

## **BILL ANALYSIS**

Senate Research Center

H.B. 1573  
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Engrossed

### **DIGEST AND PURPOSE**

Currently, the Houston Municipal Employees Pension System has approximately 20,000 active and retired participants. As proposed, H.B. 1573 provides benefit improvements for members, retirees, and survivors by increasing the benefit percentage for certain groups; increasing the maximum benefit accrual percentage; increasing the annual cost of living adjustment; allowing reinstatement of service covered by a lump-sum payment; and permitting retired classified employees working in municipal positions to purchase credited service for otherwise ineligible service prior to September 1, 1999. It also makes certain administrative changes to lengthen periods in which to file benefit claims.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. DEFINITIONS. Defines “authorized absence,” “average monthly salary,” “benefit accrual rate,” “city,” “credited service,” “deferred participant,” “dependent child,” “disability,” “effective retirement date,” “eligible survivor,” “employee,” “marriage,” “member,” “military service,” “pension,” “pension board,” “pension fund,” “pension system,” “predecessor system,” “previous service,” “prior service,” “retiree,” “salary,” “separation from service,” “service,” “surviving spouse,” and “trustee.”

SECTION 2. PENSION BOARD. (a) Requires the pension board of the predecessor system to continue to administer, manage, and operate the pension system, including directing investments and overseeing the fund’s assets.

(b) Requires the pension system to operate for the benefit of the employees of a city and the pension system. Provides that the pension system operates regardless of whether the city’s population falls below the population required for the city. Provides that the pension board is not subject to Title 9 (Trusts), Property Code.

(c) Provides that the pension board consists of 11 trustees and sets forth the composition of the board.

(d)-(k) Provides for the election or appointment of the pension board trustees. Provides that no more than two of the employee trustees may be employees of the same department. Establishes trustee terms and term limits. Provides for the filling of a board vacancy caused by a trustee’s death, resignation, or removal. Requires employee trustees and retiree trustees to continue to serve after their terms have expired until a successor is qualified. Prohibits appointed trustees from continuing to serve after their terms have expired. Provides that if an eligible candidate for an elected trustee position on the pension board is unopposed for an election, the election is prohibited from being held for that position, and requires the pension board to certify the candidate as elected to the pension board.

- (l) Requires each trustee, at the first pension board meeting following the trustee's most recent election or appointment, to take a certain oath of office.
- (m) Provides that a trustee serves without bond and is prohibited from receiving compensation for service on the pension board. Authorizes the pension board, by resolution, to adopt a policy for removal of a trustee.
- (n) Provides that the trustee who is the city treasurer or a person performing the duties city of treasurer serves as the treasurer of the pension fund under penalty of that person's official bond and oath of office. Requires that person's official bond to the city to cover the person's position as treasurer of the pension fund, including sureties and liabilities.
- (o) Requires the pension board to receive, manage, and disburse the pension fund as provided by this Act and rules adopted by the pension board.
- (p) Requires the pension board to elect from the elected trustees a chair, vice chair, and secretary in each odd-numbered year.
- (q) Requires the pension board to hold regular monthly meetings, and provides for a special pension board meeting.
- (r) Requires the city to allow city employees who are trustees to promptly attend pension board and committee meetings, and to attend any other event regarding proposed amendments to this Act if attendance is consistent with a trustee's duty to the pension board.
- (s) Requires adequate notice to be given to all trustees as to any proposed meeting.
- (t) Entitles each trustee to one vote on the pension board. Provides that a majority is needed for a decision. Provides that a majority is a quorum. Prohibits a trustee who is a member from voting on any issue relating specifically to that trustee.
- (u) Requires the city to provide information to the pension board about employees as reasonably required by the pension board to administer the fund and provide benefits properly.
- (v) Authorizes the pension board to purchase an insurance policy providing for reimbursement of a trustee, officer, or employee of the pension board for liability imposed for damages caused by an alleged act, error, or omission committed in the performance of the person's duty with the pension board. Prohibits a policy purchased under this subsection from providing reimbursement for damages caused by the individual's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently. Requires the cost of insurance coverage purchased under this subsection to be paid from money in the pension fund.
- (w) Authorizes the pension board, if the insurance described in Subsection (v) of this section is not in effect, to indemnify a trustee, officer, or employee of the pension board for the same reasons for which an insurance policy is authorized. Prohibits the extension of indemnity in the same cases as are prohibited in an insurance policy. Requires a determination of indemnification to be made by a majority vote of the pension board. Prohibits a trustee from voting when the proposed indemnification is of that trustee. In the event the vote of the pension board results in a tie, requires that the indemnification be approved. Authorizes the pension board to adopt a policy establishing a method for presentation, approval, and payment of claims for indemnification. Extends indemnification approved under this subsection to acts, errors, and omissions of trustees, officers, or employees of the predecessor system as long as the alleged act, error, or omission occurs after July 1, 1989.

