By:  Flynn, et al. (Senate Sponsor - Taylor) H.B. No. 2763

(In the Senate - Received from the House May 2, 2019; May 3, 2019, read first time and referred to Committee on State Affairs; May 15, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; May 15, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Huffman         X

Hughes          X

Birdwell        X

Creighton       X

Fallon          X

Hall            X

Lucio           X

Nelson          X

Zaffirini       X

COMMITTEE SUBSTITUTE FOR H.B. No. 2763 By:  Zaffirini

A BILL TO BE ENTITLED

AN ACT

relating to the police pension fund in certain municipalities.

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

SECTION 1.  Section 1.04, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), is amended by adding Subdivisions (1-a), (1-b), (6-a), (8), (9), and (10) to read as follows:

(1-a)  "Actuarial experience study" has the meaning assigned by Section 802.1014, Government Code.

(1-b)  "Actuarially determined contribution rate" means the contribution rate, expressed as a percentage of payroll or compensation, actuarially determined necessary to:

(A)  fund the normal cost of the pension fund, the costs of administering the fund, and the unfunded actuarial amortization amount of the fund for the current plan year; and

(B)  maintain a closed amortization period that does not exceed 30 years.

(6-a)  "Normal cost" means the actuarially determined amount necessary to fully fund accrued pension benefits under the pension fund allocated to the current plan year.

(8)  "Plan year" means the 12-month period beginning January 1 and ending on the following December 31.

(9)  "Trustee" means a member of the board of trustees.

(10)  "Unfunded actuarial amortization amount" means the actuarially determined amount required to pay off the fund's unfunded actuarial accrued liability layers over a closed 30-year amortization period. The initial layer is equal to the unfunded actuarial accrued liability of the fund in the plan year beginning January 1, 2019. For each subsequent plan year, the unfunded actuarial accrued liability layer is equal to the unanticipated change in the unfunded actuarial accrued liability of the fund in that plan year over the expected unfunded actuarial accrued liability included in the preceding plan year's actuarial valuation.

SECTION 2.  Sections 2.01 and 2.02, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.01.  BOARD OF TRUSTEES. A board of trustees of the police pension fund is created, in which is vested the general administration, management, and responsibility for the proper and effective operation of the fund. [~~The board shall be organized immediately after the members have qualified and taken the oath of office.~~] The board has all necessary powers to discharge the board's duties, including the authority to adopt necessary rules for the administration of the fund and to correct any defect, supply any omission, and reconcile any inconsistency that may appear in this Act in a manner and to the extent that the board considers expedient for the administration of this Act for the greatest benefit of all members of the fund.

Sec. 2.02.  COMPOSITION OF BOARD. (a) The board of trustees of the fund is composed of eight trustees [~~seven members~~] as follows:

(1)  the president of the municipality's police association or the president's designee, to serve during the president's term of office[~~, except as provided by Subsection (b) of this section~~];

(2)  two trustees [~~one municipal financial staff employee~~] designated by the city manager, to serve at the pleasure of the city manager;

(3)  two trustees [~~one legally qualified voter~~] designated by the [~~mayor, to serve a two-year term;~~

[~~(4)  one legally qualified voter designated by the~~] city council, each to serve a staggered three-year [~~two-year~~] term; and

(4)  three trustees [~~(5)  three members of the fund~~] elected by the members of the fund, each to serve a staggered three-year term.

(b)  [~~If the president of the municipality's police association is prevented by the constitution or bylaws of the association from serving as a member of the board of trustees or if the president is not a member of the fund, the member of the fund who holds the next highest ranking office in the association serves on the board in place of the president of the association for the term of the officer's office in the association.~~

[~~(c)~~]  A trustee [~~member of the board of trustees~~] serves until a successor is selected and qualified. A vacancy occurring by death, resignation, or removal is filled in the same manner used to fill the position being vacated. A person appointed or elected to fill a position vacated by death, resignation, or removal serves the remainder of the term, if any, for the position being vacated, at which time the person may be reappointed or stand for election for a full term.

