

1-1 By: Wentworth S.B. No. 1628
1-2 (In the Senate - Filed March 10, 2009; March 20, 2009, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 14, 2009, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; April 14, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the pension retirement system in certain municipalities
1-9 for firefighters and police.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 1.02, Chapter 824 (S.B. 817), Acts of the
1-12 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
1-13 Texas Civil Statutes), is amended by adding Subdivisions (1-a),
1-14 (4-b), (4-c), (11-a), (12-b), and (12-c) and amending Subdivisions
1-15 (11) and (12-a) to read as follows:

1-16 (1-a) "Alternate payee" has the meaning assigned by
1-17 Section 804.001, Government Code, or any successor statute.

1-18 (4-b) "Class" means the trainee class of a fire
1-19 fighter or police officer training academy of a municipality to
1-20 which this Act applies from which a member graduated, as determined
1-21 by the board.

1-22 (4-c) "Class graduation date" means the date the
1-23 graduates of any class graduated, as determined by the board.

1-24 (11) "Member" means a fire fighter or police officer
1-25 who has become a member of the fund as provided by Section 4.01(a)
1-26 or 4.011 of this Act and has not retired, died, or forfeited the
1-27 person's interest in the fund.

1-28 (11-a) "Member buyback contribution amount" means the
1-29 amount of the first contribution by a member to the fund for a full
1-30 pay period, multiplied by 26, divided by 12, and multiplied by 3.

1-31 (12-a) "Probationary period" means the period
1-32 beginning on the graduation date of a graduate of a class and ending
1-33 on the date the graduate becomes a member.

1-34 (12-b) "Qualified funds" means pretax funds that are
1-35 part of an eligible rollover distribution, as described in Section
1-36 402(f)(2) of the code, or funds that have been transferred to the
1-37 fund in accordance with Section 403(b)(13) or Section 457(e)(17) of
1-38 the code to purchase years or fractions of years of service.

1-39 (12-c) "Qualified mayoral designee" means an
1-40 individual designated by the mayor of a municipality to which this
1-41 Act applies who is a member or former member of the city council of,
1-42 or an employee of, a municipality to which this Act applies.

1-43 SECTION 2. Subsection (c), Section 3.02, Chapter 824 (S.B.
1-44 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
1-45 6243o, Vernon's Texas Civil Statutes), is amended to read as
1-46 follows:

1-47 (c) Any contributing member of the fund who is in good
1-48 standing in the fire or police department may:

1-49 (1) appear in person or by attorney to contest the
1-50 application for membership participation in the fund or for an
1-51 annuity or benefit by any person claiming to be entitled to an
1-52 annuity or benefit, either as a member, ~~or~~ beneficiary, or
1-53 alternate payee; and

1-54 (2) offer supporting testimony.

1-55 SECTION 3. Subsections (c) and (d), Section 3.03, Chapter
1-56 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993
1-57 (Article 6243o, Vernon's Texas Civil Statutes), are amended to read
1-58 as follows:

1-59 (c) Each member, retiree, ~~and~~ beneficiary, and alternate
1-60 payee shall provide bank depository information to the board so
1-61 that the board can disburse benefits by electronic transfer.

1-62 (d) Except as provided by Section 802.1024, Government
1-63 Code, the board may reduce the amount of a benefit to which a
1-64 retiree, ~~or~~ beneficiary, or alternate payee is otherwise entitled
1-65 in order to reimburse the fund for an overpayment or incorrect
1-66 payment of benefits to the retiree, ~~or~~ beneficiary, or alternate

2-1 payee.

2-2 SECTION 4. Article 4, Chapter 824 (S.B. 817), Acts of the
2-3 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
2-4 Texas Civil Statutes), is amended by adding Section 4.011 to read as
2-5 follows:

2-6 Sec. 4.011. MEMBERSHIP OF FIRE CHIEF AND POLICE CHIEF.

2-7 (a) Subject to Subsection (d) of this section, not later than the
2-8 30th day after the date a fire chief or a police chief of a
2-9 municipality to which this Act applies assumes office, the fire
2-10 chief or police chief may make an irrevocable election to not become
2-11 a member of the fund.

2-12 (b) An election under this section must be made by
2-13 delivering written notice of the election to the secretary of the
2-14 board.

2-15 (c) A fire chief or police chief who does not make an
2-16 election under this section becomes a member of the fund.

2-17 (d) A fire chief or police chief who was a member of the fund
2-18 at any time during the two years preceding the date the fire chief
2-19 or police chief assumes office may not make an election under this
2-20 section.

