Retirement Income Security Act of 1974 (ERISA) was enacted.⁶

The 1974 code denies qualified status to any “trust” that does not fully vest at termination “to the extent that [such benefits are] then funded.”⁷ Based upon certain language in the Tampa Plan, the IRS examiner concluded that the Plan created the intention to hold funded benefits in a trust, and applied the 1974 Code requirement that the funded benefits in such trust fully vest at the Plan’s termination.⁸

¹ The IRS issued a favorable determination letter that the Plan is qualified, contingent upon the adoption of the proposed amendment. *See* Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013. For more information on Favorable Determination Letters, visit: <http://www.irs.gov/Retirement-Plans/EP-Determination-Letter-Resource-Guide---What-is-a-Favorable-Determination-Letter%3F> (last visited on March 18, 2013).

² Section 401(a)(2), IRC (2012).

³ Section 401(a)(4), IRC (2012).

⁴ Section 401(a)(7), IRC (2012).

⁵ Publication 794 (Rev. 1-2013), Catalog Number 20630M, Department of Treasury, Internal Revenue Service, www.irs.gov

⁶ Although ERISA exempts governmental plans, the IRS takes the position that the vesting requirements enumerated in the 1974 code apply to governmental plans.

⁷ *See* Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013 (quoting language from the IRS examiner) (quoting IRS examiner). *See also* s. 411 (d)(3)(B), IRC (2012).

⁸ *See* Correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013.

Currently, the Plan does not reference vesting in such situations.⁹ It only states that a plan participant must work for six continuous years for his or her plan to vest (i.e., a plan participant must work for six continuous years in order to receive benefits once he or she retires). Therefore, without such amendment:

- 1) Plan participants are at risk of losing their accrued benefits if the Plan is either fully or partially terminated; and
- 2) the Plan will lose its qualified status and accompanying favorable tax treatment.

Effect of Proposed Changes

In response to the IRS determination, HB 533 seeks to amend Tampa's Plan to both protect participants' accrued pension benefits from loss in the case of partial or full termination and to maintain favorable tax treatment. The City of Tampa also believes that the amendment will assist in the City's ability to attract and retain employees.¹⁰

The proposed change is for administrative and compliance purposes and will not result in additional costs to the Plan or the City of Tampa.¹¹ In addition, the IRS reviewed the bill and issued a favorable determination letter to the City of Tampa that its Plan is qualified, contingent upon the adoption of the proposed amendment.¹²

The bill would take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends subsection (K) of section 4 of ch. 23559, L.O.F., 1945, as amended by ch. 2004-431, L.O.F.

Section 2: Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes No

IF YES, WHEN? December 19, 2012

WHERE? The *Tampa Tribune*, a daily newspaper published in Hillsborough County, Florida

B. REFERENDUM(S) REQUIRED? Yes No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached No

III. COMMENTS

⁹ The Plan only states that in order to vest, a plan participant has to work for six consecutive years. Ch. 2004-431, L.O.F.

¹⁰ See 2013 Economic Impact Statement, completed by Lee Huffstutler, Chief Accountant for the City of Tampa.

¹¹ See Correspondence from John A. Lessl, ASA, EA, MAAA (General Employee Pension Board's Actuary) to Lee Huffstutler, CPA, CIA, CGFO, PMP (City of Tampa, Chief Accountant), dated December 6, 2012.

¹² See Favorable Determination Letter from the Internal Revenue Service to the City of Tampa, dated June 18 2012. See also correspondence from James H. Culbreth, Esq. and Salvatore Territo, Esq. (Chief Assistant City Attorney for the City of Tampa), dated February 12, 2013.

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.