

## **BILL ANALYSIS**

C.S.H.B. 1390  
By: Turner  
Urban Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

In 1997, the 75th Texas Legislature repealed Article 6243e.2, V.T.C.S., and created Article 6243e.2(1), V.T.C.S. Article 6243e.2(1), V.T.C.S., governs the firefighters' relief and retirement fund for firefighters in cities having a population not less than 1,600,000.

The proposed complete committee substitute for House Bill No. 1390 proposes to clarify certain wording of the statute to advance administration of the fund and to provide additional flexibility for fund members or their survivors at no material cost to the fund. Certain changes are also proposed, for example, to allow retirees to take advantage of a new tax provision in federal law, to pro-rate on a monthly basis a benefit for Deferred Retirement Option Plan (DROP) participants currently only provided after a full year of DROP participation and to provide a small change in the way the annual supplemental benefit is distributed to the benefit of the lowest-income retirees.

The proposed substitute also establishes a Post-retirement Option Plan ("PROP"), an option already in use in other local and state pension funds, that allows retirees that do not need their full monthly distribution every month to direct the fund to retain part of such monies until needed by the retiree (or until required to be distributed pursuant to the Internal Revenue Code).

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not confer any additional rulemaking authority upon any State officer, agency, department or institution.

### **SECTION-BY-SECTION ANALYSIS**

SECTION 1. Amends Section 1, Article 6243e.2(1), Revised Statutes, as follows:

Adds a definition for the term "beneficiary adult child" to be employed as part of a new provision that allows an adult child to be designated by a member to receive certain benefits upon the member's death on the same basis as a minor child.

Adds a definition for the term "normal retirement age" because on its face the recently enacted federal Pension Protection Act of 2006 requires a pension plan to have such a defined age in order for fund members to take advantage of an exclusion from federal income tax.

Adds a definition of "PROP" to indicate the post-retirement option plan as provided in the new Section 5A of Article 6243e.2(1).

Adds a definition of "PROP account" to indicate the notional account established when an election is made by a member or surviving spouse to become a PROP participant.

SECTION 2. Amends Subsections 2(b)(5), (h), (j), (n), (p) and (r) and adds Subsections (h-1), (h-2), (p-1) and (s), Article 6243e.2(1), Revised Statutes, as follows:

(b)(5) Changes the residency requirement of citizen Trustees from 3 years to 1 year.

(h) Corrects an obsolete and inoperable provision requiring the municipal “Treasurer” to serve as fund treasurer under an official oath and bond of a municipal Treasurer.

(h-1) Clarifies authority to form committees and to form committees of the whole board by board order, fund rule or fund policy and establishes that committees of the whole board may take final action on matters within the committees’ defined authority.

(h-2) Provides authority of a pension benefits committee to deliberate and take final actions on applications for existing pension benefits submitted by members or their survivors.

(j) Provides a constant number of 6 for a board quorum and for committees of the whole board and establishes that votes on committee orders must be recorded in minutes.

(n) Clarifies how individual performing municipal treasurer role on fund board is to be provided with fund reports.

(p)(1) Clarifies that the board may adopt rules, policies and procedures for the administration of the fund.

(p-1) Clarifies that a rule, policy or procedure adopted by the board is final and binding with respect to matters within the board’s jurisdiction and authority.

(r) Clarifies that individual performing municipal treasurer role on fund board is to be provided with fund rules, policies and procedures.

(s) Clarifies that the fund is not subject to Title 9 of the Texas Property Code regarding trusts.

SECTION 3. Amends Subsections 3(g) and (l) and adds Subsections (g-1), (g-2), (g-3), and (n) of Article 6243e.2(1), Revised Statutes, as follows:

(g) Clarifies the ability of the fund to purchase insurance policies or pooled governmental entity insurance coverage to responsibly protect fund assets, trustees and employees.

(g-1) Expressly recognizes board’s ability to enter into collective self-insurance pools of governmental entities to provide coverage similar to insurance coverage.

(g-2) Makes a conforming change to (g-1), recognizing fund’s ability to join self-insurance pools.

(g-3) Makes a conforming change to (g-1), recognizing fund’s ability to join self-insurance pools.

(l) Clarifies objective means of determining “good faith” for purposes of individual immunities in accordance with current Texas case law, states that the statutory provision for such protection is cumulative of other law, and specifies non-waiver of immunities except where otherwise provided.

(n) Permits the fund to directly receive death certificates and pending death certificates in order that death benefits may be provided to survivors in time to defray the costs of funeral expenses and other hardships.

SECTION 4. Amends Subsection 4(b), Article 6243e.2(1), Revised Statutes, as follows:

(b) Corrects a misstatement concerning the timing of the beginning of service pension distributions.

