

## **BILL ANALYSIS**

S.B. 297  
By: Janek  
Pensions & Investments  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 1997, the 75th Texas Legislature repealed legislation related to the firefighters' relief and retirement fund and created new legislation which governs the fund in cities having a population of not less than 1.6 million. As proposed, S.B. 297 repeals current legislation related to the firefighters' relief and retirement fund in municipalities of at least 1.6 million and presents new language to advance the administration of the fund.

### **RULEMAKING AUTHORITY**

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

### **ANALYSIS**

SECTION 1. Amends Section 1, Article 6243e.2(1), V.T.C.S., by renumbering Subdivision (1) as Subdivision (1-a) and amending Subdivisions (1) and (7), as follows:

- (1) Defines "active service." (1-a) Redesignated from existing Subdivision (1).
- (7) Deletes current language from the definition of "DROP account."

SECTION 2. Amends Section 2(b), Article 6243e.2 (1), V.T.C.S., to require the name of the board of trustees to be known as "(name of municipality) Firefighters' Relief and Retirement Fund Board of Trustees" and the fund to be known as "(name of municipality) Firefighters' Relief and Retirement Fund." Deletes language from existing text.

SECTION 3. Amends Section 3, Article 6243e.2(1), V.T.C.S., by adding Subsections (j)-(m), as follows:

- (j) Authorizes the Firefighters' Relief and Retirement Fund Board of Trustees (board) to pay with fund assets, and distribute to survivors of deceased firefighters, commemorative flags and similar memorabilia, having a value of \$75 or less, to honor service rendered by the firefighters.
- (k) Authorizes the board to accept gifts and donations to the fund. Requires the gifts and donations to be added to the fund for the use of the fund.
- (l) Provides that the trustees, executive director, and employees of the fund are fully protected and free of liability for any action taken or omission made or any action or omission suffered by them in good faith in the performance of their duties for the fund.
- (m) Authorizes the board, or a committee of the board sitting in review of medical or psychiatric records, to consider the medical or psychiatric records of multiple individual

applicants for disability benefits within a single closed session under Section 551.078, Government Code (Medical Board or Medical Committee), but requires any action on an application to be taken on an individual basis.

SECTION 4. Amends Section 4(d), Article 6243e.2(1), V.T.C.S., to add a reference to Section 7(b) regarding the total monthly benefit payable to an eligible survivor of a deceased member.

SECTION 5. Amends Sections 5 (a), (c)-(e), (g), (i)-(k), and (m), Article 6243e.2(1), V.T.C.S., as follows:

- (a) Provides that the increase to a DROP participant's monthly benefit at retirement does not apply to benefits payable under Subsection (1) of this section.
- (c) Makes a nonsubstantive change.
- (d) Requires that the credit to the member's DROP account be at an annual rate of not less than five percent nor greater than ten percent, irrespective of actual earnings. Deletes current language from existing text related to a DROP account credited with losses and makes conforming changes.
- (e) Deletes current language from existing text..
- (g) Makes conforming changes.
- (i) Provides that a salary earned or additional years of participation completed after the member's DROP election becomes effective may not be considered in the computation of retirement or death benefits except for the limited purpose of percentage increases provided under Subsection (a) of this section.
- (j) (5) Makes a nonsubstantive change. (6-7) Authorizes certain surviving spouses to elect to maintain the DROP account with the fund in the same manner described by Subsections (e), (f), and (g) of this section if there are no eligible survivors, in accordance with the member's beneficiary designation filed with the board, or, if the member failed to file a valid beneficiary designation, to the member's estate; and if the conditions described by Subdivision (1), (2), or (6) of this subsection exist. Creates a new subdivision.
- (k) Requires an eligible beneficiary's share of a deceased member's DROP account to be distributed as soon as administratively practicable after the member's death in the form of a single lump-sum payment, unless the surviving spouse makes the election permitted by Subsection (j) (7) of this section.
- (m) Authorizes a DROP participant with a break in service to receive service credit within DROP for days worked after the regular expiration of the permitted DROP period. Requires the service credit to be limited to the number of days in which the participant experienced a break in service or the number of days required to constitute 10 years of DROP participation, whichever is smaller.

