

BILL ANALYSIS

Senate Research Center
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H.B. 752
By: Woolley (Williams)
State Affairs
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Engrossed

DIGEST AND PURPOSE

The Houston Police Officers' Pension System (HPOPS) is a public employee retirement system governed by state statute. Accordingly, ERISA laws regulating private pension plans generally do not apply to HPOPS. Article 6243g-4 of the Texas Civil Statutes governs the pension plan for Houston police officers who are members of HPOPS. In June of 2001, the HPOPS Board of Trustees and the City of Houston entered into an agreement to enhance Houston police officers' and retirees' benefits. These benefit enhancements have been implemented in accordance with the agreement.

H.B. 752 codifies this agreement into the pension law.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1, Article 6243g-4, Revised Statutes, as follows:

Sec. 1. PURPOSE. Provides that the purpose of this article is to restate and amend the provisions of former law creating and governing a police officers pension system in each city in this state having a population of 1.5 million or more, according to the most recent federal decennial census, and to reflect changes agreed to by the city and the board of trustees of the pension system under Section 27 of this article. Requires the pension system to continue to operate regardless of whether the city's population falls below 1.5 million. Deletes language relating to permitting the consolidation of the terms of certain pension plans.

SECTION 2. Amends Section 2, Article 6243g-4, Revised Statutes, by amending Subdivisions (1), (2), (7), (11), (14), and (23), adding Subdivisions (4-a), (14-a), and (22-a), and renumbering Subdivision (19) as Subdivision (17-a), as follows:

- (1) Redefines "active member."
- (2) Redefines "average total direct pay."
- (4-a) Defines "catastrophic injury."
- (7) Redefines "dependent child."
- (11) Redefines "former member."
- (14) Redefines "member."
- (14-a) Defines "normal retirement age."
- (17-a) Redesignated from existing Subdivision (19).
- (22-a) Defines "survivor."
- (23) Redefines "total direct pay."

SECTION 3. Amends Section 3, Article 6243g-4, Revised Statutes, by amending Subsections (a)-(d), (f), and (g) and adding Subsection (h), as follows:

- (a) Includes "that operates under Section 67, Article XVI, Texas Constitution" in relation to the board of trustees of the pension system (board).

- (b) Provides that the board is composed of seven certain members.
- (c) Provides that the terms of office of the board members elected as described by Subsection (b)(2) of this section will begin on January 1 and end on December 31.
- (d) Makes a conforming change.
- (f) Provides that an individual who is an officer or employee of any employee organization or retiree organization or an employee of the pension system is prohibited from being elected to the board, appointed to the board, or in any other way serving as, rather than becoming, a member of the board.
- (g) Requires each board member to, within 30 days after taking office, rather than the date of appointment or election, take an oath of office to perform certain duties.
- (h) Prohibits, if a candidate for an elected trustee position is unopposed in an election, the election from being held for that position, notwithstanding any other provision in this section. Requires the board to certify the candidate as elected to the board on the executive director's certification that the candidate is eligible to be a trustee under this section and is unopposed for election. Requires the certified candidate to take the oath of office as soon as practicable in January, after being declared elected in December.

SECTION 4. Amends Section 4(a), Article 6243g-4, Revised Statutes, as follows:

- (a) Provides that elected members of the board who are employees of the city's police department are entitled to leave from their employer to attend to the official business of the pension system and are not required to report to the city or any other governmental entity regarding travel or the official business of the pension system, except when on city business.

SECTION 5. Amends Section 5, Article 6243g-4, Revised Statutes, by amending Subsection (d) and adding Subsection (b-1), as follows:

- (b-1) Authorizes the board to hire an executive director. Requires the executive director, acting under the direction of the board, to handle the operations of the plan and perform other duties as the board may assign. Requires the executive director to also serve as the plan administrator for purposes of complying with Subchapter A, Chapter 804, Government Code.
- (d) Authorizes the board to employ one or more actuaries, legal counsel, accountants, or other professionals, rather than an actuary, legal counsel, an accountant, or another professional, and pay the compensation for these services from the fund.

