

1-1 By: Turner (Senate Sponsor - Jackson) H.B. No. 1390  
1-2 (In the Senate - Received from the House April 10, 2007;  
1-3 April 11, 2007, read first time and referred to Committee on  
1-4 Intergovernmental Relations; April 30, 2007, reported favorably by  
1-5 the following vote: Yeas 5, Nays 0; April 30, 2007, sent to  
1-6 printer.)

1-7 A BILL TO BE ENTITLED  
1-8 AN ACT

1-9 relating to a firefighters' relief and retirement fund in certain  
1-10 municipalities.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 1, Article 6243e.2(1), Revised Statutes,  
1-13 is amended by adding Subdivisions (1-b), (13-a), (15-a), and (15-b)  
1-14 to read as follows:

1-15 (1-b) "Beneficiary adult child" means a child of a  
1-16 member by birth or adoption who:

1-17 (A) is not an eligible child; and

1-18 (B) is designated a beneficiary of a member's  
1-19 DROP account by valid designation under Section 5(j-1).

1-20 (13-a) "Normal retirement age" means the earlier of:

1-21 (A) the age at which the member attains 20 years  
1-22 of service; or

1-23 (B) the age at which the member first attains the  
1-24 age of at least 50 years and at least 10 years of service.

1-25 (15-a) "PROP" means the post-retirement option plan  
1-26 under Section 5A of this article.

1-27 (15-b) "PROP account" means the notional account  
1-28 established to reflect the credits and contributions of a member or  
1-29 surviving spouse who has made a PROP election in accordance with  
1-30 Section 5A of this article.

1-31 SECTION 2. Section 2, Article 6243e.2(1), Revised Statutes,  
1-32 is amended by amending Subsections (b), (h), (j), (n), (p), and (r)  
1-33 and adding Subsections (h-1), (h-2), (p-1), and (s) to read as  
1-34 follows:

1-35 (b) The board of trustees of the fund shall be known as the  
1-36 "(name of municipality) Firefighters' Relief and Retirement Fund  
1-37 Board of Trustees" and the fund shall be known as the "(name of  
1-38 municipality) Firefighters' Relief and Retirement Fund." The board  
1-39 consists of 10 trustees, including:

1-40 (1) the mayor or an appointed representative of the  
1-41 mayor;

1-42 (2) the treasurer of the municipality or, if there is  
1-43 not a treasurer, the secretary, clerk, or other person who by law,  
1-44 charter provision, or ordinance performs the duty of treasurer of  
1-45 the municipality;

1-46 (3) five firefighters who are members of the fund;

1-47 (4) one person who is a retired firefighter and a  
1-48 member of the fund with at least 20 years of participation; and

1-49 (5) two persons, each of whom is a registered voter of  
1-50 the municipality, has been a resident of the municipality for at  
1-51 least one year [~~three years~~] preceding the date of initial  
1-52 appointment, and is not a municipal officer or employee.

1-53 (h) The board shall annually elect from among the trustees a  
1-54 chair, a vice chair, and a secretary. [~~The person described under~~  
1-55 ~~Subsection (b)(2) of this section serves as the treasurer of the~~  
1-56 ~~fund under penalty of that person's official bond and oath of~~  
1-57 ~~office.~~]

1-58 (h-1) The board may form a standing or ad hoc committee  
1-59 composed of any number of trustees of the board to further  
1-60 administration of the fund. A committee composed of all the  
1-61 trustees of the board:

1-62 (1) may be established only by order of the board, fund  
1-63 rule, or policy; and

1-64 (2) has the same power as the board to take final

2-1 action, including the power to issue orders on matters within the  
 2-2 scope of the committee's authority as defined by applicable law,  
 2-3 rule, or policy.

2-4 (h-2) If the board establishes a pension benefits committee  
 2-5 under Subsection (h-1) of this section, that committee, even if it  
 2-6 is composed of fewer than all the trustees of the board, may  
 2-7 deliberate and act in place of the board regarding each application  
 2-8 for benefits submitted to the fund by a member or the member's  
 2-9 survivor. Final action of a pension benefits committee on an  
 2-10 application for benefits is binding, subject only to any right of  
 2-11 appeal to the board under law, rule, or policy at the time the  
 2-12 application is filed. Except to the extent the final action of a  
 2-13 pension benefits committee may be appealed to the board, the final  
 2-14 action of the pension benefits committee on an application for  
 2-15 benefits constitutes the final action of the board, including for  
 2-16 purposes of filing an appeal to a district court under Section 12 of  
 2-17 this article.

