

1-1 By: Menéndez S.B. No. 1207
1-2 (In the Senate - Filed February 24, 2023; March 9, 2023,
1-3 read first time and referred to Committee on Finance;
1-4 March 31, 2023, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 17, Nays 0; March 31, 2023,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Hinojosa	X		
1-11	Bettencourt	X		
1-12	Campbell	X		
1-13	Creighton	X		
1-14	Flores	X		
1-15	Hall	X		
1-16	Hancock	X		
1-17	Hughes	X		
1-18	Kolkhorst	X		
1-19	Nichols	X		
1-20	Paxton	X		
1-21	Perry	X		
1-22	Schwertner	X		
1-23	West	X		
1-24	Whitmire	X		
1-25	Zaffirini	X		

1-26 COMMITTEE SUBSTITUTE FOR S.B. No. 1207 By: Hinojosa

1-27 A BILL TO BE ENTITLED
1-28 AN ACT

1-29 relating to the retirement system in certain municipalities for
1-30 firefighters and police officers.

1-31 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-32 SECTION 1. Sections 1.02(4-a), (5), (7), and (17), Chapter
1-33 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993
1-34 (Article 6243o, Vernon's Texas Civil Statutes), are amended to read
1-35 as follows:

1-36 (4-a) "Catastrophic injury" means, except as provided
1-37 by Section 5.03(a-2) of this Act, irreparable physical bodily
1-38 injury sustained by a member as a direct and immediate result of the
1-39 member's engaging in an activity that:

1-40 (A) constitutes the performance of the member's
1-41 duties as a firefighter or police officer;

1-42 (B) involves an extraordinary degree of risk of
1-43 bodily injury or death; and

1-44 (C) does not result in death.

1-45 (5) "Code" means the United States Internal Revenue
1-46 Code of 1986 or a successor statute, unless the context requires
1-47 otherwise.

1-48 (7) "Dependent child" means:

1-49 (A) a person who is less than 18 years of age and
1-50 is a natural or adopted child of a deceased member or deceased
1-51 retiree; or

1-52 (B) a person:

1-53 (i) who is at least 18 years of age;

1-54 (ii) who is mentally or physically disabled
1-55 to the extent that the person is not capable of being
1-56 self-supporting; and

1-57 (iii) whose natural or adoptive parent is a
1-58 deceased member or deceased retiree~~[, provided that, for the year~~
1-59 ~~immediately preceding the death of the member or retiree, the~~
1-60 ~~deceased member or retiree claimed the person as a dependent on the~~

2-1 ~~member's or retiree's federal income tax return].~~

2-2 (17) "Total salary" means all salary of a member:

2-3 (A) including:

2-4 (i) amounts picked up by the municipality
2-5 under Section 4.04(b) of this Act; and

2-6 (ii) amounts that would be included in
2-7 salary but for an election under Section 125(d), 132(f)(4), 401(k),
2-8 402(e)(3), 402(h)(1)(B), or 457(b) of the code; and

2-9 (B) excluding ~~[, except]:~~

2-10 (i) ~~[(A)]~~ overtime pay, field training
2-11 officer's pay, bomb squad pay, SWAT team pay, K-9 pay, and hostage
2-12 team pay; and

2-13 (ii) ~~[(B)]~~ pay for unused accrued vacation
2-14 and sick leave, holiday pay, compensatory time pay, and bonus days
2-15 leave, or any similar items of compensation that may be paid in the
2-16 future.

2-17 SECTION 2. Section 2.02, Chapter 824 (S.B. 817), Acts of the
2-18 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
2-19 Texas Civil Statutes), is amended by amending Subsections (a) and
2-20 (b) and adding Subsection (b-1) to read as follows:

2-21 (a) The mayor of a municipality to which this Act applies,
2-22 or a qualified mayoral designee, serves on the board for the term of
2-23 the mayor's office, provided ~~[except]~~ that, if the mayor appoints a
2-24 qualified mayoral designee, the mayor may replace or remove that
2-25 qualified mayoral designee at the mayor's discretion, and the term
2-26 of the mayor or the mayor's qualified mayoral designee, as
2-27 applicable, on the board expires on the date the mayor ceases to be
2-28 mayor of the municipality for any reason. An individual designated
2-29 by the mayor to serve on the board under this subsection may only
2-30 serve on the board while the individual is a qualified mayoral
2-31 designee.

2-32 (b) The two members of the municipal governing body serve on
2-33 the board for the term of the office to which they are elected or
2-34 appointed, provided that the term of the member on the board expires
2-35 on the day the member ceases to be a member of the municipal
2-36 governing body for any reason.

2-37 (b-1) The governing body of a municipality shall fill a
2-38 vacancy on the board under Section 2.01(a)(2) of this Act in the
2-39 manner provided by Subsection (b) of this section.

2-40 SECTION 3. Section 3.01(a), Chapter 824 (S.B. 817), Acts of
2-41 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
2-42 Vernon's Texas Civil Statutes), is amended to read as follows:

2-43 (a) The board has complete authority and power to:

2-44 (1) administer the fund for the exclusive benefit of
2-45 all members, retirees, and beneficiaries;

2-46 (2) disburse benefits or otherwise order payments from
2-47 the fund as required by this Act;

2-48 (3) control the fund independently;

2-49 (4) conduct all litigation on behalf of the fund; and

2-50 (5) purchase with fund assets from one or more
2-51 insurers licensed to do business in this state one or more insurance
2-52 policies that provide for reimbursement of the fund and any
2-53 trustee, officer, or employee of the board for liability imposed or
2-54 damages because of an alleged act, error, or omission committed in
2-55 the trustee's, officer's, or employee's capacity as a fiduciary
2-56 officer or employee of the fund and for costs and expenses incurred
2-57 as a trustee, officer, or employee in defense of a claim for an
2-58 alleged act, error, or omission, as long as the insurance policy
2-59 does not provide for reimbursement of a trustee, officer, or
2-60 employee for liability imposed or expenses incurred because of the
2-61 trustee's, officer's, or employee's personal dishonesty, fraud,
2-62 lack of good faith, or intentional failure to act prudently.

