

AN ACT

relating to a firefighters' relief and retirement fund in certain municipalities.

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

SECTION 1. Section 1, Article 6243e.2(1), Revised Statutes, is amended by adding Subdivisions (1-b), (13-a), (15-a), and (15-b) to read as follows:

(1-b) "Beneficiary adult child" means a child of a member by birth or adoption who:

(A) is not an eligible child; and

(B) is designated a beneficiary of a member's DROP account by valid designation under Section 5(j-1).

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

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

(B) the age at which the member first attains the age of at least 50 years and at least 10 years of service.

(15-a) "PROP" means the post-retirement option plan under Section 5A of this article.

(15-b) "PROP account" means the notional account established to reflect the credits and contributions of a member or surviving spouse who has made a PROP election in accordance with Section 5A of this article.

SECTION 2. Section 2, Article 6243e.2(1), Revised Statutes,

1 is amended by amending Subsections (b), (h), (j), (n), (p), and (r)  
2 and adding Subsections (h-1), (h-2), (p-1), and (s) to read as  
3 follows:

4 (b) The board of trustees of the fund shall be known as the  
5 "(name of municipality) Firefighters' Relief and Retirement Fund  
6 Board of Trustees" and the fund shall be known as the "(name of  
7 municipality) Firefighters' Relief and Retirement Fund." The board  
8 consists of 10 trustees, including:

9 (1) the mayor or an appointed representative of the  
10 mayor;

11 (2) the treasurer of the municipality or, if there is  
12 not a treasurer, the secretary, clerk, or other person who by law,  
13 charter provision, or ordinance performs the duty of treasurer of  
14 the municipality;

15 (3) five firefighters who are members of the fund;

16 (4) one person who is a retired firefighter and a  
17 member of the fund with at least 20 years of participation; and

18 (5) two persons, each of whom is a registered voter of  
19 the municipality, has been a resident of the municipality for at  
20 least one year [~~three years~~] preceding the date of initial  
21 appointment, and is not a municipal officer or employee.

22 (h) The board shall annually elect from among the trustees a  
23 chair, a vice chair, and a secretary. [~~The person described under  
24 Subsection (b)(2) of this section serves as the treasurer of the  
25 fund under penalty of that person's official bond and oath of  
26 office.~~]

27 (h-1) The board may form a standing or ad hoc committee

1 composed of any number of trustees of the board to further  
2 administration of the fund. A committee composed of all the  
3 trustees of the board:

4 (1) may be established only by order of the board, fund  
5 rule, or policy; and

6 (2) has the same power as the board to take final  
7 action, including the power to issue orders on matters within the  
8 scope of the committee's authority as defined by applicable law,  
9 rule, or policy.

10 (h-2) If the board establishes a pension benefits committee  
11 under Subsection (h-1) of this section, that committee, even if it  
12 is composed of fewer than all the trustees of the board, may  
13 deliberate and act in place of the board regarding each application  
14 for benefits submitted to the fund by a member or the member's  
15 survivor. Final action of a pension benefits committee on an  
16 application for benefits is binding, subject only to any right of  
17 appeal to the board under law, rule, or policy at the time the  
18 application is filed. Except to the extent the final action of a  
19 pension benefits committee may be appealed to the board, the final  
20 action of the pension benefits committee on an application for  
21 benefits constitutes the final action of the board, including for  
22 purposes of filing an appeal to a district court under Section 12 of  
23 this article.

24 (j) Six [A majority of the] trustees of the board constitute  
25 [constitutes] a quorum to transact business of the board or of any  
26 committee composed of all the trustees of the board. An order of  
27 the board or a committee must be made by vote recorded in the

1 minutes of the [~~board's~~] proceedings of the board or committee.  
2 Each decision of the board in a matter under the board's  
3 jurisdiction is final and binding as to each affected  
4 [~~firefighter,~~] member[~~,~~] and beneficiary, subject only to the  
5 rights of appeal specified by this article.