(x) Requires the pension board to manage the pension fund under this Act and under the Internal Revenue Code of 1986, as amended, and sets forth certain authorizations regarding administration and records of the pension fund.

(y) Makes the determination of any fact by the pension board and the pension board's interpretation of this Act final and binding on any interested party, including members, deferred participants, retirees, eligible survivors, beneficiaries, and the city.

(z) Requires the pension board to determine the prior service to be credited to each member of the pension system based on certain information.

(aa) Requires the pension board to determine each member's credited service based on certain records.

(bb) Authorizes the trustees and the executive director to rely on certain information.

(cc) Provides that the trustees, executive director, and employees of the pension system are fully protected and free of liability for any action taken or suffered by them in good faith in reliance on the actuary, accountant, treasurer, or counsel, and that the action is conclusively binding on all employees, members, and certain other persons.

(dd) Provides that a gathering of any number of trustees to investigate, research, or review prospective or current investments, without formal action by the trustees, is not a deliberation or meeting under Chapter 551 (Open Meetings), Government Code, and is not required to be open to the public.

**SECTION 3. ADDITIONAL POWERS OF PENSION BOARD.** (a) Authorizes the pension board, if it determines that there is a surplus of funds in an amount exceeding the current obligations of the pension fund, to invest the surplus in the manner provided by Chapter 802 (Administrative Requirements), Government Code.

(b) Authorizes the pension board to contract with a person to perform any investment, administrative, legal, medical, accounting, clerical, or other service the pension board considers appropriate, including certain professionals.

(c) Authorizes a fee for a service or person under Subsection (b) of this section to be paid from the pension fund.

(d) Authorizes the pension board to hire employees whose positions and salaries are required to be set by the pension board.

(e) Provides that the executive director hired by the pension board is the plan administrator.

(f) Requires the pension board to compensate from the pension fund the persons employed by and performing services for the board. Authorizes the pension board to provide these employees other benefits it considers proper. Provides that a person employed under Subsection (d) or (e) of this section who has service credits with the pension system at the time of the person's employment by the pension board retains the person's status in the pension system. Provides that a person employed by the pension system with no service credits is a group A member. Requires the pension board to adopt a detailed annual budget detailing its proposed administrative expenditures under this subsection for the next fiscal year.

(g) Authorizes the pension board to institute legal action in the name of the pension board on behalf of the pension system.

- (h) Authorizes the pension board to offset amounts received wrongly or erroneously by any member of the pension system from future pension or benefit payments payable to the person or the person's beneficiaries.
- (i) Requires the city attorney, upon written request from the chair, to represent the pension board or pension fund in any legal matter. Prohibits the city attorney from receiving compensation for legal services. Authorizes the pension board to employ legal counsel instead of or in addition to the city attorney and to pay reasonable compensation from the pension fund.
- (j) Authorizes the pension board to obtain from any participant in the system information it considers necessary for the proper administration of the pension system. Authorizes the pension board to require a participant or other entity to furnish information it requires for the determination of benefits under this Act. On noncooperation, authorizes the pension board to withhold payment of the pension or other benefits until the pension board receives the information.
- (k) Authorizes the pension board, upon majority vote, to allocate among the trustees the responsibilities of the pension board under this Act and to designate another person who is not a trustee to carry out the responsibilities of the pension board under this Act.
- (l) Authorizes the pension board by resolution to make the implementation of a provision of this Act contingent on receipt of a favorable private letter ruling or favorable determination letter from the Internal Revenue Service if the pension board determines that the action is in the best interest of the pension system.
- (m) Establishes the intent that this Act provide that the pension system's benefit plan be considered a qualified plan under Section 401(a), Internal Revenue Code of 1986, as amended. Authorizes the pension board to adopt rules that qualify the plan to the extent necessary for the pension system to be a qualified plan. Provides that rules adopted by the pension board under this subsection are considered a part of the plan. Requires the pension system's benefit plan, in determining qualification status under Section 401(a), Internal Revenue Code of 1986, as amended, to be considered the primary retirement plan for members of the pension system.