2-18 (j) ~~Six~~ [A majority of the] trustees of the board constitute  
 2-19 [constitutes] a quorum to transact business of the board or of any  
 2-20 committee composed of all the trustees of the board. An order of  
 2-21 the board or a committee must be made by vote recorded in the  
 2-22 minutes of the [board's] proceedings of the board or committee.  
 2-23 Each decision of the board in a matter under the board's  
 2-24 jurisdiction is final and binding as to each affected  
 2-25 [firefighter,] member[,], and beneficiary, subject only to the  
 2-26 rights of appeal specified by this article.

2-27 (n) The board shall, not later than January 31 of each year,  
 2-28 provide to [make and file with] the person described by Subsection  
 2-29 (b)(2) of this section [~~treasurer of the municipality~~] a detailed  
 2-30 and itemized report of all receipts and disbursements with respect  
 2-31 to the fund, together with a statement of fund administration,  
 2-32 during the preceding fiscal year of the fund, and shall provide  
 2-33 [make and file] other reports and statements or existing financial  
 2-34 [furnish further] information concerning the fund as from time to  
 2-35 time may be required or requested by the person described by  
 2-36 Subsection (b)(2) of this section [~~treasurer of the municipality~~].

2-37 (p) The board shall manage the fund according to the terms  
 2-38 and purposes of this article and all applicable sections of the code  
 2-39 and has the powers necessary to accomplish that purpose, including  
 2-40 the power to:

2-41 (1) adopt for the administration of the fund written  
 2-42 rules, policies, and procedures [guidelines] not inconsistent with  
 2-43 this article;

2-44 (2) interpret and construe this article and any  
 2-45 summary plan descriptions or benefits procedures, except that each  
 2-46 construction must meet any qualification requirements established  
 2-47 under Section 401 of the code;

2-48 (3) correct any defect, supply any omission, and  
 2-49 reconcile any inconsistency that appears in this article in a  
 2-50 manner and to the extent that the board considers expedient to  
 2-51 administer this article for the greatest benefit of all members;

2-52 (4) select, employ, and compensate employees the board  
 2-53 considers necessary or advisable in the proper and efficient  
 2-54 administration of the fund;

2-55 (5) determine all questions, whether legal or factual,  
 2-56 relating to eligibility for participation, service, or benefits or  
 2-57 relating to the administration of the fund to promote the uniform  
 2-58 administration of the fund for the benefit of all members;

2-59 (6) establish and maintain records necessary or  
 2-60 appropriate to the proper administration of the fund; and

2-61 (7) compel witnesses to attend and testify before the  
 2-62 board concerning matters related to the operation of this article  
 2-63 in the same manner provided for taking of testimony before notaries  
 2-64 public.

2-65 (p-1) A rule, policy, or procedure adopted by the board  
 2-66 under Subsection (p)(1) of this section is final and binding with  
 2-67 respect to any matter within the board's jurisdiction and  
 2-68 authority.

2-69 (r) The board shall maintain at the offices of the fund [the

3-1 ~~original of] each rule, policy, or procedure [guideline] adopted~~  
 3-2 under this section and shall deliver to the person described by  
 3-3 Subsection (b)(2) of this section [~~municipality~~] a copy of each  
 3-4 adopted rule, policy, or procedure [~~guideline~~].

3-5 (s) Title 9, Property Code, does not apply to the fund.

3-6 SECTION 3. Section 3, Article 6243e.2(1), Revised Statutes,  
 3-7 is amended by amending Subsections (g) and (l) and adding  
 3-8 Subsections (g-1), (g-2), (g-3), and (n) to read as follows:

3-9 (g) The board may, from fund assets, purchase from an  
 3-10 insurer licensed to do business in this state insurance to:

3-11 (1) provide for legal defense of the fund;

3-12 (2) cover liabilities and losses of the fund;

3-13 (3) cover any other insurable risk to the fund; and

3-14 (4) provide for the legal defense of or [~~and to~~]

3-15 indemnify and hold harmless the trustees of the board and employees  
 3-16 of the fund [~~board, individually and collectively, harmless] from~~  
 3-17 the effects and consequences of their acts, errors, omissions, or  
 3-18 other [~~and] conduct within the scope of their duties as trustees or~~  
 3-19 employees, whether the acts, errors, omissions, or other conduct is  
 3-20 proven or merely alleged [~~official capacity as fiduciaries or~~  
 3-21 ~~cofiduciaries or within the scope of what the board trustee or~~  
 3-22 ~~employee believes in good faith, at the time, to be the board~~  
 3-23 ~~trustee's or employee's official capacity. An insurance company~~  
 3-24 ~~through which insurance is purchased under this subsection has a~~  
 3-25 ~~cause of action against a board trustee or employee to the extent~~  
 3-26 ~~that a loss results from the board trustee's or employee's wilful~~  
 3-27 ~~and malicious misconduct or gross negligence].~~

