

BILL ANALYSIS

Senate Research Center

C.S.H.B. 3170
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State Affairs
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Committee Report (Substituted)

DIGEST

Currently, Article 6243e.2, V.T.C.S., creates and governs the firemen's relief and retirement fund in cities having a population of not less than 1,200,000, providing retirement and disability benefits for firefighters. This article was enacted in 1975 and was drawn from former Article 6243e, which allowed creation of similar funds in a number of cities. The only pension fund which has been created by and is presently governed by Article 6243e.2 is the Houston Firemen's Relief and Retirement Fund. C.S.H.B. 3170 would create Article 6243e.2(1), V.T.C.S. and repeal Article 6243e.2 to provide benefit enhancements for active and retired members and their beneficiaries.

PURPOSE

As proposed, C.S.H.B. 3170 outlines provisions regarding a firefighters' relief and retirement fund in certain municipalities.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the board of trustees of a firefighters' relief and retirement fund under SECTION 1 (Sections 1(l), 2(p)(1), 3(d), 5(g), 13(b), and 14(b), Article 6243e.2(1), V.T.C.S., of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 109, V.T.C.S., by adding Article 6243e.2(1), as follows:

Art. 6243e.2(1). FIREFIGHTERS' RELIEF AND RETIREMENT FUND IN MUNICIPALITIES OF AT LEAST 1,600,000 POPULATION

Sec. 1. DEFINITIONS. Defines "average monthly salary," "board," "board of trustees," "code," "deferred retiree," "disabled child," "DROP," "DROP account," "eligible child," "eligible parent," "eligible spouse," "firefighter," "fund," "member," "off-duty disability," "on-duty disability," "salary," and "years of participation."

Sec. 2. FUND AND BOARD OF TRUSTEES. (a) Provides that a firefighters' relief and retirement fund (fund) is established in each incorporated municipality that has a population of at least 1,600,000 and a fully-paid fire department.

(b) Requires the board of trustees of the fund to be known as the "Board of Firefighters' Relief and Retirement Fund Trustees of Houston, Texas" (board). Sets forth the composition of the board.

(c) Outlines provisions and sets forth requirements regarding the election of a person to serve as a trustee under Subsection (b)(3) of this section.

(d) Outlines provisions and sets forth requirements regarding the election of a person to serve as a trustee under Subsection (b)(4) of this section.

(e) Requires a person to be appointed by the elected members of the board, to serve as a trustee under Subsection (b)(5) of this section. Provides that each of those trustees serves

a staggered term of two years. Requires the appointment or reapportionment to take place in December of each year.

(f) Outlines provisions for the filling of a vacancy in an elected position on the board.

(g) Sets forth requirements for each trustee of the board.

(h) Requires the board to annually elect from among the trustees a chair, vice chair, and a secretary. Provides that the person described under Subsection (b)(2) of this section serves as the treasurer of the fund under penalty of that person's official bond and oath of office.

(i) Prohibits a trustee of the board from receiving compensation for service on the board.

(j) Provides that a majority of the trustees of the board constitutes a quorum to transact business. Requires an order of the board to be made by vote recorded in the minutes of the board's proceedings. Provides that each decision of the board in a matter under the board's jurisdiction is final and binding as to each affected firefighter, member, and beneficiary, subject only to the rights of appeal specified by this article.

(k) Requires the board to receive, manage, and disburse the fund for the municipality and to hear and determine applications for retirement and claims for disability and designate the beneficiaries or persons entitled to participate as provided by this article.

(l) Requires the board to hold regular monthly meetings at a time and place as the board, by resolution, designates. Authorizes the board to hold special meetings on call of the chair as the chair determines is necessary, keep accurate minutes of board meetings and records of board proceedings, keep separate from all other municipal funds all money for the use and benefit of the fund, and keep a record of claims, receipts, and disbursement. Authorizes a disbursement from the fund to be made in accordance with procedures established by the board.

(m) Requires the municipality to provide full and timely information to the board on matters relating to the hiring of new firefighters, compensation of members, members' deaths or terminations of service, and such other information concerning firefighters as is reasonably required by the board, from time to time, for the board to administer the fund and provide benefits properly.

