

By: Wentworth

S.B. No. 1628

A BILL TO BE ENTITLED

AN ACT

relating to the pension retirement system in certain municipalities
for firefighters and police.

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

SECTION 1. Section 1.02, Chapter 824 (S.B. 817), Acts of the
73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
Texas Civil Statutes), is amended by adding Subdivisions (1-a),
(4-b), (4-c), (11-a), (12-b), and (12-c) and amending Subdivisions
(11) and (12-a) to read as follows:

(1-a) "Alternate payee" has the meaning assigned by
Section 804.001, Government Code, or any successor statute.

(4-b) "Class" means the trainee class of a fire
fighter or police officer training academy of a municipality to
which this Act applies from which a member graduated, as determined
by the board.

(4-c) "Class graduation date" means the date the
graduates of any class graduated, as determined by the board.

(11) "Member" means a fire fighter or police officer
who has become a member of the fund as provided by Section 4.01(a)
or 4.011 of this Act and has not retired, died, or forfeited the
person's interest in the fund.

(11-a) "Member buyback contribution amount" means the
amount of the first contribution by a member to the fund for a full
pay period, multiplied by 26, divided by 12, and multiplied by 3.

1 (12-a) "Probationary period" means the period
2 beginning on the graduation date of a graduate of a class and ending
3 on the date the graduate becomes a member.

4 (12-b) "Qualified funds" means pretax funds that are
5 part of an eligible rollover distribution, as described in Section
6 402(f)(2) of the code, or funds that have been transferred to the
7 fund in accordance with Section 403(b)(13) or Section 457(e)(17) of
8 the code to purchase years or fractions of years of service.

9 (12-c) "Qualified mayoral designee" means an
10 individual designated by the mayor of a municipality to which this
11 Act applies who is a member or former member of the city council of,
12 or an employee of, a municipality to which this Act applies.

13 SECTION 2. Section 3.02(c), Chapter 824 (S.B. 817), Acts of
14 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
15 Vernon's Texas Civil Statutes), is amended to read as follows:

16 (c) Any contributing member of the fund who is in good
17 standing in the fire or police department may:

18 (1) appear in person or by attorney to contest the
19 application for membership participation in the fund or for an
20 annuity or benefit by any person claiming to be entitled to an
21 annuity or benefit, either as a member, ~~[or]~~ beneficiary, or
22 alternate payee; and

23 (2) offer supporting testimony.

24 SECTION 3. Sections 3.03(c) and (d), Chapter 824 (S.B.
25 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
26 6243o, Vernon's Texas Civil Statutes), are amended to read as
27 follows:

1 (c) Each member, retiree, ~~and~~ beneficiary, and alternate
2 payee shall provide bank depository information to the board so
3 that the board can disburse benefits by electronic transfer.

4 (d) Except as provided by Section 802.1024, Government
5 Code, the board may reduce the amount of a benefit to which a
6 retiree, ~~or~~ beneficiary, or alternate payee is otherwise entitled
7 in order to reimburse the fund for an overpayment or incorrect
8 payment of benefits to the retiree, ~~or~~ beneficiary, or alternate
9 payee.

10 SECTION 4. Article 4, Chapter 824 (S.B. 817), Acts of the
11 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
12 Texas Civil Statutes), is amended by adding Section 4.011 to read as
13 follows:

14 Sec. 4.011. MEMBERSHIP OF FIRE CHIEF AND POLICE CHIEF. (a)
15 Subject to Subsection (d) of this section, not later than the 30th
16 day after the date a fire chief or a police chief of a municipality
17 to which this Act applies assumes office, the fire chief or police
18 chief may make an irrevocable election to not become a member of the
19 fund.

20 (b) An election under this section must be made by
21 delivering written notice of the election to the secretary of the
22 board.

23 (c) A fire chief or police chief who does not make an
24 election under this section becomes a member of the fund.

25 (d) A fire chief or police chief who was a member of the fund
26 at any time during the two years preceding the date the fire chief
27 or police chief assumes office may not make an election under this

1 section.