**SECTION 4. INELIGIBLE INDIVIDUALS.** Sets forth certain employees of the city or of the pension system who are not eligible to become members of the pension system, notwithstanding any other provision of this Act.

**SECTION 5. INDIVIDUALS ELIGIBLE FOR MEMBERSHIP.** Provides that individuals described in this section are eligible for membership under this Act. Sets forth membership provisions and criteria for members of groups A, B, and C. Provides and sets requirements and conditions for movement between membership groups.

**SECTION 6. GROUP C MEMBERSHIP, SERVICE REQUIREMENTS, AND BENEFITS.** Provides that a group C member is subject to the provisions that apply to group A members under this Act, except as otherwise provided by this section. Defines "credited service," "effective date of participation in group C," "executive official," and "group C." Makes provisions, requirements, and conditions for group C membership.

**SECTION 7. SERVICE; CREDITED SERVICE.** (a) Prohibits duplication of service or credited service in group A, B, or C of the pension system or in the pension system and any other defined benefit pension plan to which the city contributes.

- (b) Sets dates on which a member's service begins and terminates.

(c) Makes provisions for a group A member to pay into the pension fund and obtain credit for city service.

(d) Makes provisions for a member to establish service described by Subsection (c) of this section that occurred before September 1, 1999.

(e) Makes provisions for a member to establish service described by Subsection (c) of this section that occurred on or after September 1, 1999.

(f) Requires the member to pay interest in addition to those sums paid under Subsection (d) or (e) of this section.

(g) Makes provisions for a group B member who separates from service before completing five years of credited service.

(h) Makes provisions for a group B member who was a group A member to purchase the service credit in group B.

**SECTION 8. CONTRIBUTIONS.** Requires monthly contributions from group A members. Requires the employer to make pickup contributions when appropriate. Requires the city to make periodic payments into the pension fund at a certain rate.

**SECTION 9. CONTRIBUTION REFUNDS.** Provides that employment termination before five years of service results in ineligibility to receive a pension. Requires the pension system to refund to the terminated member the amount paid by the member. Requires the refund to be paid to the beneficiary if the member dies and Section 14 of this Act does not apply.

**SECTION 10. NORMAL RETIREMENT PENSION.** Provides that for purposes of this section, a pension under this section is referred to as a normal retirement pension. Makes provisions for eligibility for a normal retirement pension for members of groups A, B, and C. Provides a formula to determine the amount of the monthly normal retirement pension to an eligible member. Prohibits the total normal retirement pension of a retired member of group A, B, or C from exceeding 90 percent of the member's average monthly salary. Provides for an annual increase of pension and survivor benefits for future payments only. Provides that a member receiving a normal retirement pension is considered to have resigned and will be removed from the full-time employment rolls.

**SECTION 11. GROUP B RETIREMENT OPTIONS.** Provides retirement options for members of group B. Makes provisions for a former group B member who dies after terminating employment but before attaining the required age to begin receiving benefits.

**SECTION 12. DEFERRED RETIREMENT OPTION PLAN.** (a) Defines "DROP," "DROP account," "DROP benefit," "DROP election date," "DROP entry date," and "DROP participant."

(b) Authorizes an eligible member to elect to participate in the deferred retirement option plan (DROP). Provides that such election is irrevocable except as provided in this section.

(c) Sets forth limits of eligibility to participate in DROP. Prohibits a participant in DROP from changing membership from one group to another, converting service from one group to another, purchasing service credit, or making a claim to purchase military service.

(d) Provides that service and benefits cease to accrue on the day preceding the member's DROP entry date. Sets the period of a member's DROP participation. Provides for certain amounts to be credited to the DROP participant's DROP account.