SECTION 6. Amends Section 6, Article 6243e.2(1), V.T.C.S., by adding a new Subsection (g) and relettering existing Subsections (g) and (h) , as follows:

- (g) Requires the pension benefits committee to review, on a case-by-case basis, existing benefit payments to members, and to survivors of deceased members, who retired as a result of a disability with 20 or more years of service under a provision of any predecessor statute previously governing the fund. Provides that the review will

determine whether the member's disability was an on-duty disability that satisfies the requirements of Subsection

(b) or (c) of this section. Provides that a determination that a member's disability was an on-duty disability, as described above, will apply only on a prospective basis beginning with January 1 of the calendar year in which the determination is made, and will not affect the amount of the member's or survivor's benefits. Requires the committee to make its review and determination under this subsection on the basis of the medical evidence and any other relevant non-testimonial evidence that was previously submitted in connection with the prior application for benefits, except that if the committee finds that the historical file is insufficient to make the determination, supplemental evidence of a probative nature may be adduced and accepted to help make the determination.

(h) Redesignates existing Subsection (g) as (h).

(i) Redesignates existing Subsection (h) as (i).

SECTION 7. Amends Sections 7(b), (e), and (g), Article 6243e.2(1), V.T.C.S., as follows:

(b) Requires any benefit an eligible spouse may be granted under Section 10A of this article to be reduced in the same proportion as the reduced benefit provided by this subsection. Provides that this subsection may not be construed to effect any reduction to an eligible spouse of benefits otherwise payable under Section 4(d) of this article. Makes nonsubstantive changes.

(e) (4) Requires the \$5,000 death benefit, if the member is not survived by an eligible spouse, an eligible child, or an eligible parent, to be paid to the deceased member's estate or to the member's court-approved small estate through its legal representative.

(g) Requires the benefit provided by this subsection, if a member fails to properly designate a beneficiary, to be payable to the member's estate or to the member's court approved small estate through its legal representative on application by the estate or legal representative.

SECTION 8. Amends Section 11, Article 6243e.2(1), V.T.C.S., by amending Subsections (b), (d), (f), (h), and (m) and adding Subsections (n)-(p), as follows:

(b) Requires the amounts of all benefits that the member or the member's beneficiaries may become entitled to receive from the fund to be computed on the basis of the schedule of benefits in effect for the fund at the member's election either on the day the member leaves active service or on the day the member ceased to carry out the member's regular duties as a firefighter. Deletes current language from existing text.

(d) Requires contributions, benefits, and service credit with respect to qualified military service, notwithstanding any provision of this article to the contrary, to be provided in accordance with Section 414(u) of the code. Requires a member who is engaged in active duty in any of the military services of the United States to receive credited pension service for the period of the military service, if the member returns to employment with the employer municipality's fire department with an honorable discharge within the period required by the federal reemployment Act and the period of military service does not exceed the period prescribed by that Act. Provides that if a member sustains an injury while on military leave under the terms of the federal reemployment Act, pension benefits are payable based on the off-duty disability benefit provisions prescribed by Section 6(e) of this article. Provides that if a member dies

while on military leave under the terms of the federal reemployment Act, death benefits are payable to eligible survivors based on the off-duty death benefits prescribed by Section 7 of this article. Provides that this subsection is intended to comply with the federal reemployment Act. Authorizes the board to make, maintain, and amend policies and procedures as desirable or necessary to implement the federal reemployment act. Defines “federal reemployment Act” as used in this subsection.

(f) Provides that in this article, an authorization to receive a benefit “beginning on the effective date of the member’s termination of active service” includes authority for the member to instead elect to make the member’s pension effective on the date the member ceases to carry out the member’s regular duties as a firefighter. Makes a conforming change.

(h) Authorizes a benefit payable under this article to a minor or other person under a legal disability to be made only to the legal guardian of the person, or as provided by Subsection (g) of this section. Deletes current language from existing text regarding payment to a conservator or guardian of that person’s estate.