(n) Requires the board not later than January 31 of each year to make and file with the treasurer of the municipality a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of fund administration, and to make and file other reports and statements or furnish further information as from time to time may be required or requested by the treasurer of the municipality.

(o) Requires the secretary of the board, not later than the seventh day after the date of each board meeting, to forward true copies of the minutes of the meeting to each fire station and to each division of the fire department.

(p) Requires the board to manage the fund according to the terms and purposes of this article and all applicable sections of the code. Provides that the board has the powers necessary to accomplish that purpose. Sets forth certain powers of the board.

(q) Authorizes the chair to administer oaths to witnesses.

(r) Requires the board to maintain at the offices of the fund the original of each rule or guideline adopted under this section and to deliver to the municipality a copy of each adopted rule or guideline.

Sec. 3. OTHER POWERS OF THE BOARD. (a) Authorizes the board to invest the surplus

in the manner provided by Chapter 802, Government Code, if the board determines that there is a surplus of funds in an amount exceeding the current demands on the fund.

(b) Sets forth certain persons the board is authorized to employ to perform certain services.

(c) Authorizes a fee incurred in connection with a service or person employed under Subsection (b) of this section to be paid from the fund, except that the costs of audits under Subsection (b)(1) of this section may be paid from the fund only if the municipality does not pay that cost.

(d) Outlines provisions and sets forth requirements regarding the performance and adoption of an actuarial valuation by the board.

(e) Authorizes the board to recover by civil action from any offending party's surety money paid out or obtained from the fund through fraud, misrepresentation, defalcation, theft, embezzlement, or misapplication and to institute, conduct and maintain the action in the name of the board for the use and benefit of the fund in addition to any other remedy the board has, including any right of set-off from future benefits.

(f) Requires the municipal attorney, on written request from the chair, to represent the board or the fund in any legal matter, including litigation. Provides that the municipal attorney is not entitled to compensation from the fund for providing that representation.

(g) Outlines provisions regarding the purchasing of insurance by the board for certain instances. Sets forth requirements and outlines provisions regarding insurance and an insurance company. Sets forth prohibitions and outlines provisions regarding indemnification of a board trustee. Outlines provisions regarding the establishment of a self-insurance fund.

Sec. 4. SERVICE PENSION BENEFITS. Outlines provisions and sets forth requirements regarding service pension benefits for certain members.

Sec. 5. DEFERRED RETIREMENT OPTION PLAN. Outlines provisions and sets forth requirements regarding a deferred retirement option plan for members.

Sec. 6. DISABILITY PENSION BENEFITS. Sets forth instances in which a member is entitled to receive disability pension benefits. Provides that another statutory presumption regarding the cause of illnesses or conditions does not affect any benefit payable under this Act. Sets forth certain monetary amounts a member is entitled to receive if the board determines that a member is not capable of performing the usual duties of the member's classification or position because of the member's off-duty disability. Sets forth instances in which a member is not eligible to receive disability pension benefits. Provides that in the event that a member is not eligible to receive a service pension under Section 4 the member may elect any deferred pension or refund of contributions for which the member is eligible under Section 8. Sets forth instances in which a member has a preexisting condition under this subsection. Sets forth exceptions from which a person is prohibited from receiving disability pension benefits. Authorizes the board to require other or additional evidence of disability before authorizing payment of disability pension benefits. Requires the board to make all determinations concerning benefits under this section in accordance with uniform principles consistently applied on the basis of medical or other evidence that the board determines is necessary or desirable.

Sec. 7. DEATH BENEFITS. Sets forth instances in which a member's eligible survivors are entitled to receive death benefits. Outlines provisions and sets forth requirements regarding death benefits allocated to a member's eligible survivors in certain instances. Outlines provisions regarding a death benefit to be paid if a member in active service dies and does not leave an eligible survivor, or the eligible survivors unanimously elect such a benefit in lieu of any other death benefit. Requires a member's beneficiary to be designated before the

member's death on a form approved by the board. Outlines provisions regarding the designation of a member's beneficiary. Prohibits money payable under this subsection from escheating to the state. Sets forth instances in which death benefits are not payable under this Act. Provides that a benefit payable under this section to a member's eligible child ceases when the child ceases to be an eligible child. Sets forth instances in which an eligible spouse is entitled to receive or continue to receive survivor benefits on remarriage.