6 (n) The board shall, not later than January 31 of each year,  
7 provide to [~~make and file with~~] the person described by Subsection  
8 (b)(2) of this section [~~treasurer of the municipality~~] a detailed  
9 and itemized report of all receipts and disbursements with respect  
10 to the fund, together with a statement of fund administration,  
11 during the preceding fiscal year of the fund, and shall provide  
12 [~~make and file~~] other reports and statements or existing financial  
13 [~~furnish further~~] information concerning the fund as from time to  
14 time may be required or requested by the person described by  
15 Subsection (b)(2) of this section [~~treasurer of the municipality~~].

16 (p) The board shall manage the fund according to the terms  
17 and purposes of this article and all applicable sections of the code  
18 and has the powers necessary to accomplish that purpose, including  
19 the power to:

20 (1) adopt for the administration of the fund written  
21 rules, policies, and procedures [~~guidelines~~] not inconsistent with  
22 this article;

23 (2) interpret and construe this article and any  
24 summary plan descriptions or benefits procedures, except that each  
25 construction must meet any qualification requirements established  
26 under Section 401 of the code;

27 (3) correct any defect, supply any omission, and

1 reconcile any inconsistency that appears in this article in a  
2 manner and to the extent that the board considers expedient to  
3 administer this article for the greatest benefit of all members;

4 (4) select, employ, and compensate employees the board  
5 considers necessary or advisable in the proper and efficient  
6 administration of the fund;

7 (5) determine all questions, whether legal or factual,  
8 relating to eligibility for participation, service, or benefits or  
9 relating to the administration of the fund to promote the uniform  
10 administration of the fund for the benefit of all members;

11 (6) establish and maintain records necessary or  
12 appropriate to the proper administration of the fund; and

13 (7) compel witnesses to attend and testify before the  
14 board concerning matters related to the operation of this article  
15 in the same manner provided for taking of testimony before notaries  
16 public.

17 (p-1) A rule, policy, or procedure adopted by the board  
18 under Subsection (p)(1) of this section is final and binding with  
19 respect to any matter within the board's jurisdiction and  
20 authority.

21 (r) The board shall maintain at the offices of the fund [~~the~~  
22 ~~original of~~] each rule, policy, or procedure [~~guideline~~] adopted  
23 under this section and shall deliver to the person described by  
24 Subsection (b)(2) of this section [~~municipality~~] a copy of each  
25 adopted rule, policy, or procedure [~~guideline~~].

26 (s) Title 9, Property Code, does not apply to the fund.

27 SECTION 3. Section 3, Article 6243e.2(1), Revised Statutes,

1 is amended by amending Subsections (g) and (l) and adding  
2 Subsections (g-1), (g-2), (g-3), and (n) to read as follows:

3 (g) The board may, from fund assets, purchase from an  
4 insurer licensed to do business in this state insurance to:

5 (1) provide for legal defense of the fund;

6 (2) cover liabilities and losses of the fund;

7 (3) cover any other insurable risk to the fund; and

8 (4) provide for the legal defense of or ~~and to~~

9 indemnify and hold harmless the trustees of the board and employees  
10 of the fund [~~board, individually and collectively, harmless~~] from  
11 the effects and consequences of their acts, errors, omissions, or  
12 other [~~and~~] conduct within the scope of their duties as trustees or  
13 employees, whether the acts, errors, omissions, or other conduct is  
14 proven or merely alleged [~~official capacity as fiduciaries or~~  
15 ~~cofiduciaries or within the scope of what the board trustee or~~  
16 ~~employee believes in good faith, at the time, to be the board~~  
17 ~~trustee's or employee's official capacity. An insurance company~~  
18 ~~through which insurance is purchased under this subsection has a~~  
19 ~~cause of action against a board trustee or employee to the extent~~  
20 ~~that a loss results from the board trustee's or employee's wilful~~  
21 ~~and malicious misconduct or gross negligence].~~

22 (g-1) The board may use fund assets to provide insurance  
23 coverage comparable to that provided by insurers under Subsection  
24 (g) of this section by entering into a collective pool providing  
25 governmental entities of this state with self-insurance coverage,  
26 including coverage authorized by Chapter 791 or 2259, Government  
27 Code, or Chapter 119, Local Government Code. This article does not

1 limit the ability of the board to provide any type of group  
2 insurance or self-insurance coverage in a pool of governmental  
3 entities for fund employees and their beneficiaries as a benefit of  
4 employment.

