

## **BILL ANALYSIS**

Senate Research Center  
76R1068 GCH-F

H.B. 1739  
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State Affairs  
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Engrossed

### **DIGEST**

In August 1998, the state board of trustees of the Texas Statewide Emergency Services Personnel Retirement Fund (fund) held a meeting to receive public input and information from fire, rescue, and emergency medical services departments that participate in the fund. Many of the suggestions and presentations from the departments and the office of the attorney general were regarding Internal Revenue Service tax qualification language, modifying qualifications for disability benefits, and administrative penalties. H.B. 1739 would amend statutes regarding membership, service credit, benefits, and administration of the statewide retirement system for emergency services personnel, and would provide certain administrative penalties.

### **PURPOSE**

As proposed, H.B. 1739 amends statutes regarding the statewide retirement system for emergency services personnel.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the state board of trustees of the Texas statewide emergency services personnel retirement fund in SECTIONS 2, 5, and 10 (Sections 2(o), 4(c), and 23B(a), Article 6243e.3, V.T.C.S. (Texas Statewide Emergency Services Act)) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1, Article 6243e.3, V.T.C.S. (Texas Statewide Emergency Services Act), by amending Subdivision (s) and adding Subdivision (18), to redefine "retirement age" and define "code."

SECTION 2. Amends Section 2, Article 6243e.3, V.T.C.S., by amending Subsections (a)-(c) and adding Subsections (g)-(p), to make the Texas statewide emergency services personnel retirement fund (fund) as a trust fund with, rather than in, the state treasury. Prohibits a governing body, rather than a municipality, from rescinding an election to participate in the fund. Requires a participating department to pay contributions to the fund as required by rule of the state board of trustees (board), and to pay interest on delinquent contributions or the attorney general may sue to collect any unpaid and accrued interest. Requires interest recovered to be deposited in the fund. Intends the fund to qualify under Section 401, to be exempt from federal income taxes under Section 501(a), and to conform to applicable governmental authorities. Provides that a construction provision that qualifies the fund to apply over other provisions that apply a construction regarding fund. Requires the fund to be maintained for the exclusive benefit of members and their beneficiaries, and that the principal may be used at no time for any other activity save after its termination or to satisfy certain debts. Prohibits the annual benefit provided in any year from exceeding the amount permitted by Section 415(b), otherwise the aggregate benefit that exceeds the limitation must be paid out of certain other funds until the remainder may be paid from the fund. Prohibits a member's retirement pension from beginning later than April 1 of the year in which the member leaves active service or until the member attains 70.5 years of age. Prohibits benefits from being paid to a qualified beneficiary outside a certain date and the satisfaction of requirements under Section 401(a)(9), except for certain circumstances regarding the benefits of a surviving spouse. Entitles certain members who may receive a rollover distribution from the fund to transfer the amount to another retirement plan. Prohibits the annual compensation for an ineligible participant from exceeding \$150,000 or an amount established by the secretary of the U.S. Treasury. Sets forth who are ineligible participants. Provides that the benefit earned by a member becomes nonforfeitable not later than the date the member attains normal retirement age and upon the termination or partial termination of the fund or discontinuance of contributions to the fund, however the forfeiture may not be used to increase the benefit any member

would otherwise receive. Authorizes the board to adopt rules to implement this Act. Provides that the board shall implement this Act in a manner that preserves the tax qualification of the fund, and the board may revise any provision or program to the extent necessary to retain the tax qualification. Requires contributions, benefits, and qualified service for military service to be provided in compliance with Section 414(u).

SECTION 3. Amends Section 2A(c), Article 6243e.3, V.T.C.S., to authorize certain members to be eligible to receive benefits, if applicable.

SECTION 4. Amends Section 3, Article 6243e.3, V.T.C.S., by amending Subsection (a) and adding Subsection (d), to make the cashing or depositing of the first payment of a retirement annuity conclusive evidence that the payee is retired. Makes conforming changes.

SECTION 5. Amends Section 4, Article 6243e.3, V.T.C.S., by amending Subsections (b) and (c) and adding Subsections (d)-(f), to provide that a member who suffers certain disabilities is guaranteed a benefit of at least \$300 a month. Requires the board to establish rules to determine the amount of benefits above the minimum that corresponds with the amount of contributions. Requires a local board of trustees to require a member receiving temporary disability benefits to file a disability rating report from a physician, of whom the local board may choose, every three months. Authorizes the board to adopt an order to terminate the payments or place the member on permanent disability, upon receiving the report. Requires the board to adopt an order to terminate benefits if the board determines that certain standards have been met. Requires the board to send each order adopted under this subsection to the fire fighters' pension commissioner (commissioner). Provides that the benefits cease if the recipient becomes capable of performing his or her duties or the duties of another reasonable occupation. Sets forth what constitutes reasonable evidence for a person to no longer receive benefits. Authorizes the state or local board of trustees to require financial responsibility information from a person as a condition to the continued receipt of disability benefits, including certain personal financial information, and otherwise failure to provide the information constitutes grounds for terminating benefits.

SECTION 6. Amends Section 8, Article 6243e.3, V.T.C.S., to require a local board of trustees to assign a person to support duties if the person meets certain qualifications including age, certification, retirement status.

SECTION 7. Amends Sections 11(b), (d), and (e), Article 6243e.3, V.T.C.S., to require the costs to be certified by a qualified actuary as of the effective date of merger or within two years following the date of merger, rather than three years preceding the date of merger. Includes the buy-back accrued time method as a method of determining a member's retirement benefits. Provides that the member's retirement benefits in the pension system are based on the formula for benefits outlined without regard to the member's age, in the buy-back method. Deletes text requiring certain formulas to determine benefits.

SECTION 8. Amends Section 21(a), Article 6243e.3, V.T.C.S., to authorize administrative expenses to be paid from income earned by investment of the fund. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 23, Article 6243e.3, V.T.C.S., as follows:

Sec. 23. New heading: **ADDITIONAL DUTIES OF LOCAL BOARD OF TRUSTEES.** Requires each local board of trustees to file with the commissioner an annual report containing information and filed within the time required by the commissioner. Deletes text requiring the local board to require certain reports regarding disability of a member. Makes conforming changes.

SECTION 10. Amends Article 6243e.3, V.T.C.S., by adding Sections 23A and 23B, as follows:

Sec. 23A. **ADMINISTRATIVE PENALTY.** Authorizes the state board to impose an administrative penalty on a local board of trustees that fails to file certain reports in a timely manner. Prohibits the penalty from exceeding \$5,000, and requires the amount to be based on certain factors regarding the violation.

Sec. 23B. **INTERRUPTION OF PAYMENTS.** Requires the pension system to withhold payments of a monthly retirement annuity if a participating department attempts to provide information to the commissioner relating to continued eligibility to receive the payments and the recipient fails to cooperate or provide the requested information. Authorizes the board to adopt

rules to enforce this subsection. Prohibits the system from beginning certain payments based on the service of a person whose local board is not current in its filing of an annual report required under Section 23(b).

SECTION 11. Amends Section 404.094(b), to authorize a state agency that receives certain monies from the Texas Statewide Emergency Services Act to net the funds against certain purchases and securities.

SECTION 12. Effective date: September 1, 1999.

SECTION 13. Emergency clause.