2-63 SECTION 4. The heading to Section 3.03, Chapter 824 (S.B.
2-64 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
2-65 6243o, Vernon's Texas Civil Statutes), is amended to read as
2-66 follows:

2-67 Sec. 3.03. ~~[ORDERS FOR]~~ DISBURSEMENTS OF BENEFITS.

2-68 SECTION 5. Section 3.03(b), Chapter 824 (S.B. 817), Acts of
2-69 the 73rd Legislature, Regular Session, 1993 (Article 6243o,

3-1 Vernon's Texas Civil Statutes), is amended to read as follows:

3-2 (b) Disbursements of benefits may not be made without a
3-3 record vote of the board.

3-4 SECTION 6. Section 4.03, Chapter 824 (S.B. 817), Acts of the
3-5 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
3-6 Texas Civil Statutes), is amended by amending Subsections (b), (c),
3-7 and (f) and adding Subsections (f-1) and (i) to read as follows:

3-8 (b) Subject to Subsections (c) and (e) of this section, a
3-9 [Not later than the 90th day after the date of the member's
3-10 reinstatement to an active status in the fire or police department,
3-11 the] member may restore credit not established during the period
3-12 the member was engaged in active service in any uniformed service by
3-13 paying [must file with the secretary of the board a written
3-14 statement of intent to pay] into the fund an amount equal to what
3-15 the member would have paid during that period if the member had
3-16 remained on active status in the fire or police department [during
3-17 the period of the member's absence in the uniformed service].

3-18 (c) The member must make the payment described by Subsection
3-19 (b) of this section in full within an amount of time after the
3-20 member's return to active status in the fire or police department
3-21 that is equal to three times the amount of time the member was
3-22 engaged in active service with the uniformed service [absent],
3-23 except that the maximum period for payment may not exceed five
3-24 years.

3-25 (f) If a [person who became a] member [before October 1,
3-26 1997,] does not make the payment authorized [required] under
3-27 Subsection (b) [(c)] of this section within the [required amount
3-28 of] time prescribed by Subsection (c) of this section and the member
3-29 would otherwise be eligible for credit under federal law, the
3-30 member may receive credit for the uniformed service if:

3-31 (1) the board determines that the member had good
3-32 cause for not complying with Subsection (b) or (c) of this section;
3-33 and

3-34 (2) the member [also] pays interest, compounded
3-35 annually, on the then current rate of a member's contribution from
3-36 the date the payment was required to the date the payment was made.

3-37 (f-1) The board shall set the rate of interest for purposes
3-38 of Subsection (f)(2) of this section.

3-39 (i) The survivors of a member of the fund who dies while
3-40 performing qualified military service, as defined in Section 414(u)
3-41 of the code, are entitled to any additional benefits, other than
3-42 benefit accruals relating to the period of qualified military
3-43 service, that would have been provided if the member had returned to
3-44 active status in the fire or police department and then terminated
3-45 employment as the result of death.

3-46 SECTION 7. Section 5.03, Chapter 824 (S.B. 817), Acts of the
3-47 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
3-48 Texas Civil Statutes), is amended by amending Subsections (a),
3-49 (a-1), (c), and (d) and adding Subsection (a-3) to read as follows:

3-50 (a) An active member of the fund who is not eligible to
3-51 receive a catastrophic injury disability annuity under Subsection
3-52 (a-1) of this section is eligible to retire and receive a regular
3-53 disability retirement annuity only if the member:

3-54 (1) makes a written application for regular disability
3-55 retirement with the board;

3-56 (2) establishes to the satisfaction of the board that
3-57 the member is permanently disabled through injury or disease so as
3-58 to be unable to perform the duties of any available position in the
3-59 department and, unless waived by the board, has been off active duty
3-60 because of that injury or disease for a continuous period of not
3-61 less than the 30 days preceding [before] the date of the application
3-62 for disability retirement;

3-63 (3) has had all member contributions required by this
3-64 Act made on the member's behalf;

3-65 (4) is not disqualified from receiving a disability
3-66 retirement annuity under [on indefinite suspension as described in]
3-67 Subsection (d) of this section; and

3-68 (5) has authorized the release to the board of all
3-69 medical records dated on or after the date of initial application

4-1 for employment with the department.

4-2 (a-1) An active member of the fund is eligible to retire and
4-3 receive a catastrophic injury disability retirement annuity only if
4-4 the member:

4-5 (1) makes a written application for catastrophic
4-6 injury disability retirement with the board;

4-7 (2) establishes to the satisfaction of the board that
4-8 the member is permanently so disabled as a result of a catastrophic
4-9 injury as to:

4-10 (A) be unable to secure any type of third-party
4-11 employment, or engage in any self-employment, other than sporadic
4-12 third-party or self-employment; and

4-13 (B) have, as a result of the lack of third-party
4-14 employment or self-employment, an annual income less than the
4-15 poverty level for one person in the 48 contiguous states of the
4-16 United States as provided under the poverty guidelines published
4-17 from time to time by the United States Department of Health and
4-18 Human Services, or similar guidelines selected by the board;

4-19 (3) has had all member contributions required by this
4-20 Act made on the member's behalf;

4-21 (4) is not disqualified from receiving a disability
4-22 retirement annuity under [on indefinite suspension as described in]
4-23 Subsection (d) of this section; and

4-24 (5) has authorized the release to the board of all
4-25 medical records dated on or after the date of initial application
4-26 for employment with the department.

4-27 (a-3) In making any determination under this section, the
4-28 board may consider or require any evidence the board considers
4-29 necessary or appropriate to make the determination.