3-28 (g-1) The board may use fund assets to provide insurance  
 3-29 coverage comparable to that provided by insurers under Subsection  
 3-30 (g) of this section by entering into a collective pool providing  
 3-31 governmental entities of this state with self-insurance coverage,  
 3-32 including coverage authorized by Chapter 791 or 2259, Government  
 3-33 Code, or Chapter 119, Local Government Code. This article does not  
 3-34 limit the ability of the board to provide any type of group  
 3-35 insurance or self-insurance coverage in a pool of governmental  
 3-36 entities for fund employees and their beneficiaries as a benefit of  
 3-37 employment.

3-38 (g-2) If insurance or pooled governmental self-insurance  
 3-39 coverage is unavailable, insufficient, inadequate, or not in  
 3-40 effect, the board may indemnify a board trustee or employee for  
 3-41 liability imposed as damages and for reasonable costs and expenses  
 3-42 incurred by that individual in defense of an alleged act, error, or  
 3-43 omission committed in the individual's official capacity or within  
 3-44 the scope of what the board trustee or employee believed in good  
 3-45 faith, at the time, to be the board trustee's or employee's official  
 3-46 capacity. The board may not indemnify a board trustee or employee  
 3-47 for the amount of a loss that results from the board trustee's or  
 3-48 employee's wilful and malicious misconduct or gross negligence.

3-49 (g-3) The board may establish a self-insurance fund to pay  
 3-50 claims for the indemnification of board trustees or employees under  
 3-51 Subsection (g-2) of this section. The board shall provide that the  
 3-52 self-insurance fund must be limited to an amount not to exceed the  
 3-53 greater of three percent of the fund assets or \$5 million. The  
 3-54 self-insurance fund shall be invested in the same manner as other  
 3-55 assets of the fund, and all earnings and losses from investing the  
 3-56 self-insurance fund shall be credited to the self-insurance fund  
 3-57 unless that credit exceeds the limit on the self-insurance fund set  
 3-58 by the board or this subsection. Amounts held in the self-insurance  
 3-59 fund may not be included in the actuarial valuation for purposes of  
 3-60 determining the municipal contribution rate or the assets available  
 3-61 to satisfy the actuarial liabilities of the fund to pay service,  
 3-62 disability, or death benefits provided by this article. A decision  
 3-63 to indemnify or make a reimbursement out of the self-insurance fund  
 3-64 must be made by a majority vote of board trustees eligible to vote  
 3-65 on the matter. If the proposed indemnification or reimbursement is  
 3-66 of a trustee, that trustee may not vote on the matter.

3-67 (l) The trustees, executive director, and employees of the  
 3-68 fund are fully protected and free of liability for any action taken  
 3-69 or omission made or any action or omission suffered by them in good

4-1 faith, objectively determined, in the performance of their duties  
 4-2 for the fund. The protection from liability provided by this  
 4-3 subsection is cumulative of and in addition to any other  
 4-4 constitutional, statutory, or common law official or governmental  
 4-5 immunity, defense, and civil or procedural protection provided to  
 4-6 the fund as a governmental entity and to a fund trustee or employee  
 4-7 as an official or employee of a governmental entity. Except for a  
 4-8 waiver expressly provided by this article, this article does not  
 4-9 grant an implied waiver of any immunity.

4-10 (n) On the reported death of a member, the fund or an  
 4-11 authorized representative of the fund may obtain the death  
 4-12 certificate or the pending death certificate directly from the  
 4-13 issuing examiner or governmental agency without the prior  
 4-14 notification or confirmation that otherwise may be required under  
 4-15 law to expedite the issuance of death benefits from the fund to  
 4-16 survivors in need of those benefits.

4-17 SECTION 4. Section 4(b), Article 6243e.2(1), Revised  
 4-18 Statutes, is amended to read as follows:

4-19 (b) A member who terminates active service on or after  
 4-20 November 1, 1997, and who has completed at least 20 years of  
 4-21 participation in the fund on the effective date of termination of  
 4-22 service is entitled to a monthly service pension, beginning after  
 4-23 ~~[on]~~ the effective date of termination of active service, in an  
 4-24 amount equal to 50 percent of the member's average monthly salary,  
 4-25 plus three percent of the member's average monthly salary for each  
 4-26 year of participation in excess of 20 years, but not in excess of 30  
 4-27 years of participation, for a maximum total benefit of 80 percent of  
 4-28 the member's average monthly salary.