SECTION 3.  Article 2, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), is amended by adding Section 2.021 to read as follows:

Sec. 2.021.  QUALIFICATIONS OF TRUSTEES. (a) To be designated or elected a trustee under Section 2.02 of this Act, a person must have:

(1)  demonstrated financial, accounting, business, investment, budgeting, or actuarial experience;

(2)  a bachelor's degree from an accredited institution of higher education; or

(3)  been vetted to verify that the person is capable of performing the duties and responsibilities of a trustee under this Act and determined qualified for designation or election, as appropriate, to the board by:

(A)  the trustee serving on the board under Section 2.02(a)(1) of this Act; and

(B)  a trustee designated by the city manager under Section 2.02(a)(2) of this Act.

(b)  A person is presumed to have demonstrated the expertise described by Subsection (a)(1) of this section if the person has at least five years of full-time employment experience working in a field described by that subdivision.

(c)  A person is not required to reside in the municipality to be designated or elected a trustee under Section 2.02 of this Act.

SECTION 4.  Section 2.03, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 2.03.  ELECTED TRUSTEES. The board shall provide by rule for the procedure for electing trustees described by Section 2.02(a)(4) [~~2.02(a)(5)~~] of this Act.

SECTION 5.  Article 2, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), is amended by adding Section 2.035 to read as follows:

Sec. 2.035.  TRUSTEE TRAINING. (a) A person who is appointed or elected to the board of trustees and qualifies for office as a trustee shall complete a training program that complies with this section.

(b)  The training program must provide the trustee with information regarding:

(1)  the law governing the pension fund's operations;

(2)  the programs, functions, rules, and budget of the fund;

(3)  the scope of and limitations on the rulemaking authority of the board;

(4)  the results of the most recent actuarial valuation of the fund; and

(5)  the requirements of:

(A)  laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B)  other laws applicable to a trustee in performing the trustee's duties, including the board's fiduciary duty to hold and administer the assets of the fund for the exclusive benefit of members and their beneficiaries under Section 802.203, Government Code, Section 67(f), Article XVI, Texas Constitution, and any other applicable law.

SECTION 6.  Sections 2.09(a), (b), and (c), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), are amended to read as follows:

(a)  The board may purchase from an insurer authorized to do business in this state one or more insurance policies that provide for the reimbursement of a trustee [~~member~~], officer, or employee of the board for liability imposed as damages caused by, and for costs and expenses incurred by the person in defense of, an alleged act, error, or omission committed in the person's capacity as fiduciary of assets of the fund. The board may not purchase an insurance policy that provides for the reimbursement of a trustee [~~member~~], officer, or employee of the board for liability imposed or costs and expenses incurred because of the trustee's [~~member's~~], officer's, or employee's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently. The board of trustees shall use money in the fund to purchase an insurance policy under this subsection.

(b)  If an insurance policy described by Subsection (a) of this section is not available, sufficient, adequate, or otherwise in effect, the board may indemnify a trustee [~~member~~], officer, or employee of the board for liability imposed as damages caused by, and for reasonable costs and expenses incurred by the person in defense of, an alleged act, error, or omission committed in the person's fiduciary capacity. The board may not indemnify a trustee [~~member~~], officer, or employee of the board for liability imposed or costs and expenses incurred because of the trustee's [~~member's~~], officer's, or employee's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently.

(c)  A decision to indemnify under this section must be made by five trustees [~~a majority of the board~~]. If a proposed indemnification is of a trustee [~~board member~~], the trustee [~~member~~] may not vote on the matter.

SECTION 7.  Article 2, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), is amended by adding Sections 2.10, 2.11, and 2.12 to read as follows:

Sec. 2.10.  ACTION INCREASING AMORTIZATION PERIOD. Notwithstanding any other provision of this Act, the rate of contributions to the pension fund may not be reduced or eliminated, a new monetary benefit payable by the pension fund may not be established, and the amount of a monetary benefit from the fund may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the pension fund would be increased to a period that exceeds 25 years.

Sec. 2.11.  ACTUARIAL VALUATIONS. (a) The assumptions and methods adopted by the board and used to prepare an actuarial valuation of the pension fund's assets and liabilities must be consistent with generally accepted actuarial standards.

(b)  Any assumed rate of return adopted by the board under this Act must be reviewed as part of each actuarial valuation conducted on or after January 1, 2020.