2-21 SECTION 5. Section 5.01, Chapter 824 (S.B. 817), Acts of the
2-22 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
2-23 Texas Civil Statutes), is amended by amending Subsection (g) and
2-24 adding Subsections (k), (l), and (m) to read as follows:

2-25 (g) A member may not receive an award from the fund for
2-26 service retirement until the member has at least 20 years of service
2-27 in the fire or police department and has also contributed the
2-28 required amount of money for at least 20 years. In determining the
2-29 number of years of service in a department, the member shall be
2-30 given full credit for the period the member was an active member
2-31 plus the time the member was actively engaged in service with any
2-32 uniformed service in accordance with Section 4.03 of this Act and
2-33 for absences taken under the Family and Medical Leave Act of 1993
2-34 (29 U.S.C. Section 2601 et seq.), in accordance with Section 4.02 of
2-35 this Act. Disciplinary suspensions of 15 days or less may not be
2-36 subtracted from a member's service credit under this Act if the
2-37 member has paid into the fund, within 30 days after the later of the
2-38 termination date of each suspension or the exhaustion of any appeal
2-39 with respect to the suspension, a sum of money equal to the amount
2-40 of money that would have been deducted from that person's salary
2-41 during that period of suspension if it had not been for that
2-42 suspension. A municipality to which this Act applies shall
2-43 double-match a payment made under this subsection. Members of the
2-44 fund at the time of their retirement shall also receive service
2-45 credit for all unused sick leave accumulated by them under Chapter
2-46 143, Local Government Code, but only to the extent the unused sick
2-47 leave exceeds 90 days. Service credit for unused sick leave shall
2-48 be prorated based on each full month of sick leave. A member's
2-49 service credit under this section includes any service credit
2-50 purchased in accordance with Subsections (k)-(m) of this section.

2-51 (k) A member employed for a probationary period by a
2-52 municipality to which this Act applies may elect to purchase one
2-53 month of service credit for each full month in the member's
2-54 probationary period, up to a maximum of 10 months. For each month
2-55 of service credit the member elects to purchase, the member shall
2-56 pay to the fund, on or before September 30, 2010, an amount equal to
2-57 the sum of:

2-58 (1) the member buyback contribution amount for the
2-59 member; and

2-60 (2) interest on the amount determined under
2-61 Subdivision (1) of this subsection at the rate of eight percent per
2-62 annum, compounded annually, calculated for the period beginning on
2-63 the first day after the class graduation date for the member's class
2-64 and ending on the earlier of December 31, 2009, or the date the fund
2-65 receives the payment required under this subsection.

2-66 (l) A member may not elect to purchase a partial month of
2-67 service credit under Subsection (k) of this section. A member is
2-68 not required to elect to purchase more than one month of service
2-69 credit under Subsection (k) of this section. A member may make the
2-70 payment required under Subsection (k) of this section only with
2-71 qualified funds. A member must make an election under Subsection

3-1 (k) of this section on or before December 31, 2009, in accordance
 3-2 with policies and procedures adopted by the board.

3-3 (m) An election under Subsection (k) of this section is void
 3-4 unless the member makes the full required payment before the
 3-5 earlier of the date of the member's retirement or the date of the
 3-6 member's death. If a member makes only partial payment before the
 3-7 earlier of the date of the member's retirement or the date of the
 3-8 member's death, the fund shall refund all payments received,
 3-9 without interest, to the member, if the member is alive, or to the
 3-10 member's estate, if the member is dead. The fund shall refund
 3-11 payment under this subsection not later than the 60th day after the
 3-12 date of the member's retirement or the date of the member's death,
 3-13 as applicable.

3-14 SECTION 6. Subsection (b), Section 5.015, Chapter 824 (S.B.
 3-15 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
 3-16 6243o, Vernon's Texas Civil Statutes), is amended to read as
 3-17 follows:

3-18 (b) The Back DROP election:
 3-19 (1) results in a lump-sum payment for a number of full
 3-20 months of service elected by the member that does not exceed the
 3-21 lesser of the number of months of service credit the member has in
 3-22 excess of 20 years or 60 [~~48~~] months;
 3-23 (2) is available only to a member who takes a service
 3-24 retirement; and
 3-25 (3) must be made at the time of application for
 3-26 retirement.

