

CHAPTER 663

S.B. No. 1186

An Act relating to fire fighter and police officer retirement systems in certain cities; validating certain prior acts and proceedings for separation of pension funds; amending Sections 1, 1A, 2, 3, 4, 6, 8, 9, 10, 10A, 11, 16, and 17, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 6243b, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Sections 1, 1A, 2, 3, 4, 6, 8, 9, 10, 10A, 11, 16, and 17, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 6243b, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. **BOARD OF TRUSTEES.** (a) In all incorporated cities and towns containing more than four hundred thousand (400,000) inhabitants and less than six hundred thousand (600,000) inhabitants, according to the last preceding Federal Census, having a fully or partially paid fire department, the mayor, two (2) citizens of said city or town to be designated by the mayor, the chief of police, the chief of the fire department and their successors, three (3) policemen other than the chief or assistant chief, to be elected by members of the policemen's pension fund, three (3) firemen other than the chief or assistant chief, to be elected by members of the firemen's pension fund, composing eleven (11) members, seven (7) of which shall be a quorum, shall constitute a board of trustees of the Firemen *and* [;] Policemen [~~and Fire Alarm Operators~~] Pension Fund, to provide for the disbursement of the same and to designate the beneficiaries thereof. The three policemen and the three firemen named above shall be elected to a term of four (4) years. The term for a citizen designated by the mayor is four (4) years. The board shall be known as the Board of Firemen *and* [;] Policemen [; ~~and Fire Alarm Operators~~] Pension Fund, [~~Trustees of~~] _____, Texas. Said board shall organize by choosing one member as Chairman and by appointing a secretary. Such board shall have charge of and administer said fund and shall order payments therefrom in pursuance of the provisions of this law. It shall report annually to the governing body of such city or town the condition of the said fund and the receipts and disbursements on account of the same with a complete list of beneficiaries of said fund and the amounts paid them.

"(b) Of the first two (2) citizens designated by the mayor to serve on the board of trustees after the effective date of this subsection, one shall serve a four-year term and the other a two-year term. Thereafter all terms shall be for four (4) years. Of the first six (6) firemen and policemen elected after the effective date of this subsection, three (3) of the firemen and policemen shall serve four-year terms and three (3) of the firemen and policemen shall serve two-year terms. The first four-year terms shall not be served by all three members elected from the firemen's fund nor by all three members elected from the policemen's fund. This determination shall be made by lot under the supervision of the board. Thereafter all elected terms shall be for four (4) years.

"(c) The board of trustees shall provide by rule for election of its elected members by secret ballot.

"Section 1A. **DEFINITIONS.** In this Act:

"(1) 'Board of Trustees' or 'Board' means the Board of Trustees of the Firemen *and* [;] Policemen [~~and Fire Alarm Operators~~] Pension Fund.

"(2) 'Member' means a duly appointed and enrolled policeman *or* [;] fireman [; ~~or fire alarm operator~~] of a city covered by this Act who is a contributing member of the pension fund.

"(3) 'Pension Fund' or 'Fund' means the Firemen *and* [;] Policemen [~~and Fire Alarm Operators~~] Pension Fund.

"(4) 'Salary' means base pay plus longevity pay received by a member from the city for personal services rendered as a policeman *or* [;] fireman [; ~~or fire alarm operator~~] excluding all other forms of compensation.

"(5) 'Wages' means salary, longevity, and overtime pay received by a member from the city for personal services rendered as a policeman *or* [;] fireman [; ~~or fire alarm operator~~] excluding all other compensation.

"Section 2. **PARTICIPATION IN FUND; WAGE DEDUCTIONS.** Each member fireman *and* [;] policeman [~~and fire alarm operator~~] in the employment of such city or town [;] must participate in said fund, except in times of national emergency those persons as are employed during that time shall not be required to participate in the fund, and said city or town shall be authorized to deduct a sum of not less than one per cent (1%) nor in excess of six per cent (6%) of his wages from each month to form a part of the fund known as the Firemen *and* [;] Policemen

~~[and Fire Alarm Operators]~~ Pension Fund, except that the city or town shall deduct a sum less than one per cent (1%) or more than six per cent (6%) of the member's wages each month to form a part of the fund ~~[Firemen, Policemen and Fire Alarm Operators Pension Fund]~~ if the board of trustees of that fund increases or decreases the percentage of wages to be contributed to the fund under the provisions of Section 10A of this Act. The amount to be deducted from the wages of those named above who must participate in the fund is to be determined by the board of trustees as provided for in Section 1 of this Act within the minimum and maximum deductions herein provided or as otherwise provided under the provisions of Section 10A of this Act.