(e) Sets restrictions on the monthly amount credited under Subsection (d). Provides for

supplemental payments to be credited to the DROP accounts.

- (f) Establishes the period for credits to a DROP participant's DROP account.
- (g) Provides for a lump-sum payment to a DROP participant who terminates employment.
- (h) Provides for distribution of a DROP account balance if a DROP participant dies before the full distribution of the balance.
- (i) Makes a DROP participant ineligible for disability benefits provided by this Act.
- (j) Makes exceptions to the irrevocability of an election to participate in the DROP.
- (k) Makes provisions for the revocation of a DROP election.
- (l) Under board rule, authorizes the beneficiary of a deceased member to make the DROP election and to receive the DROP distribution in a lump sum. Sets forth limits on the election by a beneficiary. Makes an election under this subsection irrevocable.
- (m) Provides for action in the case of an unanticipated actuarial cost.
- (n) Makes a former DROP participant who is rehired by the city or pension system following termination of employment ineligible to participate in the DROP.
- (o) Sets forth specific requirements regarding a DROP participant's retirement pension on termination of employment, the member's credited service, the member's benefits, and cost-of-living adjustments.
- (p) Provides a formula to compute the survivor benefit for the survivor of a deceased DROP participant if a DROP election is not revoked under Subsection (j) of this section. Sets forth eligibility guidelines for receiving enhanced survivor benefits.
- (q) Authorizes the pension board to adopt rules for the implementation and operation of the DROP, including rules regarding the payment of DROP benefits.

**SECTION 13. DISABILITY PENSIONS.** (a) Makes a member with five or more years of credited service and who becomes disabled eligible, regardless of age, for an ordinary disability retirement and requires that member to receive a monthly disability pension computed in a certain manner.

- (b) Makes a member who is disabled under certain circumstances eligible for a service disability retirement, with the monthly pension to be computed in a certain manner.
- (c) Requires that a group A member, in addition to the monthly disability pension under Subsection (b), receive a certain other payment to be computed in a certain manner.
- (d) Limits a disability pension under this section to a member who is unable to perform work or services as an employee due to the disability. Provides that a member who is granted a disability pension is considered to have resigned.
- (e) Requires certain recipients of benefits under this Act to file an annual report of employment activities and earnings with the pension board. Requires the pension board to establish the form and timing of the report. Authorizes the pension board to reduce the amount of the pension if the combination of pension and earnings exceeds a certain amount. Provides that after a certain date or age a disability pension recipient is not required to submit the annual affidavit of employment and earnings.

(f) Prohibits a member from receiving a disability pension and a deferred or normal retirement pension at the same time. Makes provisions regarding a member whose disability ceases to exist but who does not return to work for the city.

(g) Requires a retired member receiving disability and a person receiving survivor benefits as a disabled dependent child under this Act to submit to an examination the pension board requires. Makes those recipients subject at all times to reexamination by the pension board. Upon refusal to submit to examination or the regained ability to perform the usual and customary duties of the employment, authorizes, in the case of refusal, and requires, in the case of recovery of ability, the pension board to suspend or discontinue payments.

(h) Requires the pension board, in determining whether the benefits shall be continued, increased, decreased, or discontinued, to consider the result of an examination, physician report, or report of employment activities and earnings. Authorizes the pension board to reduce, suspend, or discontinue benefits to a recipient who fails to appear for an examination, fails to file a report, or files a false report.

(i) Sets forth criteria for application for a disability pension.

#### SECTION 14. SURVIVING SPOUSE AND DEPENDENT CHILD MONTHLY ALLOWANCE.

Sets forth conditions under which the pension board is required to order survivor benefits to be paid in the form of monthly allowance. Sets forth eligibility criteria for certain survivor benefits. Makes benefits for a dependent child payable to the guardian of the child. Authorizes the pension board to approve benefit payment to a child who is at least 18 years of age, rather than the child's guardian. Defines "guardian." Makes provisions for the case of the death of a retiree with no eligible survivor. Sets forth dates on which a survivor benefit begins and ceases to be payable to an eligible survivor.