4-29 SECTION 5. Section 5, Article 6243e.2(1), Revised Statutes,  
 4-30 is amended by amending Subsections (a), (i), (j), and (q) and adding  
 4-31 Subsection (j-1) to read as follows:

4-32 (a) A member who is eligible to receive a service pension  
 4-33 under Section 4 of this article and who remains in active service  
 4-34 may elect to participate in the deferred retirement option plan  
 4-35 provided by this section. On subsequently terminating active  
 4-36 service, a member who elected the DROP may apply for a monthly  
 4-37 service pension under Section 4 of this article, except that the  
 4-38 effective date of the member's election to participate in the DROP  
 4-39 will be considered the member's retirement date for determining the  
 4-40 amount of the member's monthly service pension. The member may also  
 4-41 apply for any DROP benefit provided under this section on  
 4-42 terminating active service. An election to participate in the  
 4-43 DROP, once approved by the board, is irrevocable. A DROP  
 4-44 participant's monthly benefit at retirement is increased by two  
 4-45 percent of the amount of the member's original benefit for every  
 4-46 full year of participation in the DROP by the member. For a  
 4-47 member's final year of participation, but not beyond the member's  
 4-48 10th year in the DROP, if a full year of participation is not  
 4-49 completed, the member shall receive a prorated increase of 0.166  
 4-50 percent of the member's original benefit for each month of  
 4-51 participation in that year. An ~~[This]~~ increase provided by this  
 4-52 subsection does not apply to benefits payable under Subsection (l)  
 4-53 of this section. An ~~[This]~~ increase under this subsection is  
 4-54 applied to the member's benefit at retirement and is not added to  
 4-55 the member's DROP account. The total increase under this  
 4-56 subsection may not exceed 20 percent for 10 years of participation  
 4-57 in the DROP by the member.

4-58 (i) ~~The [For purposes of computing and providing service~~  
 4-59 ~~pension benefits under Section 4 of this article and for purposes of~~  
 4-60 ~~computing and providing death benefits under Section 7 of this~~  
 4-61 ~~article, the] day immediately before the [effective] date [of] the~~  
 4-62 ~~DROP participant's election becomes effective is the last day used~~  
 4-63 ~~for purposes of computing and providing service pension benefits~~  
 4-64 ~~under Section 4 of this article or for purposes of computing and~~  
 4-65 ~~providing death benefits under Section 7 of this article~~  
 4-66 ~~[considered to be the date the member terminates active service].~~ A  
 4-67 salary earned or additional years of participation completed after  
 4-68 the member's DROP election becomes effective may not be considered  
 4-69 in the computation of retirement or death benefits, except for the

5-1 limited purpose of percentage increases provided under Subsection  
5-2 (a) of this section.

5-3 (j) If a DROP participant dies before complete distribution  
5-4 of the member's DROP account has been made, the member's DROP  
5-5 account balance shall be distributed to the member's eligible  
5-6 beneficiaries, determined as follows:

5-7 (1) if the member is survived by a spouse who was the  
5-8 member's spouse on the date the member's DROP election became  
5-9 effective [last day of active service] and one or more eligible  
5-10 children, one-half of the member's DROP account balance shall be  
5-11 paid to that eligible spouse, and the remaining one-half shall be  
5-12 divided equally among the member's eligible children;

5-13 (2) if the member is survived by a spouse described by  
5-14 Subdivision (1) of this subsection, but not by an eligible child,  
5-15 the member's entire DROP account balance shall be paid to the  
5-16 surviving spouse;

5-17 (3) if the member is survived by one or more eligible  
5-18 children, but not by a spouse described by Subdivision (1) of this  
5-19 subsection, the member's DROP account balance shall be divided  
5-20 equally among the eligible children;

5-21 (4) if the member is not survived by a spouse described  
5-22 by Subdivision (1) of this subsection or an eligible child, the  
5-23 member's DROP account balance shall be divided equally among the  
5-24 member's eligible parents;

5-25 (5) if the member is not survived by a spouse described  
5-26 by Subdivision (1) of this subsection, an eligible child, or an  
5-27 eligible parent, the member's DROP account balance shall be  
5-28 distributed in accordance with the member's beneficiary  
5-29 designation filed with the board or, if the member has failed to  
5-30 file a valid beneficiary designation, to the member's estate;