"Section 3. *PAYMENTS TO FUND.* There shall be deducted for such fund from the wages of each fireman ~~and [] policeman [and fire alarm operator]~~ a sum to be determined by the board of trustees under the provisions of Section 2 or 10A of this Act. Any donations made to such fund and rewards received by any member of either of said funds, and all funds received from any source for such fund shall be deposited in like manner to the credit of such fund.

"Section 4. *CONDUCT OF MEETINGS.* The board shall hold regular monthly meetings and other meetings upon call of its chairman. It shall issue orders signed by the president or chairman and secretary to the persons entitled thereto, of the amount of money ordered paid to such persons from such fund by said board which order shall state for what purpose such payment is to be made; it shall keep a record of its proceedings, which record shall be a public record; it shall at each monthly meeting send to the city treasurer a written list of persons entitled to payment from the fund, stating the amount of such payment, and for what granted, which list shall be certified to and signed by the president or chairman and secretary of such board, attested under oath. The treasurer shall enter a copy of said list upon the book to be kept for that purpose, which book shall be known as the 'Record of the Firemen ~~and [] Policemen [and Fire Alarm Operators]~~' Pension Fund Board,' of _____, Texas, and the said board shall direct payments of the amounts named therein to the persons entitled thereto out of said fund. No money of said fund shall be disbursed for any purpose without a vote of a majority of the board, which shall be a no and yes vote entered upon the proceedings of the board."

"Section 6. *MEMBERSHIP IN PENSION FUND; ELIGIBILITY.* (a) Any person who has been duly appointed and enrolled as a policeman ~~or [] fireman [; or fire alarm operator]~~ of any city covered by this Act shall automatically become a member of the pension fund of such city upon expiration of ninety (90) days from date such city comes within the provisions of this Act, provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age. In all instances where a person is already a member of and contributor to such pension fund, he shall retain and be entitled to all rights and privileges due him by virtue of having been such a member and contributor.

"(b) Any person not a member of the pension fund when this Act becomes effective, who thereafter is duly appointed and enrolled as a fireman ~~or [] policeman [; or fire alarm operator]~~ of such city shall automatically become a member of the pension system as a condition of his employment provided such person at the time of such appointment was not less than eighteen (18) years of age and not more than twenty-nine (29) years of age."

"Section 8. *DISABILITY PENSIONS.* Whenever any member of the fire department ~~or [] police department [or fire alarm operators' department]~~ of any such city or town, and who is a contributor to said fund as provided, shall become so permanently disabled through injury received, or disease contracted, in the line of duty, as to incapacitate him for the performance of duty, or shall for any cause, through no fault of his own, become so permanently disabled as to incapacitate him for the performance of duty, and shall make written application therefor approved by a majority of the board, he shall be retired from service and be entitled to receive from said fund one-half of the monthly salary received by him as a member of either of said departments, at the time he became so disabled, to be paid in regular monthly installments subject to change under the provisions of Section 10A of this Act.

"Section 9. *DEATH BENEFITS, WIDOWS, ETC.* In the case of the death before or after retirement of any member of the fire department ~~or [] police department [; or fire alarm operators' department]~~ of any city or town resulting from disease contracted or injury received while in the line of duty or from any other cause through no fault of his own and who at the time of his death or retirement was a contributor to said Fund, leaving a widow and no children, the widow shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death; and, if at the time of the death of such contributor, under the circumstances and conditions hereinabove set forth, such contributor leaves a child or children under sixteen (16) years of age and the wife of such contributor is dead or divorced from such contributor, the child or children under sixteen (16) years of age shall be entitled to receive monthly from said Fund an amount not exceeding one-third of such monthly salary received by such member