5 (g-2) If insurance or pooled governmental self-insurance  
6 coverage is unavailable, insufficient, inadequate, or not in  
7 effect, the board may indemnify a board trustee or employee for  
8 liability imposed as damages and for reasonable costs and expenses  
9 incurred by that individual in defense of an alleged act, error, or  
10 omission committed in the individual's official capacity or within  
11 the scope of what the board trustee or employee believed in good  
12 faith, at the time, to be the board trustee's or employee's official  
13 capacity. The board may not indemnify a board trustee or employee  
14 for the amount of a loss that results from the board trustee's or  
15 employee's wilful and malicious misconduct or gross negligence.

16 (g-3) The board may establish a self-insurance fund to pay  
17 claims for the indemnification of board trustees or employees under  
18 Subsection (g-2) of this section. The board shall provide that the  
19 self-insurance fund must be limited to an amount not to exceed the  
20 greater of three percent of the fund assets or \$5 million. The  
21 self-insurance fund shall be invested in the same manner as other  
22 assets of the fund, and all earnings and losses from investing the  
23 self-insurance fund shall be credited to the self-insurance fund  
24 unless that credit exceeds the limit on the self-insurance fund set  
25 by the board or this subsection. Amounts held in the self-insurance  
26 fund may not be included in the actuarial valuation for purposes of  
27 determining the municipal contribution rate or the assets available

1 to satisfy the actuarial liabilities of the fund to pay service,  
2 disability, or death benefits provided by this article. A decision  
3 to indemnify or make a reimbursement out of the self-insurance fund  
4 must be made by a majority vote of board trustees eligible to vote  
5 on the matter. If the proposed indemnification or reimbursement is  
6 of a trustee, that trustee may not vote on the matter.

7 (1) The trustees, executive director, and employees of the  
8 fund are fully protected and free of liability for any action taken  
9 or omission made or any action or omission suffered by them in good  
10 faith, objectively determined, in the performance of their duties  
11 for the fund. The protection from liability provided by this  
12 subsection is cumulative of and in addition to any other  
13 constitutional, statutory, or common law official or governmental  
14 immunity, defense, and civil or procedural protection provided to  
15 the fund as a governmental entity and to a fund trustee or employee  
16 as an official or employee of a governmental entity. Except for a  
17 waiver expressly provided by this article, this article does not  
18 grant an implied waiver of any immunity.

19 (n) On the reported death of a member, the fund or an  
20 authorized representative of the fund may obtain the death  
21 certificate or the pending death certificate directly from the  
22 issuing examiner or governmental agency without the prior  
23 notification or confirmation that otherwise may be required under  
24 law to expedite the issuance of death benefits from the fund to  
25 survivors in need of those benefits.

26 SECTION 4. Section 4(b), Article 6243e.2(1), Revised  
27 Statutes, is amended to read as follows:



1           (b) A member who terminates active service on or after  
2 November 1, 1997, and who has completed at least 20 years of  
3 participation in the fund on the effective date of termination of  
4 service is entitled to a monthly service pension, beginning after  
5 [~~on~~] the effective date of termination of active service, in an  
6 amount equal to 50 percent of the member's average monthly salary,  
7 plus three percent of the member's average monthly salary for each  
8 year of participation in excess of 20 years, but not in excess of 30  
9 years of participation, for a maximum total benefit of 80 percent of  
10 the member's average monthly salary.

