

SUBJECT: Revising statewide emergency services personnel retirement system

COMMITTEE: Pensions and Investments — favorable, without amendment

VOTE: 7 ayes — Greenberg, Bonnen, Clark, Rangel, Salinas, Telford, Williams
0 nays
2 absent — Tillery, George

WITNESSES: For — None
Against — None
On — Morris Sandefer, Fire Fighters Pension Commission

DIGEST: HB 1739 would amend provisions of the Texas Statewide Emergency Services Retirement Act, Article 6243e.3, VTCS.

HB 1739 would allow the state board of trustees for the Texas Statewide Emergency Services Personnel Retirement Fund to set the time and manner for contributions made by a participating department. (A participating department is a public entity that performs fire, rescue, or emergency medical services and participates in the system of contributions and benefits of the fund.) Contributions that did not conform to these specifications would accrue interest at the most recent assumed actuarial rate of return on investments of the fund. The attorney general would be able to sue to recover any lost interest, with any recovery going to the retirement fund.

HB 1739 would also add the following fund provisions:

! The fund would be intended to qualify under governing federal tax provisions and conform with applicable governmental authorities, with any ambiguity of interpretation being interpreted in a way that would allow the fund to qualify.

! The fund would be maintained only for the benefit of the members and their beneficiaries. The fund could not be used for any other purpose before its termination or satisfaction of liabilities of members and their beneficiaries.

! No annual benefit from the fund could exceed the amount permitted by section 415(b) of the Internal Revenue Code, which sets numerical limits for annual benefits . If the total amount of the contributions made to the fund, including contributions made by any other plan under a governing body that contributed to the fund, exceeded the amount called for under federal law, the amount contributed by the other plan would be the first to be reduced.

! A retirement pension would be disbursed no later than April 1 of the year following the year of retirement or when the member reached 70.5 years. Benefits would be disbursed to a beneficiary a year after the death of the member. The disbursement would have to be consistent with 26 USC 401(a)(9), the federal tax section that governs required distributions. Benefits to a surviving spouse would be disbursed on the date when the deceased member would have turned 55.

! Any member or beneficiary who received a roll over distribution could apply this distribution to an eligible retirement plan of their choice. (A roll over distribution occurs, under 26 USC 402 (c)(4), when a beneficiary spouse receives distribution after the death of a member employee. The beneficiary spouse then is treated as the member employee would have been treated for federal tax purposes.) Application of this distribution would be under the direction of the state board of trustees.

! The annual compensation for a person who first became a member of the fund after 1995 would not exceed \$150,000 or an amount adjusted by the US Treasury. Forfeiture could not be used to increase the benefits of any members.

! The state board of trustees would be able to adopt rules necessary to keep the fund qualified under the federal income tax code. These rules also would have to be consistent with 26 USC 414(u), the federal tax section concerning treatment of veteran's reemployment rights.

HB 1739 would create a floor for disability payments to members of at least \$300 monthly, with increases determined by the state board according to

department contributions. A local board would have to require a temporarily disabled member receiving benefits to submit a physician-prepared disability rating every three months. If these reports indicated a significant change in the temporarily disabled member's condition, the local board could terminate, after notice and hearing, the benefits or place the member on permanent disability. A similar section found in section 23 would be deleted.

The local board could terminate temporary disability benefits if the member became capable of completing the requirements of the member's former position or a position consistent with the member's education, training, and experience. If the member refused such a comparable position that would provide the member with at least the same pay as the former position, then this refusal would be conclusive evidence that the member was no longer disabled. The state or local board also could require the member to provide information on the member's financial status as a condition for receiving benefits.

HB 1739 would change the timetable for when the costs to a current pension plan under a department that seeks to merge with the fund must be certified by a qualified actuary to within two years of the effective date of the merger.

The bill would add the buy back accrued time method to the methods used to determine a member's retirement benefits in the pension system. It would eliminate the member's choice of formula for determining a person's retirement, as well as retirement benefits accrued prior to the date of merger. The buy back method would determine a member's retirement benefits in the pension system based on the current formula of determination, without regard to the member's age. A member could buy back up to 15 years of service.