4-30 (c) A [Except as provided by Subsection (d) of this section,
4-31 a] member [of the fund] who is on suspension for a specific period,
4-32 including a member whose indefinite suspension is reversed or
4-33 modified to a suspension for a specific period, and who becomes
4-34 disabled as a result of an injury sustained or disease contracted
4-35 while the member is on suspension is eligible for a disability
4-36 retirement annuity under Subsection (a) or (a-1) of this section,
4-37 as applicable, only if the suspended member makes up each
4-38 [deducted] contribution to the fund not made by the member [lost] by
4-39 reason of the suspension not later than the 30th day after the later
4-40 of the termination date of the suspension or the date the suspension
4-41 becomes final in accordance with Section 6.105 of this Act
4-42 [exhaustion of any appeal with respect to the suspension]. A
4-43 municipality to which this Act applies shall double-match all
4-44 contributions made by a member under this subsection.

4-45 (d) A member of the fund who is on indefinite suspension,
4-46 excluding an indefinite suspension reversed or modified to be a
4-47 suspension for a specific period, that becomes [is not eligible for
4-48 a disability retirement annuity until the] final in accordance with
4-49 Section 6.105 of this Act or who is terminated by the municipality,
4-50 [determination of the suspension and all appeals of that
4-51 determination are exhausted. A member of the fund who is on
4-52 indefinite suspension] is not entitled to a disability retirement
4-53 annuity [if the member is finally discharged]. [A member of the
4-54 fund who is on indefinite suspension but who is restored to duty or
4-55 who is given a suspension for a specific period is eligible for a
4-56 disability retirement annuity as provided by Subsection (a) of this
4-57 section.]

4-58 SECTION 8. Sections 5.04(a) and (a-1), Chapter 824 (S.B.
4-59 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
4-60 62430, Vernon's Texas Civil Statutes), are amended to read as
4-61 follows:

4-62 (a) A member who is eligible to retire and receive a
4-63 disability retirement annuity under Section 5.03(a) of this Act is
4-64 entitled to receive an annuity from the fund equal to:

4-65 (1) 50 percent of the member's average total salary, if
4-66 the member has served three years or more before the date of
4-67 retirement;

4-68 (2) 50 percent of the member's average monthly total
4-69 salary as of the date of retirement multiplied by 12, if the member

5-1 has served at least two months and less than three years before the
5-2 date of retirement; or

5-3 (3) 50 percent of the member's average daily total
5-4 salary as of the date of retirement multiplied by 360, if the member
5-5 has served less than two months before the date of retirement.

5-6 (a-1) Subject to Subsection (a-2) of this section a member
5-7 who is eligible to retire and receive a catastrophic injury
5-8 disability retirement annuity under Section 5.03(a-1) of this Act
5-9 is entitled to receive an annuity from the fund equal to:

5-10 (1) 87.5 percent of the member's average total salary,
5-11 if the member has served three years or more before the date of
5-12 retirement;

5-13 (2) 87.5 percent of the member's average monthly total
5-14 salary as of the date of retirement multiplied by 12, if the member
5-15 has served at least two months and less than three years before the
5-16 date of retirement; or

5-17 (3) 87.5 percent of the member's average daily total
5-18 salary as of the date of retirement multiplied by 360, if the member
5-19 has served less than two months before the date of retirement.

5-20 SECTION 9. Sections 5.05(a-1), (a-3), (c), and (c-1),
5-21 Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular
5-22 Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), are
5-23 amended to read as follows:

5-24 (a-1) A disability retiree who is awarded a catastrophic
5-25 injury disability annuity under Section 5.03(a-1) of this Act
5-26 shall, if required by the board, undergo a medical examination by
5-27 any reputable physician or physicians selected by the board:

5-28 (1) not later than 60 months after the date of the
5-29 award of the annuity by the board; and

5-30 (2) thereafter, not later than 60 months following the
5-31 last required medical examination of the disability retiree under
5-32 this subsection.

5-33 (a-3) Subject to Subsections (b) and [Subsection] (c) of
5-34 this section, based on an examination under Subsection
5-35 [Subsections] (a), (a-1), or (a-2) of this section, the board shall
5-36 determine whether the disability retirement annuity shall be
5-37 continued, decreased, restored to the original amount if it had
5-38 been decreased, or discontinued.

5-39 (c) For those retired because of disability on or after
5-40 August 30, 1971, the disability retirement annuity may not, except
5-41 in the case of discontinuance, be reduced to an amount that is less
5-42 than the product of:

5-43 (1) 2.25 percent multiplied by the number of years
5-44 that the retiree served in the department and contributed a portion
5-45 of salary as a member of the fund multiplied by the retiree's
5-46 average total salary, if the retiree served three years or more
5-47 before the date of retirement;

5-48 (2) 2.25 percent multiplied by the number of years
5-49 that the retiree served in the department and contributed a portion
5-50 of salary as a member of the fund multiplied by the retiree's
5-51 average monthly total salary as of the date of retirement
5-52 multiplied by 12, if the retiree served at least two months and less
5-53 than three years before the date of retirement; or

5-54 (3) 2.25 percent multiplied by the number of years
5-55 that the retiree served in the department and contributed a portion
5-56 of salary as a member of the fund multiplied by the retiree's
5-57 average daily total salary as of the date of retirement multiplied
5-58 by 360, if the member has served less than two months before the
5-59 date of retirement.

5-60 (c-1) In making the computation under Subsections (b) and
5-61 [Subsection] (c) of this section, all fractional years shall be
5-62 prorated based on full months served in the department as a
5-63 contributing member of the fund before the date of retirement.

5-64 SECTION 10. The heading to Section 5.07, Chapter 824 (S.B.
5-65 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
5-66 6243o, Vernon's Texas Civil Statutes), is amended to read as
5-67 follows:

5-68 Sec. 5.07. OUTSIDE INCOME PENSION SUSPENSION OR REDUCTION.

