

By: Martinez

H.B. No. 3292

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the continuation of the office of the fire fighters'  
3 pension commissioner and the administration of the Texas emergency  
4 services retirement system and the Texas local firefighters  
5 retirement systems.

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

7 ARTICLE 1. AMENDMENTS TO CHAPTER 865, GOVERNMENT CODE

8 SECTION 1.01. Section 865.002, Government Code, is amended  
9 by adding Subsections (c), (d), and (e) to read as follows:

10 (c) A person may not be a trustee or an employee of the  
11 pension system employed in a "bona fide executive, administrative,  
12 or professional capacity," as that phrase is used for purposes of  
13 establishing an exemption to the overtime provisions of the federal  
14 Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.),  
15 if:

16 (1) the person is an officer, employee, or paid  
17 consultant of a Texas trade association in the field of investment  
18 or insurance; or

19 (2) the person's spouse is an officer, manager, or paid  
20 consultant of a Texas trade association in the field of investment  
21 or insurance.

22 (d) In this section, a Texas trade association means a  
23 cooperative and voluntarily joined statewide association of  
24 business or professional competitors in this state designed to

1 assist its members and its industry or profession in dealing with  
2 mutual business or professional problems and in promoting their  
3 common interest.

4 (e) A person may not serve as a trustee or act as the general  
5 counsel to the state board or the pension system if the person is  
6 required to register as a lobbyist under Chapter 305 because of the  
7 person's activities for compensation on behalf of a business or an  
8 association related to the operation of the state board.

9 SECTION 1.02. Chapter 865, Government Code, is amended by  
10 adding Section 865.0035 to read as follows:

11 Sec. 865.0035. STATE BOARD MEMBER TRAINING. (a) A person  
12 who is appointed to and qualifies for office as a member of the  
13 state board may not vote, deliberate, or be counted as a member in  
14 attendance at a meeting of the state board until the person  
15 completes a training program that complies with this section.

16 (b) A training program must provide the person with  
17 information regarding:

18 (1) this subtitle;

19 (2) the programs, functions, rules, and budget of the  
20 pension system;

21 (3) the results of the most recent formal audit of the  
22 system;

23 (4) the requirements of laws relating to open  
24 meetings, public information, administrative procedure, and  
25 conflicts of interest; and

26 (5) any applicable ethics policies adopted by the  
27 system or the Texas Ethics Commission.

1        (c) A person appointed to the state board is entitled to  
2 reimbursement, as provided by the General Appropriations Act, for  
3 the travel expenses incurred in attending the training program  
4 regardless of whether the attendance at the program occurs before  
5 or after the person qualifies for office.

6        ARTICLE 2. AMENDMENTS TO TEXAS LOCAL FIRE FIGHTERS RETIREMENT ACT

7        SECTION 2.01. Section 2, Texas Local Fire Fighters  
8 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
9 amended by amending Subdivision (1) and adding Subdivisions (1-a)  
10 and (1-b) to read as follows:

11        (1) "Commissioner" means the fire fighters' pension  
12 commissioner appointed under Section 21 of this Act.

13        (1-a) "Compensation" includes amounts of workers'  
14 compensation benefits that are received by an employee and by which  
15 the employee's salary is reduced.

16        (1-b) "Contribution" means an amount of money paid by  
17 a municipality or other political subdivision to a retirement  
18 system or required to be paid periodically to a retirement system by  
19 or on behalf of a member of the retirement system for the purpose of  
20 financing benefits payable by the system.

21        SECTION 2.02. Section 2(10), Texas Local Fire Fighters  
22 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
23 redesignated as Section 2(1-c), Texas Local Fire Fighters  
24 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), to  
25 read as follows:

26        (1-c) [~~(10)~~] "Determination date" means:

27        (A) the day before the effective date of an

1 addition or change adopted by the board of trustees of a retirement  
2 system under Section 7 of this Act; or

3 (B) the date of divorce for a member or retiree  
4 whose benefits under this Act are subject to a qualified domestic  
5 relations order.

6 SECTION 2.03. Section 18(g), Texas Local Fire Fighters  
7 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
8 amended to read as follows:

9 (g) A board of trustees established under this Act shall,  
10 not later than February 28 of each year, file with the [~~fire~~  
11 ~~fighters' pension~~] commissioner a detailed and itemized report of  
12 all receipts and disbursements with respect to its fund during the  
13 fund's preceding fiscal year, together with a list of the members of  
14 the board. A board shall file such additional information as is  
15 required or requested from time to time by the [~~fire fighters'~~  
16 ~~pension~~] commissioner.