3-27 SECTION 7. Subsection (a-1), Section 5.03, Chapter 824
 3-28 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993
 3-29 (Article 6243o, Vernon's Texas Civil Statutes), is amended to read
 3-30 as follows:

3-31 (a-1) An active member of the fund is eligible to retire and
 3-32 receive a catastrophic injury disability retirement annuity if the
 3-33 member:

3-34 (1) makes a written application for catastrophic
 3-35 injury disability retirement with the board;

3-36 (2) is permanently so disabled as a result of a
 3-37 catastrophic injury as to:

3-38 (A) be unable to secure any type of third-party
 3-39 employment, or engage in any self-employment, other than sporadic
 3-40 third-party or self-employment; and

3-41 (B) have, as a result of the lack of third-party
 3-42 employment or self-employment, an annual income less than the
 3-43 poverty level for one person in the 48 contiguous states of the
 3-44 United States as provided under the poverty guidelines published
 3-45 from time to time by the United States Department of Health and
 3-46 Human Services, or similar guidelines selected by the board;

3-47 (3) has had all member contributions required by this
 3-48 Act made on the member's behalf;

3-49 (4) is not on indefinite suspension as described in
 3-50 Subsection (d) [~~(e)~~] of this section; and

3-51 (5) has authorized the release to the board of all
 3-52 medical records dated on or after the date of initial application
 3-53 for employment with the department.

3-54 SECTION 8. Subsection (a), Section 5.07, Chapter 824 (S.B.
 3-55 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
 3-56 6243o, Vernon's Texas Civil Statutes), is amended to read as
 3-57 follows:

3-58 (a) The board shall require each disability retiree
 3-59 retiring after August 29, 1979, to provide the board annually not
 3-60 later than May 1 of each year with a true and complete copy of the
 3-61 retiree's income tax return for the previous year, except for a
 3-62 retiree who is 65 years of age or older as of December 31 of the
 3-63 previous year.

3-64 SECTION 9. Section 5.09, Chapter 824 (S.B. 817), Acts of the
 3-65 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's
 3-66 Texas Civil Statutes), is amended by amending Subsection (a) and
 3-67 adding Subsection (a-1) to read as follows:

3-68 (a) At or before its regular meeting in the month of March,
 3-69 the board annually shall review the Consumer's Price Index for All
 3-70 Urban Consumers (CPI-U), U.S. City Average or the nearest
 3-71 equivalent published by the United States Bureau of Labor

4-1 Statistics for the preceding calendar year. If that index shows an
 4-2 increase during the preceding calendar year in the cost of living as
 4-3 compared with that index at the close of the previous year, the
 4-4 board shall order an increase of all service, disability, and death
 4-5 benefit retirement annuities by a percentage that varies by the
 4-6 date of the member's service or disability retirement, or, in the
 4-7 case of a member who died before retirement, the date on which the
 4-8 member died. If the member's service retirement, disability
 4-9 retirement, or death before retirement occurred before August 30,
 4-10 1971, the annuity shall be increased by a percentage equal to the
 4-11 percentage increase in the cost of living index. If the member's
 4-12 service retirement, disability retirement, or death before
 4-13 retirement occurred on or after August 30, 1971, but before October
 4-14 1, 1999 [~~1997~~], the annuity shall be increased as follows: if the
 4-15 percentage increase in the cost of living index is eight percent or
 4-16 less, the annuity shall be increased by a percentage equal to the
 4-17 percentage increase, and if the percentage increase in the cost of
 4-18 living index is more than eight percent, the annuity shall be
 4-19 increased by eight percent plus a percentage equal to 75 percent of
 4-20 the percentage increase that is more than eight percent. If the
 4-21 member's service retirement, disability retirement, or death
 4-22 before retirement occurred on or after October 1, 1999 [~~1997~~], the
 4-23 annuity shall be increased by a percentage equal to 75 percent of
 4-24 the percentage increase in the cost of living index. A percentage
 4-25 increase in annuities shall be rounded to the nearest one-tenth
 4-26 percentage point for a cost of living increase.

4-27 (a-1) The cost of living increases described by this section
 4-28 do not apply to an annuity payable under Section 6.02(g-3) of this
 4-29 Act until the annuity becomes effective.

4-30 SECTION 10. Section 6.02, Chapter 824 (S.B. 817), Acts of
 4-31 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 4-32 Vernon's Texas Civil Statutes), is amended by amending Subsections
 4-33 (d), (g), and (g-1) and adding Subsections (d-1), (d-2), and (g-3)
 4-34 to read as follows:

4-35 (d) Subject to Subsection (d-2) of this section, if [~~If~~], at
 4-36 the time a death benefit annuity becomes payable under Subsection
 4-37 (a) or (c) of this section, the deceased member or retiree leaves a
 4-38 surviving spouse and at least one dependent child, the board shall
 4-39 award:

4-40 (1) 75 percent [~~one-half~~] of the annuity to the
 4-41 surviving spouse; and

4-42 (2) 25 percent [~~one-half~~] of the annuity:

4-43 (A) to the dependent child, if there is only one;

4-44 or

4-45 (B) if there is more than one dependent child, in
 4-46 equal shares to each child.

