

By: Woolley, et al.

H.B. No. 752

A BILL TO BE ENTITLED

AN ACT

relating to the administration of public retirement systems for police officers in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1, Article 6243g-4, Revised Statutes, is amended to read as follows:

Sec. 1. PURPOSE. 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. The pension system shall continue to operate regardless of whether the city's population falls below 1.5 million [~~permit the consolidation of the terms of certain pension plans~~].

SECTION 2. Section 2, Article 6243g-4, Revised Statutes, is amended 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) to read as follows:

(1) "Active member" means a person employed as [~~an employee who holds~~] a classified police officer by the [~~position in a~~] police department of a city subject to this article, except for a person [~~an employee~~] who is a part-time, seasonal, or temporary

1 employee or a person who elected to remain a member of a pension
2 system described by Chapter 88, Acts of the 77th Legislature,
3 Regular Session, 2001 (Article 6243h, Vernon's Texas Civil
4 Statutes). The term does not include a person who is a member of
5 another pension system of the same city, except to the extent
6 provided by Section 15(j) or 18 of this article.

7 (2) "Average total direct pay" means an amount
8 determined by dividing the following sum by 12:

9 (A) the highest biweekly pay received by a member
10 for any single pay period in the last 26 pay periods in which the
11 member worked full-time, considering only items of total direct pay
12 that are included in each paycheck, multiplied by 26; plus

13 (B) the total direct pay, excluding all items of
14 the type included in Paragraph (A) received during the same last 26
15 biweekly pay periods [~~a member's total direct pay for the 26 pay~~
16 ~~periods immediately preceding the date of separation from service~~
17 ~~or the date of entry into DROP, if earlier, divided by 12].~~

18 (4-a) "Catastrophic injury" means a sudden, violent,
19 life-threatening, duty-related injury sustained by an active
20 member that is due to an externally caused motor vehicle accident,
21 gunshot wound, aggravated assault, or other external event or
22 events and results, as supported by evidence, in one of the
23 following conditions:

24 (A) loss of sight in one or both eyes;

25 (B) loss of one or both feet at or above the
26 ankle;

27 (C) loss of one or both hands at or above the

1 wrist;

2 (D) injury to the spine that results in permanent
3 and complete paralysis of both arms, both legs, or one arm and one
4 leg; or

5 (E) an externally caused physical traumatic
6 injury to the brain rendering the member physically or mentally
7 unable to perform the member's duties as a police officer.

8 (7) "Dependent child" means a deceased member's
9 unmarried natural or adopted child who:

10 (A) has not attained age 18;

11 (B) has attained age 18 but not age 24 [~~22~~] and is
12 attending school on a full-time basis; or

13 (C) has attained age 18 and is permanently
14 disabled as the result of a disability that began before the child
15 attained age 18.

16 (11) "Former member" means a person who was once an
17 active member, vested or not, but who [~~has~~] terminated active
18 member status and received a refund of member contributions.

19 (14) "Member" means [~~includes~~] an active member,
20 inactive member, or retired member, as the context may require. The
21 term [~~, but~~] does not include a former member.

22 (14-a) "Normal retirement age" means the earlier of:

23 (A) the age at which the member attains 20 years
24 of service; or

25 (B) the age at which the member first attains
26 both the age of at least 60 and at least 10 years of service.

27 (17-a) [~~(19)~~] "Retired member" means a member who has

1 separated from service and who is eligible to receive an immediate
2 service or disability pension under this article.

3 (22-a) "Survivor" means a surviving spouse, a
4 dependent child, or a dependent parent.

5 (23) "Total direct pay" means wages as defined by
6 Section 3401(a) of the code, plus any amounts that are not included
7 in gross income by reason of workers' compensation claims under
8 Section 104(a)(1), 125, 402(g)(2), or 457 of the code, [and] member
9 contributions picked up pursuant to Section 414(h)(2) of the code,
10 and any portion of a motorcycle allowance that is not considered
11 wages, less any pay received for overtime work. The term does not
12 include nontaxable payments not expressly described by this
13 subdivision. However, the compensation included in applying the
14 limits under Sections 26(c) and (d) of this article shall include
15 overtime pay and exclude any amount that is excluded from gross
16 income under Section 104(a)(1) of the code and the portion of any
17 motorcycle allowance that is excluded from gross income by any
18 other provision of the code not mentioned in this subdivision.

19 SECTION 3. Section 3, Article 6243g-4, Revised Statutes, is
20 amended by amending Subsections (a)-(d), (f), and (g) and adding
21 Subsection (h) to read as follows:

22 (a) The board of trustees of the pension system that was
23 created under Chapter 76, Acts of the 50th Legislature, Regular
24 Session, 1947 (Article 6243g-1, Vernon's Texas Civil Statutes), and
25 that operates under Section 67, Article XVI, Texas Constitution,
26 continues to be responsible for the general administration,
27 management, and operation of the pension system, including the

1 direction of investment and oversight of the fund's assets.

2 (b) The board is composed of seven members as follows:

3 (1) the administrative head of the city or the
4 administrative head's authorized representative;

5 (2) three employees of the police department having
6 membership in the pension system, ~~[and]~~ elected by the active,
7 inactive, and retired members of the pension system ~~[in the manner~~
8 ~~determined at a one-time election held for the pension system~~
9 ~~before October 1, 1999]~~;

10 (3) two retired members~~[, elected in the manner~~
11 ~~determined at a one-time election held for the pension system~~
12 ~~before October 1, 1999,]~~ who are receiving pensions from the system
13 and are not officers or employees of the city, elected by the
14 active, inactive, and retired members of the pension system; and

15 (4) the treasurer of the city or the person
16 discharging the duties of the city treasurer.