11           SECTION 5. Section 5, Article 6243e.2(1), Revised Statutes,  
12 is amended by amending Subsections (a), (i), (j), and (q) and adding  
13 Subsection (j-1) to read as follows:

14           (a) A member who is eligible to receive a service pension  
15 under Section 4 of this article and who remains in active service  
16 may elect to participate in the deferred retirement option plan  
17 provided by this section. On subsequently terminating active  
18 service, a member who elected the DROP may apply for a monthly  
19 service pension under Section 4 of this article, except that the  
20 effective date of the member's election to participate in the DROP  
21 will be considered the member's retirement date for determining the  
22 amount of the member's monthly service pension. The member may also  
23 apply for any DROP benefit provided under this section on  
24 terminating active service. An election to participate in the  
25 DROP, once approved by the board, is irrevocable. A DROP  
26 participant's monthly benefit at retirement is increased by two  
27 percent of the amount of the member's original benefit for every

1 full year of participation in the DROP by the member. For a  
2 member's final year of participation, but not beyond the member's  
3 10th year in the DROP, if a full year of participation is not  
4 completed, the member shall receive a prorated increase of 0.166  
5 percent of the member's original benefit for each month of  
6 participation in that year. An [This] increase provided by this  
7 subsection does not apply to benefits payable under Subsection (1)  
8 of this section. An [This] increase under this subsection is  
9 applied to the member's benefit at retirement and is not added to  
10 the member's DROP account. The total increase under this  
11 subsection may not exceed 20 percent for 10 years of participation  
12 in the DROP by the member.

13 (i) The [For purposes of computing and providing service  
14 pension benefits under Section 4 of this article and for purposes of  
15 computing and providing death benefits under Section 7 of this  
16 article, the] day immediately before the [effective] date [of] the  
17 DROP participant's election becomes effective is the last day used  
18 for purposes of computing and providing service pension benefits  
19 under Section 4 of this article or for purposes of computing and  
20 providing death benefits under Section 7 of this article  
21 [considered to be the date the member terminates active service]. A  
22 salary earned or additional years of participation completed after  
23 the member's DROP election becomes effective may not be considered  
24 in the computation of retirement or death benefits, except for the  
25 limited purpose of percentage increases provided under Subsection  
26 (a) of this section.

27 (j) If a DROP participant dies before complete distribution

1 of the member's DROP account has been made, the member's DROP  
2 account balance shall be distributed to the member's eligible  
3 beneficiaries, determined as follows:

4 (1) if the member is survived by a spouse who was the  
5 member's spouse on the date the member's DROP election became  
6 effective [~~last day of active service~~] and one or more eligible  
7 children, one-half of the member's DROP account balance shall be  
8 paid to that eligible spouse, and the remaining one-half shall be  
9 divided equally among the member's eligible children;

10 (2) if the member is survived by a spouse described by  
11 Subdivision (1) of this subsection, but not by an eligible child,  
12 the member's entire DROP account balance shall be paid to the  
13 surviving spouse;

14 (3) if the member is survived by one or more eligible  
15 children, but not by a spouse described by Subdivision (1) of this  
16 subsection, the member's DROP account balance shall be divided  
17 equally among the eligible children;

18 (4) if the member is not survived by a spouse described  
19 by Subdivision (1) of this subsection or an eligible child, the  
20 member's DROP account balance shall be divided equally among the  
21 member's eligible parents;

22 (5) if the member is not survived by a spouse described  
23 by Subdivision (1) of this subsection, an eligible child, or an  
24 eligible parent, the member's DROP account balance shall be  
25 distributed in accordance with the member's beneficiary  
26 designation filed with the board or, if the member has failed to  
27 file a valid beneficiary designation, to the member's estate;

1           (6) if a member's spouse described by Subdivision (1)  
2 of this subsection was not married to the member on the date the  
3 member's DROP election became effective, the spouse shall receive a  
4 reduced benefit equal to the benefit otherwise payable to the  
5 surviving spouse under this subsection, multiplied by the  
6 percentage of the period between the member's DROP election and the  
7 date the member left active service during which the spouse and the  
8 member were married, and the amount by which the spouse's benefit is  
9 reduced shall be divided among any other eligible survivors as if  
10 the member did not have an eligible spouse or, if there are no  
11 eligible survivors, distributed in accordance with the member's  
12 beneficiary designation filed with the board, or if the member  
13 failed to file a valid beneficiary designation, to the member's  
14 estate; and

15           (7) if the conditions described by Subdivision (1),  
16 (2), or (6) of this subsection exist, the surviving spouse may elect  
17 to maintain the DROP account with the fund in the same manner  
18 described by Subsections (e), (f), and (g) of this section.