5-69 SECTION 11. Section 5.07, Chapter 824 (S.B. 817), Acts of

6-1 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 6-2 Vernon's Texas Civil Statutes), is amended by adding Subsections
 6-3 (a-1) and (c) and amending Subsection (b) to read as follows:

6-4 (a-1) If a retiree fails to provide an income tax return to
 6-5 the board under Subsection (a) of this section, the board may
 6-6 suspend the retiree's disability retirement annuity until the
 6-7 retiree provides the required income tax return.

6-8 (b) Subject to Subsection (c) of this section, if [if] the
 6-9 retiree received income from other employment, including
 6-10 self-employment, during the preceding year, the board may reduce
 6-11 the retiree's disability retirement annuity by the amount of \$1 for
 6-12 each month for each \$2 of income earned by the retiree from the
 6-13 other employment during each month of the previous year, except
 6-14 that the disability retirement annuity may not be decreased below
 6-15 the amount determined under Section 5.05(c) of this Act.

6-16 (c) The board may restore a disability retirement annuity
 6-17 that has been reduced under Subsection (b) of this section. The
 6-18 amount of the restored annuity must be the same as the amount of the
 6-19 annuity before the reduction plus any applicable cost-of-living
 6-20 increases under Section 5.09 of this Act that occurred during the
 6-21 period the annuity was reduced. This subsection does not require
 6-22 the board to allow or deny cost-of-living increases in any other
 6-23 circumstances.

6-24 SECTION 12. Section 5.10, Chapter 824 (S.B. 817), Acts of
 6-25 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 6-26 Vernon's Texas Civil Statutes), is amended by amending Subsections
 6-27 (b), (c), (d), (f), and (j) and adding Subsections (b-1) and (d-1)
 6-28 to read as follows:

6-29 (b) A distributee may elect, at the time and in the manner
 6-30 prescribed by the board, to have any portion of an eligible rollover
 6-31 distribution paid directly to an eligible retirement plan specified
 6-32 by the distributee in a direct rollover. [Any member or beneficiary
 6-33 who is entitled to receive any distribution that is an eligible
 6-34 rollover distribution as defined by Section 402(c)(4) of the code
 6-35 is entitled to have that distribution transferred directly to
 6-36 another eligible retirement plan of the member's or beneficiary's
 6-37 choice on providing direction to the fund regarding that transfer
 6-38 in accordance with procedures established by the board.]

6-39 (b-1) For purposes of this subsection and Subsection (b) of
 6-40 this section:

6-41 (1) "Direct rollover" means a payment by the fund to
 6-42 the eligible retirement plan specified by a distributee.

6-43 (2) "Distributee" means a member or former member.
 6-44 The term includes a member's or former member's surviving spouse or
 6-45 designated beneficiary and a member's or former member's spouse or
 6-46 former spouse who is the alternate payee under a qualified domestic
 6-47 relations order, as defined by Section 414(p) of the code, with
 6-48 regard to the interest of the spouse or former spouse.

6-49 (3) "Eligible retirement plan" means:

6-50 (A) an individual retirement account described
 6-51 by Section 408(a) of the code;

6-52 (B) an individual retirement annuity described
 6-53 by Section 408(b) of the code;

6-54 (C) a qualified annuity plan described by Section
 6-55 403(a) of the code;

6-56 (D) a qualified trust described by Section 401(a)
 6-57 of the code;

6-58 (E) an eligible deferred compensation plan
 6-59 described by Section 457(b) of the code that is maintained by an
 6-60 eligible employer described by Section 457(e)(1)(A) of the code;

6-61 (F) an annuity contract described by Section
 6-62 403(b) of the code that accepts the distributee's eligible rollover
 6-63 distribution; or

6-64 (G) in the case of an eligible rollover
 6-65 distribution to a designated beneficiary who is not the surviving
 6-66 spouse, or the spouse or former spouse under a qualified domestic
 6-67 relations order, an individual retirement account or individual
 6-68 retirement annuity only.

6-69 (4) "Eligible rollover distribution" means a

7-1 distribution of all or any portion of the balance to the credit of
 7-2 the distributee. The term does not include:

7-3 (A) a distribution that is one of a series of
 7-4 substantially equal periodic payments, paid not less frequently
 7-5 than once a year, made over the life or life expectancy of the
 7-6 distributee or the joint lives or joint life expectancies of the
 7-7 distributee and the distributee's designated beneficiary;

7-8 (B) a series of payments for a specified period
 7-9 of 10 years or more;

7-10 (C) a distribution to the extent the distribution
 7-11 is required under Section 401(a)(9) of the code; or

7-12 (D) the portion of a distribution that is not
 7-13 includable in gross income, unless the distributee directs that the
 7-14 eligible rollover distribution be transferred directly to a
 7-15 qualified trust that is part of a defined contribution plan that
 7-16 agrees to separately account for the portion that is includable in
 7-17 gross income and the portion that is not or to an individual
 7-18 retirement account or individual annuity.

7-19 (c) The total salary taken into account for any purpose
 7-20 under this Act [~~for any member of the fund~~] may not exceed the
 7-21 annual compensation limitation under Section 401(a)(17) of the
 7-22 code, effective January 1, 2017, which is \$405,000 [~~\$200,000 per~~
 7-23 year] for an eligible member [~~participant~~] or \$270,000 [~~\$150,000~~
 7-24 per year] for an ineligible member [~~participant~~]. For purposes of
 7-25 this subsection, an eligible member is any employee who first
 7-26 became a member before 1996 and an ineligible member is any other
 7-27 member. The [~~These~~] dollar limits shall be [~~periodically~~] adjusted
 7-28 annually for cost-of-living increases as provided by Section
 7-29 401(a)(17) of the code [~~in accordance with guidelines provided by~~
 7-30 the United States secretary of the treasury. For purposes of this
 7-31 subsection, an eligible participant is any person who first became
 7-32 a member before 1996, and an ineligible participant is any member
 7-33 who is not an eligible participant].