SECTION 15. ANNUITY INCREASE. Authorizes the pension board to additionally increase annuities payable under this Act by a certain amount. Authorizes the pension board to distribute a supplemental payment to certain people. Makes provisions for the supplemental payment to be credited to DROP participants. Prohibits a person from receiving more than one supplemental payment as a result of the person's status as a retiree and eligible survivor or a DROP participant and eligible survivor.

SECTION 16. LUMP-SUM BENEFIT PAYMENT. Authorizes the pension board to pay to a certain participant a lump-sum payment with restrictions. Sets forth requirements regarding the lump-sum benefit payment.

SECTION 17. TERMINATION OF EMPLOYMENT; DEATH; REEMPLOYMENT. Makes provisions regarding: (a) a member who terminates employment involuntarily due to a reduction in work force;

(b) a member who leaves employment voluntarily before becoming eligible for a normal retirement or disability pension;

(c) a member whose employment is terminated for a reason other than death;

(d) a member's who dies while still employed; and

(e) a member who makes a certain election and who dies before reaching the age of eligibility for pension.

(f) Provides that this Act does not change the status of any former member of the predecessor system whose services with the city or the pension system were terminated. Makes provisions for refunds under this section.

(g) and (h) Make provisions for a deferred participant who is reemployed by the city or pension system and for a case in which that participant accrues not more than two years of service after reemployment.

(i) Establishes a method of computing the disability pension or survivor benefit under Subsection (h)(3) of this section.

(j) Makes provisions for a case in which a certain member accrues more than two years of service after reemployment.

(k) Provides that if a retiree is reemployed by the city or pension system and becomes a member, the retiree's pension under this Act ceases on the day before the date the retiree is reemployed. Makes provisions for the suspension of the payment and for subsequent separation. Requires the reemployed retiree, after receiving any pension during the period of reemployment, to return all of the pension received during that period to the pension system not later than a certain date. Establishes penalties for a non-timely return of the pension.

(l) Provides that if a member meets certain conditions, the optional annuity election, including any designation of an eligible designated survivor, governs the payment of any pension or benefit, and no other survivor benefit is payable. Provides that if a member meets certain requirements, the optional annuity election, including any designation of an eligible designated survivor, shall control the payment of any pension or benefit, and no other survivor benefit is payable unless the member makes a certain election to revoke. Provides that if revocation occurs, any survivor benefit is paid under Subsection (j) of this section.

(m) Makes provisions for a member whose service is terminated before the member has completed five years of service for any reason other than death, a city workforce reduction, or a service disability.

(n) Makes this section prohibit retroactive payment of any benefits or other amounts under this section to any member, retiree, deferred participant, beneficiary, eligible survivor, estate, or other person or entity.

(o) Provides that after separation from service, a member is subject to the schedule of benefits and provisions in effect on the member's last day of credited service, except as otherwise expressly provided by this Act.

(p) Provides that a person receiving or eligible for a survivor benefit under this Act is subject to a certain schedule of benefits and provisions.

**SECTION 18. MILITARY SERVICE CREDIT.** Sets forth contributions, benefits, and service with respect to service in the uniformed services. Requires the city to make the employer contributions to the pension fund for the employee's membership for each month of service credit in which the member is engaged in service in a uniformed service, based on a certain rate. Authorizes a member who has active military service under certain circumstances to receive credited service if the member fulfills certain conditions. Makes provisions for the military service credited under this section.

**SECTION 19. MULTIPLE PENSIONS; TRANSFER OF EMPLOYMENT.** Authorizes the pension board to authorize a member to make one election to cease to be a member of the pension system and, for future service, to become a member of the retirement system if the member meets certain conditions. Provides that a person who does not make such an election remains a member of the pension system. Provides that a person who makes such an election is considered to have separated from service on the date of the election. Prohibits duplication of any pension or benefit payable from the pension system or another benefit plan to which the city contributes. Makes provisions for any pension or benefit payable to any person under another pension plan.



SECTION 20. SERVICE FOR FORMERLY INELIGIBLE EMPLOYEES. Authorizes certain ineligible members to purchase credited service if the members meet certain criteria. Requires payments under this section to be made by a certain date. Provides for a case in which payments are not completed within the prescribed period.