17 (c) The terms of office of the board members elected as
18 described by Subsection (b)(2) of this section shall be three
19 years, beginning on January 1 and ending on December 31, with one
20 board member being elected every year at an election called by the
21 board and held in December. If a vacancy occurs among the three
22 elected active board members, the board shall hold an election
23 within 60 days after the date the vacancy occurred. At that
24 election, an active member shall be elected to serve for the
25 remainder of the term of the vacant position or for a full term if
26 the term of the board member that caused the vacancy would have
27 ended in that year.

1 (d) The terms of office of the board members elected as
2 described by Subsection (b)(3) of this section shall be three
3 years, beginning on January 1 and ending on December 31. Beginning
4 in 1999, and each third succeeding year, one board member shall be
5 elected at an election called by the board and held in December.
6 Beginning in 2000, and each third succeeding year, a second board
7 member shall be elected at an election called by the board and held
8 in December. If a vacancy occurs among the two elected retired
9 members of the board, the board shall hold an election within 60
10 days after the date the vacancy occurred. At that election, a
11 retired member shall be elected to serve for the remainder of the
12 term of the vacant position or for a full term if the term of the
13 board member that caused the vacancy would have ended in that year.
14 A board member who is a retired member and who was appointed to the
15 board before January 1999 shall serve the remainder of the board
16 member's term. On expiration of the appointed term, the appointed
17 board member is eligible to run for the board position described by
18 Subsection (b)(3) of this section in the same manner as any other
19 retired member.

20 (f) An individual who is [~~If it is so determined at a~~
21 ~~one-time election held for the pension system before October 1,~~
22 ~~1999,~~] an officer or employee of any employee organization or
23 retiree organization or an employee of the pension system is
24 prohibited from being elected to the board, appointed to the board,
25 or in any other way serving as [~~becoming~~] a member of the board.

26 (g) Each board member shall, within 30 days after taking
27 office [~~the date of appointment or election~~], take an oath of

1 office:

2 (1) to diligently and honestly administer the affairs
3 of the pension system by:

4 (A) being loyal exclusively to all members;

5 (B) being prudent in protecting and managing the
6 trust's property;

7 (C) defending the trust's assets; and

8 (D) acting under the terms of the plan; and

9 (2) to not knowingly violate, or willingly permit to
10 be violated, this article.

11 (h) Notwithstanding any other provision in this section, if
12 a candidate for an elected trustee position is unopposed in an
13 election, the election may not be held for that position. The board
14 shall certify the candidate as elected to the board on the executive
15 director's certification that the candidate is eligible to be a
16 trustee under this section and is unopposed for election. The
17 certified candidate shall take the oath of office as soon as
18 practicable in January, after being declared elected in December.

19 SECTION 4. Section 4(a), Article 6243g-4, Revised Statutes,
20 is amended to read as follows:

21 (a) Elected members of the board who are employees of the
22 city's police department are entitled to leave from their employer
23 to attend to the official business of the pension system and are not
24 required to report to the city or any other governmental entity
25 regarding travel or the official business of the pension system,
26 except when on city business.

27 SECTION 5. Section 5, Article 6243g-4, Revised Statutes, is

1 amended by amending Subsection (d) and adding Subsection (b-1) to
2 read as follows:

3 (b-1) The board may hire an executive director. The
4 executive director, acting under the direction of the board, shall
5 handle the operations of the plan and shall perform other duties as
6 the board may assign. The executive director shall also serve as
7 the plan administrator for purposes of complying with Subchapter A,
8 Chapter 804, Government Code.

9 (d) The board may employ one or more actuaries, legal
10 counsel, accountants, or other professionals [~~an actuary, legal~~
11 ~~counsel, an accountant, or another professional~~] and pay the
12 compensation for these services from the fund.

13 SECTION 6. Section 6, Article 6243g-4, Revised Statutes, is
14 amended by adding Subsections (e-1), (g), and (h) and amending
15 Subsection (f) to read as follows:

16 (e-1) The board may sue on behalf of the pension system in
17 any court with proper subject matter jurisdiction regardless of
18 location. The board has sole authority to litigate matters on
19 behalf of the pension system.

20 (f) The board has full discretion and authority to
21 administer the pension system, to construe and interpret this
22 article, to correct any defect or omission, to reconcile any
23 inconsistency that appears in this article, and to do all other acts
24 necessary to carry out the purpose of this article in a manner and
25 to the extent that the board considers expedient to administer this
26 article for the greatest benefit of all members. All decisions of
27 the board are final and binding on all affected parties.

1 (g) The board, if reasonably necessary in the course of
2 performing a board function, may subpoena a witness or the
3 production of a book, record, or other document. The presiding
4 officer of the board may issue, in the name of the board, a subpoena
5 only if a majority of the board approves. The presiding officer of
6 the board, or the presiding officer's designee, shall administer an
7 oath to each witness. A peace officer shall serve a subpoena issued
8 by the board. If the person to whom a subpoena is directed fails to
9 comply, the board may bring suit to enforce the subpoena in a
10 district court of the county in which the person resides or in the
11 county in which the book, record, or other document is located. If
12 the district court finds that good cause exists for issuance of the
13 subpoena, the court shall order compliance. The district court may
14 modify the requirements of a subpoena that the court finds are
15 unreasonable. Failure to obey the order of the district court is
16 punishable as contempt.

17 (h) The board is not subject to Title 6, Property Code.