7-34 (d) Accrued benefits under this Act become 100 percent
 7-35 vested for a member on the earlier of:

7-36 (1) the date the member attains normal retirement age
 7-37 [~~has completed 20 years of service~~];

7-38 (2) the earlier termination or partial termination of
 7-39 the pension plan created by this Act, if it affects the member; or

7-40 (3) the complete discontinuance of contributions by
 7-41 the municipality to the fund.

7-42 (d-1) For purposes of Subsection (d)(1) of this section,
 7-43 "normal retirement age" means the age at which a member is entitled
 7-44 to receive a service retirement benefit without reduction because
 7-45 of age.

7-46 (f) Distribution of benefits must:

7-47 (1) begin not later than April 1 of the year following
 7-48 the later of the calendar year in [~~during~~] which the member:

7-49 (A) becomes 70-1/2 years of age; or

7-50 (B) retires; and

7-51 (2) [~~must~~] otherwise conform to Section 401(a)(9) of
 7-52 the code and the regulations adopted under that section of the code,
 7-53 including regulations governing the incidental death benefit
 7-54 distribution requirements.

7-55 (j) Notwithstanding any other provision of this Act, the
 7-56 limitations on benefits imposed by Section 415 of the code and
 7-57 Subsection (a) of this section must be adjusted each year to the
 7-58 extent permitted by cost-of-living increases announced by the
 7-59 secretary of the treasury under Section 415(d) of the code and
 7-60 applicable law. A cost-of-living increase described by this
 7-61 subsection applies to members who have terminated employment,
 7-62 including members who have begun receiving benefits before the
 7-63 effective date of the increase, and any benefits previously denied.
 7-64 Benefits paid to make up for benefits previously denied are
 7-65 considered the delayed payment of benefits earned before retirement
 7-66 and not extra compensation earned after retirement. [~~To the extent~~
 7-67 permitted by law, the board may adjust the benefits of retired
 7-68 members and beneficiaries by increasing any retirement benefit that
 7-69 was reduced because of Section 415 of the code. If Section 415 of

~~the code is amended to permit the payment of amounts previously precluded under Section 415 of the code, the board may adjust the benefits of retired members and beneficiaries, including the restoration of benefits previously denied. Benefits paid under this subsection are not considered as extra compensation earned after retirement but as the delayed payment of benefits earned before retirement.]~~

SECTION 13. Section 5.11, Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended by adding Subsection (b-1) to read as follows:

(b-1) If a retiree is entitled to receive a 13th check in accordance with Subsection (b) of this section, but dies before payment of the 13th check and has no surviving spouse or dependent child, the 13th check shall be paid to the retiree's estate.

SECTION 14. Section 5.12, Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended by adding Subsection (c-1) to read as follows:

(c-1) If a retiree is entitled to receive a 14th check in accordance with Subsection (c) of this section, but dies before payment of the 14th check and has no surviving spouse or dependent child, the 14th check shall be paid to the retiree's estate.

SECTION 15. Section 6.01(b), Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) Subject to the applicable provisions of this Act, including Section 6.02(j) of this Act, a [A] dependent child is entitled to receive benefits based on the service of any parent who is a member of the fund.

SECTION 16. Section 6.02, Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (d), (d-2), (e), (f), (g), and (j) and adding Subsections (a-1) and (c-1) to read as follows:

(a) Subject to Section 6.03 of this Act and the provisions of this section, if a member [or retiree receiving a disability pension under Section 5.03(a) of this Act] dies leaving a surviving spouse or at least one dependent child, the surviving spouse and the children are entitled to receive from the fund an aggregate death benefit annuity, computed and payable from the date of the member's death. The surviving spouse may elect the annuity in an amount that is equal to either:

(1) 75 [50] percent of the member's average total salary; or

(2) the same percentage of the member's average total salary that the member would have been entitled to receive as a retirement annuity if the member could have retired on the date of death.

(a-1) This subsection applies only to a death benefit annuity payable under Subsection (a) of this section on August 31, 2023, that is based on the service of a member who died after September 1, 2005, but before September 1, 2023. If the amount of a death benefit annuity subject to this section is less than 75 percent of the member's average total salary, excluding any applicable cost-of-living increases to the annuity under Section 5.09 of this Act, and the member's surviving spouse did not elect to receive a portion of the benefit in a lump-sum payment under Section 6.14 of this Act, the amount of the annuity shall increase beginning on September 1, 2023, to an amount equal to 75 percent of the member's average total salary plus the amount of any cost-of-living increases provided under Section 5.09 of this Act. A member's surviving spouse or dependent child who is receiving an annuity subject to this section is not entitled to any additional payment under this subsection for the period before September 1, 2023.

(c-1) Subject to the provisions of this section, if a retiree receiving a disability pension under Section 5.03(a) of this Act dies leaving a surviving spouse or at least one dependent child, the surviving spouse and dependent children are entitled to

9-1 receive from the fund an aggregate death benefit annuity, computed
 9-2 and payable from the date of the retiree's death, equal to 50
 9-3 percent of the retiree's average total salary as of the date of
 9-4 retirement.

9-5 (d) Subject to Subsection (d-2) of this section, if, at the
 9-6 time a death benefit annuity becomes payable under Subsection (a),
 9-7 ~~or~~ (c), or (c-1) of this section, the deceased member or retiree
 9-8 leaves a surviving spouse and at least one dependent child, the
 9-9 board shall award:

9-10 (1) 75 percent of the annuity to the surviving spouse;
 9-11 and

9-12 (2) 25 percent of the annuity:
 9-13 (A) to the dependent child, if there is only one;

9-14 or
 9-15 (B) if there is more than one dependent child, in
 9-16 equal shares to each child.