5-31 (6) if a member's spouse described by Subdivision (1)  
5-32 of this subsection was not married to the member on the date the  
5-33 member's DROP election became effective, the spouse shall receive a  
5-34 reduced benefit equal to the benefit otherwise payable to the  
5-35 surviving spouse under this subsection, multiplied by the  
5-36 percentage of the period between the member's DROP election and the  
5-37 date the member left active service during which the spouse and the  
5-38 member were married, and the amount by which the spouse's benefit is  
5-39 reduced shall be divided among any other eligible survivors as if  
5-40 the member did not have an eligible spouse or, if there are no  
5-41 eligible survivors, distributed in accordance with the member's  
5-42 beneficiary designation filed with the board, or if the member  
5-43 failed to file a valid beneficiary designation, to the member's  
5-44 estate; and

5-45 (7) if the conditions described by Subdivision (1),  
5-46 (2), or (6) of this subsection exist, the surviving spouse may elect  
5-47 to maintain the DROP account with the fund in the same manner  
5-48 described by Subsections (e), (f), and (g) of this section.

5-49 (j-1) Only for the purpose of distributing a member's DROP  
5-50 account under Subsection (j) of this section, a person who is  
5-51 designated a beneficiary adult child in a valid beneficiary  
5-52 designation filed by the member with the board is considered an  
5-53 eligible child. A designation under this subsection is distinct  
5-54 from the member's beneficiary designation under Subsection (j)(5)  
5-55 of this section.

5-56 (q) A member may revoke the member's Back-DROP election by  
5-57 notifying the fund in writing not later than the earlier of:

5-58 (1) the date the member leaves active service; or  
5-59 (2) the 10th business day after the date the member  
5-60 signs an application form for a Back-DROP.

5-61 SECTION 6. Article 6243e.2(1), Revised Statutes, is amended  
5-62 by adding Section 5A to read as follows:

5-63 Sec. 5A. POST-RETIREMENT OPTION PLAN. (a) The following  
5-64 persons may elect to participate in the post-retirement option plan  
5-65 provided by this section:

5-66 (1) a member who terminates active service after  
5-67 participating in the DROP and who is eligible to receive a service  
5-68 pension or other taxable benefits under Section 5 of this article;

5-69 (2) a retired member, whether or not that member was a

6-1 DROP participant, who is eligible to receive a service pension or  
6-2 other taxable benefits under Section 4 of this article; or

6-3 (3) a surviving spouse of a member who elects and is  
6-4 eligible to participate in the PROP under Subsection (f) of this  
6-5 section.

6-6 (b) A PROP participant may elect to have all or part of the  
6-7 amount that the participant would otherwise receive as a monthly  
6-8 service pension or other taxable benefits under this article, less  
6-9 any amount the board determines is required to pay the  
6-10 participant's share of group medical insurance costs, credited to  
6-11 the participant's PROP account. The participant's PROP account  
6-12 shall be credited with hypothetical earnings in the same manner as  
6-13 the amounts in a member's DROP account under Section 5(d) of this  
6-14 article. At any time, a PROP participant may stop the amounts being  
6-15 credited to the participant's PROP account and elect to resume  
6-16 receiving the participant's monthly service pension or other  
6-17 taxable benefits under this article.

6-18 (c) A member or surviving spouse who elects to participate  
6-19 in the PROP shall comply with the PROP election process established  
6-20 by the board.

6-21 (d) Subject to rules and procedures adopted by the board, a  
6-22 PROP participant may elect to receive partial payments from the  
6-23 participant's PROP account in an amount determined by the  
6-24 participant. The board may establish rules and procedures  
6-25 concerning partial payments, including limitations on timing and  
6-26 frequency of those payments. A PROP participant who elects partial  
6-27 payments may, at any time, elect to receive the PROP participant's  
6-28 entire remaining PROP account balance in a single lump-sum payment.  
6-29 If, at any time after the initial credit to the PROP account, a  
6-30 participant's PROP account balance becomes zero, the account closes  
6-31 and the participant's participation in the PROP ceases. A person  
6-32 whose PROP account has been closed because of a zero balance is not  
6-33 eligible to again participate in the PROP.

6-34 (e) An election by a member or surviving spouse to receive a  
6-35 single lump-sum payment or partial payments under Subsection (d) of  
6-36 this section must satisfy the requirements of Section 401(a)(9) of  
6-37 the code. All distributions and changes in the form of distribution  
6-38 must be made in a manner and at a time that comply with that section  
6-39 of the code.