immediately preceding his retirement, and, if not retired before death, one-third of such monthly salary received by such member immediately preceding his death, said sum so paid to be equally divided among said children under sixteen (16) years of age, if more than one; and if at the time of the death of such contributor, under the conditions hereinabove set forth, such contributor leaves a widow and a child or children under sixteen (16) years of age, the widow shall be entitled to receive monthly from said Fund (for the joint benefit of herself and such child or children) an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-half of such monthly salary received by such member immediately preceding his death, said payments to be made until such child or all of said children, if more than one, as the case may be, shall reach sixteen (16) years of age, and after said child or all of said children, as the case may be, have reached the age of sixteen (16) years, then the widow shall be entitled to receive monthly from said Fund (for her benefit) an amount not exceeding one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, one-third of such monthly salary received by such member immediately preceding his death. In no case shall the amount paid to any one family exceed monthly the amount of one-half of the monthly salary earned by the deceased immediately prior to the time of his retirement, or, if not retired, prior to the time of his death. On the remarriage of any widow, such pension paid to her for her benefit shall cease and in the event that there are child or children under sixteen (16) years of age at the time of said remarriage, one-third of the monthly salary received by such member immediately preceding his retirement, and if not retired before death, immediately preceding his death, shall be paid monthly to the widow for the sole benefit of the child or children under the age of sixteen (16) years; provided, however, that the Pension Board, if it finds that said payments to the widow are not being used for the benefit of said child or children, may order said monthly benefits paid to said child or children instead of to said widow who has remarried. Where there is more than one child of such contributor, the benefits herein provided for shall be equally divided among the children, and upon the marriage or death of any child receiving such pension, or upon any child receiving such pension reaching sixteen (16) years of age, such pension payment for the benefit of said child shall cease, and if there remains a child or children under sixteen (16) years of age, the share of the said child so married or dead or reaching sixteen (16) years of age, shall be paid for the benefit of the remaining child or children under sixteen (16) years of age. In the event that a contributor leaves a widow and child or children under sixteen (16) years of age who are not the children of said widow, the Pension Board may, in its discretion, either pay monthly to the widow for the benefit of herself and said child or children, an amount not exceeding one-half of the monthly salary received by such member immediately preceding his retirement, or immediately preceding his death, if not retired before death, as hereinabove provided, or said Board may order one-fourth of said monthly salary received by such member paid to the widow and one-fourth of said monthly salary paid to said child or children. No widow or child of any such member resulting from any marriage contracted subsequent to the date of retirement of said member shall be entitled to a pension under this law; provided, however, that the provisions of this Section shall not be construed so as to change any pension now being paid any pensioner under the provisions of *this Act* [~~Chapter 101, of the General and Special Laws of the Forty-third Legislature, First Called Session, and as amended by Chapter 316 of the General and Special Laws of the Regular Session of the Forty-fourth Legislature~~]. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

"Section 10. *DEATH BENEFITS, FATHER, ETC.* If any member of the fire department or [5] police department [~~or fire alarm operators' department~~] dies from injuries received or disease contracted while in the line of duty, or from any cause through no fault of his own, who was a contributor to said fund and entitled to participate in said fund himself, leaves no wife or child, but who shall leave surviving him a dependent father, mother, brother, or sister, wholly dependent upon said person for support, such dependent father, mother, sister and brother shall be entitled to receive in the aggregate one-half of the salary earned by said deceased immediately prior to his death, to be equally divided between those who are wholly dependent on said deceased, so long as they are wholly dependent. The board shall have authority to determine the facts as to the dependency of said parties and each of them, as to how long the same exists, and may at any time upon the request of any contributor to such fund, reopen any award made to any of said parties and discontinue such pension as to all or any of them as it may deem proper, and the findings of said board in regard to such matter and as to all pensions granted under this law shall be final upon all parties seeking a pension as a dependent of said deceased, or otherwise, until such award of the trustees shall have been set aside or revoked. The provisions of this section are subject to change under the provisions of Section 10A of this Act.

