

By: Rose

H.B. No. 2821

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the administration of certain local firefighters'  
3 retirement systems; providing a penalty.

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

5 SECTION 1. Sections 18(d) and (g), Texas Local Fire  
6 Fighters Retirement Act (Article 6243e, Vernon's Texas Civil  
7 Statutes), are amended to read as follows:

8 (d) A board established under this Act shall keep accurate  
9 minutes and records of its proceedings and a record of all claims,  
10 receipts, and disbursements relating to the fund. A board shall  
11 maintain in its records all files, documents, and studies relating  
12 to the fund or members of the retirement system. An order of a board  
13 must be made by vote recorded in the minutes of its proceedings.

14 (g) A board of trustees established under this Act shall~~[~~  
15 ~~not later than February 28 of each year,~~] file with the Pension  
16 Review Board [~~fire fighters' pension commissioner~~] a detailed and  
17 itemized report of all receipts and disbursements with respect to  
18 its fund during the fund's preceding fiscal year, together with a  
19 list of the members of the board. [~~A board shall file such~~  
20 ~~additional information as is required or requested from time to~~  
21 ~~time by the fire fighters' pension commissioner.~~]

22 SECTION 2. Section 22, Texas Local Fire Fighters Retirement  
23 Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to  
24 read as follows:

1           Sec. 22. (a) A person aggrieved by a decision of a board of  
2 trustees relating to eligibility for or amount of benefits payable  
3 by a retirement system may appeal the decision to an arbitrator as  
4 provided by this section [~~to the fire fighters' pension~~  
5 ~~commissioner~~].

6           (b) An appeal under this section is begun by delivering a  
7 notice of appeal with the chairman, secretary, or  
8 secretary-treasurer of the board of trustees that made the  
9 decision. The notice must be delivered not later than the 20th day  
10 after the date of the decision and contain a brief description of  
11 the reasons or grounds for appeal. [~~The aggrieved person must file~~  
12 ~~a copy of the notice with the fire fighters' pension commissioner.~~]

13           (c) If the aggrieved person decides to appeal the decision  
14 of the board of trustees to an arbitrator, the person and the  
15 chairman of the board of trustees, or their designees, shall  
16 attempt to agree on an arbitrator. If the parties do not agree on an  
17 arbitrator before the 11th calendar day after the date the notice of  
18 appeal is filed under Subsection (b), the chairman shall  
19 immediately request a list of seven qualified neutral arbitrators  
20 from the American Arbitration Association or the Federal Mediation  
21 and Conciliation Service, or their successor organizations. If the  
22 person and the chairman, or their designees, do not agree on one of  
23 the seven arbitrators on the list before the sixth business day  
24 after the date the person and the chairman receive the list, each  
25 party or the party's designee shall alternately strike a name from  
26 the list of arbitrators until one name remains. The arbitrator  
27 remaining on the list is the arbitrator for the appeal.

1       (d) After the arbitrator is selected, the parties or their  
2 designees shall agree on a date for a hearing on the appeal. The  
3 hearing shall be conducted in the municipality of which the board is  
4 a part.

5       (e) At a hearing conducted under this section, the  
6 arbitrator has the authority to administer oaths and issue  
7 subpoenas to compel the attendance of witnesses and subpoenas duces  
8 tecum to compel the production of documents. An oath administered  
9 by an arbitrator under this subsection has the same force and effect  
10 as an oath administered by a magistrate, and a subpoena issued by an  
11 arbitrator under this subsection has the same force and effect as a  
12 subpoena issued by a magistrate.

13       (f) A person who fails to respond to a subpoena issued by an  
14 arbitrator under Subsection (e) commits an offense. An offense  
15 under this section is punishable by a fine of not more than \$500.

16       (g) The aggrieved person and the board of trustees shall pay  
17 equal shares of the fees and expenses of an arbitrator who conducts  
18 a hearing as provided by this section. The party who subpoenas a  
19 witness shall pay any costs associated with the appearance of the  
20 witness at the hearing.

21       (h) The aggrieved person or the board of trustees may appeal  
22 the decision of an arbitrator to a district court that has  
23 jurisdiction over the municipality of which the board is a part by  
24 filing a petition in district court not later than the 10th calendar  
25 day after the later of the date the board of trustees or the  
26 aggrieved person receives, by certified mail, the decision of the  
27 arbitrator.