9-17 (d-2) If, at the time a death benefit annuity becomes
 9-18 payable under Subsection (a), ~~or~~ (c), or (c-1) of this section, a
 9-19 ~~[deceased member or]~~ retiree leaves a surviving spouse who is not
 9-20 entitled to an annuity on the date of the retiree's death under
 9-21 Subsection (g-1) of this section as the result of Subsection (g-3)
 9-22 of this section and the deceased retiree has one or more dependent
 9-23 children, the dependent child or children shall be awarded 100
 9-24 percent of the death benefit annuity until the annuity to the
 9-25 surviving spouse becomes payable ~~[effective]~~ under Subsection
 9-26 (g-3) of this section.

9-27 (e) If, at the time a death benefit annuity under Subsection
 9-28 (a), ~~or~~ (c), or (c-1) of this section becomes payable, the
 9-29 deceased leaves a surviving spouse and no dependent child, the
 9-30 board shall award the annuity to the surviving spouse.

9-31 (f) If, at the time a death benefit annuity under Subsection
 9-32 (a), ~~or~~ (c), or (c-1) of this section becomes payable, the
 9-33 deceased leaves no surviving spouse and at least one dependent
 9-34 child, the board shall award the annuity:

9-35 (1) to the dependent child, if there is only one; or
 9-36 (2) if there is more than one child, in equal shares to
 9-37 each child.

9-38 (g) A child who is adopted after the date of retirement of
 9-39 the member is not entitled to a death benefit annuity under this
 9-40 Act. A child who is born after the date of retirement of the member
 9-41 is not entitled to a death benefit annuity under this Act unless the
 9-42 retiree was married to the other parent of the child on the date of
 9-43 retirement. A surviving spouse of a retiree whose status as a
 9-44 surviving spouse resulted from a marriage after the date of the
 9-45 retirement of the retiree is entitled to receive only the benefits,
 9-46 if any, provided under Subsection (g-1) of this section or Section
 9-47 6.08 of this Act.

9-48 (j) A dependent child as defined by Section 1.02(7)(B) of
 9-49 this Act has the same rights as a dependent child as defined by
 9-50 Section 1.02(7)(A) of this Act, except that any death benefit
 9-51 annuity paid under this section ~~[subsection]~~ to a dependent child
 9-52 as defined by Section 1.02(7)(B) of this Act may, at the discretion
 9-53 of the board, be reduced to the extent of any state pension or aid,
 9-54 including Medicaid, or any state-funded assistance received by the
 9-55 child, regardless of whether the funds were made available to the
 9-56 state by the federal government. In no other instance under this
 9-57 Act is a child entitled to any benefit after becoming 18 years of
 9-58 age.

9-59 SECTION 17. Section 6.03, Chapter 824 (S.B. 817), Acts of
 9-60 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 9-61 Vernon's Texas Civil Statutes), is amended to read as follows:

9-62 Sec. 6.03. DEATH BENEFIT ANNUITY FOR SPOUSE AND CHILDREN OF
 9-63 MEMBER KILLED IN LINE OF DUTY. (a) The death benefit annuity of a
 9-64 surviving spouse and any dependent child of a member of the fund who
 9-65 is killed in the line of duty is governed by this section.

9-66 (a-1) A member of the fund is considered to have been killed
 9-67 in the line of duty if the member's death directly resulted from
 9-68 traumatic injury sustained while engaging in or conducting
 9-69 simulated training of a law enforcement activity, fire suppression

10-1 activity, rescue, hazardous material response, emergency medical
 10-2 services, disaster relief, or other emergency response activity.
 10-3 For purposes of this subsection, "traumatic injury" means severe
 10-4 physical injury of sudden onset and of a life-ending or
 10-5 life-threatening nature.

10-6 ~~(b) [The board shall consider the finding of a municipality~~
 10-7 ~~to which this Act applies that a member was killed in the line of~~
 10-8 ~~duty as a guideline for its determination in applying this~~
 10-9 ~~section.]~~ On an application for survivor's benefits by a surviving
 10-10 spouse or dependent child, the fund shall pay the normal benefits
 10-11 payable under Section 6.02 of this Act. When a benefit is payable
 10-12 under this section, the death benefit annuity shall be recomputed,
 10-13 applying Subsection (c) of this section, and any deficiency payment
 10-14 shall be paid to the eligible beneficiaries.

10-15 (c) Notwithstanding the formulas for computing the total
 10-16 amounts of annuities otherwise provided by this Act, if a member is
 10-17 killed in the line of duty, the member's surviving spouse and
 10-18 dependent children are entitled to a death benefit annuity equal
 10-19 to:

10-20 (1) the total salary [of] the member received during
 10-21 the 12-month period before the date of the member's death, if the
 10-22 member served 12 months or more before the date of the member's
 10-23 death;

10-24 (2) the average monthly total salary the member
 10-25 received before the date of the member's death multiplied by 12, if
 10-26 the member served at least two months and less than 12 months before
 10-27 the date of the member's death; or

10-28 (3) the average daily total salary the member received
 10-29 before the date of the member's death multiplied by 360, if the
 10-30 member served less than two months before the date of the member's
 10-31 death [at the time of death].

10-32 ~~(d) The provisions of this Act [Rules provided by this~~
 10-33 ~~section] relating to qualification and disqualification for and~~
 10-34 ~~apportionment of benefits apply to a death benefit annuity computed~~
 10-35 ~~under this section [subsection]. A death benefit annuity computed~~
 10-36 ~~under this section [subsection] is divided in the manner described~~
 10-37 ~~by Section 6.02 of this Act and is subject to the same~~
 10-38 ~~cost-of-living adjustments that apply to annuities [pensions] for~~
 10-39 ~~service retirement.~~

10-40 SECTION 18. Section 6.04, Chapter 824 (S.B. 817), Acts of
 10-41 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 10-42 Vernon's Texas Civil Statutes), is amended to read as follows:

10-43 Sec. 6.04. EFFECT OF MARRIAGE ON [REARRIAGE,] BENEFITS
 10-44 [AFTER TERMINATION OF MARRIAGE]. (a) Except as provided by
 10-45 Subsection (e) of this section, the [The] right of a surviving
 10-46 spouse or dependent child to annuity payments under this Act is not
 10-47 affected by the surviving spouse's marriage [remarriage] or
 10-48 dependent child's marriage under either statutory or common law if
 10-49 the marriage [or remarriage] takes place on or after October 1,
 10-50 1995.

