

## **BILL ANALYSIS**

Senate Research Center  
81R16738 KFF-F

H.B. 2829  
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State Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In the ongoing administration of the Austin fire fighters relief and retirement fund (fund), the fund often comes across various issues in plan administration that need to be addressed by changes to its governing statute (Article 6243e.1, V.T.C.S.). The purpose of this legislation is to “clean-up” and enhance certain provisions within the governing statute.

Aside from some technical changes, the more significant issues addressed include: providing more specific parameters and additional flexibility for the board in the granting of a cost-of-living adjustment (COLA) for retirees, incorporating a prudent investor standard with respect to the investment of plan assets, and providing a requirement that the board adopt an investment policy.

This legislation has the support of the fund, the City of Austin, the Austin Fire Fighters Association (Local 975), and the Austin Retired Fire Fighters Association. In addition, this legislation has no fiscal impact on the state or the City of Austin. The actuary for the fund has opined that the legislation will not have an adverse impact on the actuarial soundness of the fund.

H.B. 2829 amends current law relating to participation in and benefits and administration of retirement systems for firefighters in certain municipalities.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1.02, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), by adding Subdivision (13) to define "spouse."

SECTION 2. Amends Section 2.03(c), Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), to provide that nominations are authorized to be made in person, by mail, or by telephone to the office of the firefighters relief and retirement fund (fund) and are required to be received between September 1 and September 15, rather than October 1 and October 15.

SECTION 3. Amends Section 2.11, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), to require the board of trustees (board) of the fund to adopt rules and perform reasonable activities it considers necessary or desirable for the efficient administration of the fund and to maintain the qualified status of the fund under Section 401(a) of the Internal Revenue Code.

SECTION 4. Amends Article 2, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), by amending Section 2.13, as follows:

Sec. 2.13. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS, RETIREES, ANNUITANTS, OR BENEFICIARIES. (a) Provides that information contained in records in the custody of the fund concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 552.101 (Exception: Confidential

Information), Government Code, and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the administrator of the fund determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual after the administrator of the fund determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the fund;

(C) a governmental official or employee after the administrator of the fund determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed pursuant to a subpoena and the administrator of the fund determines that the individual will have a reasonable opportunity to contest the subpoena.

(b) Provides that this section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the fund.

(c) Authorizes a determination and disclosure under Subsection (a) to be made without notice to the individual member, retiree, annuitant, or beneficiary.

SECTION 5. Amends Section 5.04, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes the three percent factor used in this section to be changed to some other percent if the change applies to one or any combination of certain groups, rather than applies only to certain groups.

(b-1) Requires the board's actuary, in determining whether to approve an increase in the factor under Subsection (b) of this section, to take into consideration whether the fund has reserves sufficient to enable the payment of a cost-of-living adjustment under Section 9.04(a) (relating to an annual cost-of-living adjustment) of this Act to all current members and survivors at a level that is equal to the average percentage increase in the Consumer Price Index for All Urban Consumers (index) as determined by the United States Department of Labor for the 10 annual periods preceding the proposed effective date of the change.

SECTION 6. Amends Section 7.02, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), as follows:

Sec. 702. SURVIVING SPOUSE OF RETIREE. (a) Creates this subsection from existing text.

(b) Provides that for purposes of Subsection (a)(1) (relating to marriage to the retiree at the time of the retiree's retirement) of this section, with respect to an informal marriage established in this state, a surviving spouse is considered married to a retiree as of the date a declaration of informal marriage was recorded

in accordance with Subchapter E (Marriage Without Formalities), Chapter 2 (The Marriage Relationship), Family Code.

SECTION 7. Amends Section 9.04, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), by amending Subsections (a) and (b) and adding Subsections (a-1)-(a-4), and (b-1), as follows:

(a) Entitles a person receiving a retirement or survivor's benefit under this Act, subject to this section and except as provided by Section 5.05 (relating to eligibility for service retirement annuity) of this Act, each calendar year to a, rather than an annual, cost-of-living adjustment of that person's benefit calculated in accordance with this section.