18 SECTION 7. Sections 7(d) and (f), Article 6243g-4, Revised
19 Statutes, are amended to read as follows:

20 (d) On the date the board makes a declaration under
21 Subsection (c) of this section, the board shall call a special
22 election to be held not earlier than the 20th or later than the 60th
23 ~~[30th]~~ day after that date to fill the vacancy for the unexpired
24 term of the person who was removed. The person who was removed is
25 not eligible to run in the special election but is eligible to run
26 in all subsequent board elections.

27 (f) The hearing must begin as soon as the hearing examiner

1 can be scheduled but not later than the 60th day after the date the
2 board votes to remove the board member. In a hearing conducted
3 under this subsection, the hearing examiner may issue subpoenas.
4 The parties may agree to an expedited hearing procedure. Unless
5 otherwise agreed by the parties, in an expedited procedure, the
6 hearing examiner must issue a decision not later than the 10th day
7 after the date the hearing ends. Unless operating under an
8 expedited hearing procedure, the hearing examiner shall make a
9 reasonable effort to issue a decision not later than the 30th day
10 after the date the hearing ends. The hearing examiner's inability
11 to meet the time requirements imposed by this subsection does not
12 affect the hearing examiner's jurisdiction or final decision. The
13 final decision of the hearing examiner may be either to remove the
14 board member or not to remove the board member from the board. [~~A
15 decision may be made to remove the board member from the board only
16 if the hearing examiner determines that the board member violated
17 Subchapter A, Chapter 121, Property Code.~~] The hearing examiner's
18 fees and expenses shall be paid by the pension system. The costs of
19 a witness shall be paid by the party who calls the witness.

20 SECTION 8. Section 8(a), Article 6243g-4, Revised Statutes,
21 is amended to read as follows:

22 (a) Each active member of the pension system shall pay into
23 the system each month 8 3/4 percent of the member's total direct
24 pay. The payments shall be deducted by the city from the salary of
25 each active member each payroll period [~~monthly~~] and paid to the
26 pension system. Except for the repayment of withdrawn
27 contributions under Section 17(f) or 18(c)(3) of this article and

1 rollovers permitted by Section 17(h) of this article, a person may
2 not be required or permitted to make any payments into the pension
3 system after the person separates from service.

4 SECTION 9. The heading to Section 9, Article 6243g-4,
5 Revised Statutes, is amended to read as follows:

6 Sec. 9. CONTRIBUTIONS [~~MONTHLY PAYMENT~~] BY THE CITY.

7 SECTION 10. Section 9(a), Article 6243g-4, Revised
8 Statutes, is amended to read as follows:

9 (a) The city shall make substantially equal contributions
10 to the fund as soon as administratively feasible after each payroll
11 period. For each fiscal year ending after June 30, 2005, the city's
12 minimum contribution shall be the greater of 16 percent of the
13 members' total direct pay or the level percentage of salary payment
14 required to amortize the unfunded actuarial liability over a
15 constant period of 30 years computed on the basis of an acceptable
16 actuarial reserve funding method approved by the board. However,
17 for the fiscal year ending June 30, 2002, the city's contribution
18 shall be \$32,645,000, for the fiscal year ending June 30, 2003, the
19 city's contribution shall be \$34,645,000, for the fiscal year
20 ending June 30, 2004, the city's contribution shall be \$36,645,000,
21 and for the fiscal year ending June 30, 2005, the city's
22 contribution shall be 16 percent of the members' total direct pay.
23 [~~For fiscal years ending before June 30, 2002, the city shall make~~
24 ~~contributions to the fund after each payroll period in an amount~~
25 ~~previously agreed to by the city and the board. For the fiscal year~~
26 ~~ending June 30, 2002, the city's contribution rate shall be~~
27 ~~composed of the normal cost plus the level percentage of salary~~

1 ~~payment required to amortize the actuarial liability over a period~~
2 ~~of 40 years from January 1, 1983, computed on the basis of an~~
3 ~~acceptable actuarial reserve funding method approved by the board.~~
4 ~~For each fiscal year ending after June 30, 2002, the city's~~
5 ~~contribution shall be the sum of (1) an amount computed in the~~
6 ~~manner provided for the contribution for the fiscal year ending~~
7 ~~June 30, 2002, plus (2) \$2 million multiplied by the number of~~
8 ~~fiscal years that have ended since June 30, 2002, but not more than~~
9 ~~16 percent of the aggregate total direct pay of all active members~~
10 ~~for the fiscal year. If the amount described by (1) in the~~
11 ~~preceding sentence is greater than 16 percent of the aggregate~~
12 ~~total direct pay of all active members for the year, the amount~~
13 ~~described by (1) shall be contributed.]~~

14 SECTION 11. Section 11(a), Article 6243g-4, Revised
15 Statutes, is amended to read as follows:

16 (a) A member who returns to service after an interruption in
17 service is entitled to credit for the previous service to the extent
18 provided by Section 19 of this article. ~~[In addition, a member who~~
19 ~~is retiring shall receive one-half day of service for each day for~~
20 ~~which the city is required to make contributions with respect to the~~
21 ~~member's unused sick leave, vacation pay, or accumulated overtime~~
22 ~~under Section 9(b) of this article, except to the extent that the~~
23 ~~member elects to have the amounts credited to the member's DROP~~
24 ~~account. Under no circumstances may payments for the same days of~~
25 ~~unused sick leave, vacation pay, or accumulated overtime be used to~~
26 ~~both increase a member's service and credit the member's DROP~~
27 ~~account.]~~

1 SECTION 12. Section 12, Article 6243g-4, Revised Statutes,
2 is amended by amending Subsections (a), (b), (d), (f), and (g) and
3 adding Subsections (h) and (i) to read as follows:

4 (a) A member who separates from service after earning 20 or
5 more years of service is eligible to receive a monthly service
6 pension, beginning in the month of separation from service. A
7 member who separates from service with the city after November 23,
8 1998, after earning 10 or more but less than 20 years of service in
9 any of the city's pension systems and who complies with all
10 applicable requirements of Section 19 of this article is eligible
11 to receive a monthly service pension, beginning in the month the
12 individual attains 60 years of age. An individual may not receive a
13 pension under this article while still an active member, except as
14 provided by Subsection (f) of this section. All service pensions
15 end with the month in which the retired member dies. The city shall
16 supply all personnel, financial, and payroll records necessary to
17 establish the member's eligibility for a benefit, the member's
18 credited service, and the amount of the benefit. The city must
19 provide those records in the format specified by the pension
20 system.

21 (b) Except as otherwise provided by this section, the
22 monthly service pension of a member that becomes due after May 1,
23 2001 [~~who separates from service after November 23, 1998~~], is equal
24 to 2.75 [~~2.5~~] percent of the member's average total direct pay or,
25 if the member retired before November 24, 1998, 2.75 percent of the
26 member's base salary, for each of the member's first 20 years of
27 service, plus an additional two percent of the member's average

1 total direct pay for each of the member's subsequent years of
2 service, computed to the nearest one-twelfth of a year. A member
3 who separates from service after November 23, 1998, including a
4 member who was a DROP participant, and begins to receive a monthly
5 service pension shall also receive a one-time lump-sum payment of
6 \$5,000 at the same time the first monthly pension payment is made.
7 The lump-sum payment under this subsection is not available to a
8 member who has previously received a \$5,000 payment under this
9 section or Section 16 of this article.

10 (d) A retired member who receives a service pension under
11 this article is entitled to receive an additional amount each month
12 equal to \$150 [~~\$88.05~~], beginning on the later of the date the
13 retired member's pension begins or the date the first monthly
14 payment becomes due after June 18, 2001, and continuing until the
15 end of the month in which the retired member dies. This amount is
16 intended to defray the retired member's group medical insurance
17 costs and will be paid directly by the fund to the retired member
18 for the retired member's lifetime.

19 (f) Notwithstanding anything to the contrary in this
20 article, an active or inactive member who is eligible to
21 participate in the executive official pension plan established by
22 Chapter 358, Acts of the 48th Legislature, Regular Session, 1943
23 (Article 6243g, Vernon's Texas Civil Statutes), or a successor
24 statute, may, while continuing employment with the police
25 department, participate in the executive official pension plan and
26 elect:

27 (1) if an active member:

1 (A) to begin receiving an immediate pension
2 benefit and be considered a retired member eligible for all rights
3 and privileges afforded any other retired member under this
4 article, if the member has 20 years or more of service and is
5 eligible for retirement under this section except for the
6 continuing employment; or

7 (B) to enter DROP if the member satisfies all
8 requirements of this article for DROP membership; or

9 (2) if an inactive member, to begin receiving an
10 immediate pension benefit equal to 2.75 [~~2.5~~] percent of the
11 member's average total direct pay at the time the member became
12 inactive for the member's first 20 years of service and be entitled
13 to all rights and privileges afforded a retired member under this
14 article.

15 (g) Notwithstanding anything to the contrary in this
16 article, service pensions that began before May 1, 2001 [~~September~~
17 ~~1, 1999~~], shall continue to be paid in accordance with applicable
18 prior law, subject only to the adjustments that are specifically
19 provided by this section.

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

27 (i) The computation of average total direct pay shall be

1 made in accordance with procedures and policies adopted by the
2 board.

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

6 (b) An active member who has at least 20 years of service
7 with the police department may file with the pension system an
8 [~~irrevocable~~] election to participate in DROP and receive a DROP
9 benefit instead of the standard form of pension provided by this
10 article. The election may be made, under procedures established by
11 the board, by an active member who has attained the required years
12 of service. A DROP election that is made and accepted by the board
13 may not be revoked before the member's separation from service.

14 (c) The monthly service pension and death benefits of an
15 active member who becomes a DROP participant will be determined as
16 if the active member had separated from service and begun receiving
17 a pension on the effective date of the DROP election. The active
18 member does not retire but does not accrue additional service
19 credit beginning on the effective date of the election, and
20 increases in pay that occur on or after that date may not be used in
21 computing the active member's monthly service pension, except as
22 provided by Subsection (l) of this section, but cost-of-living
23 adjustments that occur on or after that date and that otherwise
24 would be applicable to the pension will be made.

25 (d) The member's DROP benefit is determined as provided by
26 this subsection and Subsection (e) of this section. Each month an
27 amount equal to the monthly service pension the active member would

1 have been entitled to receive if the active member had separated
2 from service on the effective date of entry into DROP, less any
3 amount that is intended to help defray the active member's group
4 medical insurance costs as described by Section 12(d) of this
5 article, shall be credited to a notional DROP account for the active
6 member, and each month an amount equal to the monthly contributions
7 the active member makes to the fund on and after the effective date
8 of entry into DROP also shall be credited to the same notional DROP
9 account. In any year in which a 13th payment is made to retired
10 members under Section 12(e) of this article, an amount equal to the
11 amount of the 13th payment that would have been made to the DROP
12 participant if the DROP participant had retired on the date of DROP
13 entry will be credited to the DROP account. [~~In addition, any
14 amount that is contributed by the city under Section 9(b) of this
15 article with respect to the active member's unused sick leave,
16 vacation pay, or accumulated overtime, and that is not required to
17 be used to provide 10 or 20 years of service to the member under
18 Section 11 of this article or used to repay withdrawn contributions
19 under Section 18(c) of this article shall be credited to the DROP
20 account as of the end of the month in which it is contributed.~~]