2 SECTION 5. Section 5.01, Chapter 824 (S.B. 817), Acts of the
3 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
4 Texas Civil Statutes), is amended by amending Subsection (g) and
5 adding Subsections (k), (l), and (m) to read as follows:

6 (g) A member may not receive an award from the fund for
7 service retirement until the member has at least 20 years of service
8 in the fire or police department and has also contributed the
9 required amount of money for at least 20 years. In determining the
10 number of years of service in a department, the member shall be
11 given full credit for the period the member was an active member
12 plus the time the member was actively engaged in service with any
13 uniformed service in accordance with Section 4.03 of this Act and
14 for absences taken under the Family and Medical Leave Act of 1993
15 (29 U.S.C. Section 2601 et seq.), in accordance with Section 4.02 of
16 this Act. Disciplinary suspensions of 15 days or less may not be
17 subtracted from a member's service credit under this Act if the
18 member has paid into the fund, within 30 days after the later of the
19 termination date of each suspension or the exhaustion of any appeal
20 with respect to the suspension, a sum of money equal to the amount
21 of money that would have been deducted from that person's salary
22 during that period of suspension if it had not been for that
23 suspension. A municipality to which this Act applies shall
24 double-match a payment made under this subsection. Members of the
25 fund at the time of their retirement shall also receive service
26 credit for all unused sick leave accumulated by them under Chapter
27 143, Local Government Code, but only to the extent the unused sick

1 leave exceeds 90 days. Service credit for unused sick leave shall
2 be prorated based on each full month of sick leave. A member's
3 service credit under this section includes any service credit
4 purchased in accordance with Subsections (k)-(m) of this section.

5 (k) A member employed for a probationary period by a
6 municipality to which this Act applies may elect to purchase one
7 month of service credit for each full month in the member's
8 probationary period, up to a maximum of 10 months. For each month
9 of service credit the member elects to purchase, the member shall
10 pay to the fund, on or before September 30, 2010, an amount equal to
11 the sum of:

12 (1) the member buyback contribution amount for the
13 member; and

14 (2) interest on the amount determined under
15 Subdivision (1) of this subsection at the rate of eight percent per
16 annum, compounded annually, calculated for the period beginning on
17 the first day after the class graduation date for the member's class
18 and ending on the earlier of December 31, 2009, or the date the fund
19 receives the payment required under this subsection.

20 (l) A member may not elect to purchase a partial month of
21 service credit under Subsection (k) of this section. A member is
22 not required to elect to purchase more than one month of service
23 credit under Subsection (k) of this section. A member may make the
24 payment required under Subsection (k) of this section only with
25 qualified funds. A member must make an election under Subsection
26 (k) of this section on or before December 31, 2009, in accordance
27 with policies and procedures adopted by the board.

1 (m) An election under Subsection (k) of this section is void
2 unless the member makes the full required payment before the
3 earlier of the date of the member's retirement or the date of the
4 member's death. If a member makes only partial payment before the
5 earlier of the date of the member's retirement or the date of the
6 member's death, the fund shall refund all payments received,
7 without interest, to the member, if the member is alive, or to the
8 member's estate, if the member is dead. The fund shall refund
9 payment under this subsection not later than the 60th day after the
10 date of the member's retirement or the date of the member's death,
11 as applicable.

12 SECTION 6. Section 5.015(b), Chapter 824 (S.B. 817), Acts
13 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
14 Vernon's Texas Civil Statutes), is amended to read as follows:

15 (b) The Back DROP election:

16 (1) results in a lump-sum payment for a number of full
17 months of service elected by the member that does not exceed the
18 lesser of the number of months of service credit the member has in
19 excess of 20 years or 60 [~~48~~] months;

20 (2) is available only to a member who takes a service
21 retirement; and

22 (3) must be made at the time of application for
23 retirement.

24 SECTION 7. Section 5.03(a-1), Chapter 824 (S.B. 817), Acts
25 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
26 Vernon's Texas Civil Statutes), is amended to read as follows:

27 (a-1) An active member of the fund is eligible to retire and

1 receive a catastrophic injury disability retirement annuity if the
2 member:

3 (1) makes a written application for catastrophic
4 injury disability retirement with the board;

5 (2) is permanently so disabled as a result of a
6 catastrophic injury as to:

7 (A) be unable to secure any type of third-party
8 employment, or engage in any self-employment, other than sporadic
9 third-party or self-employment; and

10 (B) have, as a result of the lack of third-party
11 employment or self-employment, an annual income less than the
12 poverty level for one person in the 48 contiguous states of the
13 United States as provided under the poverty guidelines published
14 from time to time by the United States Department of Health and
15 Human Services, or similar guidelines selected by the board;

16 (3) has had all member contributions required by this
17 Act made on the member's behalf;

18 (4) is not on indefinite suspension as described in
19 Subsection (d) [~~(e)~~] of this section; and

20 (5) has authorized the release to the board of all
21 medical records dated on or after the date of initial application
22 for employment with the department.