19           (j-1) Only for the purpose of distributing a member's DROP  
20 account under Subsection (j) of this section, a person who is  
21 designated a beneficiary adult child in a valid beneficiary  
22 designation filed by the member with the board is considered an  
23 eligible child. A designation under this subsection is distinct  
24 from the member's beneficiary designation under Subsection (j)(5)  
25 of this section.

26           (q) A member may revoke the member's Back-DROP election by  
27 notifying the fund in writing not later than the earlier of:

- 1           (1) the date the member leaves active service; or  
2           (2) the 10th business day after the date the member  
3 signs an application form for a Back-DROP.

4           SECTION 6. Article 6243e.2(1), Revised Statutes, is amended  
5 by adding Section 5A to read as follows:

6           Sec. 5A. POST-RETIREMENT OPTION PLAN. (a) The following  
7 persons may elect to participate in the post-retirement option plan  
8 provided by this section:

9           (1) a member who terminates active service after  
10 participating in the DROP and who is eligible to receive a service  
11 pension or other taxable benefits under Section 5 of this article;

12           (2) a retired member, whether or not that member was a  
13 DROP participant, who is eligible to receive a service pension or  
14 other taxable benefits under Section 4 of this article; or

15           (3) a surviving spouse of a member who elects and is  
16 eligible to participate in the PROP under Subsection (f) of this  
17 section.

18           (b) A PROP participant may elect to have all or part of the  
19 amount that the participant would otherwise receive as a monthly  
20 service pension or other taxable benefits under this article, less  
21 any amount the board determines is required to pay the  
22 participant's share of group medical insurance costs, credited to  
23 the participant's PROP account. The participant's PROP account  
24 shall be credited with hypothetical earnings in the same manner as  
25 the amounts in a member's DROP account under Section 5(d) of this  
26 article. At any time, a PROP participant may stop the amounts being  
27 credited to the participant's PROP account and elect to resume

1 receiving the participant's monthly service pension or other  
2 taxable benefits under this article.

3 (c) A member or surviving spouse who elects to participate  
4 in the PROP shall comply with the PROP election process established  
5 by the board.

6 (d) Subject to rules and procedures adopted by the board, a  
7 PROP participant may elect to receive partial payments from the  
8 participant's PROP account in an amount determined by the  
9 participant. The board may establish rules and procedures  
10 concerning partial payments, including limitations on timing and  
11 frequency of those payments. A PROP participant who elects partial  
12 payments may, at any time, elect to receive the PROP participant's  
13 entire remaining PROP account balance in a single lump-sum payment.  
14 If, at any time after the initial credit to the PROP account, a  
15 participant's PROP account balance becomes zero, the account closes  
16 and the participant's participation in the PROP ceases. A person  
17 whose PROP account has been closed because of a zero balance is not  
18 eligible to again participate in the PROP.

19 (e) An election by a member or surviving spouse to receive a  
20 single lump-sum payment or partial payments under Subsection (d) of  
21 this section must satisfy the requirements of Section 401(a)(9) of  
22 the code. All distributions and changes in the form of distribution  
23 must be made in a manner and at a time that comply with that section  
24 of the code.

25 (f) The board by rule or policy may permit a member's  
26 surviving spouse to elect to participate in the PROP by choosing  
27 either or both of the following options:

1           (1) continuing a deceased member's PROP account; or  
2           (2) establishing a PROP account in which to receive  
3 credits from all or part of the surviving spouse's survivor  
4 benefits.

5           (g) A surviving spouse PROP participant and the  
6 participant's PROP account are subject to this section and any  
7 additional rules the board may adopt relating to PROP accounts and  
8 participants generally or to surviving spouse PROP accounts and  
9 participants particularly. The board may, by rule, further  
10 restrict or define, through the establishment of reasonable  
11 categories, who is a surviving spouse of a member for purposes of  
12 this section.