21 (e) As of the end of each month an amount is credited to each
22 active member's notional DROP account at the rate of one-twelfth of
23 a hypothetical earnings rate on amounts in the account. The
24 hypothetical earnings rate is determined for each calendar year
25 based on the average of the aggregate annual rate of return on
26 investments of the pension system for the five consecutive fiscal
27 years ending June 30 preceding the calendar year to which the

1 earnings rate applies. The rate may not be less than zero. [~~The~~
2 ~~board may lower any future rate below the rate otherwise prescribed~~
3 ~~by this subsection to the extent necessary to ensure that the DROP~~
4 ~~does not adversely affect the financial condition of the fund.~~]

5 (f) At the time of a DROP participant's separation from
6 service, the DROP participant or, if separation from service was
7 due to the DROP participant's death, the person entitled to receive
8 benefits under Sections 16 and 16A of this article shall be afforded
9 a one-time election to revoke the DROP election and substitute
10 either the annuity that would have been paid if the member had never
11 elected DROP or an annuity and notional DROP account equal to the
12 annuity and notional DROP account that would have been received if
13 the member had entered DROP on a date elected by the member or
14 survivor. The date elected by the member or survivor may not be
15 earlier than the earliest date the member could have elected to
16 enter DROP or later than the date of the member's death or other
17 separation from service. The computation of the value of the
18 annuity and DROP account of a member or survivor who makes a Back
19 DROP election shall be subject to the policies and procedures
20 adopted by the board. For purposes of this subsection, "Back DROP"
21 means the option to make this one-time election [~~If a DROP~~
22 ~~participant separates from service because of disability or death,~~
23 ~~the member or the member's spouse or, if there is no eligible~~
24 ~~spouse, any other person eligible to receive benefits under Section~~
25 ~~16 of this article, as applicable, may either receive an amount~~
26 ~~equal to the member's DROP account or revoke the member's DROP~~
27 ~~election and elect to receive benefits as provided by this article~~

1 ~~without regard to this section. A revocation and election under~~
2 ~~this subsection must be made at the time and in the manner provided~~
3 ~~in a procedure that the board may adopt from time to time.~~
4 ~~Alternatively, the retired member, a deceased member's spouse, or,~~
5 ~~if there is no spouse, the person entitled to receive benefits under~~
6 ~~Section 16 of this article may elect to receive a distribution that~~
7 ~~is equal to the member's DROP account and benefits as described by~~
8 ~~Subsection (c) of this section].~~

9 (f-1) If a DROP participant separates from service due to
10 death and the person entitled to receive benefits under Sections 16
11 and 16A of this article does not revoke the DROP election, the DROP
12 benefit may be received in the form of an additional annuity over
13 the life expectancy of the surviving spouse.

14 (g) In lieu of receiving a lump-sum DROP benefit on
15 separation from service, a retired member who has been a DROP
16 participant or, if separation from service was due to the DROP
17 participant's death, the surviving spouse may leave the retired
18 member's DROP account with the pension system, in which case
19 interest will be credited to the DROP account in the manner
20 described by Subsection (e) of this section [~~this subsection~~].
21 [~~The interest credited for any month shall be at the applicable~~
22 ~~annual interest rate as defined by Section 417(e)(3)(A)(ii)(II) of~~
23 ~~the code and published by the Internal Revenue Service for June of~~
24 ~~the year preceding the calendar year in which the interest is~~
25 ~~credited.~~]

26 (j) A retired member who is a DROP participant, or a
27 surviving spouse, may elect to receive distribution of the DROP

1 account in a one-time lump-sum payment or in any other form of
2 distribution that is approved by the board and satisfies the
3 requirements of Section 401(a)(9) of the code. [~~Distributions to a~~
4 ~~deceased member's survivors, as described by Subsection (f) of this~~
5 ~~section, shall be made in a lump sum as soon as administratively~~
6 ~~feasible after the deceased member's death.~~]

7 (1) The DROP account of each DROP participant who was an
8 active member on May 1, 2001, shall be recomputed and adjusted,
9 effective on that date, to reflect the amount that would have been
10 credited to the account if the member's pension had been computed
11 based on 2.75 percent of the member's average total direct pay, or
12 base pay if applicable, for each of the member's first 20 years of
13 service. The DROP account adjustment shall also include the
14 assumed earnings that would have been credited to the account if the
15 2.75 percent multiplier for the first 20 years of service had been
16 in effect from the time the member became a DROP participant [~~If~~
17 ~~DROP causes any unanticipated actuarial costs, the board may take~~
18 ~~action as necessary to mitigate the unanticipated actuarial cost,~~
19 ~~including discontinuing acceptance of additional elections to~~
20 ~~participate in the DROP, but the pension system shall continue to~~
21 ~~administer DROP for the members participating before the date of~~
22 ~~discontinuance of enrollment].~~

23 (m) The DROP monthly service pension, as described by
24 Subsection (c) of this section, of each DROP participant who
25 retires after May 1, 2001, shall be recomputed as of the date of
26 retirement, based on the DROP participant's average total direct
27 pay at the time of retirement and changes to the benefit formula in

1 Section 12(b) of this article that have occurred since the member's
2 DROP entry date. If this recomputation would result in a greater
3 monthly service pension, as described by Subsection (c) of this
4 section, the DROP participant's monthly service pension shall be
5 adjusted to the greater amount.