6-40 (f) The board by rule or policy may permit a member's  
6-41 surviving spouse to elect to participate in the PROP by choosing  
6-42 either or both of the following options:

6-43 (1) continuing a deceased member's PROP account; or  
6-44 (2) establishing a PROP account in which to receive  
6-45 credits from all or part of the surviving spouse's survivor  
6-46 benefits.

6-47 (g) A surviving spouse PROP participant and the  
6-48 participant's PROP account are subject to this section and any  
6-49 additional rules the board may adopt relating to PROP accounts and  
6-50 participants generally or to surviving spouse PROP accounts and  
6-51 participants particularly. The board may, by rule, further  
6-52 restrict or define, through the establishment of reasonable  
6-53 categories, who is a surviving spouse of a member for purposes of  
6-54 this section.

6-55 (h) If a member who is a PROP participant dies before  
6-56 complete distribution of the participant's PROP account has been  
6-57 made, the participant's PROP account balance shall be distributed  
6-58 in the same manner as a DROP account balance is distributed under  
6-59 Sections 5(j), (j-1), and (k) of this article, except for amounts  
6-60 subject to a surviving spouse's election under Subsection (f) of  
6-61 this section that results in the nondistribution from the plan of  
6-62 all or part of the deceased participant's PROP account.

6-63 (i) Only benefits that are taxable under the code may be  
6-64 credited to a PROP account. Nontaxable disability benefits or  
6-65 other nontaxable benefits, including the nontaxable part of any  
6-66 benefit, may not be credited to a PROP account.

6-67 (j) The board may set a date after which additional members  
6-68 or surviving spouses will not be allowed to elect to participate in  
6-69 the PROP.

7-1           (k) The board may set a date after which the crediting of  
7-2 additional benefits of a member or a surviving spouse to a PROP  
7-3 account is not allowed.

7-4           (l) The board by rule or policy may limit the number of  
7-5 distribution transactions for all PROP participants or for any  
7-6 category of PROP participants.

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

7-10          (n) The board may adopt rules, policies, or procedures that  
7-11 the board determines are necessary or desirable to implement or  
7-12 administer this section.

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

7-15          (b) If the board determines that a member is not capable of  
7-16 performing the usual and customary duties of the member's  
7-17 classification or position because of the member's on-duty  
7-18 disability, the member is entitled to receive a monthly disability  
7-19 pension, beginning after [~~on~~] the effective date of the member's  
7-20 termination of active service, in an amount equal to the greater of:

7-21           (1) 50 percent of the member's average monthly salary;  
7-22 or

7-23           (2) the service pension the member would have been  
7-24 entitled to receive under Section 4 of this article based on years  
7-25 of participation as of the effective date of the member's  
7-26 termination of active service.

7-27          (c) If the board determines that a member is not capable of  
7-28 performing any substantial gainful activity because of the member's  
7-29 on-duty disability, the member is entitled to receive a monthly  
7-30 disability pension, beginning after [~~on~~] the effective date of the  
7-31 member's termination of active service, in an amount equal to the  
7-32 greater of:

7-33           (1) 75 percent of the member's average monthly salary;  
7-34 or

7-35           (2) the service pension the member would have been  
7-36 entitled to receive under Section 4 of this article based on years  
7-37 of participation on the effective date of the member's termination  
7-38 of active service.

7-39          (e) If the board determines that a member is not capable of  
7-40 performing the usual and customary duties of the member's  
7-41 classification or position because of the member's off-duty  
7-42 disability, the member is entitled to an off-duty disability  
7-43 pension in lieu of any other benefit under this article. If the  
7-44 board makes that determination, the member is entitled to receive a  
7-45 monthly disability pension, beginning after [~~on~~] the effective date  
7-46 of the member's termination of active service, in an amount equal to  
7-47 the greater of:

7-48           (1) 25 percent of the member's average monthly salary,  
7-49 plus 2-1/2 percent of the member's average monthly salary for each  
7-50 full year of participation in the fund, except that the total  
7-51 monthly disability pension under this subdivision may not exceed 50  
7-52 percent of the member's average monthly salary; or

7-53           (2) the service pension the member would have been  
7-54 entitled to receive under Section 4 of this article based on years  
7-55 of participation on the effective date of the member's termination  
7-56 of active service.

7-57          SECTION 8. Section 10A(f), Article 6243e.2(1), Revised  
7-58 Statutes, is amended to read as follows:

7-59          (f) In determining the lump-sum payment amount, the total  
7-60 number of years since the commencement date of each retired  
7-61 member's or eligible survivor's annual retirement or survivor  
7-62 benefit shall be divided by the total number of years since the  
7-63 commencement date of all retired members' and eligible survivors'  
7-64 annual retirement or survivor benefit to establish a payment  
7-65 percentage for each retired member and eligible survivor. For  
7-66 purposes of this section, benefits provided under Section 4(d) of  
7-67 this article may not be included in a retired member's or eligible  
7-68 survivor's annual retirement or survivor benefit.