1        (i) The substantial evidence rule applies to an appeal to a  
2 district court under this section.

3        (j) A party who prevails in an appeal to district court is  
4 entitled to court costs and reasonable attorney's fees. [~~An appeal~~  
5 ~~under this section to the fire fighters' pension commissioner is~~  
6 ~~held in Austin and is a contested case under the Administrative~~  
7 ~~Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas~~  
8 ~~Civil Statutes) conducted as a de novo hearing by the State Office~~  
9 ~~of Administrative Hearings.~~]

10        SECTION 3. Section 22A, Texas Local Fire Fighters  
11 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
12 amended to read as follows:

13        Sec. 22A. A board of trustees may employ an attorney to  
14 represent the board in one or all legal matters, including a hearing  
15 on appeal to an arbitrator or in a district or appellate court [~~the~~  
16 ~~fire fighters' pension commissioner~~]. At the request of a board of  
17 trustees, the city attorney of the municipality of which the board  
18 is a part shall, without additional compensation, represent the  
19 board in one or all legal matters.

20        SECTION 4. Section 27(d), Texas Local Fire Fighters  
21 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
22 amended to read as follows:

23        (d) A board of trustees established under this Act shall  
24 adopt formal investment policies that emphasize safety and  
25 diversity as well as liquidity for benefit payments. In developing  
26 those policies, the board of trustees shall give special  
27 consideration to the preferred investment practices of the

1 Government Financial Officers Association. Each [~~Not later than~~  
2 ~~December 31 of each~~] year, the board of trustees shall submit to the  
3 Pension Review Board [~~fire fighters' pension commissioner~~] a copy  
4 of the investment policies adopted by the board.

5 SECTION 5. Sections 30(b) and (c), Texas Local Fire  
6 Fighters Retirement Act (Article 6243e, Vernon's Texas Civil  
7 Statutes), are amended to read as follows:

8 (b) Contributions picked up as provided by this section  
9 shall be treated as employer contributions in determining tax  
10 treatment of the amounts under the Internal Revenue Code of 1986.  
11 Each municipality or other political subdivision picking up  
12 contributions shall continue, however, to compute federal income  
13 tax withholding as if these contributions were employee wages until  
14 the first payroll period that begins after the date the board of  
15 trustees of the retirement system [~~fire fighters' pension~~  
16 ~~commissioner~~] files with the secretary of state a notice stating  
17 that the United States Internal Revenue Service has determined or a  
18 federal court has ruled that under Section 414(h), Internal Revenue  
19 Code of 1986 (26 U.S.C. Section 414(h)), the contributions are not  
20 includable in the gross income of a member until they are  
21 distributed or made available. Employee contributions picked up as  
22 provided by this section shall be deposited to the credit of the  
23 individual account of each affected member and shall be treated for  
24 all other purposes of this Act as if the contributions had been  
25 deducted from the compensation of members. Picked up contributions  
26 are not includable in a computation of contribution rates of the  
27 municipality or other political subdivision.

1           (c) A pick up of employee contributions takes effect in a  
2 municipality or other political subdivision on January 1 of the  
3 year following the year in which:

4           (1) the governing body of the municipality or other  
5 political subdivision by ordinance has adopted the pick up;

6           (2) the pick up has been approved by majority vote of  
7 the participating members of the retirement system at an election  
8 by secret ballot at which at least 50 percent of the participating  
9 members vote; and

10           (3) the board of trustees of the retirement system  
11 [~~fire fighters' pension commissioner~~] has filed with the secretary  
12 of state a notice stating that the United States Internal Revenue  
13 Service has issued a determination that the plan covering employees  
14 of the municipality or other political subdivision is a qualified  
15 retirement plan under Section 401(a), Internal Revenue Code of 1986  
16 (26 U.S.C. Section 401(a)), and that its related trust is tax exempt  
17 under Section 501(a) of that code (26 U.S.C. Section 501(a)).

18           SECTION 6. Sections 18A, 21, 21A, and 31(c), Texas Local  
19 Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil  
20 Statutes), are repealed.

21           SECTION 7. This Act takes effect September 1, 2005.