13           (h) If a member who is a PROP participant dies before  
14 complete distribution of the participant's PROP account has been  
15 made, the participant's PROP account balance shall be distributed  
16 in the same manner as a DROP account balance is distributed under  
17 Sections 5(j), (j-1), and (k) of this article, except for amounts  
18 subject to a surviving spouse's election under Subsection (f) of  
19 this section that results in the nondistribution from the plan of  
20 all or part of the deceased participant's PROP account.

21           (i) Only benefits that are taxable under the code may be  
22 credited to a PROP account. Nontaxable disability benefits or  
23 other nontaxable benefits, including the nontaxable part of any  
24 benefit, may not be credited to a PROP account.

25           (j) The board may set a date after which additional members  
26 or surviving spouses will not be allowed to elect to participate in  
27 the PROP.

1       (k) The board may set a date after which the crediting of  
2 additional benefits of a member or a surviving spouse to a PROP  
3 account is not allowed.

4       (l) The board by rule or policy may limit the number of  
5 distribution transactions for all PROP participants or for any  
6 category of PROP participants.

7       (m) The board by rule or policy may establish a minimum  
8 dollar amount allowed for crediting of benefit amounts to a PROP  
9 account.

10       (n) The board may adopt rules, policies, or procedures that  
11 the board determines are necessary or desirable to implement or  
12 administer this section.

13       SECTION 7. Sections 6(b), (c), and (e), Article 6243e.2(1),  
14 Revised Statutes, are amended to read as follows:

15       (b) If the board determines that a member is not capable of  
16 performing the usual and customary duties of the member's  
17 classification or position because of the member's on-duty  
18 disability, the member is entitled to receive a monthly disability  
19 pension, beginning after ~~on~~ the effective date of the member's  
20 termination of active service, in an amount equal to the greater of:

21           (1) 50 percent of the member's average monthly salary;

22 or

23           (2) the service pension the member would have been  
24 entitled to receive under Section 4 of this article based on years  
25 of participation as of the effective date of the member's  
26 termination of active service.

27       (c) If the board determines that a member is not capable of



1 performing any substantial gainful activity because of the member's  
2 on-duty disability, the member is entitled to receive a monthly  
3 disability pension, beginning after [~~on~~] the effective date of the  
4 member's termination of active service, in an amount equal to the  
5 greater of:

6 (1) 75 percent of the member's average monthly salary;  
7 or

8 (2) the service pension the member would have been  
9 entitled to receive under Section 4 of this article based on years  
10 of participation on the effective date of the member's termination  
11 of active service.

12 (e) If the board determines that a member is not capable of  
13 performing the usual and customary duties of the member's  
14 classification or position because of the member's off-duty  
15 disability, the member is entitled to an off-duty disability  
16 pension in lieu of any other benefit under this article. If the  
17 board makes that determination, the member is entitled to receive a  
18 monthly disability pension, beginning after [~~on~~] the effective date  
19 of the member's termination of active service, in an amount equal to  
20 the greater of:

21 (1) 25 percent of the member's average monthly salary,  
22 plus 2-1/2 percent of the member's average monthly salary for each  
23 full year of participation in the fund, except that the total  
24 monthly disability pension under this subdivision may not exceed 50  
25 percent of the member's average monthly salary; or

26 (2) the service pension the member would have been  
27 entitled to receive under Section 4 of this article based on years

1 of participation on the effective date of the member's termination  
2 of active service.

3 SECTION 8. Section 10A(f), Article 6243e.2(1), Revised  
4 Statutes, is amended to read as follows:

5 (f) In determining the lump-sum payment amount, the total  
6 number of years since the commencement date of each retired  
7 member's or eligible survivor's annual retirement or survivor  
8 benefit shall be divided by the total number of years since the  
9 commencement date of all retired members' and eligible survivors'  
10 annual retirement or survivor benefit to establish a payment  
11 percentage for each retired member and eligible survivor. For  
12 purposes of this section, benefits provided under Section 4(d) of  
13 this article may not be included in a retired member's or eligible  
14 survivor's annual retirement or survivor benefit.