A local board would have to file an annual report containing information required by the firefighter's pension commissioner with the commissioner. If a local board failed to file such a report on time, the state board could assess an administrative penalty of not more than \$5,000. The penalty would be based on the seriousness of the violation, the history of past violations, the amount necessary to stop future violations, the local board's efforts to correct the violation, and any relevant issue required by justice. The state board could adopt rules on how to determine the penalty, and the attorney general could sue the local board to recover the penalty.

If a recipient member failed to cooperate with or provide information relating to the continued eligibility to receive payments to a participating department, the pension system could withhold payments of a monthly retirement annuity. The state board could adopt rules to enforce this withholding. A pension system also could not disburse annuity payments if the local board failed to file the required annual report with the Commissioner's Office.

HB 1739 also would make corresponding changes to the Government Code, sec. 404.094(d), by adding the Texas Statewide Emergency Services Retirement Act to the list of state agency sponsored securities transactions eligible to net funds against purchases of security.

HB 1739 also would change the term "municipality" in sec. 2(b) to "governing body". In section 2(c), it would remove the requirement that contributions be paid at least once a year. It would amend Article 6243e.3, sec.3(c) to make the choice between an on-duty and off-duty death benefit for a member's beneficiary a requirement only if applicable.

HB 1739 would take effect on September 1, 1999

**SUPPORTERS
SAY:**

HB 1739 would help ensure that the Texas Statewide Emergency Services Personnel Retirement Fund would be formally recognized as a tax-qualified system under section 104 of the Internal Revenue Code. Section 104 excludes from gross income certain compensation for injuries and sickness for the affected employee. The system already operates as a tax-qualified system, and HB 1739 would allow the fund to file a determination letter with the Internal Revenue Service that would be beneficial in the event an IRS audit ever reviewed the system's tax-qualified status.

The revisions made by HB 1739 would benefit the local emergency services personnel who participate in this state-administered retirement fund. As of September 1997, 152 fire departments were participating in the fund, representing approximately 5,900 volunteer fire fighters.

The inclusion of the buy-back accrued time method would allow members to buy back time served in another system and apply those years to the current system for plan contributions made before the age of 40. Under a buy back, a member may be credited with service time by purchasing the amount paid in retirement benefits during the service time in question. This method would

allow members to receive an enhanced opportunity to purchase credit for contributions paid into a system under a participating department. With a lower buy back threshold age, a member would be able to retire at an earlier age or potentially claim greater benefits due to the additional service time credited to their total amount of contributions in the system. Under the current buy back method, a member may buy back time only up to the age of 40. Currently, persons 55 years of age with 15 years of service are eligible to retire.

HB 1739 would also benefit temporarily disabled members of the system by raising the limit on the amount of monthly payments to a disabled member. The maximum monthly payment of \$300 would become the minimum payment, with the state board having the authority to set a benefit rate higher than that amount.

HB 1739 also would add incentives for local boards to file important annual reports with the state board. State auditors require that the system provide proof that the members being paid are eligible to continue to receive payment. If the local board does not provide this annual report, such information may not be given to the state auditors. The threat of monetary penalties would encourage local boards to comply.

Under the current system, if a given member does not provide required information for continued benefit eligibility, funds are withheld for all members of the system. HB 1739 would shift the burden so that the system would be faced with penalties rather than the individual member.

HB 1739 would place the Statewide Emergency Services Personnel Retirement Fund on equal footing with the Teachers Retirement System, Employees Retirement System, and the Permanent School Fund in streamlining treatment of transfers when assets are sold. Now, when the fund sells an asset, it must wire the transfer from the custodial bank involved in the transaction to the state treasury, then back to the transacting bank. This requirement involves an inefficient use of administrative resources and results in unnecessary delay. HB 1739 would allow the fund, like the other systems mentioned above, to reinvest money realized from a sold asset within 24 hours, eliminating the unnecessary intermediate step of depositing the funds in the state treasury.

OPPONENTS
SAY:

Although the changes proposed by the HB 1739 would not affect the actuarial soundness of the system, there would be some cost. The actuarial impact statement indicates that there would be an increase to the normal cost, unfunded actuarial accrued liability, and amortization period of the monies managed by the system.