4-47 (d-1) The allocation of an annuity under Subsection (d) of
 4-48 this section is effective as to all annuities payable by the fund as
 4-49 of October 1, 2009, that are payable in part to a surviving spouse
 4-50 and in part to one or more surviving children. This subsection
 4-51 applies only to benefits payable by the fund after September 30,
 4-52 2009, and does not affect benefits paid or payable by the fund
 4-53 before October 1, 2009.

4-54 (d-2) If, at the time a death benefit annuity becomes
 4-55 payable under Subsection (a) or (c) of this section, a deceased
 4-56 member or retiree leaves a surviving spouse who is not entitled to
 4-57 an annuity on the date of death under Subsection (g-1) of this
 4-58 section and one or more dependent children, the dependent child or
 4-59 children shall be awarded 100 percent of the death benefit annuity
 4-60 until the annuity to the surviving spouse becomes effective under
 4-61 Subsection (g-3) of this section.

4-62 (g) A child who is born after the date of retirement of the
 4-63 member is not entitled to a death benefit annuity under this Act
 4-64 unless the retiree was married to the other parent of the child on
 4-65 the date of retirement. A surviving spouse of a retiree whose
 4-66 status as a surviving spouse resulted from a marriage after the date
 4-67 of the [~~who was not married to the retiree until after the~~
 4-68 retiree's] retirement of the retiree is entitled to receive only
 4-69 the benefits, if any, provided under Subsection (g-1) of this
 4-70 section or Section 6.08 of this Act.

4-71 (g-1) Subject to Subsection (g-3) of this section, a [A]

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

5-16 (g-3) The death benefit to which a surviving spouse is
 5-17 entitled under Subsection (g-1) of this section as a result of a
 5-18 retiree's death that occurs on or after October 1, 2009, is payable
 5-19 by the fund on the date of the retiree's death if the surviving
 5-20 spouse is 55 years of age or older on the date of the retiree's
 5-21 death. If the surviving spouse is not 55 years of age or older on
 5-22 the date of the retiree's death, the annuity shall be payable by the
 5-23 fund on the date the surviving spouse reaches age 55. A surviving
 5-24 spouse who is not 55 years of age or older on the date of the
 5-25 retiree's death is not entitled to benefits from the fund during the
 5-26 period beginning on the date of the retiree's death and ending on
 5-27 the date the surviving spouse reaches age 55.

5-28 SECTION 11. Section 6.06, Chapter 824 (S.B. 817), Acts of
 5-29 the 73rd Legislature, Regular Session, 1993 (Article 6243o,
 5-30 Vernon's Texas Civil Statutes), is amended to read as follows:

5-31 Sec. 6.06. COMMON-LAW MARRIAGES. Common-law marriages are
 5-32 not recognized under this Act and benefits may not be conferred on
 5-33 common-law spouses as beneficiaries unless a declaration of
 5-34 informal marriage was made and recorded under Sections 2.402 and
 5-35 2.404 [~~Section 1.92~~], Family Code, and their [~~its~~] subsequent
 5-36 amendments, or any successor statutes, before the member's death.

5-37 SECTION 12. Subsection (a), Section 6.08, Chapter 824 (S.B.
 5-38 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
 5-39 6243o, Vernon's Texas Civil Statutes), is amended to read as
 5-40 follows:

5-41 (a) Except as provided by Subsection (b) of this section, a
 5-42 surviving spouse of a retiree whose status as such resulted from any
 5-43 marriage after the date of the retirement of the retiree and who has
 5-44 been married to the retiree for a period of [~~at least the 2-1/2 but~~]
 5-45 less than the five consecutive years preceding the date of the
 5-46 retiree's death, is entitled to a lump-sum death benefit because of
 5-47 the retiree's death in the amount of \$15,000 [~~\$2,500~~].

5-48 SECTION 13. Subsection (f), Section 6.14, Chapter 824 (S.B.
 5-49 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
 5-50 6243o, Vernon's Texas Civil Statutes), is amended to read as
 5-51 follows:

5-52 (f) The surviving spouse must elect the number of months
 5-53 used in computing the lump-sum payment. The number of months may
 5-54 not exceed the lesser of:

5-55 (1) the number of months of service credit in excess of
 5-56 20 years that the deceased member has on the date of death; or

5-57 (2) 60 [~~48~~] months.

5-58 SECTION 14. Subsection (c), Section 4.01, Chapter 824 (S.B.
 5-59 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article
 5-60 6243o, Vernon's Texas Civil Statutes), is repealed.

5-61 SECTION 15. This Act takes effect October 1, 2009.

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