17 SECTION 2.04. Section 18A, Texas Local Fire Fighters  
18 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
19 amended to read as follows:

20 Sec. 18A. ENFORCEMENT OF ACT. (a) If a board of trustees  
21 fails or refuses to comply with an applicable requirement of this  
22 Act, the [~~fire fighters' pension~~] commissioner may issue a subpoena  
23 addressed to a sheriff or constable to require the production of  
24 books, records, or other documents that may be necessary to provide  
25 or determine compliance.

26 (b) The attorney general shall represent the [~~fire~~  
27 ~~fighters' pension~~] commissioner in the enforcement of this Act and

1 may file an appropriate pleading or action in a district court in  
2 Travis County to enforce a subpoena or secure a writ of mandamus to  
3 compel compliance with this Act.

4 SECTION 2.05. Section 21, Texas Local Fire Fighters  
5 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
6 amended to read as follows:

7 Sec. 21. [~~FIRE FIGHTERS' PENSION~~] COMMISSIONER. (a) The  
8 governor shall appoint, with the advice and consent of the senate, a  
9 [~~fire fighters' pension~~] commissioner from lists, each containing  
10 not fewer than three nor more than 10 nominees, that are submitted  
11 by the State Firemen's and Fire Marshals' Association of Texas and  
12 the Texas State Association of Fire Fighters.

13 (b) A person is not eligible for appointment as the [~~fire~~  
14 ~~fighters' pension~~] commissioner if the person or the person's  
15 spouse:

16 (1) is employed by or participates in the management  
17 of a business entity or other organization regulated by or  
18 receiving money from the office of the commissioner;

19 (2) owns or controls, directly or indirectly, more  
20 than a 10 percent interest in a business entity or other  
21 organization regulated by or receiving money from the office of the  
22 commissioner; or

23 (3) uses or receives a substantial amount of tangible  
24 goods, services, or money from the office of the commissioner other  
25 than compensation or reimbursement authorized by law for the [~~fire~~  
26 ~~fighters' pension~~] commissioner.

27 (c) Appointment of the [~~fire fighters' pension~~]

1 commissioner shall be made without regard to the race, color,  
2 disability, sex, religion, age, or national origin of the  
3 appointee.

4 (d) The [~~fire fighters' pension~~] commissioner serves a term  
5 of six [~~four~~] years.

6 (e) The office of the [~~fire fighters' pension~~] commissioner  
7 shall be located in Austin.

8 (g) The [~~fire fighters' pension~~] commissioner is entitled  
9 to reimbursement by the state for actual and necessary expenses  
10 incurred in performing functions of the office.

11 (h) The office of the [~~fire fighters' pension~~] commissioner  
12 is subject to Chapter 325, Government Code (Texas Sunset Act).  
13 Unless continued in existence as provided by that chapter, the  
14 office is abolished September 1, 2025 [~~2013~~].

15 (i) Any reference in law to the firemen's pension  
16 commissioner means the [~~fire fighters' pension~~] commissioner  
17 provided by this section.

18 (j) The [~~fire fighters' pension~~] commissioner may conduct  
19 seminars or workshops for persons interested in issues pertaining  
20 to retirement systems under this Act. The commissioner may impose  
21 and collect a fee for attendance at a seminar or workshop in an  
22 amount that, in the aggregate, does not exceed the estimated costs  
23 of preparing for and conducting the seminar or workshop. Fees  
24 collected under this subsection shall be remitted to the  
25 comptroller of public accounts for deposit in an account in the  
26 general revenue fund to be known as the fire fighters' pension  
27 commissioner account. Amounts in the account may be appropriated

1 only to the commissioner for the payment of administrative  
2 expenses.

3 (k) A person may not serve as the [~~fire fighters' pension~~]  
4 commissioner or act as the general counsel to the commissioner [~~or~~  
5 ~~to the office of the fire fighters' pension commissioner~~] if the  
6 person is required to register as a lobbyist under Chapter 305,  
7 Government Code, because of the person's activities for  
8 compensation on behalf of a profession related to the operation of  
9 the office of the [~~fire fighters' pension~~] commissioner.