"Section 10A. *MODIFICATION OF BENEFITS, MEMBERSHIP QUALIFICATIONS, ELIGIBILITY REQUIREMENTS AND CONTRIBUTIONS; CONDI-*

TIONS. (a) Notwithstanding anything to the contrary in other parts of this Act, the Board of Trustees ~~[of the Firemen, Policemen, and Fire Alarm Operators Pension Fund]~~ may, by majority vote of the whole board, make from time to time one or more of the following changes, or modifications:

“(1) modify or change prospectively or retroactively in any manner whatsoever any of the benefits provided by this Act, except that any retroactive change or modification shall only increase pensions or benefits;

“(2) modify or change prospectively in any manner whatsoever any of the membership qualifications;

“(3) modify or change prospectively or retroactively in any manner whatsoever any of the eligibility requirements for pensions or benefits;

“(4) increase or decrease prospectively the percentage of wages less than the one per cent (1%) minimum or above the six per cent (6%) maximum provided in Section 2 of this Act to be contributed to the fund; or

“(5) provide prospectively for refunds, in whole or in part, and with or without interest, of contributions made to the fund by employees who leave the city service before qualifying for a pension.

“(b) None of the changes made under Subsection (a) of this section may be made unless all of the following conditions are sequentially complied with:

“(1) the change must be approved by a qualified actuary selected by a four-fifths vote of the Board; the actuary, if an individual, must be a Fellow of the Society of Actuaries or a Fellow of the Conference of Actuaries in Public Practice or a Member of the American Academy of Actuaries; the findings upon which the properly selected and qualified actuary's approval are based are not subject to judicial review;

“(2) the change must be approved by a majority of all persons then making contributions to the fund as employees of a department to which the change would directly apply, voting by secret ballot at an election held after ten (10) days' notice given by posting at a prominent place in every station or substation of a department to which the change would directly apply ~~[fire station, every police station and substation,]~~ and in the city hall;

“(3) ~~[whether the fund for the police and the fund for the firemen and fire alarm operators are operated as separate funds or as one fund, all changes shall be uniform for both departments and contributing members of both departments shall have the right to vote;~~

“(4) ~~[the]~~ the changes, except changes made under the provisions of Subdivision (1), Subsection (a), of this section, shall apply only to active member employees who are members of the affected departments at the time the change becomes effective and those who enter the departments thereafter; and

“(5) ~~[the]~~ the changes shall not deprive any person, without his written consent, of any right to receive a pension or benefits which have already become vested and matured.

“Section 11. INVESTIGATIONS. The board shall consider all cases for the retirement and pension of the members of the fire and ~~[;]~~ police departments ~~[and fire alarm operators' department]~~ rendered necessary or expedient under the provisions of this law, and all applications for pensions by widows and the children and of dependent relatives, and the said trustees shall give written notice to persons asking a pension to appear before said board and offer such sworn evidence as he or they may desire. Any person who is a member of either of said departments and who is a contributor to said fund may appear either in person or by attorney and contest the application for participation in said fund by any person claiming to be entitled to participate therein, and may offer testimony in support of such contest. The president or chairman of said board shall have authority to issue process for witnesses and administer oaths to said witnesses and to examine any witness as to any matter affecting retirement or a pension under the provisions of this law. Such process for witness shall be served by any member of the police or ~~[;]~~ fire ~~[and fire alarm operators']~~ department and upon the failure of any witness to attend and testify, he or she may be compelled to attend and testify, as in any judicial proceeding.”

“Section 16. SEPARATION OF FIREMEN'S AND POLICEMEN'S PENSION FUNDS IN CERTAIN CITIES. In any ~~[such]~~ city or town ~~[having a population of more than one hundred thousand (100,000) inhabitants and less than one hundred and eighty-five thousand (185,000) inhabitants, according to the last preceding Federal Census,]~~ subject to and operating under the Pension Law, ~~[applicable to such cities or towns in which the Fire Alarm Operators form a part of and are under the direction of the Fire Department,]~~ the governing Body and Board of Trustees may, if it is deemed advisable and a majority of the members of said Fire Department or Police Department vote therefor, authorize and provide for the maintenance and administration of Pension Funds for each Department, said