6 SECTION 14. Section 15, Article 6243g-4, Revised Statutes,
7 is amended by amending Subsections (a)-(d) and adding Subsections
8 (h)-(k) to read as follows:

9 (a) An active member who becomes totally and permanently
10 incapacitated for the performance of the member's duties as a
11 result of a bodily injury received in, or illness caused by, the
12 performance of those duties shall, on presentation to the board of
13 proof of total and permanent incapacity, be retired and shall
14 receive an immediate duty-connected disability pension equal to the
15 greater of 55 [~~50~~] percent of the member's average total direct pay
16 at the time of retirement or the member's accrued service pension.
17 If the injury or illness involves a traumatic event that directly
18 causes an immediate cardiovascular condition resulting in a total
19 disability, the member is eligible for a duty-connected disability
20 pension. A disability pension granted by the board shall be paid to
21 the member for the remainder of the member's life or for as long as
22 the incapacity remains. If a member is a DROP participant at the
23 commencement of the member's disability, the member shall have the
24 option of receiving the DROP balance in any manner that is approved
25 by the board and that satisfies the requirements of Section
26 401(a)(9) of the code and Treasury Regulation Section 1.104-1(b)
27 (26 C.F.R. Section 1.104-1) and is otherwise available to any other

1 member under this article.

2 (b) A member with 10 years or more of credited service who
3 becomes totally and permanently incapacitated for the performance
4 of the member's duties and is not eligible for either an immediate
5 service pension or a duty-connected disability pension is eligible
6 for an immediate monthly pension computed in the same manner as a
7 service retirement pension but based on average total direct pay
8 and service accrued to the date of the disability. The pension
9 under this subsection may not be less than 27.5 percent of the
10 member's average total direct pay.

11 (c) A member who becomes entitled to receive a disability
12 pension after November 23, 1998, is entitled to receive a one-time
13 lump-sum payment of \$5,000 at the same time the first monthly
14 disability pension payment is made, but only if the member has not
15 previously received a \$5,000 payment under this section or Section
16 12 of this article. The retired member [~~person~~] shall also receive
17 an additional amount each month equal to \$150 [~~\$88.05~~], beginning
18 on the later of the date the pension begins or the date the first
19 monthly payment becomes due after June 18, 2001, and continuing as
20 long as the disability pension continues, to help defray the cost of
21 group medical insurance. [~~A retired member whose disability~~
22 ~~pension continues and was in pay status on November 23, 1998, is~~
23 ~~entitled to receive a one-time lump-sum payment of \$5,000 as soon as~~
24 ~~administratively feasible after November 23, 1998. This payment~~
25 ~~has no effect on the amount of the retired member's monthly~~
26 ~~pension.] For any year in which a 13th payment is made to retired
27 members under Section 12(e) of this article, a 13th payment,~~

1 computed in the same manner, shall also be paid to members who have
2 retired under this section.

3 (d) A person may not receive a disability pension unless the
4 person files with the board an application for a disability pension
5 not later than 180 days after the date of separation from service,
6 at which time the board shall have the person examined by a
7 physician chosen and compensated by the board. The physician shall
8 make a report and recommendations to the board regarding the extent
9 of any disability and whether any disability that is diagnosed is a
10 duty-connected disability. Except as provided by Subsection (j) of
11 this section, a [A] person may not receive a disability pension for
12 an injury received or illness incurred after separation from
13 service.

14 (h) As soon as administratively feasible after the later of
15 June 18, 2001, or the date of the member's retirement because of
16 disability, an additional monthly disability benefit may be
17 provided to the member. The additional monthly benefit shall be
18 equal to the difference between the monthly benefit the member is
19 receiving under Subsection (a) or (b) of this section, whichever is
20 applicable, and 100 percent of the member's average total direct
21 pay at the time of retirement because of disability. The additional
22 benefit will end on the earlier of the fourth anniversary of the
23 date the benefit is first paid, the end of the last month the member
24 is engaged in an education or training program approved in
25 accordance with procedures adopted by the board, or the date the
26 member is approved to return to active duty. This additional
27 monthly benefit is not reduced by any DROP account distributions

1 the member receives unless the member elects to receive the DROP
2 distributions in the form of an annuity. This additional benefit is
3 not available to a member who is receiving a disability benefit
4 under Subsection (j) of this section.

5 (i) Effective for payments that become due after April 30,
6 2000, and instead of the disability benefit provided by Subsection
7 (a), (b), or (h) of this section, a member who suffers a
8 catastrophic injury shall receive a monthly benefit equal to 100
9 percent of the member's average total direct pay determined as of
10 the date of retirement.

11 (j) A member who transfers from the police department of a
12 city subject to this article to another department of the same city,
13 or who separates from service and is rehired in another department,
14 and who subsequently terminates employment with the city due to a
15 duty-connected injury incurred while working as a non-police
16 employee, shall be entitled to receive an immediate proportional
17 nonduty-connected disability benefit computed in the same manner as
18 provided by Subsection (b) of this section, but the benefit shall be
19 based only on service earned as an employee of the police
20 department. For purposes of this proportional disability benefit
21 only, the 180-day application filing requirement in Subsection (d)
22 of this section begins at the time of separation from the department
23 that employed the member at the time the disability was incurred. A
24 person may not receive a disability pension for an injury incurred
25 after termination from service with the city or for a nonduty
26 disability incurred after separation from service with the police
27 department. This proportional nonduty-connected disability

1 benefit is not available to a person who is already receiving a
2 service retirement pension or disability pension under this
3 article.