Sec. 2.12.  INVESTMENT RETURN ASSUMPTIONS; ACTUARIAL EXPERIENCE STUDY REQUIRED. (a) Except as provided by Section 67(f)(3), Article XVI, Texas Constitution, and notwithstanding Section 11.01 of this Act, the board shall adopt an assumed rate of return of seven percent to be used in the preparation of any actuarial valuation conducted on or after September 1, 2019, and before January 1, 2020.

(b)  This section expires January 2, 2020.

SECTION 8.  Sections 6.01, 6.03, and 6.04, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 6.01.  CONTRIBUTION OF MEMBERS AND PARTICIPATION IN FUND; WAGE DEDUCTIONS. Subject to modification under Section 11.01 of this Act, each [~~Each~~] member shall make contributions to the fund, [~~except in a time of national emergency,~~] and the municipality is authorized to deduct 12 [~~a sum of not less than one percent and not more than 10~~] percent of the member's monthly wages as contributions to the fund for service rendered after August 31, 2019. [~~The board shall determine the percentage deducted from monthly wages, as provided by Section 2.01 of this Act, within the minimum and maximum deductions provided by this section or as otherwise provided by Section 11.01 of this Act.~~]

Sec. 6.03.  CONTRIBUTIONS BY MUNICIPALITY. (a) Subject to modification under Section 11.01 of this Act and not later than the 15th business day after the first day of the municipality's fiscal year, the [~~The~~] municipality[~~, acting under the advice of the actuary for the fund,~~] shall contribute to the fund 18 percent [~~contributions expressed as a percentage~~] of payroll based on authorized positions, as determined by the municipality [~~or compensation for each member, in such amounts and at such times as are required to pay the municipality's normal cost and interest on any unfunded actuarial requirement at the rate of interest assumed in the actuarial valuation. The municipality shall also include in the contribution to the fund sufficient money to pay the costs of administration of the fund, including the costs of periodic actuarial evaluations and annual statements to the members of the fund~~].

(b)  Not later than December 31 of the year following the year in which the municipality makes a contribution under Subsection (a) of this section, the municipality shall:

(1)  calculate the difference, if any, between the amount of the municipality's actual payroll for the applicable fiscal year and the amount of payroll on which its contribution under Subsection (a) of this section was based; and

(2)  contribute to the fund an amount equal to the municipality's applicable contribution rate multiplied by the amount of the difference calculated under Subdivision (1) of this subsection.

Sec. 6.04.  MUNICIPALITY'S LIABILITY. (a) Except as provided by this section [~~Notwithstanding any other provision of this Act~~], the municipality may not be held liable or responsible for any claim or asserted claim for benefits under the fund, but all claims shall be paid from the money for which provisions have been made under the terms of the plan and fund.

(b)  The municipality shall pay the pension fund, in the manner provided by Subsection (d) of this section, money in an amount sufficient to offset any negative financial impact to the fund, as determined by the actuary for the fund, caused by a unilateral action taken by the municipality, including a reduction by the municipality in the number of the municipality's police officers.

(c)  The actuary for the fund, as part of the actuary's actuarial valuation of the fund, shall annually determine whether a reduction in the number of municipal police officers by a municipality had a negative financial impact to the fund.

(d)  If the actuary determines a negative financial impact to the fund has occurred under this section, the municipality shall:

(1)  provide additional funding to the fund in the time frame prescribed for making contribution increases under Section 11.01(b-1) of this Act; and

(2)  continue to provide the funding described by Subdivision (1) of this subsection until the negative impact of the action is eliminated as determined by the actuary for the fund.

SECTION 9.  Section 11.01, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.01.  MODIFICATION OF BENEFITS, MEMBERSHIP QUALIFICATIONS, ELIGIBILITY REQUIREMENTS, AND CONTRIBUTIONS. (a) Subject to Section 2.10 [~~Notwithstanding any other provision~~] of this Act and except as otherwise provided by this section, the board, with the approval of at least six [~~four~~] board members, may modify:

(1)  benefits provided by this Act, including the multiplier by which a pension benefit amount provided under Article 7 of this Act is calculated, except that any increase in benefits is subject to Subsection (b) of this section;

(2)  future membership qualifications;

(3)  eligibility requirements for pensions or benefits, including the age at which a member is eligible to retire; or

(4)  subject to Subsection (b) of this section, the contribution rates [~~percentage of wage deductions~~] provided by Sections [~~Section~~] 6.01 and 6.03 of this Act[~~, except that any increase in wage deductions is subject to Subsection (b)(2) of this section~~].