SECTION 6. Amends Section 6, Article 6243g-4, Revised Statutes, by adding Subsections (e-1), (g), and (h) and amending Subsection (f), as follows:

- (e-1) Authorizes the board to sue on behalf of the pension system in any court with proper subject matter jurisdiction regardless of location. Provides that the board has sole authority to litigate matters on behalf of the pension system.
- (f) Provides that the board has full discretion and authority to administer the pension system, to construe and interpret this article, to correct any defect or omission, to reconcile any inconsistency that appears in this article, and to do all other acts necessary to carry out the purpose of this article in a manner and to the extent that the board considers expedient to administer this article for the greatest benefit of all members. Provides that all decisions of the board are final and binding on all affected parties.
- (g) Authorizes the board, if reasonably necessary in the course of performing a board function, to subpoena a witness or the production of a book, record, or other document. Authorizes the presiding officer of the board to issue, in the name of the board, a

subpoena only if a majority of the board approves. Requires the presiding officer of the board, or the presiding officer's designee, to administer an oath to each witness. Requires a peace officer to serve a subpoena issued by the board. Authorizes the board to bring suit to enforce the subpoena in a district court of the county in which the person resides or in the county in which the book, record, or other document is located, if the person to whom a subpoena is directed fails to comply. Requires the court to order compliance if the district court finds that good cause exists for issuance of the subpoena. Authorizes the district court to modify the requirements of a subpoena that the court finds are unreasonable. Provides that failure to obey the order of the district court is punishable as contempt.

(h) Provides that the board is not subject to Title 6, Property Code.

SECTION 7. Amends Sections 7(d) and (f), Article 6243g-4, Revised Statutes, as follows:

(d) Requires the board, on the date the board makes a declaration under Subsection (c) of this section, to call a special election to be held not earlier than the 20th or later than the 60th, rather than 30th, day after that date to fill the vacancy for the unexpired term of the person who was removed.

(f) Deletes language authorizing a decision to be made to remove the board member from the board only if the hearing examiner determines that the board member violated Subchapter A, Chapter 121, Property Code.

SECTION 8. Amends Section 8(a), Article 6243g-4, Revised Statutes, to replace the term "monthly" with "each payroll period."

SECTION 9. Amends the heading to Section 9, Article 6243g-4, Revised Statutes, to read as follows:

Sec. 9. CONTRIBUTIONS BY THE CITY.

SECTION 10. Amends Section 9(a), Article 6243g-4, Revised Statutes, to require the city to make substantially equal contributions to the fund as soon as administratively feasible after each payroll period. Requires, for each fiscal year ending after June 30, 2005, the city's minimum contribution to be the greater of 16 percent of the members' total direct pay or the level percentage of salary payment required to amortize the unfunded actuarial liability over a constant period of 30 years computed on the basis of an acceptable actuarial reserve funding method approved by the board. Requires, for the fiscal year ending June 30, 2002, the city's contribution to be \$32,645,000, for the fiscal year ending June 30, 2003, the city's contribution to be \$34,645,000, for the fiscal year ending June 30, 2004, the city's contribution to be \$36,645,000, and for the fiscal year ending June 30, 2005, the city's contribution to be 16 percent of the members' total direct pay. Deletes language relating to the fiscal years ending before June 30, 2002.

SECTION 11. Amends Section 11(a), Article 6243g-4, Revised Statutes, to delete language relating to a retiring member.

SECTION 12. Amends Section 12, Article 6243g-4, Revised Statutes, by amending Subsections (a), (b), (d), (f), and (g) and adding Subsections (h) and (i), as follows:

(a) Requires the city to supply all personnel, financial, and payroll records necessary to establish a member's eligibility for a benefit, the member's credited service, and the amount of the benefit. Requires the city to provide those records in the format specified by the pension system.

(b) Provides that, except as otherwise provided by this section, the monthly service pension of a member that becomes due after May 1, 2001, rather than who separates from service after November 23, 1998, is equal to 2.75percent, rather than 2.5 percent, of the

member's average total direct pay or, if the member retired before November 24, 1998, 2.75 percent of the member's base salary, for each of the member's first 20 years of service, plus an additional two percent of the member's average total direct pay for each of the member's subsequent years of service, computed to the nearest one-twelfth of a year.

