

By: Jackson, Mike

S.B. No. 619

A BILL TO BE ENTITLED

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

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

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

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

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

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

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

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

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

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

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

(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,

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

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

(1) provide for legal defense of the fund;

(2) cover liabilities and losses of the fund;

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

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

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

(g-1) The board may use fund assets to provide insurance coverage comparable to that provided by insurers under Subsection (g) of this section by entering into a collective pool providing governmental entities of this state with self-insurance coverage, including coverage authorized by Chapter 791 or 2259, Government 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) As part of the administrative expenses of the fund, the  
20 board may use fund assets to pay the chair of the board annual  
21 compensation in an amount not to exceed one-half of the annual base  
22 salary of a firefighter with 17 years of firefighter service if the  
23 position of the chair is assigned to serve full-time at the fund.

24 (o) On the reported death of a member, the fund or an  
25 authorized representative of the fund may obtain the death  
26 certificate or the pending death certificate directly from the  
27 issuing examiner or governmental agency without the prior



1 notification or confirmation that otherwise may be required under  
2 law to expedite the issuance of death benefits from the fund to  
3 survivors in need of those benefits.

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

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

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

19 (a) A member who is eligible to receive a service pension  
20 under Section 4 of this article and who remains in active service  
21 may elect to participate in the deferred retirement option plan  
22 provided by this section. On subsequently terminating active  
23 service, a member who elected the DROP may apply for a monthly  
24 service pension under Section 4 of this article, except that the  
25 effective date of the member's election to participate in the DROP  
26 will be considered the member's retirement date for determining the  
27 amount of the member's monthly service pension. The member may also

1 apply for any DROP benefit provided under this section on  
2 terminating active service. An election to participate in the  
3 DROP, once approved by the board, is irrevocable. A DROP  
4 participant's monthly benefit at retirement is increased by two  
5 percent of the amount of the member's original benefit for every  
6 full year of participation in the DROP by the member. For a  
7 member's final year of participation, but not beyond the member's  
8 10th year in the DROP, if a full year of participation is not  
9 completed, the member shall receive a prorated increase of 0.166  
10 percent of the member's original benefit for each month of  
11 participation in that year. An [This] increase provided by this  
12 subsection does not apply to benefits payable under Subsection (1)  
13 of this section. An [This] increase under this subsection is  
14 applied to the member's benefit at retirement and is not added to  
15 the member's DROP account. The total increase under this  
16 subsection may not exceed 20 percent for 10 years of participation  
17 in the DROP by the member.

18 (i) The [For purposes of computing and providing service  
19 pension benefits under Section 4 of this article and for purposes of  
20 computing and providing death benefits under Section 7 of this  
21 article, the] day immediately before the [effective] date [of] the  
22 DROP participant's election becomes effective is the last day used  
23 for purposes of computing and providing service pension benefits  
24 under Section 4 of this article or for purposes of computing and  
25 providing death benefits under Section 7 of this article  
26 [considered to be the date the member terminates active service]. A  
27 salary earned or additional years of participation completed after

1 the member's DROP election becomes effective may not be considered  
2 in the computation of retirement or death benefits, except for the  
3 limited purpose of percentage increases provided under Subsection  
4 (a) of this section.

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

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

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

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

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

27 (5) if the member is not survived by a spouse described

1 by Subdivision (1) of this subsection, an eligible child, or an  
2 eligible parent, the member's DROP account balance shall be  
3 distributed in accordance with the member's beneficiary  
4 designation filed with the board or, if the member has failed to  
5 file a valid beneficiary designation, to the member's estate;

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

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

24 (j-1) Only for the purpose of distributing a member's DROP  
25 account under Subsection (j) of this section, a person who is  
26 designated a beneficiary adult child in a valid beneficiary  
27 designation filed by the member with the board is considered an

1 eligible child. A designation under this subsection is distinct  
2 from the member's beneficiary designation under Subsection (j)(5)  
3 of this section.

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

6 (1) the date the member leaves active service; or

7 (2) the 10th business day after the date the member  
8 signs an application form for a Back-DROP.

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

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

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

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

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

23 (b) A PROP participant may elect to have all or part of the  
24 amount that the participant would otherwise receive as a monthly  
25 service pension or other taxable benefits under this article, less  
26 any amount the board determines is required to pay the  
27 participant's share of group medical insurance costs, credited to

1 the participant's PROP account. The participant's PROP account  
2 shall be credited with hypothetical earnings in the same manner as  
3 the amounts in a member's DROP account under Section 5(d) of this  
4 article. At any time, a PROP participant may stop the amounts being  
5 credited to the participant's PROP account and elect to resume  
6 receiving the participant's monthly service pension or other  
7 taxable benefits under this article.

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

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

24 (e) An election by a member or surviving spouse to receive a  
25 single lump-sum payment or partial payments under Subsection (d) of  
26 this section must satisfy the requirements of Section 401(a)(9) of  
27 the code. All distributions and changes in the form of distribution

1 must be made in a manner and at a time that comply with that section  
2 of the code.

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

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

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

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

26 (i) Only benefits that are taxable under the code may be  
27 credited to a PROP account. Nontaxable disability benefits or

1 other nontaxable benefits, including the nontaxable part of any  
2 benefit, may not be credited to a PROP account.

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

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

9 (l) The board by rule or policy may limit the number of  
10 distribution transactions for all PROP participants or for any  
11 category of PROP participants.

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

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

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

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

26 (1) 50 percent of the member's average monthly salary;  
27 or



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

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

11                 (1) 75 percent of the member's average monthly salary;  
12 or

13                 (2) the service pension the member would have been  
14 entitled to receive under Section 4 of this article based on years  
15 of participation on the effective date of the member's termination  
16 of active service.