Sec. 8. DEFERRED PENSION AT AGE 50; REFUND OF CONTRIBUTIONS. Sets forth instances in which a member is entitled to receive a certain monthly deferred pension benefit. Authorizes members to receive a lump-sum refund of contributions to the fund with interest computed at five percent, not compounded. Outlines provisions regarding a member's refund of contributions.

Sec. 9. PROOF OF CONTINUED DISABILITY. Outlines provisions and sets forth requirements regarding proof of continued disability for a person receiving a disability pension or receiving death benefits as a disabled child.

Sec. 10. NONSTATUTORY BENEFIT INCREASES. Sets forth instances in which the benefits provided by this article may be increased.

Sec. 11. GENERAL PROVISIONS FOR CALCULATION AND PAYMENT OF BENEFITS. Prohibits a member, eligible survivor, or beneficiary of a member from being entitled to receive payments from a fund under more than one section of this article in a particular capacity. Authorizes a person to be entitled to benefits both as a member and as a survivor or beneficiary of another member. Outlines provisions and sets forth requirements regarding the calculation and payment of benefits. Authorizes a person entitled to receive benefits from the fund to make a one-time election to receive a smaller pension or survivor benefit than is otherwise provided under this article, make a one-time election not to receive any future annual increases in the pension or survivor benefits received by the person or the person's beneficiary, or make a one-time election not to receive a specific benefit enhancement. Requires an election under Subsection (i) of this section to be made in writing and submitted to the board for approval. Provides that on the date the board grants approval of an election under Subsection (i) of this section, the election becomes irrevocable. Sets forth instances in which a person has been convicted of causing the death of a member or eligible beneficiary for purposes of this subsection.

Sec. 12. APPEALS OF BENEFIT DECISIONS. Outlines provisions and sets forth requirements regarding the appeals of benefit decisions.

Sec. 13. MEMBERSHIP AND CONTRIBUTIONS. Outlines provisions and sets forth requirements for membership in the fund and contributions to the fund.

Sec. 14. INTERNAL REVENUE CODE LIMITATIONS. Prohibits a member from accruing a benefit under this article in excess of an amount that, when added to all other pension benefits received under Section 401 of the code, results in an annual benefit in excess of the applicable limits provided by Section 415 of the code. Provides that the accrual limitation applies only as long as satisfaction of Section 415 is necessary. Requires any benefit accruals limited under this section to be certified by a qualified actuary selected by the board. Requires the fund to be administered in a manner that complies with the code, United States Treasury Department regulations, and Internal Revenue Service rulings and notices applicable to public retirement systems, notwithstanding any other provision of this article. Requires the board to adopt rules and amend or repeal conflicting rules to ensure compliance with this subsection. Outlines provisions regarding the establishment of a governmental excess benefit arrangement.

Sec. 15. EXEMPTION OF BENEFITS FROM JUDICIAL PROCESS. Prohibits a fund, either before or after its order of disbursement by the board to certain individuals, from being held, seized, subjected to, or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process issued out of, or by, any court for

the payment or satisfaction of any debt, damage, claim, demand, or judgment against a certain individual. Prohibits the fund or any claim against the fund from being directly or indirectly assigned or transferred, and any attempt to assign or transfer the fund or a claim is void. Requires the fund to be sacredly held, kept, and disbursed only for the purposes provided by this article.