(d) Provides that a retired member who receives a service pension under this article is entitled to receive an additional amount each month equal to \$150, rather than \$88.05, beginning on the later of the date the retired member's pension begins or the date the first monthly payment becomes due after June 18, 2001, and continuing until the end of the month in which the retired member dies.

(f) Makes a conforming change.

(g) Requires, notwithstanding anything to the contrary in this article, service pensions that began before May 1, 2001, rather than September 1, 1999, to continue to be paid in accordance with applicable prior law, subject only to the adjustments that are specifically provided by this section.

(h) Requires average total direct pay for a member who retires after participating in a phase-down program in which the member receives a periodic payment that is generated from the member's accumulated sick time, vacation time, and overtime balances to be based on the highest pay period, excluding any pay for overtime work, in the periods during which the member worked full-time before participating in the phase-down program.

(i) Requires the computation of average total direct pay to be made in accordance with procedures and policies adopted by the board.

SECTION 13. Amends Section 14, Article 6243g-4, Revised Statutes, by amending Subsections (b)-(g), (j), and (l) and adding Subsections (f-1) and (m), as follows:

(b) Deletes the term "irrevocable" in reference to "election."

(c) Provides an exception.

(d) Deletes language relating to a member's unused sick leave, vacation pay, or accumulated overtime.

(e) Prohibits the rate from being less than zero. Deletes language relating to the board lowering future rates.

(f) Requires, at the time of a DROP participant's separation from service, the DROP participant or, if separation from service was due to the DROP participant's death, the person entitled to receive benefits under Sections 16 and 16A of this article to be afforded a one-time election to revoke the DROP election and substitute either the annuity that would have been paid if the member had never elected DROP or an annuity and notional DROP account equal to the annuity and notional DROP account that would have been received if the member had entered DROP on a date elected by the member or survivor. Prohibits the date elected by the member or survivor from being earlier than the earliest date the member could have elected to enter DROP or later than the date of the member's death or other separation from service. Requires the computation of the value of the annuity and DROP account of a member or survivor who makes a Back DROP election to be subject to the policies and procedures adopted by the board. Provides that for purposes of this subsection, "Back DROP" means the option to make this one-time election. Deletes language relating to a DROP participant who separates from service because of disability or death.

(f-1) Authorizes the DROP benefit to be received in the form of an additional annuity

over the life expectancy of the surviving spouse, if a DROP participant separates from service due to death and the person entitled to receive benefits under Sections 16 and 16A of this article does not revoke the DROP election.

(g) Authorizes the surviving spouse to leave the retired member's DROP account with the pension system, in which case interest will be credited to the DROP account in the manner described by Subsection (e) of this section, in lieu of receiving a lump-sum DROP benefit on separation from service, a retired member who has been a DROP participant or, if separation from service was due to the DROP participant's death. Deletes language relating to interest.

(j) Makes a conforming change.

(m) Requires the DROP monthly service pension, as described by Subsection (c) of this section, of each DROP participant who retires after May 1, 2001, to be recomputed as of the date of retirement, based on the DROP participant's average total direct pay at the time of retirement and changes to the benefit formula in Section 12(b) of this article that have occurred since the member's DROP entry date. Requires the DROP participant's monthly service pension to be adjusted to the greater amount, if this recomputation would result in a greater monthly service pension, as described by Subsection (c) of this section.

SECTION 14. Amends Section 15, Article 6243g-4, Revised Statutes, by amending Subsections (a)-(d) and adding Subsections (h)-(k), as follows:

(a) Requires an active member who becomes totally and permanently incapacitated for the performance of the member's duties as a result of a bodily injury received in, or illness caused by, the performance of those duties to, on presentation to the board of proof of total and permanent incapacity, be retired and receive an immediate duty-connected disability pension equal to the greater of 55 percent, rather than 50 percent of the member's average total direct pay at the time of retirement or the member's accrued service pension. Requires, if a member is a DROP participant at the commencement of the member's disability, the member to have the option of receiving the DROP balance in any manner that is approved by the board and that satisfies the requirements of Section 401(a)(9) of the code and Treasury Regulation Section 1.104-1(b) (26 C.F.R. Section 1.104-1) and is otherwise available to any other member under this article.

(b) Prohibits the pension under this subsection from being less than 27.5 percent of the member's average total direct pay.