SECTION 21. REDUCTION OF BENEFITS; DISSOLUTION OF SYSTEM. Authorizes the pension board, if it determines that the pension fund is seriously depleted, to proportionately and temporarily reduce the benefits of all retirees, eligible survivors, alternate payees, and beneficiaries. Requires the amount of any reduction to be paid to the recipients if the pension board determines that the fund is sufficiently reestablished to pay the amounts. Authorizes the city, if the reserve and surplus in the pension fund become exhausted and the pension payouts exceed the fund's income, to dissolve the pension system and liquidate the pension system without any liability to the city. Authorizes a benefit recipient to receive a smaller amount after a written request to the pension board.

SECTION 22. EXEMPTION FROM EXECUTION, ATTACHMENT, OR OTHER WRIT. Provides that the pension fund and payments out of the pension fund shall be sacredly held, kept, and disbursed, and may not be used by anyone or required by anyone to fulfill any purpose other than those purposes set forth under this Act, and payments are protected from judgment, seizing, holding, garnishment, injunction, or any other writ, claim, process, or proceeding. Provides that this section does not prevent the division of benefits accrued by a member by court order to fulfill a qualified domestic relations order or the payment of a share of benefits to an alternate payee in accordance with the court order. Prohibits that this section does not prevent the offset of amounts received wrongly or in error against future pension or benefit payments.

SECTION 23. FEDERAL TAX QUALIFICATION OF PENSION FUND; MAXIMUM BENEFITS FROM PENSION FUND. (a) Provides that the pension fund is intended to qualify under Section 401(a), Internal Revenue Code of 1986, as amended, and is for the exclusive benefit of the members and retirees and their eligible survivors. Prohibits any part of the corpus or income of the pension fund from ever being used for or diverted to any purpose other than for the benefit of members and retirees and their eligible survivors as provided by this Act.

(b) Prohibits a member, retiree, or eligible survivor of the pension system from accruing any benefit under this Act in excess of certain benefit limits. Requires the pension board to reduce the amount of any benefit that exceeds those limits by the amount of the excess. Requires any member's benefits that exceed the applicable limits to be reduced to the extent necessary to make the benefits conform to the limits.

(c) Authorizes any member, retiree, or eligible survivor who receives a distribution that is an eligible rollover distribution as defined by Section 402(c)(4), Internal Revenue Code of 1986, as amended, to have that distribution transferred to another retirement plan of the member's choice on providing direction to the pension system regarding that transfer in accordance with pension board procedure.

(d) Prohibits the total salary taken into account for any purpose for any member or retiree of the pension system from exceeding a certain amount. Requires these dollar limits to be adjusted in accordance with the U.S. secretary of the treasury's guidelines. Defines an eligible participant and an ineligible participant for the purposes of this subsection.

(e) Sets forth the date on which accrued benefits under this Act become nonforfeitable. Makes provisions regarding the pension system or fund's termination or partial termination and the discontinuance of city contributions.

(f) Prohibits amounts representing forfeited benefits of terminated members from being used to increase benefits payable to the pension fund, but authorizes the amounts to be used to reduce contributions for future plan years.

- (g) Sets forth requirements regarding the distribution of benefits.
- (h) Sets forth requirements regarding the actuarial assumptions to be used in determining benefits.
- (i) Authorizes the pension board to adjust the benefits of retirees and eligible survivors by increasing any benefit that was reduced or denied because of Section 415, Internal Revenue Code of 1986, as amended, under certain circumstances. Provides that benefits paid under this subsection are not extra compensation earned after retirement but are the delayed payment of benefits earned before retirement.
- (j) Authorizes the pension board to make any change in this Act to the extent that the change is necessary to ensure compliance with the qualification requirements of Section 401, Internal Revenue Code of 1986, as amended, or any other federal law.

**SECTION 24. EXCESS BENEFIT PLAN.** (a) Provides that a separate, nonqualified, unfunded excess benefit plan is reenacted and continued outside the pension fund.