(m) (1) Makes a nonsubstantive change.

(n) Authorizes the fund, if one or more persons have been given a power of attorney effective to direct distribution of benefits to any person eligible to receive benefits under this article and the fund receives conflicting directions as to those distributions, to withhold benefits until either the final result of judicial proceedings determining which directive prevails or the fund receives a signed agreement between attorneys-in-fact, and principals, if applicable, on distribution directives that completely resolves the conflict. Provides that the fund may not be made a party to any proceeding or suit concerning or involving the distribution of benefits under conflicting directives.

(o) Authorizes the fund to offset amounts received wrongly or in error from the fund by any person receiving benefit payments under this article by making deductions from future benefit payments otherwise payable to the person or the person’s beneficiaries. Limits the fund to only be able to collect for overpayments made for the preceding three years the board discovered the overpayments.. Stipulates that the three year limitation does not apply to a person wrongly accepting the overpayment as in cases of fraud.

SECTION 9. Amends Sections 13(c) and (d), Article 6243e.2(1), V.T.C.S., as follows:

(c) Requires each member in active service to make contributions to the fund in an amount equal to 8.35, rather than 7.7, percent of the member’s salary at the time of the contribution, and as of July 1, 2004, in an amount equal to nine percent of the member’s salary at the time of the contribution.

(d) Requires the municipality’s contribution rate to be composed of the normal cost plus the level percentage of salary payment required to amortize the unfunded actuarial liability over a constant period of 30, rather than 40, years.

SECTION 10. Amends Section 16(a), Article 6243e.2(1), V.T.C.S., to delete current language from existing text regarding the physical examination undertaken by firefighters.

SECTION 11. Amends Section 17, Article 6243e.2(1), V.T.C.S, by amending Subsections (a) and (b)and adding Subsections (d) and (e), as follows:

(a) Provides that information contained in records that are in the custody of a fund is not

public information. Makes a conforming change.

(a) (1) (B) Provides that information contained in records that are in the custody of a fund is not public information unless the information is disclosed to the individual's attorney, guardian, executor, administrator, or conservator, or other legal representative of the individual's estate or court-approved small estate or other person who the board determines is acting in the interest of the individual or the individual's estate;

(a)(1)(C) Provides that information contained in records that are in the custody of a fund is not public information unless the information is disclosed to a spouse or former spouse of the individual, or the attorney of the spouse or former spouse, if the information concerns the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the fund.

(b) Provides that notwithstanding Subsection (a) of this section, the fund may disclose the status or identity of certain individuals as well as the individual's dates of service, date of death, last rank held, and the divisions of the fire department of the municipality in which service has been rendered.

(d) Provides that the release of information concerning members, retirees, or beneficiaries to departments of the municipality or to other municipal employee pension funds or systems of the municipality, in order to implement or advance the purposes of this article is permitted under this section. Provides that the release of that information does not constitute any waiver of confidentiality by the fund or any waiver as to the confidentiality of the information under the statutes and policies governing the receiving municipal department or employee pension fund or system.

(e) Provides that the publication and provision by the fund of a retiree's address, e-mail address, telephone number, dates of service, last rank held, and the divisions of the fire department of the municipality in which service was rendered, within compilations or directories of this information concerning fund retirees, is permitted under this section. Authorizes the fund, in its sole discretion, to provide or distribute those compilations as it deems is in the best interest of the retirees in general. Authorizes a retiree to prevent the publication under this subsection of information relating to the retiree by giving advance written notice to the fund.

SECTION 12. Amends Section 18(b), Article 6243e.2(1), V.T.C.S., to authorize the board to maintain a proportional retirement program under this section. Deletes current language from existing text regarding the provisions governing a participating retirement system.

SECTION 13. Repealer: Section 13(h), Article 6243e.2(1) (Firefighter's relief and retirement fund in municipalities of at least 1,600,000 population ), V.T.C.S.

SECTION 14. Effective date: September 1, 2003.

#### **EFFECTIVE DATE**

September 1, 2003.

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