(c) Requires the retired member, rather than person, to also receive an additional amount each month equal to \$150, rather than \$88.05, beginning on the later of the date the pension begins or the date the first monthly payment becomes due after June 18, 2001, and continuing as long as the disability pension continues, to help defray the cost of group medical insurance. Deletes language relating to a retired member whose disability pension continues and was in pay status on November 23, 1998.

(d) Provides an exception.

(h) Authorizes, as soon as administratively feasible after the later of June 18, 2001, or the date of the member's retirement because of disability, an additional monthly disability benefit to be provided to the member. Requires the additional monthly benefit to be equal to the difference between the monthly benefit the member is receiving under Subsection (a) or (b) of this section, whichever is applicable, and 100 percent of the member's average total direct pay at the time of retirement because of disability. Provides that the additional benefit will end on the earlier of the fourth anniversary of the date the benefit is first paid, the end of the last month the member is engaged in an education or training program approved in accordance with procedures adopted by the board, or the date the member is approved to return to active duty. Provides that this additional monthly benefit is not reduced by any DROP account distributions the member receives

unless the member elects to receive the DROP distributions in the form of an annuity. Provides that this additional benefit is not available to a member who is receiving a disability benefit under Subsection (j) of this section.

(i) Requires a member who suffers a catastrophic injury to receive a monthly benefit equal to 100 percent of the member's average total direct pay determined as of the date of retirement, effective for payments that become due after April 30, 2000, and instead of the disability benefit provided by Subsection (a), (b), or (h) of this section.

(j) Requires a member who transfers from the police department of a city subject to this article to another department of the same city, or who separates from service and is rehired in another department, and who subsequently terminates employment with the city due to a duty-connected injury incurred while working as a non-police employee, to be entitled to receive an immediate proportional nonduty-connected disability benefit computed in the same manner as provided by Subsection (b) of this section, but requires the benefit to be based only on service earned as an employee of the police department. Provides that for purposes of this proportional disability benefit only, the 180-day application filing requirement in Subsection (d) of this section begins at the time of separation from the department that employed the member at the time the disability was incurred. Prohibits a person from receiving a disability pension for an injury incurred after termination from service with the city or for a nonduty disability incurred after separation from service with the police department. Provides that this proportional nonduty-connected disability benefit is not available to a person who is already receiving a service retirement pension or disability pension under this article.

(k) Provides that a benefit payment that becomes due under this section is effective on the later of the first day the disabled member leaves the payroll of the city or the date the member signs the application for a disability pension.

SECTION 15. Amends Sections 16(a), (c), and (f)-(h), Article 6243g-4, Revised Statutes, as follows:

(a) Requires that in the case of a common-law marriage, a marriage declaration must be signed by the member and the member's common-law spouse before a notary public and recorded in the records of the county clerk's office in the county in which the couple resides at the commencement of the marriage, rather than filed with the board.

(c) Provides that if a member of the pension system who has not completed 10 years of service in the police department is killed or dies from any cause growing out of or in consequence of any act clearly not in the actual performance of the member's official duty, the member's surviving spouse, dependent child or children, or dependent parent or parents are entitled to receive an immediate benefit. Provides that the benefit is computed in the same manner as a service retirement pension but is based on the deceased member's service and average total direct pay at the time of death. Prohibits the monthly benefit from being less than 27.5 percent of the member's average total direct pay.

(f) Provides that a surviving spouse who receives a survivor's benefit under this article is entitled to receive an additional amount each month equal to \$150, beginning with the later of the date the first payment of the survivor's benefit is due or the date the first monthly payment becomes due after June 18, 2001, and continuing until the end of the month in which the surviving spouse dies.

(g) Makes a conforming change.

(h) Makes a conforming change.

SECTION 16. Amends Article 6243g-4, Revised Statutes, by adding Section 16A, as follows:

Sec. 16A. BENEFICIARY DESIGNATION. (a) Provides that the provisions of Section 16 of this article pertaining to rights of survivors do not apply to an amount held in a member's DROP account. Authorizes a member who participates in DROP to designate a beneficiary to receive the balance of the member's DROP account in the event of the member's death, as permitted by Section 401(a)(9) of the code and the board's policies. Provides that a member who is married is considered to have designated the member's spouse as the member's beneficiary unless the spouse consents, in a notarized writing delivered to the board, to the designation of another person as beneficiary. Authorizes the board to pay the balance of the member's DROP account to the member's beneficiaries in a certain order, if no designated beneficiary survives the member.