- (b) Defines “excess benefit participant,” “excess benefit plan,” “maximum benefit,” “qualified plan,” and “unrestricted benefit.”
- (c) Makes an excess benefit participant who is receiving benefits from the pension fund eligible for a monthly benefit under the excess benefit plan in a certain amount.
- (d) Makes provisions for a monthly benefit for an eligible surviving spouse or dependent child after the death of an excess benefit participant.
- (e) Requires payment of a benefit to a person under this chapter to be paid at a certain time and in a certain manner. Prohibits an excess benefit participant or a beneficiary of the participant from electing to defer receipt of all or any part of a payment due under this section.
- (f) Requires the pension board to administer the excess benefit plan, and the executive director to carry out the business of the board with respect to the plan. Provides that the rights, duties, and responsibilities of the pension board and the executive director are the same for the plan as for the pension fund.
- (g) Requires the consultants, independent auditors, attorneys, and actuaries selected to perform services for the pension fund to perform services for the excess benefit plan, but prohibits their fees for services from being paid by the pension fund. Requires certain advice from the actuary.
- (h) Prohibits contributions from accumulating under the excess benefit plan to pay future retirement benefits. Requires the executive director to reduce each payment of employer contributions that would otherwise be made to the pension fund under Section 8 of this Act by a certain amount. Requires the employer to pay to the plan not earlier than a certain time the necessary amount. Requires the executive director to satisfy the obligation of the plan to pay retirement benefits from the employer contributions transferred for that month.
- (i) Requires employer contributions otherwise required to be made to the pension fund under Section 8 of this Act and to any other qualified plan to be divided into those contributions required to pay benefits under this section and those contributions paid into and accumulated to pay the maximum benefits required under the qualified plan. Prohibits employer contributions made to provide retirement benefits under this section from being commingled with the money of the pension fund or any other qualified plan.

(j) Exempts benefits under this section from execution, attachment, garnishment, assignment, injunction, and any other writ in the same manner as retirement annuities under Section 22 of this Act and prohibits them from being paid to a person other than to the person who would have received the benefits from the pension fund except for the limitations provided by Section 23 of this Act.

**SECTION 25. EMPLOYEES ON RETIREMENT WHEN ACT TAKES EFFECT.** Requires any person receiving a retirement benefit from the predecessor system immediately before the effective date of this Act to continue to receive the same benefit amount the person was entitled to receive under the predecessor system. Provides that this Act does not change the status of any former member receiving a pension, or who is eligible to receive a pension, from the city or the pension system under the predecessor system, unless otherwise expressly provided by this Act.

**SECTION 26. CONFIDENTIAL INFORMATION.** Provides that records that are in the custody of the pension system concerning an individual participant are not public information and are prohibited from being disclosed in a form identifiable to a specific individual, with certain exceptions. Provides that this section does not prevent the disclosure of the status or identity of an individual as a participant in the pension system. Authorizes the executive director to designate other employees of the pension system to make the necessary determinations under this section. Provides that a determination and disclosure under this section does not require notice to the participant.

**SECTION 27. POWER OF ATTORNEY.** Authorizes a person eligible for benefit payments to direct the pension system to treat as the authorized representative of the person concerning the disposition of the pension or other benefits an attorney-in-fact under a power of attorney that the pension system determines complies with Section 490 (Statutory Durable Power of Attorney), Texas Probate Code. Provides that if the power of attorney under this section is revoked, the pension system is not liable for payments made to or actions taken at the request of the attorney-in-fact before the date the pension system receives written notice that the power of attorney has been revoked.

**SECTION 28. PROPORTIONATE RETIREMENT PROGRAM WITH PARTICIPATING RETIREMENT SYSTEMS.** (a) Authorizes the pension board to establish a program of proportionate retirement benefits subject to the requirements of this section.

(b) Defines “combined service credit,” “eligible participant,” “full participation,” “maximum benefit,” “participating retirement system,” and “service credit.”

(c) Provides that participation by the pension system in the proportionate retirement program is voluntary. Authorizes the pension board to elect to participate in the proportionate retirement program by adopting a resolution. Requires the pension board, if a resolution is adopted, to notify the other participating retirement systems of the election. Sets forth the effective date of participation in the proportionate retirement program. Authorizes the participation in the proportionate retirement program to be terminated for any reason by pension board resolution, with an exception. Requires the pension board, on adoption of such a resolution, to notify the other participating retirement systems of the termination. Sets forth the effective date of termination.