SECTION 5. Amends Subsections 5(a), (i), (j) and (q) and adds Subsection (j-1), Article 6243e.2(1), Revised Statutes, as follows:

(a) Provides that for a DROP participant’s final year in DROP, but not beyond the member’s 10<sup>th</sup> year in the DROP, if a full year is not completed, the 2 percent increase in monthly benefit

for each year of DROP participation is accorded to the participant as a pro-rated increase of 0.166 percent for each month completed.

(i) Corrects language concerning the significance of the day immediately prior to the effective date of a DROP election.

(j)(1) Corrects language concerning a spouse's eligibility to be the beneficiary with regard to a DROP account.

(j-1) Provides that for purposes of distributing a deceased member's DROP account, a person properly designated as a beneficiary adult child to the fund shall be considered an "eligible child".

(q) Clarifies conditions for revoking a Back-DROP election when date of leaving active service is within 10 days of the election.

SECTION 6. Adds Section 5A, Subsections (a) – (n), Article 6343e.2(1), Revised Statutes, as follows:

(a) Establishes three categories of persons who may elect to participate in a post-retirement option plan ("PROP").

(b) Establishes the amounts of monies that may be credited to a PROP account, and the ability of a PROP participant to stop further credits to a PROP account.

(c) Requires compliance with a PROP election process established by the board.

(d) Permits PROP participant to take partial or total payments and provides for termination of PROP account if balance reaches zero.

(e) Specifies compliance with Internal Revenue Code provisions as condition for all payments from PROP.

(f) Permits board to establish rules or policies allowing surviving spouses to participate in PROP through either of two means.

(g) Makes PROP participation by surviving spouses subject to further rules and restrictions adopted by the board.

(h) Provides for distribution of PROP balances after death of a member who is a PROP participant.

(i) Mandates that only taxable benefits may be credited to a PROP account.

(j) Permits board to set a date after which there shall be no new PROP participants.

(k) Permits board to set a date after which no additional benefits may be credited to PROP accounts.

(l) Permits board to limit the number of distribution transactions for PROP participants.

(m) Permits board to provide a minimum dollar amount for credits to a PROP account.

(n) Provides for board adoption of any rules needed to implement and administer the PROP.

SECTION 7. Amends Subsections 6(b), (c) and (e), Article 6243e.2(1), Revised Statutes, as follows:

(b), (c) and (e) amendments clarify the timings of the beginnings of distribution of an occupational on-duty disability benefit, a general on-duty disability benefit and an off-duty disability benefit.

SECTION 8. Amends Subsection 10A(f), Article 6243e.2(1), Revised Statutes, as follows:

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(f) Provides that a \$150 monthly supplemental benefit shall not be counted for purposes of calculating the Section 10A annual supplemental benefit.

SECTION 9. Amends Subsections 11(f), (g) and (m), Article 6243e.2(1), Revised Statutes, as follows:

(f) Clarifies the date upon which a member, eligible survivor or beneficiary may begin to receive a benefit.

(g) Provides for a designation of a trust, even after a member's death, to receive distributions otherwise payable to disabled individuals or minor children.

(m) Removes a mistaken statement indicating that benefits under this article generally may be paid to a decedent member's estate.

SECTION 10. Amends Subsections 12(a) and (b), Article 6243e.2(1), Revised Statutes, as follows:

(a) and (b) amendments provide conforming changes to a prior change in Section 2(h) of the bill, describing the officers of the fund board.

SECTION 11. Amends Subsections 13(b) and (d) Article 6243e.2(1), Revised Statutes, as follows:

(b) Removes confusing language concerning the process of board acceptance of members.

(d) Removes language in order to properly reflect the decades-long practice of bi-weekly contributions based on a bi-weekly payroll.

SECTION 12. Amends Subsection 14(a), Article 6243e.2(1), Revised Statutes, as follows:

(a) Clarifies that any benefit accruals limited by section 415 of the Internal Revenue code are determined for the fund by a qualified actuary.

SECTION 13. Effective Date: Immediate if receives vote of two thirds of all members of each house, except for Section 5A as added by this bill (concerning "PROP") which takes effect on October 1, 2007.

### **EFFECTIVE DATE**

Immediate if receives vote of two thirds of all members of each house, except for Section 5A as added by this bill (concerning "PROP") which takes effect on October 1, 2007.

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

The substitute deletes SECTION 3 of the original bill, Subsection (n), which states the that board may use fund assets to pay the chair of the board annual compensation in an amount not to exceed one-half of the annual base salary of a firefighter with 17 years of firefighter service if the position of the chair is assigned to serve full-time at the fund.

The substitute adds "a member who is" to SECTION 6, Subsection (h), after the first word of the paragraph, "If."

The substitute deletes SECTION 13 of the original bill, which is a conforming change pertaining to the section relating to chairman's compensation. SECTION 13 is no longer necessary, because SECTION 3, Subsection (n) was deleted.