Funds to be the Policemen's Division of the Firemen *and* [;] Policemen [~~and Fire Alarm Operators'~~] Pension Fund [;] and the Firemen's Division of the Firemen *and* [;] Policemen [~~and Fire Alarm Operators'~~] Pension Fund, [~~and~~] to be kept independent of and apart from each other, and said Funds of each Department to consist of contributions by members of said Department, donations thereto and funds received from any source by said Department [; ~~as provided in Section 3 and Section 14 of Chapter 101, Page 270, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, and the provisions contained in Sections 1, through 15, of Chapter 101, Page 270, of the General and Special Laws of the First Called Session of the Forty-third Legislature, being House Bill No. 31, as amended by Chapter 346, Page 811, of the General and Special Laws of the Regular Session of the Forty-fourth Legislature, being House Bill No. 991, and, as amended by House Bill No. 772 of the General and Special Laws of the Regular Session of the Forty-fifth Legislature, shall apply to the management, control, and disposition of each of said Funds,;~~] the purpose and effect of said division [~~of said Firemen, Policemen, and Fire Alarm Operators' Pension Fund into a Firemen's Division of said Pension Fund, and a Policemen's Division of said Pension Fund]~~ being to maintain the membership of and the payments into each Department separate, and to limit the rights of the members of each Department and their beneficiaries to the Pension Fund of their Department, and after the creation and establishment of a Firemen's Division of said Pension Fund and a Policemen's Division of said Pension Fund, the rights of Firemen [; ~~including Fire Alarm Operators and their beneficiaries,;~~] shall be limited to the Firemen's Division of said Pension Fund, and the rights of Policemen and their beneficiaries shall be limited to the Policemen's Division of said Pension Fund. After a separation has been voted and approved, as above provided, the Board of Trustees shall apportion the existing Firemen *and* [;] Policemen [; ~~and Fire Alarm Operators'~~] Pension Fund between the two (2) Funds on the basis of contributions made by the members of the respective Departments and donations or payments to said Departments, and thereafter all payments to members or their beneficiaries of benefits, now accrued or hereafter accruing, shall be made from the Fund of their Department. Where a separation of funds is had, as hereinabove provided, the governing body of any city or town whose voters have authorized the payment of funds from the public treasury into the Firemen *and* [;] Policemen [; ~~and Fire Alarm Operators'~~] Pension Fund [;] is hereby authorized to pay to the Board of Trustees [~~of the Firemen, Policemen, and Fire Alarm Operators' Pension Fund]~~, for the use of the Pension Fund of each division above provided for, sums not to exceed in total the amount voted by the people to be paid into the single fund.

"Section 17. *VALIDATION OF PROCEEDINGS FOR SEPARATION OF PENSION FUNDS.* All Acts and proceedings had and done by the governing body and Board of Trustees of the Pension Fund of any such city or town, subject to the above provisions, in creating, establishing, maintaining, and administering separate Pension Funds for Firemen [; ~~including Fire Alarm Operators~~] and Policemen [;] are hereby legalized, approved, and validated, as well as the division by said governing body and Board of Trustees of any public funds voted by the voters of said city or town for the Firemen *and* [;] Policemen [; ~~and Fire Alarm Operators'~~] Pension Fund between said two (2) Funds, and said governing body and Board of Trustees shall continue the separate maintenance and administration of said Funds in the manner hereinabove provided. This section and Section 16 of this Act provide only for the separation of pension funds into policeman and fireman divisions and grant the governing body no power or authority granted to the Board of Trustees under any provision of this Act, and the Board of Trustees shall have exclusive charge of administration and maintenance of the fund."

SECTION 2. The legislature intends, in enacting this legislation, that fire alarm operators who are certified and appointed as fire fighters and members of the firemen and policemen pension fund be treated for purposes of retirement and death benefits as other members of the fire department. In reenacting Section 17, Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), the legislature does not intend to validate any action not validated by that section when it was originally enacted and took effect.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 15, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 24, 1985, by the following vote: Yeas 147, Nays 1, one present not voting.

Approved: June 14, 1985

Effective: Immediately