7-69          SECTION 9. Sections 11(f), (g), and (m), Article

8-1 6243e.2(1), Revised Statutes, are amended to read as follows:

8-2 (f) A member, eligible survivor, or beneficiary who is  
 8-3 entitled to receive a benefit payment under this article is  
 8-4 entitled to receive the benefit beginning after ~~[on]~~ the date the  
 8-5 member ceases to carry out the member's regular duties as a  
 8-6 firefighter, notwithstanding the fact that the member may remain on  
 8-7 the payroll of the member's fire department or receive sick leave,  
 8-8 vacation, or other pay after the effective date of termination of  
 8-9 the member's regular duties as a firefighter. In this article, an  
 8-10 authorization to receive a benefit "beginning after ~~[on]~~ the  
 8-11 effective date of the member's termination of active service"  
 8-12 includes authority for the member to instead elect to make the  
 8-13 member's pension effective after ~~[on]~~ the date the member ceases to  
 8-14 carry out the member's regular duties as a firefighter. If there is  
 8-15 a delay in beginning payment of benefits resulting from the  
 8-16 requirements of Section 6(h) of this article for disability  
 8-17 pensions, the member or beneficiary shall, when the disability  
 8-18 pension is approved by the board, be paid the full amount of the  
 8-19 disability pension that has accrued since the effective date of  
 8-20 termination of the member's regular duties as a firefighter.

8-21 (g) A member may designate in a trust document accepted by  
 8-22 the fund a trustee to receive the benefit payable to any eligible  
 8-23 survivor or beneficiary other than the member's eligible spouse or  
 8-24 a spouse eligible to receive a benefit under the DROP. On or after  
 8-25 the death or incapacity of the member, an eligible survivor or  
 8-26 beneficiary may designate a trustee under this subsection. If the  
 8-27 eligible survivor or beneficiary is disabled or a minor child, the  
 8-28 parent or legal guardian, as applicable, of the eligible survivor  
 8-29 or beneficiary may make the designation. Any ~~[such]~~ designation  
 8-30 made under this subsection must be made on a form approved by the  
 8-31 board.

8-32 (m) A benefit payable under this article because of the  
 8-33 death of a member or eligible beneficiary may not be paid to a  
 8-34 person convicted of causing that death but instead shall be paid as  
 8-35 if the convicted person predeceased the deceased member or  
 8-36 beneficiary. ~~[If no beneficiary is entitled to the benefit as a~~  
 8-37 ~~result, the benefit shall be paid to the decedent's estate.]~~ Except  
 8-38 as otherwise permitted by this subsection with respect to  
 8-39 suspension of benefits, the board is not required to withhold  
 8-40 payment to a person convicted of causing the death of a member or  
 8-41 eligible beneficiary until the board receives actual notice of the  
 8-42 conviction of that person. The board may suspend payment of a  
 8-43 benefit payable on the death of a member or an eligible beneficiary  
 8-44 on the indictment of the person who would otherwise be entitled to  
 8-45 the benefit, and the suspension remains in effect until the board  
 8-46 determines that a final disposition of the charges relating to the  
 8-47 cause of death has occurred. If a benefit payment is suspended  
 8-48 under this subsection and the person is not convicted, the benefit  
 8-49 again becomes payable with interest computed at the rate earned by  
 8-50 the fund during the time the benefit payment was suspended. For  
 8-51 purposes of this subsection, a person has been convicted of causing  
 8-52 the death of a member or eligible beneficiary if:

8-53 (1) the person has pleaded guilty or nolo contendere  
 8-54 to, or the person has been found guilty by a court of competent  
 8-55 jurisdiction of, an offense at the trial of which it is established  
 8-56 that the person's intentional or knowing act or omission caused the  
 8-57 death of the member or eligible beneficiary, regardless of whether  
 8-58 sentence is imposed or probated; and

8-59 (2) an appeal of the conviction is not pending, and the  
 8-60 time provided for appeal has expired.