(a-1) Provides that the annual cost-of-living adjustment under this section is based on the collective adjustment amount calculated in accordance with Subsection (a-2) of this section and allocated among persons eligible for an adjustment under this section in a manner and in an amount determined by the board; may take effect at any time during a given calendar year, as determined by the board of trustees; and may not reduce a person's benefit to an amount less than the person received when the benefit first was paid to that person.

(a-2) Provides that the collective adjustment amount described by Subsection (a-1) of this section is an amount equal to the actuarial value, as determined by the board's actuary based on the interest and mortality assumptions adopted by the board of trustees for the most recent actuarial valuation of the fund, of the percentage, rather than any, increase in the index as determined by the United States Department of Labor for the applicable determination period immediately preceding the date the cost-of-living adjustment is to take effect, multiplied by the total amount of benefits payable in the month immediately preceding the date an adjustment is to take effect to persons who are eligible to receive an adjustment under this section, and, if applicable, is reduced by an amount that the board's actuary determines is necessary to maintain the financial stability of the fund, or is increased in accordance with Subsection (b) of this section.

(a-3) Provides that for purposes of Subsection (a-2) of this section, the applicable determination period is the shorter of 12 months, or the period since the last adjustment, rather than increase in benefits, under this section.

(a-4) Prohibits the board's actuary, in determining whether to reduce the collective adjustment amount under Subsection (a-2) of this section, from taking into consideration the cost of future adjustments under this section.

(b) Authorizes the board of trustees to increase the collective adjustment amount under Subsection (a-2), rather than (a), of this section if:

(1) the board's actuary has advised the board that the increase, rather than adjustment, would not impair the financial stability of the fund. Deletes existing text prohibiting the portion of the adjustment that exceeds one percent of the benefit, if the amount would exceed one percent of a person's benefit, from being made under this section unless the board's actuary has advised the board of trustees that the adjustment would not impair the financial stability of the fund; and

(2) the increase, rather than adjustment, has been approved by the affirmative vote of a majority of the board of trustees. Deletes existing text prohibiting the adjustment, if an adjustment under Subsection (a) of this section would be one percent or less of a person's benefit, from being made under this section unless the board's actuary has advised the board that the adjustment would not impair the financial stability of the fund.

(b-1) Requires the board's actuary, in determining whether an adjustment would impair the financial stability of the fund under Subsection (b) of this section, to take into consideration the cost of future adjustments under this section.

SECTION 8. Amends Section 11.01, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), as follows:

Sec. 11.01. New heading: INVESTMENTS. Authorizes the board in its sole discretion to invest, reinvest, or change the assets of the fund. Requires the board to invest the funds in whatever instruments or investments the board considers prudent. Requires the board, in making investments for the fund, to discharge its duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use in the conduct of an enterprise of a similar character and with similar aims. Deletes existing text authorizing that the surplus, when the board determines that there is in the fund a surplus exceeding the reasonable, safe amount necessary to take care of the current demands on the fund, or so much of it as the board of trustees considers prudent, be invested in certain instances.

SECTION 9. Amends Section 11.03, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), as follows:

Sec. 11.03 New heading: INVESTMENT POLICY. (a) Requires the board of trustees to adopt and maintain a written investment policy regarding the investment of fund assets.

(b) Prohibits the board of trustees from adopting an amendment to the investment policy adopted under this section unless the proposed amendment is approved by the affirmative vote of a majority of the members of the board at not fewer than three regular meetings of the board. Deletes existing text prohibiting the fund from owning more than five percent of the voting stock of any one corporation. Deletes existing text providing that certain monies should not represent certain percentages of the investment portfolio under an investment measure at market.

SECTION 10. Repealer: Sections 9.04(c) (relating to an adjustment being determined by the board) and (d) (relating to retirement or survivor's benefits being increased by an amount determined by an affirmative vote of the board of trustees), Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975, (Article 6243e.1, V.T.C.S).

SECTION 11. Requires the board, as soon as practicable after the effective date of this Act, to adopt the written investment policy required by Section 11.03, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975, (Article 6243e.1, V. T. C. S.), as amended by this Act.

SECTION 12. Effective date: September 1, 2009.