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

8 SECTION 15. Sections 16(a), (c), and (f)-(h), Article
9 6243g-4, Revised Statutes, are amended to read as follows:

10 (a) For purposes of this article, a marriage is considered
11 to exist only if the marriage is recorded in the records of the
12 recorder's office in the county in which the marriage ceremony was
13 performed. In [or, in] the case of a [declaration of] common-law
14 marriage, a marriage declaration must be [if the declaration is]
15 signed by the member and the member's common-law spouse before a
16 notary public and recorded in the records of the county clerk's
17 office in the county in which the couple resides at the commencement
18 of the marriage [filed with the board]. In addition, a marriage
19 that is evidenced by a declaration of common-law marriage signed
20 before a notary public after December 31, 1999, may not be treated
21 as effective earlier than the date on which it was signed before the
22 notary public.

23 (c) If a member of the pension system who has not completed
24 10 years of service in the police department is killed or dies from
25 any cause growing out of or in consequence of any act clearly not in
26 the actual performance of the member's official duty, the member's
27 surviving spouse, dependent child or children, or dependent parent

1 or parents are entitled to receive an immediate benefit. The
2 benefit is computed in the same manner as a service retirement
3 pension but is based on the deceased member's service and average
4 total direct pay at the time of death. The monthly benefit may not
5 be less than 27.5 percent of the member's average total direct pay
6 ~~[only to a refund of the member's contributions to the pension~~
7 ~~system].~~

8 (f) A surviving spouse who receives a survivor's benefit
9 under this article is entitled to receive an additional amount each
10 month equal to \$150 [~~\$88.05~~], beginning with the later of the date
11 the first payment of the survivor's benefit is due or the date the
12 first monthly payment becomes due after June 18, 2001, and
13 continuing until the end of the month in which the surviving spouse
14 dies.

15 (g) A [~~surviving spouse or dependent who was in pay status~~
16 ~~on November 23, 1998, is entitled to receive a one-time lump-sum~~
17 ~~payment of \$5,000 as soon as administratively feasible after~~
18 ~~November 23, 1998. The] surviving spouse or dependent who becomes
19 eligible to receive benefits with respect to an active member who
20 dies in active service after November 23, 1998, is entitled to
21 receive a one-time lump-sum payment of \$5,000 at the time the first
22 monthly pension benefit is paid, if the member has not already
23 received a \$5,000 lump-sum payment under Section 12 or 15(c) of this
24 article. If more than one dependent is eligible to receive a
25 payment under this subsection, the \$5,000 shall be divided equally
26 among the eligible dependents. This payment has no effect on the
27 amount of the surviving spouse's or dependents' monthly pension and~~

1 may not be paid more than once.

2 (h) The monthly benefits of surviving spouses or dependents
3 provided under this section, except the \$150 [~~\$88.05~~] monthly
4 payments described by Subsection (f) of this section, shall be
5 increased annually at the same time and by the same percentage as
6 the pensions of retired members are increased in accordance with
7 Section 12(c) of this article. Also, for any year in which a 13th
8 payment is made pursuant to Section 12(e) of this article, a 13th
9 payment, computed in the same manner, shall also be made to
10 survivors who are entitled to receive death benefits at that time.

11 SECTION 16. Article 6243g-4, Revised Statutes, is amended
12 by adding Section 16A to read as follows:

13 Sec. 16A. BENEFICIARY DESIGNATION. (a) The provisions of
14 Section 16 of this article pertaining to rights of survivors do not
15 apply to an amount held in a member's DROP account. A member who
16 participates in DROP may designate a beneficiary to receive the
17 balance of the member's DROP account in the event of the member's
18 death, as permitted by Section 401(a)(9) of the code and the board's
19 policies. A member who is married is considered to have designated
20 the member's spouse as the member's beneficiary unless the spouse
21 consents, in a notarized writing delivered to the board, to the
22 designation of another person as beneficiary. If no designated
23 beneficiary survives the member, the board may pay the balance of
24 the member's DROP account to the member's beneficiaries in the
25 following order:

26 (1) to the member's spouse;

27 (2) if the member does not have a spouse, to each child

1 of the member in equal shares;

2 (3) if the member does not have a spouse or any
3 children, to each surviving parent of the member in equal shares; or

4 (4) if the member has no beneficiaries described by
5 Subdivisions (1), (2), and (3) of this subsection, to the estate of
6 the member.

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

13 SECTION 17. Section 17(h), Article 6243g-4, Revised
14 Statutes, is amended to read as follows:

15 (h) Subject to procedures adopted by the board, the pension
16 system shall accept a direct cash transfer of funds from another
17 plan that is an eligible rollover distribution within the meaning
18 of Section 402(f)(2)(A) of the code. The transfer shall be accepted
19 only for the purpose of repaying contributions the member has
20 previously withdrawn or for other purposes expressly authorized by
21 the board's procedures. [~~City contributions made under Section 9(b)~~
22 ~~of this article based on the unused sick leave, vacation pay, and~~
23 ~~accumulated overtime pay of a member who has separated from service~~
24 ~~may be applied, at the election of the member seeking a refund, to~~
25 ~~pay a refund of member contributions if the contributions are not~~
26 ~~used under Section 11(c) of this article to satisfy a service~~
27 ~~requirement for retirement.]~~

1 SECTION 18. Section 18, Article 6243g-4, Revised Statutes,
2 is amended by amending Subsections (a) and (b) and adding
3 Subsection (d) to read as follows:

4 (a) Except as provided by this section:

5 (1) [7] credit may not be allowed to any person for
6 service with any department in the city other than the police
7 department; and

8 (2) a [~~. Except as provided by this section, if a~~
9 ~~person is transferred to or from some other department of the city~~
10 ~~to or from the police department, the~~] person's service will be
11 computed from the date of entry into the service of the police
12 department until the date of separation from service with the
13 police department.