8-61 SECTION 10. Sections 12(a) and (b), Article 6243e.2(1),  
 8-62 Revised Statutes, are amended to read as follows:

8-63 (a) A member who is eligible for retirement for length of  
 8-64 service or disability or who has a claim for temporary disability,  
 8-65 or any of the member's beneficiaries, who is aggrieved by a decision  
 8-66 or order of the board, whether on the basis of rejection of a claim  
 8-67 or of the amount allowed, may appeal from the decision or order of  
 8-68 the board to a district court in the county in which the board is  
 8-69 located by giving written notice of the intention to appeal. The



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

9-10 (b) Not later than the 30th day after the date of service of  
 9-11 the notice of intention to appeal on the board, an officer [~~the~~  
 9-12 ~~secretary or treasurer~~] of the board shall file with the district  
 9-13 court a transcript of all papers and proceedings in the case before  
 9-14 the board. When the copy of the notice of intention to appeal and  
 9-15 the transcript have been filed with the court, the appeal is  
 9-16 considered perfected, and the court shall docket the appeal, assign  
 9-17 the appeal a number, fix a date for hearing the appeal, and notify  
 9-18 both the appellant and the board of the date fixed for the hearing.

9-19 SECTION 11. Sections 13(b) and (d), Article 6243e.2(1),  
 9-20 Revised Statutes, are amended to read as follows:

9-21 (b) At the time that physical examinations are administered  
 9-22 on behalf of the municipality, each applicant must be provided  
 9-23 written notice that a copy of the results of the examination will be  
 9-24 forwarded to the board for the purpose of determining whether the  
 9-25 applicant has a preexisting condition that would be relevant to any  
 9-26 determination under Section 6 of this article. Not later than the  
 9-27 10th day after the date of a physical examination performed on an  
 9-28 applicant for a beginning position in the fire department as  
 9-29 required by Section 143.022, Local Government Code, the  
 9-30 municipality shall provide to the board a copy of all documents  
 9-31 resulting from the physical examination. The board may require  
 9-32 additional physical examinations if necessary in determining the  
 9-33 presence or absence of any preexisting condition. The fund shall  
 9-34 pay the cost of any additional physical examination the board  
 9-35 requires. The [~~If accepted by the board, the~~] applicant's  
 9-36 membership in the fund is effective on acceptance by the board  
 9-37 [~~being appointed to the position of probationary firefighter~~].

9-38 (d) The municipality shall make [~~monthly~~] contributions to  
 9-39 the fund once every two weeks in an amount equal to the product of  
 9-40 the contribution rate certified by the board and the aggregate  
 9-41 salaries paid to members of the fund during the period [~~month~~]  
 9-42 for which the contribution is made. The board shall certify the  
 9-43 municipality's contribution rate for each year or portion of a year  
 9-44 based on the results of actuarial valuations made at least every  
 9-45 three years. The municipality's contribution rate shall be  
 9-46 composed of the normal cost plus the level percentage of salary  
 9-47 payment required to amortize the unfunded actuarial liability over  
 9-48 a constant period of 30 years computed on the basis of an acceptable  
 9-49 actuarial reserve funding method approved by the board.  
 9-50 Notwithstanding any other provision of this article, the  
 9-51 contributions by the municipality, when added to any contributions  
 9-52 with respect to a qualified governmental excess benefit arrangement  
 9-53 maintained in accordance with Section 14(c) of this article, may  
 9-54 not be less than twice the amount paid into the fund by  
 9-55 contributions of the members.

9-56 SECTION 12. Section 14(a), Article 6243e.2(1), Revised  
 9-57 Statutes, is amended to read as follows:

9-58 (a) Notwithstanding any other provision of this article, a  
 9-59 member may not accrue a benefit or allowance under this article in  
 9-60 excess of an amount that, when added to all other pension benefits  
 9-61 received under plans of the municipality that are qualified under  
 9-62 Section 401 of the code, results in an annual benefit in excess of  
 9-63 the applicable limits provided by Section 415 of the code. That  
 9-64 accrual limitation applies only as long as satisfaction of Section  
 9-65 415 of the code is necessary to maintain the tax-qualified status of  
 9-66 the fund under Section 401 of the code. Any benefit accruals  
 9-67 limited under this subsection must be determined [~~certified~~] by a  
 9-68 qualified actuary selected by the board.

9-69 SECTION 13. (a) Except as provided by Subsection (b) of this

10-1 section, this Act takes effect immediately if it receives a vote of  
10-2 two-thirds of all the members elected to each house, as provided by  
10-3 Section 39, Article III, Texas Constitution. If this Act does not  
10-4 receive the vote necessary for immediate effect, this Act takes  
10-5 effect September 1, 2007.

10-6 (b) Section 5A, Article 6243e.2(1), Revised Statutes, as  
10-7 added by this Act, takes effect October 1, 2007.

10-8

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