10-51 (b) This subsection applies to a surviving spouse or
 10-52 dependent child whose marriage under either statutory or common law
 10-53 took place before October 1, 1995, and resulted in a termination of
 10-54 benefits under the law in effect at the time of the marriage.
 10-55 Subject to Subsection (d) of this section and except as provided by
 10-56 Subsection (e) of this section, if on [If after] October 1, 1995,
 10-57 the surviving spouse or dependent child is unmarried or if after
 10-58 October 1, 1995, there is a termination of the marriage
 10-59 [remarriage] of a surviving spouse or [of the marriage of a]
 10-60 dependent child, the surviving spouse or dependent child, as
 10-61 applicable, [that person] is entitled, on application, to 100
 10-62 percent of the annuity that was in effect on the date of the
 10-63 termination of benefits, payable from the date of the termination
 10-64 of the marriage. A surviving spouse or dependent child entitled to
 10-65 an annuity under this subsection is also entitled to any applicable
 10-66 cost-of-living increases under Section 5.09 of this Act that
 10-67 occurred on or after the date the marriage terminated.

10-68 ~~[(c) A surviving spouse or dependent child who is unmarried~~
 10-69 ~~but receiving reduced benefits because of a prior marriage that~~

11-1 ~~caused the benefits to be terminated is entitled to 100 percent of~~
 11-2 ~~the annuity that was in effect on the original date of termination~~
 11-3 ~~of benefits.]~~

11-4 (d) The benefit provided under Subsection [~~Subsections~~] (b)
 11-5 [~~and (c)~~] of this section shall be provided prospectively beginning
 11-6 October 1, 1995, and the surviving spouse or dependent child is not
 11-7 entitled to receive any benefits or increases in benefits relating
 11-8 to any period before October 1, 1995.

11-9 (e) A person must be living at the time of application to be
 11-10 eligible for benefits under this section.

11-11 SECTION 19. Section 6.06, Chapter 824 (S.B. 817), Acts of
 11-12 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 11-13 Vernon's Texas Civil Statutes), is amended to read as follows:

11-14 Sec. 6.06. COMMON-LAW MARRIAGES. Common-law marriages are
 11-15 not recognized under this Act and benefits may not be conferred on
 11-16 common-law spouses as beneficiaries unless a declaration of
 11-17 informal marriage was made and recorded under Sections 2.402 and
 11-18 2.404, Family Code, and their subsequent amendments, or any
 11-19 successor statutes, before the member's death. The date the
 11-20 declaration of informal marriage is recorded under Section 2.404,
 11-21 Family Code, is the date of marriage for the purpose of determining
 11-22 whether any benefit is to be awarded to a surviving common-law
 11-23 spouse as a beneficiary under this Act.

11-24 SECTION 20. Section 6.09(b), Chapter 824 (S.B. 817), Acts
 11-25 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 11-26 Vernon's Texas Civil Statutes), is amended to read as follows:

11-27 (b) An application for benefits under Subsection (a) of this
 11-28 section must be accompanied by a copy of the deceased member's or
 11-29 retiree's tax return filed for the last year ending before the
 11-30 member's or retiree's death or an explanation satisfactory to the
 11-31 board of why the tax return cannot be provided. The board may, on
 11-32 its own initiative, make a thorough investigation, determine the
 11-33 facts as to the dependency with respect to an application for
 11-34 benefits made under Subsection (a) of this section, and at any time,
 11-35 on the request of any beneficiary or any contributor to the fund,
 11-36 reopen any award made to any member or dependent of any member who
 11-37 is receiving annuity payments under this section and discontinue
 11-38 those payments as to all or any of them. ~~[The findings of the board~~
 11-39 ~~under this section and all annuities granted under this section are~~
 11-40 ~~final on all parties unless set aside or revoked by a court of~~
 11-41 ~~competent jurisdiction.]~~

11-42 SECTION 21. Section 6.10, Chapter 824 (S.B. 817), Acts of
 11-43 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 11-44 Vernon's Texas Civil Statutes), is amended to read as follows:

11-45 Sec. 6.10. SUSPENSION RIGHTS. (a) Except as provided by
 11-46 Subsection (b) of this section, if [If] a member dies who is on
 11-47 [under] suspension at the time of the member's death, [including an
 11-48 indefinite suspension that has not become final,] the member's
 11-49 beneficiary has [beneficiaries have] the same rights as the
 11-50 beneficiaries of any other member under this Act.

11-51 (b) If a member dies who is on indefinite suspension that
 11-52 has not become final as of the date of the member's death, the
 11-53 member's beneficiary has the same rights as the beneficiaries of
 11-54 any other member under this Act in accordance with Subsection (a) of
 11-55 this section only if the member's beneficiary provides sufficient
 11-56 evidence to the board to establish to the board's satisfaction
 11-57 that:

11-58 (1) an administrative appeal of the indefinite
 11-59 suspension to the municipality was being actively pursued at the
 11-60 time of death; and

11-61 (2) the member had a reasonable chance of having the
 11-62 indefinite suspension reversed or modified to be a suspension for a
 11-63 specific period.