Sec. 16. SERVICE CREDIT FOR MEMBERS PREVIOUSLY MEMBERS OF SIMILAR FUNDS. Sets forth instances in which a person who becomes a firefighter in a municipality to which this article applies may receive service credit for prior employment with the fully paid fire department of another municipality in this state with a similar fund benefitting only firefighters of that municipality to which the firefighter contributed. Authorizes a member to receive credit for prior service in more than one fire department under Subsection (a) of this section only if there have not been interruptions in employment and each preceding service meets the other requirements of Subsection (a) of this section. Requires the municipality to which the member has transferred to pay an amount equal to the amount it would have paid had the member been employed by that municipality, instead of the municipality by which the firefighter was previously employed based on the municipality's pay scale, plus six percent interest, compounded annually. Requires both the municipality's contribution and the member's contribution to be paid promptly on approval of the member's application for service credit. Prohibits a firefighter from participating under this section in the fund of the municipality to which the firefighter has been transferred until the firefighter has fully complied with this article and the municipality has complied with Subsection (c) of this section. Authorizes a firefighter eligible for prior service credit to participate in the fund, subject to the other requirements of this article, without obtaining that credit, and if the firefighter does not comply with the provisions and time limits of this section, the firefighter is ineligible for the credit.

Sec. 17. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS OR BENEFICIARIES. Sets forth instances in which confidential information in records that are in the custody of a fund established under this article concerning a certain individual is not prohibited from being disclosed in a form identifiable with a specific individual. Provides that this section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member, or beneficiary of the fund. Authorizes a determination and disclosure under Subsection (a)(2) of this section to be made without notice to the individual member, retiree, or beneficiary.

SECTION 2. (a) Provides that Article 6243e.2(1), V.T.C.S., as added by this Act, restates and amends Chapter 432, Article 6243e.2(1) V.T.C.S., as that law existed before repeal by this Act, and continues in effect each firemen's relief and retirement fund established under that law.

(b) Makes application of this Act prospective to October 31, 1997.

SECTION 3. Repealer: Article 6243e.2, V.T.C.S. (Firemen's relief and retirement fund in cities of not less than 1,200,000).

SECTION 4. Effective date: November 1, 1997.

SECTION 5. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Title 109, V.T.C.S., as follows:

Sec. 1. Redefines "salary" to mean the amounts includable in gross income of a member plus any amount not includable in gross income under Section 125. Makes nonsubstantive changes.

Sec. 2. Requires the board of trustees of the firefighters' relief and retirement fund to include five firefighters who are members of the fund, rather than five persons employed by an active fire department. Requires a person to be elected by ballot of the firefighters who are members of the fund, rather than by the employees of the fire department, to serve as a trustee under Subsection (b)(3). Requires, rather than authorizes, the board to hear and determine applications for retirement and claims for disability and designate the beneficiaries or person entitled to participate as provided by this article. Requires, rather than authorizes, the board to manage the fund according to the terms and purposes of this article and all applicable sections of the code and has certain powers. Makes nonsubstantive changes.

Sec. 3. Authorizes, rather than requires, a fee incurred in connection with a service or person employed under Subsection (b) of this section to be paid from the fund, except that the cost of audits under Subsection (b)(1) of this section to be paid from the fund only if the municipality does not pay that cost. Makes nonsubstantive changes.

Sec. 4. Requires a certain qualified member with a service disability pension or a member's beneficiary to be paid a one-time additional benefit of \$5,000 from the fund by a certain date. Requires the total monthly benefit payable to a retired or disabled member to be increased by \$100 beginning on a certain date. Prohibits that additional benefit from being increased under Section 11(c) of this article. Makes a nonsubstantive change.

Sec. 5. Provides that the election to participate in the DROP, once approved by the board, is irrevocable. Requires a member's DROP account to be credited with earnings or losses at an annual rate equal to the average annual returns earned by the fund over a certain time period. Requires certain earnings and losses to be computed at a time and manner determined by the board, with an exception. Requires an election by a member concerning installation or partial payments as provided by Subsections (f)-(i), rather than Subsections (h) and (i), of this section to satisfy certain requirements. Makes nonsubstantive changes.

Sec. 6. Deletes hypertension from the list of diseases regarding payable death benefits. Makes a conforming change.

Sec. 7. Makes nonsubstantive changes.

Sec. 8. Requires certain benefits to be increased by three percent in October of each year and, if the benefit had not previously been subject to that adjustment, in the month of the member's 50th birthday.

Sec. 13. Adds Subsection (h) regarding a municipality's actuarially determined contribution rate.

Sec. 15. Authorizes a person who becomes a firefighter in certain municipalities to receive service credit for prior employment with the fully paid fire department in this state if the firefighter paid into the fund a certain amount plus six percent interest, compounded annually.