23 SECTION 8. Section 5.07(a), Chapter 824 (S.B. 817), Acts of
24 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
25 Vernon's Texas Civil Statutes), is amended to read as follows:

26 (a) The board shall require each disability retiree
27 retiring after August 29, 1979, to provide the board annually not

1 later than May 1 of each year with a true and complete copy of the
2 retiree's income tax return for the previous year, except for a
3 retiree who is 65 years of age or older as of December 31 of the
4 previous year.

5 SECTION 9. Section 5.09, Chapter 824 (S.B. 817), Acts of the
6 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
7 Texas Civil Statutes), is amended by amending Subsection (a) and
8 adding Subsection (a-1) to read as follows:

9 (a) At or before its regular meeting in the month of March,
10 the board annually shall review the Consumer's Price Index for All
11 Urban Consumers (CPI-U), U.S. City Average or the nearest
12 equivalent published by the United States Bureau of Labor
13 Statistics for the preceding calendar year. If that index shows an
14 increase during the preceding calendar year in the cost of living as
15 compared with that index at the close of the previous year, the
16 board shall order an increase of all service, disability, and death
17 benefit retirement annuities by a percentage that varies by the
18 date of the member's service or disability retirement, or, in the
19 case of a member who died before retirement, the date on which the
20 member died. If the member's service retirement, disability
21 retirement, or death before retirement occurred before August 30,
22 1971, the annuity shall be increased by a percentage equal to the
23 percentage increase in the cost of living index. If the member's
24 service retirement, disability retirement, or death before
25 retirement occurred on or after August 30, 1971, but before October
26 1, 1999 [~~1997~~], the annuity shall be increased as follows: if the
27 percentage increase in the cost of living index is eight percent or

1 less, the annuity shall be increased by a percentage equal to the
2 percentage increase, and if the percentage increase in the cost of
3 living index is more than eight percent, the annuity shall be
4 increased by eight percent plus a percentage equal to 75 percent of
5 the percentage increase that is more than eight percent. If the
6 member's service retirement, disability retirement, or death
7 before retirement occurred on or after October 1, 1999 [~~1997~~], the
8 annuity shall be increased by a percentage equal to 75 percent of
9 the percentage increase in the cost of living index. A percentage
10 increase in annuities shall be rounded to the nearest one-tenth
11 percentage point for a cost of living increase.

12 (a-1) The cost of living increases described by this section
13 do not apply to an annuity payable under Section 6.02(g-3) of this
14 Act until the annuity becomes effective.

15 SECTION 10. Section 6.02, Chapter 824 (S.B. 817), Acts of
16 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
17 Vernon's Texas Civil Statutes), is amended by amending Subsections
18 (d), (g), and (g-1) and adding Subsections (d-1), (d-2), and (g-3)
19 to read as follows:

20 (d) Subject to Subsection (d-2) of this section, if [~~If~~], at
21 the time a death benefit annuity becomes payable under Subsection
22 (a) or (c) of this section, the deceased member or retiree leaves a
23 surviving spouse and at least one dependent child, the board shall
24 award:

25 (1) 75 percent [~~one-half~~] of the annuity to the
26 surviving spouse; and

27 (2) 25 percent [~~one-half~~] of the annuity:

1 (A) to the dependent child, if there is only one;
2 or

3 (B) if there is more than one dependent child, in
4 equal shares to each child.

5 (d-1) The allocation of an annuity under Subsection (d) of
6 this section is effective as to all annuities payable by the fund as
7 of October 1, 2009, that are payable in part to a surviving spouse
8 and in part to one or more surviving children. This subsection
9 applies only to benefits payable by the fund after September 30,
10 2009, and does not affect benefits paid or payable by the fund
11 before October 1, 2009.