11-64 SECTION 22. Chapter 824 (S.B. 817), Acts of the 73rd
 11-65 Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas
 11-66 Civil Statutes), is amended by adding Section 6.105 to read as
 11-67 follows:

11-68 Sec. 6.105. DATE SUSPENSION FINAL. For purposes of this
 11-69 Act, an indefinite suspension or a suspension for a specific period

12-1 becomes final on the date:

12-2 (1) any administrative appeal of the suspension to the
 12-3 municipality has been finally adjudicated by the municipality; or

12-4 (2) if no administrative appeal of the suspension is
 12-5 made to the municipality, after the last day of the period for
 12-6 initiating an administrative appeal has elapsed.

12-7 SECTION 23. Section 6.12, Chapter 824 (S.B. 817), Acts of
 12-8 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 12-9 Vernon's Texas Civil Statutes), is amended by amending Subsection
 12-10 (b) and adding Subsection (c) to read as follows:

12-11 (b) The amount of the 13th or 14th check is equal to the
 12-12 amount of the annuity payment made in the last month of the
 12-13 preceding fiscal year, except the amount of the check shall be
 12-14 prorated for any beneficiary of:

12-15 (1) a member who died during the fiscal year preceding
 12-16 the fiscal year in which the check is disbursed [~~who has been~~
 12-17 ~~receiving an annuity for less than one year~~] so that the amount of
 12-18 the check is one-twelfth of the check that would have been paid to
 12-19 the beneficiary receiving an annuity for a full year times the
 12-20 number of full months an annuity has been paid; or

12-21 (2) a retiree who retired and died during the fiscal
 12-22 year preceding the fiscal year in which the check is disbursed so
 12-23 that the amount of the check is one-twelfth of the check that would
 12-24 have been paid to the beneficiary receiving an annuity for a full
 12-25 year times the number of full months from the date of the retiree's
 12-26 retirement to the end of the fiscal year.

12-27 (c) If a beneficiary is entitled to receive a 13th or 14th
 12-28 pension check in accordance with Subsection (a) of this section but
 12-29 dies before payment of the 13th or 14th check, the 13th or 14th
 12-30 check shall be paid to the beneficiary's estate.

12-31 SECTION 24. Section 6.14(i), Chapter 824 (S.B. 817), Acts
 12-32 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 12-33 Vernon's Texas Civil Statutes), is amended to read as follows:

12-34 (i) If a surviving spouse elects to receive a lump-sum
 12-35 payment under this section, the total death benefit annuity payable
 12-36 [~~to the surviving spouse~~] under Section 6.02 of this Act is reduced
 12-37 as provided by Subsection (j) of this section. The lump-sum
 12-38 election does not affect the amount of a death benefit annuity
 12-39 payable to a dependent child of a deceased member under Section 6.02
 12-40 of this Act while a death benefit annuity is payable to the
 12-41 surviving spouse.

12-42 SECTION 25. Chapter 824 (S.B. 817), Acts of the 73rd
 12-43 Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas
 12-44 Civil Statutes), is amended by adding Section 6.15 to read as
 12-45 follows:

12-46 Sec. 6.15. DENIAL OF BENEFITS; DEATH CAUSED BY SURVIVOR.

12-47 (a) If a person is the principal or an accomplice in wilfully
 12-48 bringing about the death of a member or beneficiary whose death
 12-49 would otherwise result in a benefit or benefit increase to the
 12-50 person, the person is not eligible for, or entitled to, that benefit
 12-51 or benefit increase. The determination of the board that a person
 12-52 wilfully brought about the death, or was an accomplice in wilfully
 12-53 bringing about the death, must be made during a meeting of the
 12-54 board. A determination by the board under this section is not
 12-55 controlled by any other finding in any other forum.

12-56 (b) A benefit or benefit increase payable under this Act
 12-57 because of the death of a member or beneficiary shall be paid as if
 12-58 the person who is no longer eligible for or entitled to the benefit
 12-59 under Subsection (a) of this section predeceased the member or
 12-60 beneficiary.

12-61 SECTION 26. Section 3.03(a), Chapter 824 (S.B. 817), Acts
 12-62 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 12-63 Vernon's Texas Civil Statutes), is repealed.

12-64 SECTION 27. Section 5.03, Chapter 824 (S.B. 817), Acts of
 12-65 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 12-66 Vernon's Texas Civil Statutes), as amended by this Act, applies
 12-67 only to a disability retirement annuity for which an application is
 12-68 made on or after the effective date of this Act. A disability
 12-69 retirement annuity for which an application was made before the

13-1 effective date of this Act is governed by the law as it existed
13-2 immediately before the effective date of this Act, and that law is
13-3 continued in effect for that purpose.

13-4 SECTION 28. Sections 5.11(b-1) and 5.12(c-1), Chapter 824
13-5 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993
13-6 (Article 6243o, Vernon's Texas Civil Statutes), as added by this
13-7 Act, and Section 6.12, Chapter 824 (S.B. 817), Acts of the 73rd
13-8 Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas
13-9 Civil Statutes), as amended by this Act, apply only to a 13th or
13-10 14th check that is disbursed on or after the effective date of this
13-11 Act. A 13th or 14th check disbursed before the effective date of
13-12 this Act is governed by the law as it existed immediately before the
13-13 effective date of this Act, and that law is continued in effect for
13-14 that purpose.

13-15 SECTION 29. Except as provided by Section 6.02(a-1),
13-16 Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular
13-17 Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), as
13-18 added by this Act, Sections 6.02 and 6.03, Chapter 824 (S.B. 817),
13-19 Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
13-20 Vernon's Texas Civil Statutes), as amended by this Act, apply only
13-21 to a death benefit annuity for which an application is made on or
13-22 after the effective date of this Act. A death benefit annuity for
13-23 which an application is made before the effective date of this Act
13-24 is governed by the law as it existed immediately before the
13-25 effective date of this Act, and that law is continued in effect for
13-26 that purpose.

13-27 SECTION 30. This Act takes effect September 1, 2023.

13-28 * * * * *