10 SECTION 2.06. Section 21A, Texas Local Fire Fighters  
11 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
12 amended by amending Subsections (a), (b), (c), (f), (g), (h),  
13 (h-1), (i), and (j) and adding Subsection (k) to read as follows:

14 (a) The [~~fire fighters' pension~~] commissioner shall provide  
15 to the commissioner's employees [~~and to the state board of trustees~~  
16 ~~of the Fire Fighters' Relief and Retirement Fund established under~~  
17 ~~the Texas Statewide Volunteer Fire Fighters Retirement Act (Article~~  
18 ~~6243e.3, Vernon's Texas Civil Statutes)], as often as necessary,  
19 information regarding the employees' [~~their~~] qualifications for  
20 [~~office or~~] employment and [~~their~~] responsibilities under  
21 applicable laws relating to standards of conduct for state  
22 [~~officers or~~] employees.~~

23 (b) The [~~fire fighters' pension~~] commissioner or the  
24 commissioner's designee shall develop a system of annual  
25 performance evaluations. All merit pay for employees of the  
26 commissioner must be based on the system established under this  
27 subsection.

1           (c) The [~~fire fighters' pension~~] commissioner or the  
2 commissioner's designee shall prepare and maintain a written policy  
3 statement that implements a program of equal employment opportunity  
4 to ensure that all personnel decisions are made without regard to  
5 race, color, disability, sex, religion, age, or national origin.  
6 The policy statement must include:

7           (1) personnel policies, including policies relating  
8 to recruitment, evaluation, selection, training, and promotion of  
9 personnel, that show the intent of the [~~office of the fire fighters'  
10 pension~~] commissioner to avoid the unlawful employment practices  
11 described by Chapter 21, Labor Code; and

12           (2) an analysis of the extent to which the composition  
13 of the [~~office's~~] personnel of the commissioner's office is in  
14 accordance with state and federal law and a description of  
15 reasonable methods to achieve compliance with state and federal  
16 law.

17           (f) The [~~fire fighters' pension~~] commissioner shall hear  
18 appeals as provided by this Act and may examine the records and  
19 accounts of boards of trustees established under this Act and adopt  
20 rules and prescribe forms for the administration of this Act and  
21 shall classify and coordinate the reports of the various boards of  
22 trustees and shall verify any and all applications of the boards of  
23 trustees.

24           (g) The [~~fire fighters' pension~~] commissioner shall file  
25 annually with the governor and the presiding officer of each house  
26 of the legislature a complete and detailed written report  
27 accounting for all funds received and disbursed by the commissioner



1 during the preceding fiscal year, other than funds of the Texas  
2 emergency services retirement fund [~~Fire Fighters' Relief and~~  
3 ~~Retirement Fund~~] established under Section 865.009, Government  
4 Code [~~the Texas Statewide Volunteer Fire Fighters Retirement Act~~  
5 ~~(Article 6243e.3, Vernon's Texas Civil Statutes)~~]. The annual  
6 report must be in the form and reported in the time provided by the  
7 General Appropriations Act.

8 (h) The office of the [~~fire fighters' pension~~] commissioner  
9 shall maintain a file on each written complaint filed with the  
10 office. The file must include:

- 11 (1) the name of the person who filed the complaint;
- 12 (2) the date the complaint is received by the office;
- 13 (3) the subject matter of the complaint;
- 14 (4) the name of each person contacted in relation to  
15 the complaint;
- 16 (5) a summary of the results of the review or  
17 investigation of the complaint; and
- 18 (6) an explanation of the reason the file was closed,  
19 if the office closed the file without taking action other than to  
20 investigate the complaint.

21 (h-1) The [~~fire fighters' pension~~] commissioner shall  
22 prepare and maintain a written plan that describes how a person who  
23 does not speak English or who has a physical, mental, or  
24 developmental disability can be provided reasonable access to the  
25 programs administered by the commissioner.

26 (i) The [~~office of the fire fighters' pension~~] commissioner  
27 shall provide to the person filing the complaint and to each person

1 who is a subject of the complaint a copy of the commissioner's  
2 ~~[office's]~~ policies and procedures relating to complaint  
3 investigation and resolution.

4 (j) The ~~[office of the fire fighters' pension]~~  
5 commissioner, at least quarterly until final disposition of the  
6 complaint, shall notify the person filing the complaint and each  
7 person who is a subject of the complaint of the status of the  
8 investigation unless the notice would jeopardize an undercover  
9 investigation.

10 (k) The commissioner may accept on behalf of the  
11 commissioner's office gifts of money or other property from any  
12 public or private source.