12 (d-2) If, at the time a death benefit annuity becomes
13 payable under Subsection (a) or (c) of this section, a deceased
14 member or retiree leaves a surviving spouse who is not entitled to
15 an annuity on the date of death under Subsection (g-1) of this
16 section and one or more dependent children, the dependent child or
17 children shall be awarded 100 percent of the death benefit annuity
18 until the annuity to the surviving spouse becomes effective under
19 Subsection (g-3) of this section.

20 (g) A child who is born after the date of retirement of the
21 member is not entitled to a death benefit annuity under this Act
22 unless the retiree was married to the other parent of the child on
23 the date of retirement. A surviving spouse of a retiree whose
24 status as a surviving spouse resulted from a marriage after the date
25 of the [~~who was not married to the retiree until after the~~
26 ~~retiree's~~] retirement of the retiree is entitled to receive only
27 the benefits, if any, provided under Subsection (g-1) of this

1 section or Section 6.08 of this Act.

2 (g-1) Subject to Subsection (g-3) of this section, a [A]
3 surviving spouse of a retiree whose status as a surviving spouse
4 resulted from a marriage [who was not married to the retiree until]
5 after the date of the [retiree's] retirement of the retiree is
6 entitled to receive the entire death benefit of a surviving spouse
7 in this section if the surviving spouse was married to the retiree
8 for a period of at least the five consecutive years preceding the
9 date of the retiree's death. A surviving spouse of a retiree whose
10 status as a surviving spouse resulted from a marriage after the date
11 of the [who was not married to the retiree until after the
12 retiree's] retirement of the retiree and was not married to the
13 retiree for a period of the five consecutive years preceding the
14 date of the retiree's death is entitled to receive only the
15 benefits, if any, provided under Section 6.08 of this Act. The
16 benefit provided by this subsection applies only with respect to a
17 retiree death that occurs on or after October 1, 2007.

18 (g-3) The death benefit to which a surviving spouse is
19 entitled under Subsection (g-1) of this section as a result of a
20 retiree's death that occurs on or after October 1, 2009, is payable
21 by the fund on the date of the retiree's death if the surviving
22 spouse is 55 years of age or older on the date of the retiree's
23 death. If the surviving spouse is not 55 years of age or older on the
24 date of the retiree's death, the annuity shall be payable by the
25 fund on the date the surviving spouse reaches age 55. A surviving
26 spouse who is not 55 years of age or older on the date of the
27 retiree's death is not entitled to benefits from the fund during the

1 period beginning on the date of the retiree's death and ending on
2 the date the surviving spouse reaches age 55.

3 SECTION 11. Section 6.06, Chapter 824 (S.B. 817), Acts of
4 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
5 Vernon's Texas Civil Statutes), is amended to read as follows:

6 Sec. 6.06. COMMON-LAW MARRIAGES. Common-law marriages are
7 not recognized under this Act and benefits may not be conferred on
8 common-law spouses as beneficiaries unless a declaration of
9 informal marriage was made and recorded under Sections 2.402 and
10 2.404 [~~Section 1.92~~], Family Code, and their [~~its~~] subsequent
11 amendments, or any successor statutes, before the member's death.

12 SECTION 12. Section 6.08(a), Chapter 824 (S.B. 817), Acts
13 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
14 Vernon's Texas Civil Statutes), is amended to read as follows:

15 (a) Except as provided by Subsection (b) of this section, a
16 surviving spouse of a retiree whose status as such resulted from any
17 marriage after the date of the retirement of the retiree and who has
18 been married to the retiree for a period of [~~at least the 2-1/2 but~~]
19 less than the five consecutive years preceding the date of the
20 retiree's death, is entitled to a lump-sum death benefit because of
21 the retiree's death in the amount of \$15,000 [~~\$2,500~~].

22 SECTION 13. Section 6.14(f), Chapter 824 (S.B. 817), Acts
23 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
24 Vernon's Texas Civil Statutes), is amended to read as follows:

25 (f) The surviving spouse must elect the number of months
26 used in computing the lump-sum payment. The number of months may
27 not exceed the lesser of:

1 (1) the number of months of service credit in excess of
2 20 years that the deceased member has on the date of death; or

3 (2) 60 [~~48~~] months.

4 SECTION 14. Section 4.01(c), Chapter 824 (S.B. 817), Acts
5 of the 73rd Legislature, Regular Session, 1993 (Article 6243o,
6 Vernon's Texas Civil Statutes), is repealed.

7 SECTION 15. This Act takes effect October 1, 2009.