14 (b) Solely for purposes of determining whether a person has
15 a sufficient number of years of service to receive a retirement
16 pension or to enter the DROP program, and not for purposes of
17 determining the amount of the pension or DROP credit, a person who
18 is employed in any full-time position with the city after June 18,
19 2001 [~~November 23, 1998~~], and has or obtains any credited service
20 with the pension system after that date, shall receive service
21 credit for any period of full-time employment with the same city.
22 However, a person may not receive credit for service with both the
23 police department and any other department of the city for the same
24 period.

25 (d) Classified police officers who were formerly employed
26 by a city as park police, airport police, or marshals, who were
27 involuntarily transferred from another city department to the

1 police department of the city, and who are current active members of
2 the pension system shall have the option to receive credit with the
3 pension system for previous service with another pension system of
4 the city, provided that a person may not receive service credit for
5 both pension systems for the same period of service.

6 SECTION 19. Section 20, Article 6243g-4, Revised Statutes,
7 is amended to read as follows:

8 Sec. 20. DONATIONS. The pension system may accept gifts
9 and donations, and the gifts and donations shall be added to the
10 fund for the use of the pension system, including, but not limited
11 to, for use for education programs and the related administrative
12 expenses of the programs.

13 SECTION 20. Section 22, Article 6243g-4, Revised Statutes,
14 is amended to read as follows:

15 Sec. 22. LEGAL ADVICE. The city attorney of the city shall
16 handle all legal matters for the pension system that are referred by
17 the board without additional compensation for the service. The
18 board may, however, as it considers necessary, employ outside legal
19 counsel to the exclusion of, or to assist, the city attorney and pay
20 reasonable compensation for the service of the additional legal
21 counsel from the fund.

22 SECTION 21. Section 23, Article 6243g-4, Revised Statutes,
23 is amended to read as follows:

24 Sec. 23. MEMBERS IN MILITARY SERVICE. (a) A member of the
25 pension system engaged in active service in a uniformed service may
26 not be required to make the monthly payments into the fund and may
27 not lose any previous years' service with the city because of the

1 uniformed service. The uniformed service shall count as continuous
2 service in the police department if the member returns to the city
3 police department after discharge from the uniformed service as an
4 employee within the period required by the Uniformed Services
5 Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section
6 4301 et seq.), as amended, and the uniformed service does not exceed
7 the period for which a person is entitled to have service counted
8 pursuant to that Act. Notwithstanding any other provision of this
9 article, contributions and benefits shall be paid and qualified
10 service for military service shall be determined in compliance with
11 Section 414(u) of the code.

12 (b) The city is required to make its [~~regular monthly~~]
13 payments into the fund on behalf of each member while the member is
14 engaged in a uniformed service. If a member who has less than 10
15 years of service in the pension system dies directly or indirectly
16 as a result of the uniformed service, and without returning to
17 active service, the spouse, dependent children, dependent parent,
18 or estate of the member is entitled to receive a benefit [~~refund~~]
19 in the same manner as described by Section 16(c) of this article.

20 SECTION 22. Sections 25(d) and (e), Article 6243g-4,
21 Revised Statutes, are amended to read as follows:

22 (d) The total salary taken into account for any purpose for
23 any member of the pension system may not exceed \$200,000 for any
24 year for an eligible participant, or for years beginning after 2001
25 for an ineligible participant, or \$150,000 a year before 2001 for an
26 ineligible participant. These dollar limits shall be adjusted from
27 time to time in accordance with guidelines provided by the United

1 States secretary of the treasury. For purposes of this subsection,
2 an eligible participant is a person who first became an active
3 member before 1996, and an ineligible participant is a member who is
4 not an eligible participant.

5 (e) Accrued benefits under this article become 100 percent
6 nonforfeitable for a member on the date the member has completed 10
7 years of service. If the pension system or the fund is terminated
8 or partially terminated, or city contributions to the fund are
9 discontinued completely, there may not be a reversion of funds to
10 the employer. On complete or partial termination or discontinuance
11 of city contributions, the fund held by the pension system shall be
12 used exclusively for benefits for members and their surviving
13 spouses and dependents, and the members' [~~affected employees'~~]
14 rights to the benefits, to the extent funded, shall be
15 nonforfeitable if not already nonforfeitable under this
16 subsection.

17 SECTION 23. Article 6243g-4, Revised Statutes, is amended
18 by adding Section 29 to read as follows:

19 Sec. 29. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS OR
20 BENEFICIARIES. (a) Information contained in a record that is in
21 the custody of a fund established under this article concerning an
22 individual member, retiree, survivor, or beneficiary is
23 confidential for purposes of Sections 552.101, 552.102, and
24 552.117, Government Code. The information may not be disclosed in a
25 form that identifies a specific individual unless the information
26 is disclosed to:

27 (1) the individual;

1 (2) the individual's attorney, guardian, executor,
2 administrator, or conservator; or

3 (3) a person who has written authorization from the
4 individual to receive the information.

5 (b) This section does not prevent the disclosure of the
6 status or identity of an individual as a member, former member,
7 retiree, deceased member, survivor, beneficiary, or alternate
8 payee of the system.

9 SECTION 24. Sections 9(b), 15(f), and 16(d), Article
10 6243g-4, Revised Statutes, are repealed.

11 SECTION 25. This Act takes effect September 1, 2003.