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

26                 (1) 25 percent of the member's average monthly salary,  
27 plus 2-1/2 percent of the member's average monthly salary for each

1 full year of participation in the fund, except that the total  
2 monthly disability pension under this subdivision may not exceed 50  
3 percent of the member's average monthly salary; or

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

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

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

20 SECTION 9. Sections 11(f), (g), and (m), Article  
21 6243e.2(1), Revised Statutes, are amended to read as follows:

22 (f) A member, eligible survivor, or beneficiary who is  
23 entitled to receive a benefit payment under this article is  
24 entitled to receive the benefit beginning after ~~on~~ the date the  
25 member ceases to carry out the member's regular duties as a  
26 firefighter, notwithstanding the fact that the member may remain on  
27 the payroll of the member's fire department or receive sick leave,

1 vacation, or other pay after the effective date of termination of  
2 the member's regular duties as a firefighter. In this article, an  
3 authorization to receive a benefit "beginning after [~~on~~] the  
4 effective date of the member's termination of active service"  
5 includes authority for the member to instead elect to make the  
6 member's pension effective after [~~on~~] the date the member ceases to  
7 carry out the member's regular duties as a firefighter. If there is  
8 a delay in beginning payment of benefits resulting from the  
9 requirements of Section 6(h) of this article for disability  
10 pensions, the member or beneficiary shall, when the disability  
11 pension is approved by the board, be paid the full amount of the  
12 disability pension that has accrued since the effective date of  
13 termination of the member's regular duties as a firefighter.

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

25 (m) A benefit payable under this article because of the  
26 death of a member or eligible beneficiary may not be paid to a  
27 person convicted of causing that death but instead shall be paid as

1 if the convicted person predeceased the deceased member or  
2 beneficiary. ~~[If no beneficiary is entitled to the benefit as a~~  
3 ~~result, the benefit shall be paid to the decedent's estate.]~~ Except  
4 as otherwise permitted by this subsection with respect to  
5 suspension of benefits, the board is not required to withhold  
6 payment to a person convicted of causing the death of a member or  
7 eligible beneficiary until the board receives actual notice of the  
8 conviction of that person. The board may suspend payment of a  
9 benefit payable on the death of a member or an eligible beneficiary  
10 on the indictment of the person who would otherwise be entitled to  
11 the benefit, and the suspension remains in effect until the board  
12 determines that a final disposition of the charges relating to the  
13 cause of death has occurred. If a benefit payment is suspended  
14 under this subsection and the person is not convicted, the benefit  
15 again becomes payable with interest computed at the rate earned by  
16 the fund during the time the benefit payment was suspended. For  
17 purposes of this subsection, a person has been convicted of causing  
18 the death of a member or eligible beneficiary if:

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

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

27 SECTION 10. Sections 12(a) and (b), Article 6243e.2(1),

Revised Statutes, are amended to read as follows:

(a) A member who is eligible for retirement for length of service or disability or who has a claim for temporary disability, or any of the member's beneficiaries, who is aggrieved by a decision or order of the board, whether on the basis of rejection of a claim or of the amount allowed, may appeal from the decision or order of the board to a district court in the county in which the board is located by giving written notice of the intention to appeal. The notice must contain a statement of the intention to appeal, together with a brief statement of the grounds and reasons the party feels aggrieved. The notice must be served personally on an officer ~~[the chair, secretary, or treasurer]~~ of the board not later than the 20th day after the date of the order or decision. After service of the notice, the party appealing shall file with the district court a copy of the notice of intention to appeal, together with the affidavit of the party making service showing how, when, and on whom the notice was served.

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

SECTION 11. Sections 13(b) and (d), Article 6243e.2(1),

Revised Statutes, are amended to read as follows:

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

(d) The municipality shall make ~~[monthly]~~ contributions to the fund once every two weeks in an amount equal to the product of the contribution rate certified by the board and the aggregate salaries paid to members of the fund during the period ~~[month]~~ for which the contribution is made. The board shall certify the municipality's contribution rate for each year or portion of a year based on the results of actuarial valuations made at least every three years. The municipality's contribution rate shall be composed of the normal cost plus the level percentage of salary

1 payment required to amortize the unfunded actuarial liability over  
2 a constant period of 30 years computed on the basis of an acceptable  
3 actuarial reserve funding method approved by the board.  
4 Notwithstanding any other provision of this article, the  
5 contributions by the municipality, when added to any contributions  
6 with respect to a qualified governmental excess benefit arrangement  
7 maintained in accordance with Section 14(c) of this article, may  
8 not be less than twice the amount paid into the fund by  
9 contributions of the members.

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

12 (a) Notwithstanding any other provision of this article, a  
13 member may not accrue a benefit or allowance under this article in  
14 excess of an amount that, when added to all other pension benefits  
15 received under plans of the municipality that are qualified under  
16 Section 401 of the code, results in an annual benefit in excess of  
17 the applicable limits provided by Section 415 of the code. That  
18 accrual limitation applies only as long as satisfaction of Section  
19 415 of the code is necessary to maintain the tax-qualified status of  
20 the fund under Section 401 of the code. Any benefit accruals  
21 limited under this subsection must be determined ~~[certified]~~ by a  
22 qualified actuary selected by the board.

23 SECTION 13. Section 2(i), Article 6243e.2(1), Revised  
24 Statutes, is repealed.

25 SECTION 14. (a) Except as provided by Subsection (b) of this  
26 section, this Act takes effect immediately if it receives a vote of  
27 two-thirds of all the members elected to each house, as provided by

S.B. No. 619

1 Section 39, Article III, Texas Constitution. If this Act does not  
2 receive the vote necessary for immediate effect, this Act takes  
3 effect September 1, 2007.

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