(b) Provides that if a member names a spouse as a beneficiary and is subsequently divorced from that spouse, the divorce voids the designation of the divorced spouse as the member's beneficiary. Provides that a designation of a divorced spouse will cause the board to pay any balance remaining in the member's DROP account in the order prescribed by Subsection (a) of this section.

SECTION 17. Amends Section 17(h), Article 6243g-4, Revised Statutes, as follows:

(h) Requires the pension system to accept a direct cash transfer of funds from another plan that is an eligible rollover distribution within the meaning of Section 402(f)(2)(A) of the code, subject to procedures adopted by the board. Requires the transfer to be accepted only for the purpose of repaying contributions the member has previously withdrawn or for other purposes expressly authorized by the board's procedures. Deletes language relating to city contributions.

SECTION 18. Amends Section 18, Article 6243g-4, Revised Statutes, by amending Subsections (a) and (b) and adding Subsection (d), as follows:

(a) Divides this subsection into subdivisions and deletes an exception.

(b) Requires a person who is employed in any full-time position with the city after June 18, 2001, rather than November 23, 1998, and has or obtains any credited service with the pension system after that date, to receive service credit for any period of full-time employment with the same city, solely for purposes of determining whether a person has a sufficient number of years of service to receive a retirement pension or to enter the DROP program, and not for purposes of determining the amount of the pension or DROP credit.

(d) Requires classified police officers who were formerly employed by a city as park police, airport police, or marshals, who were involuntarily transferred from another city department to the police department of the city, and who are current active members of the pension system to have the option to receive credit with the pension system for previous service with another pension system of the city, provided that a person be prohibited from receiving service credit for both pension systems for the same period of service.

SECTION 19. Amends Section 20, Article 6243g-4, Revised Statutes, as follows:

Sec. 20. DONATIONS. Authorizes the pension system to accept gifts and donations, and the gifts and donations to be added to the fund for the use of the pension system, including, but not limited to, for use for education programs and the related administrative expenses of the programs.

SECTION 20. Amends Section 22, Article 6243g-4, Revised Statutes, as follows:

Sec. 22. LEGAL ADVICE. Authorizes the board to, as it considers necessary, employ outside legal counsel to the exclusion of, or to assist, the city attorney and pay reasonable compensation for the service of the additional legal counsel from the fund.

SECTION 21. Amends Section 23, Article 6243g-4, Revised Statutes, as follows:

Sec. 23. MEMBERS IN MILITARY SERVICE. (a) Requires, notwithstanding any other provision of this article, contributions and benefits to be paid and qualified service for military service to be determined in compliance with Section 414(u) of the code.

(b) Deletes the phrase “regular monthly” in relation to payments and “refund” in relation to a benefit.

SECTION 22. Amends Sections 25(d) and (e), Article 6243g-4, Revised Statutes, as follows:

(d) Prohibits the total salary taken into account for any purpose for any member of the pension system from exceeding \$200,000 for any year for an eligible participant, or for years beginning after 2001 for an ineligible participant, or \$150,000 a year before 2001 for an ineligible participant.

(e) Replaces the phrase “affected employees’ with “members.”

SECTION 23. Amends Article 6243g-4, Revised Statutes, by adding Section 29, as follows:

Sec. 29. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS OR BENEFICIARIES. (a) Provides that information contained in a record that is in the custody of a fund established under this article concerning an individual member, retiree, survivor, or beneficiary is confidential for purposes of Sections 552.101, 552.102, and 552.117, Government Code. Prohibits the information from being disclosed in a form that identifies a specific individual unless the information is disclosed to:

- (1) the individual;
- (2) the individual's attorney, guardian, executor, administrator, or conservator; or
- (3) a person who has written authorization from the individual to receive the information.

(b) Provides that this section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member, survivor, beneficiary, or alternate payee of the system.

SECTION 24. Repealer: Sections 9(b), 15(f), and 16(d), Article 6243g-4, Revised Statutes.

SECTION 25. Effective date: September 1, 2003.