(b)  Notwithstanding any other provision of this Act, the board of trustees may not modify the contribution rates expressly provided by Sections 6.01 and 6.03 of this Act before January 1, 2025. If, on or after January 1, 2025, the fund's most recent actuarial valuation recommends an actuarially determined contribution rate that exceeds the aggregate contribution rates provided by Sections 6.01 and 6.03 of this Act, as modified under this section, if applicable, the board shall:

(1)  calculate the difference between the actuarially determined contribution rate and the aggregate contribution rates; and

(2)  by rule, increase the contribution rates applicable under Sections 6.01 and 6.03 of this Act by 50 percent of the difference calculated under Subdivision (1) of this subsection.

(b-1)  An increase in contribution rates under Subsection (b) of this section may not take effect before:

(1)  the January 1 following the date on which the board of trustees approved the applicable actuarial valuation, if the approval occurred at least three months before the first day of the municipality's fiscal year; or

(2)  the first day of the municipality's fiscal year that begins more than three months after the date the board approved the applicable actuarial valuation, if the approval occurred less than three months before the first day of the municipality's next fiscal year. [~~Notwithstanding any other provision of this Act, the board, with the approval of a majority of the members of the fund, may increase either of the following:~~

[~~(1)  benefits provided by this Act; or~~

[~~(2)  the percentage of wage deductions provided by Section 6.01 of this Act, except that, if the actuary for the fund certifies that an increase is necessary to maintain an actuarially sound plan, the board may, with the approval of at least four board members, increase the percentage of wage deductions.~~]

(c)  Notwithstanding any other provision of this Act, the board, with the approval of at least five [~~four~~] board members, may provide for refunds, in whole or in part, with or without interest, of accumulated contributions made to the fund by members who leave the municipality's service before qualifying for a pension.

(d)  Actions authorized under [~~Subsection (a) or (b) of~~] this section may not be made unless first reviewed by a qualified actuary selected by the [~~at least four~~] board [~~members~~]. To qualify, an actuary who is an individual must be a Fellow of the Society of Actuaries[~~, a Fellow of the Conference of Actuaries in Public Practice,~~] or a member of the American Academy of Actuaries. The basis for the actuary's approval or disapproval of a board action is not subject to judicial review.

SECTION 10.  (a) In this section, "board of trustees" and "pension fund" have the meanings assigned by Section 1.04, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes).

(b)  As soon as practicable after the effective date of this Act:

(1)  the city manager and city council shall designate trustees for the board of trustees in accordance with Sections 2.02(a)(2) and (3), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), as amended by this Act, whose terms are to begin November 1, 2019; and

(2)  the members of the pension fund shall elect, in accordance with a procedure adopted by the existing board of trustees for that purpose, three trustees to the board of trustees in accordance with Section 2.02(a)(4), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), as amended by this Act, whose terms are to begin November 1, 2019.

(c)  Notwithstanding the terms stipulated by Sections 2.02(a)(2), (3), and (4), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), as amended by this Act, as applicable:

(1)  the city manager and the city council shall designate one of the initial trustees appointed under Section 2.02(a)(2) or (3), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), as amended by this Act, as applicable, to serve a term of two years; and

(2)  the existing board of trustees shall designate one of the initial trustee positions elected under Section 2.02(a)(4), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), as amended by this Act, to serve a one-year term and another of the initial trustee positions to serve a two-year term.

(d)  Notwithstanding the term of a trustee serving on the board of trustees immediately before the effective date of this Act, effective October 31, 2019, the term of a trustee serving on the board under Sections 2.02(a)(2), (3), (4), and (5), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), as those subdivisions existed immediately before the effective date of this Act, expires.

SECTION 11.  Sections 6.01 and 6.03, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), as amended by this Act, apply only to a contribution made on or after the effective date of this Act.

SECTION 12.  Notwithstanding Section 6.03, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, Vernon's Texas Civil Statutes), as it existed immediately before the effective date of this Act, a municipality subject to that section is not required to pay interest on any unfunded actuarial requirement that is outstanding under that section on the effective date of this Act.

SECTION 13.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

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