15 SECTION 9. Sections 11(f), (g), and (m), Article  
16 6243e.2(1), Revised Statutes, are amended to read as follows:

17 (f) A member, eligible survivor, or beneficiary who is  
18 entitled to receive a benefit payment under this article is  
19 entitled to receive the benefit beginning after ~~on~~ the date the  
20 member ceases to carry out the member's regular duties as a  
21 firefighter, notwithstanding the fact that the member may remain on  
22 the payroll of the member's fire department or receive sick leave,  
23 vacation, or other pay after the effective date of termination of  
24 the member's regular duties as a firefighter. In this article, an  
25 authorization to receive a benefit "beginning after ~~on~~ the  
26 effective date of the member's termination of active service"  
27 includes authority for the member to instead elect to make the

1 member's pension effective after [~~on~~] the date the member ceases to  
2 carry out the member's regular duties as a firefighter. If there is  
3 a delay in beginning payment of benefits resulting from the  
4 requirements of Section 6(h) of this article for disability  
5 pensions, the member or beneficiary shall, when the disability  
6 pension is approved by the board, be paid the full amount of the  
7 disability pension that has accrued since the effective date of  
8 termination of the member's regular duties as a firefighter.

9 (g) A member may designate in a trust document accepted by  
10 the fund a trustee to receive the benefit payable to any eligible  
11 survivor or beneficiary other than the member's eligible spouse or  
12 a spouse eligible to receive a benefit under the DROP. On or after  
13 the death or incapacity of the member, an eligible survivor or  
14 beneficiary may designate a trustee under this subsection. If the  
15 eligible survivor or beneficiary is disabled or a minor child, the  
16 parent or legal guardian, as applicable, of the eligible survivor  
17 or beneficiary may make the designation. Any [~~such~~] designation  
18 made under this subsection must be made on a form approved by the  
19 board.

20 (m) A benefit payable under this article because of the  
21 death of a member or eligible beneficiary may not be paid to a  
22 person convicted of causing that death but instead shall be paid as  
23 if the convicted person predeceased the deceased member or  
24 beneficiary. [~~If no beneficiary is entitled to the benefit as a~~  
25 ~~result, the benefit shall be paid to the decedent's estate.~~] Except  
26 as otherwise permitted by this subsection with respect to  
27 suspension of benefits, the board is not required to withhold

1 payment to a person convicted of causing the death of a member or  
2 eligible beneficiary until the board receives actual notice of the  
3 conviction of that person. The board may suspend payment of a  
4 benefit payable on the death of a member or an eligible beneficiary  
5 on the indictment of the person who would otherwise be entitled to  
6 the benefit, and the suspension remains in effect until the board  
7 determines that a final disposition of the charges relating to the  
8 cause of death has occurred. If a benefit payment is suspended  
9 under this subsection and the person is not convicted, the benefit  
10 again becomes payable with interest computed at the rate earned by  
11 the fund during the time the benefit payment was suspended. For  
12 purposes of this subsection, a person has been convicted of causing  
13 the death of a member or eligible beneficiary if:

14 (1) the person has pleaded guilty or nolo contendere  
15 to, or the person has been found guilty by a court of competent  
16 jurisdiction of, an offense at the trial of which it is established  
17 that the person's intentional or knowing act or omission caused the  
18 death of the member or eligible beneficiary, regardless of whether  
19 sentence is imposed or probated; and

20 (2) an appeal of the conviction is not pending, and the  
21 time provided for appeal has expired.

22 SECTION 10. Sections 12(a) and (b), Article 6243e.2(1),  
23 Revised Statutes, are amended to read as follows:

24 (a) A member who is eligible for retirement for length of  
25 service or disability or who has a claim for temporary disability,  
26 or any of the member's beneficiaries, who is aggrieved by a decision  
27 or order of the board, whether on the basis of rejection of a claim

1 or of the amount allowed, may appeal from the decision or order of  
2 the board to a district court in the county in which the board is  
3 located by giving written notice of the intention to appeal. The  
4 notice must contain a statement of the intention to appeal,  
5 together with a brief statement of the grounds and reasons the party  
6 feels aggrieved. The notice must be served personally on an officer  
7 [~~the chair, secretary, or treasurer~~] of the board not later than the  
8 20th day after the date of the order or decision. After service of  
9 the notice, the party appealing shall file with the district court a  
10 copy of the notice of intention to appeal, together with the  
11 affidavit of the party making service showing how, when, and on whom  
12 the notice was served.