(d) Sets forth authorized and unauthorized uses for an eligible participant’s combined service credit. Prescribes the manner by which to determine the amount of a benefit payable by the pension system. Provides that the pension board has sole responsibility and discretion to determine the eligibility of participants for benefits.

(e) Provides that a person who withdraws pension contributions from a participating retirement system ceases to be a member of that system. Authorizes membership and service credit for which contributions were withdrawn or forfeited to be reestablished under the statutes and rules governing that system. Sets forth criteria for service to be counted as combined service credit.

Provides that a lump-sum distribution is governed by the statutes and rules applicable to the particular retirement system that distributed the payment.

(f) Provides that a person who has service credit in another participating retirement system for which the person is receiving or may become eligible to receive a benefit is not eligible to vote in a pension board election or hold a position on the pension board.

(g) Requires the pension board to make determinations regarding an eligible participant's combined service credit based on the certified records of a participating retirement system, including the pension system, and of the city.

(h) Provides that the provisions of Section 17 of this Act relating to termination of employment do not apply to an eligible participant to the extent the participant is separated from service covered by the pension system during a period for which the participant earns service credit in another participating retirement system for service performed for the city in an amount sufficient to meet the length-of-service requirement, using combined service credit, for a retirement benefit from the participating retirement system.

(i) Authorizes a proportionate retirement benefit to be paid by the pension system under the proportionate retirement program to an eligible participant who fulfills certain requirements only if the participant is eligible to receive and has applied for proportionate retirement benefits from the applicable other participating retirement systems. Prohibits an eligible participant from becoming eligible to receive a proportionate retirement benefit from the pension system while employed in a position covered by the pension system.

(j) Provides that the pension system is governed solely by its own statutory provisions, policies, and procedures relating to disability benefit determinations for members who apply for a disability pension from the pension system, with exceptions.

(k) Requires the pension system to pay only the ordinary disability benefit amount if the disability is determined to be service-related. Provides that the pension board has the right to require examinations, reports, and other information for the administration and payment of disability benefits and the right to reduce, suspend, or terminate a benefit accordingly. Provides that the benefit allowed under this subsection and Subsection (j) of this section is payable only if the other participating retirement systems authorize and pay a disability benefit under the same circumstances as provided by this subsection. Provides that a person who is receiving a disability benefit from a participating retirement system is not eligible for a disability pension under this Act, except as provided by this subsection and Subsection (j) of this section.

(l) Provides that creditable military service, if any, will be credited in the pension system only as provided by this Act and only if the service is not credited in any other participating retirement system.

(m) Requires the pension board, if it elects to participate in the proportionate retirement program under this section, to adopt rules for implementing and administering the proportionate retirement program.

(n) Prohibits a person from receiving a benefit under this section in an amount that is greater than the amount of the benefits accrued by the person in the absence of this section. Makes provisions for a survivor benefit otherwise payable under Section 14(c) of this Act on behalf of a person who has used combined service credit to qualify for benefits from at least one participating retirement system.

SECTION 29. Repealer: Chapter 358, Acts of the 48th Legislature, Regular Session, 1943 (Article 6243g, V.T.C.S.) (Municipal Pension System in Cities of 1,500,000 or More).

SECTION 30. (a) Provides that this Act continues in effect each municipal employees pension fund established under Article 6243g, V.T.C.S., as that law existed before repeal by this Act.

(b) Provides that all assets, service credit reports, and liabilities relating to persons who are covered by the predecessor system immediately before the effective date of this Act are transferred to the pension system created by this Act.

SECTION 31. Provides that a member of the pension board of trustees serving under Article 6243g, V.T.C.S. before the effective date of this Act continues to serve on the pension board created under this Act until the expiration of the term for which the member was elected or appointed under Article 6243g, V.T.C.S.

SECTION 32. (a) Provides that Section 14(d) of this Act applies only to deaths that occur on or after the effective date of this Act, without regard to the date of a member's separation from service.

(b) Provides that Section 10(h) of this Act applies only to the payment of pension and survivor benefits on or after the effective date of this Act, without regard to the date of a member's death or separation from service.

SECTION 33. Effective date: upon passage or September 1, 2001.