13 SECTION 2.07. Section 22, Texas Local Fire Fighters  
14 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
15 amended to read as follows:

16 Sec. 22. APPEALS FROM LOCAL BOARD DECISIONS. (a) A person  
17 aggrieved by a decision of a board of trustees relating to  
18 eligibility for or amount of benefits payable by a retirement  
19 system may appeal the decision to the ~~[fire fighters' pension]~~  
20 commissioner.

21 (b) An appeal under this section is begun by delivering a  
22 notice of appeal with the chairman, secretary, or  
23 secretary-treasurer of the board of trustees that made the  
24 decision. The notice must be delivered not later than the 20th day  
25 after the date of the decision and contain a brief description of  
26 the reasons or grounds for appeal. The aggrieved person must file a  
27 copy of the notice with the ~~[fire fighters' pension]~~ commissioner.

1 (c) An appeal under this section to the [~~fire fighters'~~  
2 ~~pension~~] commissioner is held in Austin and is a contested case  
3 under Chapter 2001, Government Code, [~~the Administrative Procedure~~  
4 ~~and Texas Register Act (Article 6252-13a, Vernon's Texas Civil~~  
5 ~~Statutes)~~] conducted as a de novo hearing by the State Office of  
6 Administrative Hearings.

7 (d) After a hearing under Subsection (c) of this section,  
8 the commissioner shall decide each appeal from a board of trustees'  
9 decision, issue a written opinion, and notify the board of trustees  
10 and the claimant if the commissioner overrules the board of  
11 trustees' decision.

12 SECTION 2.08. Section 22A, Texas Local Fire Fighters  
13 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
14 amended to read as follows:

15 Sec. 22A. ATTORNEY. A board of trustees may employ an  
16 attorney to represent the board in one or all legal matters,  
17 including a hearing on appeal to the [~~fire fighters' pension~~]  
18 commissioner. At the request of a board of trustees, the city  
19 attorney of the municipality of which the board is a part shall,  
20 without additional compensation, represent the board in one or all  
21 legal matters.

22 SECTION 2.09. Section 26, Texas Local Fire Fighters  
23 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
24 amended to read as follows:

25 Sec. 26. GIFTS ACCEPTED FROM ANY SOURCE. The commissioner  
26 or the board of trustees of a retirement system established under  
27 this Act is authorized to accept and receive for the use and benefit

1 of the fund, in addition to member contributions and contributions  
2 of the municipality or other political subdivision, gifts of money  
3 from any source.

4 SECTION 2.10. Section 27(d), Texas Local Fire Fighters  
5 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
6 amended to read as follows:

7 (d) A board of trustees established under this Act shall  
8 adopt formal investment policies that emphasize safety and  
9 diversity as well as liquidity for benefit payments. In developing  
10 those policies, the board of trustees shall give special  
11 consideration to the preferred investment practices of the  
12 Government Finance [~~Financial~~] Officers Association. Not later  
13 than December 31 of each year, the board of trustees shall submit to  
14 the [~~fire fighters' pension~~] commissioner a copy of the investment  
15 policies adopted by the board.

16 SECTION 2.11. Sections 30(b) and (c), Texas Local Fire  
17 Fighters Retirement Act (Article 6243e, Vernon's Texas Civil  
18 Statutes), are amended to read as follows:

19 (b) Contributions picked up as provided by this section  
20 shall be treated as employer contributions in determining tax  
21 treatment of the amounts under the Internal Revenue Code of 1986.  
22 Each municipality or other political subdivision picking up  
23 contributions shall continue, however, to compute federal income  
24 tax withholding as if these contributions were employee wages until  
25 the first payroll period that begins after the date the [~~fire~~  
26 ~~fighters' pension~~] commissioner files with the secretary of state a  
27 notice stating that the United States Internal Revenue Service has

1 determined or a federal court has ruled that under Section 414(h),  
2 Internal Revenue Code of 1986 [~~26 U.S.C. Section 414(h)~~], the  
3 contributions are not includable in the gross income of a member  
4 until they are distributed or made available. Employee  
5 contributions picked up as provided by this section shall be  
6 deposited to the credit of the individual account of each affected  
7 member and shall be treated for all other purposes of this Act as if  
8 the contributions had been deducted from the compensation of  
9 members. Picked up contributions are not includable in a  
10 computation of contribution rates of the municipality or other  
11 political subdivision.

12 (c) A pick up of employee contributions takes effect in a  
13 municipality or other political subdivision on January 1 of the  
14 year following the year in which:

15 (1) the governing body of the municipality or other  
16 political subdivision by ordinance has adopted the pick up;

17 (2) the pick up has been approved by majority vote of  
18 the participating members of the retirement system at an election  
19 by secret ballot at which at least 50 percent of the participating  
20 members vote; and

21 (3) the [~~fire fighters' pension~~] commissioner has  
22 filed with the secretary of state a notice stating that the United  
23 States Internal Revenue Service has issued a determination that the  
24 plan covering employees of the municipality or other political  
25 subdivision is a qualified retirement plan under Section 401(a),  
26 Internal Revenue Code of 1986 [~~26 U.S.C. Section 401(a)~~], and  
27 that its related trust is tax exempt under Section 501(a) of that

1 code [~~(26 U.S.C. Section 501(a))~~].

2 SECTION 2.12. Sections 31(b) and (c), Texas Local Fire  
3 Fighters Retirement Act (Article 6243e, Vernon's Texas Civil  
4 Statutes), are amended to read as follows:

5 (b) The board of trustees of a retirement system for a fire  
6 department consisting partly of employees and partly of volunteers  
7 may transfer assets actuarially attributable to the volunteers from  
8 the retirement system under this Act to the Texas Emergency  
9 Services Retirement System under Subtitle H, Title 8, Government  
10 Code [~~statewide program provided by the Texas Statewide Volunteer~~  
11 ~~Fire Fighters Retirement Act (Article 6243e.3, Vernon's Texas Civil~~  
12 ~~Statutes)~~], if the board obtains approval as provided by Section 7  
13 of this Act provided 51 percent of the volunteers first petition the  
14 board for such change.

15 (c) The [~~fire fighters' pension~~] commissioner shall  
16 determine whether retirement systems for fire departments  
17 consisting exclusively of volunteers are inactive, for purposes of  
18 this Act, because of the infrequency of their submission of  
19 contributions and reports required by this Act or other law. The  
20 commissioner shall, not later than June 1, 1992, notify the boards  
21 of trustees of retirement systems determined inactive under this  
22 subsection of that determination. This Act does not apply after  
23 December 31, 1992, to a retirement system determined inactive under  
24 this subsection unless before that date, the retirement system has  
25 completed an actuarial study of the retirement system and agreed to  
26 provide financing to the retirement system determined by the  
27 actuary to be sufficient to finance an actuarially sound system.

1 ~~[The board of trustees of an inactive retirement system may, in lieu~~  
2 ~~of agreeing to actuarially sound financing, elect to transfer the~~  
3 ~~assets of the retirement system to the statewide program provided~~  
4 ~~by the Texas Statewide Volunteer Fire Fighters Retirement Act~~  
5 ~~(Article 6243e.3, Vernon's Texas Civil Statutes).]~~

6 SECTION 2.13. Section 32(a), Texas Local Fire Fighters  
7 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
8 amended to read as follows:

9 (a) Information contained in records that are in the custody  
10 of a retirement system established under this Act concerning an  
11 individual member, retiree, annuitant, or beneficiary is  
12 confidential under Section 552.101, Government Code ~~[3(a)(1),~~  
13 ~~Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973~~  
14 ~~(Article 6252-17a, Vernon's Texas Civil Statutes)]~~, and may not be  
15 disclosed in a form identifiable with a specific individual unless:

16 (1) the information is disclosed to:

17 (A) the individual;

18 (B) the individual's attorney, guardian,  
19 executor, administrator, conservator, or other person who the board  
20 of trustees of the retirement system determines is acting in the  
21 interest of the individual or the individual's estate;

22 (C) a spouse or former spouse of the individual  
23 if the board of trustees determines that the information is  
24 relevant to the spouse's or former spouse's interest in member  
25 accounts, benefits, or other amounts payable by the retirement  
26 system; or

27 (D) a person authorized by the individual in

1 writing to receive the information; or

2 (2) the information is disclosed under an  
3 authorization of the board of trustees that specifies the reason  
4 for the disclosure.

5 SECTION 2.14. Section 2(9), Texas Local Fire Fighters  
6 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is  
7 repealed.

8 ARTICLE 3. EFFECTIVE DATE

9 SECTION 3.01. This Act takes effect immediately if it  
10 receives a vote of two-thirds of all the members elected to each  
11 house, as provided by Section 39, Article III, Texas Constitution.  
12 If this Act does not receive the vote necessary for immediate  
13 effect, this Act takes effect September 1, 2013.