13 (b) Not later than the 30th day after the date of service of  
14 the notice of intention to appeal on the board, an officer [~~the~~  
15 ~~secretary or treasurer~~] of the board shall file with the district  
16 court a transcript of all papers and proceedings in the case before  
17 the board. When the copy of the notice of intention to appeal and  
18 the transcript have been filed with the court, the appeal is  
19 considered perfected, and the court shall docket the appeal, assign  
20 the appeal a number, fix a date for hearing the appeal, and notify  
21 both the appellant and the board of the date fixed for the hearing.

22 SECTION 11. Sections 13(b) and (d), Article 6243e.2(1),  
23 Revised Statutes, are amended to read as follows:

24 (b) At the time that physical examinations are administered  
25 on behalf of the municipality, each applicant must be provided  
26 written notice that a copy of the results of the examination will be  
27 forwarded to the board for the purpose of determining whether the

1 applicant has a preexisting condition that would be relevant to any  
2 determination under Section 6 of this article. Not later than the  
3 10th day after the date of a physical examination performed on an  
4 applicant for a beginning position in the fire department as  
5 required by Section 143.022, Local Government Code, the  
6 municipality shall provide to the board a copy of all documents  
7 resulting from the physical examination. The board may require  
8 additional physical examinations if necessary in determining the  
9 presence or absence of any preexisting condition. The fund shall  
10 pay the cost of any additional physical examination the board  
11 requires. The [~~If accepted by the board, the~~] applicant's  
12 membership in the fund is effective on acceptance by the board  
13 [~~being appointed to the position of probationary firefighter~~].

14 (d) The municipality shall make [~~monthly~~] contributions to  
15 the fund once every two weeks in an amount equal to the product of  
16 the contribution rate certified by the board and the aggregate  
17 salaries paid to members of the fund during the period [~~month~~] for  
18 which the contribution is made. The board shall certify the  
19 municipality's contribution rate for each year or portion of a year  
20 based on the results of actuarial valuations made at least every  
21 three years. The municipality's contribution rate shall be  
22 composed of the normal cost plus the level percentage of salary  
23 payment required to amortize the unfunded actuarial liability over  
24 a constant period of 30 years computed on the basis of an acceptable  
25 actuarial reserve funding method approved by the board.  
26 Notwithstanding any other provision of this article, the  
27 contributions by the municipality, when added to any contributions

1 with respect to a qualified governmental excess benefit arrangement  
2 maintained in accordance with Section 14(c) of this article, may  
3 not be less than twice the amount paid into the fund by  
4 contributions of the members.

5 SECTION 12. Section 14(a), Article 6243e.2(1), Revised  
6 Statutes, is amended to read as follows:

7 (a) Notwithstanding any other provision of this article, a  
8 member may not accrue a benefit or allowance under this article in  
9 excess of an amount that, when added to all other pension benefits  
10 received under plans of the municipality that are qualified under  
11 Section 401 of the code, results in an annual benefit in excess of  
12 the applicable limits provided by Section 415 of the code. That  
13 accrual limitation applies only as long as satisfaction of Section  
14 415 of the code is necessary to maintain the tax-qualified status of  
15 the fund under Section 401 of the code. Any benefit accruals  
16 limited under this subsection must be determined [~~certified~~] by a  
17 qualified actuary selected by the board.

18 SECTION 13. (a) Except as provided by Subsection (b) of this  
19 section, this Act takes effect immediately if it receives a vote of  
20 two-thirds of all the members elected to each house, as provided by  
21 Section 39, Article III, Texas Constitution. If this Act does not  
22 receive the vote necessary for immediate effect, this Act takes  
23 effect September 1, 2007.

24 (b) Section 5A, Article 6243e.2(1), Revised Statutes, as  
25 added by this Act, takes effect October 1, 2007.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1390 was passed by the House on April 5, 2007, by the following vote: Yeas 137, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1390 was passed by the Senate on May 3, 2007, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor