

## CHAPTER 813

## S.B. No. 754

An Act relating to management of, contributions to, and disbursements from the firemen's relief and retirement funds in certain cities and to membership on the board of trustees; amending Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes), by amending the following sections: 3, 3B, 7F, 10A-2, 10A-3, 21, 23A, and 23D and by adding Section 23H.

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

**SECTION 1.** Section 3, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3. (a) In each incorporated city and town in this State having a regularly organized active fire department, whether wholly paid, part paid or volunteer, with fire fighting apparatus and equipment of the value of One Thousand Dollars (\$1,000) or more, the Mayor of such city or town, the city or town treasurer, or if no treasurer, then the city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance, performs the duty of city treasurer, and three (3) members of such regularly organized active fire department, to be selected by vote of the members of such fire department in the manner hereinafter directed shall be and are hereby constituted the 'Board of Firemen's Relief and Retirement Fund Trustees' to receive, handle and control, manage, and disburse such Fund for the respective city or town and as such Board shall have the power and authority to hear and determine all applications for retirement, claims for disability, either partial or total, and to designate the beneficiaries or

persons entitled to participate therein or therefrom as hereinafter directed and which said Board shall be known as the 'Board of Firemen's Relief and Retirement Fund Trustees of Texas.'

"(b) The Mayor shall be the chairman and the city treasurer shall be the secretary-treasurer of said Board of Trustees respectively.

"(c) Within thirty (30) days after this Act takes effect, the fire department of any such city or town as comes within the provisions of this law shall elect by ballot three (3) of its members, one to serve for one year, one to serve for two (2) years, and one to serve for three (3) years, or until their successors may be elected as herein provided, as members of said Board of Trustees and shall immediately certify such election to the governing body of such city or town. Annually thereafter, on the first Monday in the month of January after the effective date of this Act, said fire department shall elect by ballot and certify, one member of such Board of Trustees for a three (3) year term. *The member elected to the Board must receive votes from a majority of the voting participating members of the Fund provided that at least eighty percent (80%) of all participating members vote in the election. A participating member is a person making contributions to the Fund on the date of the election.* Said Board of Trustees shall elect annually from among their number a vice-chairman, who shall act as chairman in the absence or disability of the mayor-chairman.

"(d) Such Board of Trustees shall hold regular monthly meetings at such time and place as they may by resolution designate and may hold such special meetings upon call of the chairman as he may deem necessary; shall keep accurate minutes of its meetings and records of its proceedings; shall keep separate from all other city or town funds all moneys for the use and benefit of said Firemen's Relief and Retirement Fund; shall keep a record of all claims, receipts, and disbursements in a book or books to be furnished by said city or town for the purpose; shall make disbursements from said Fund only upon regular voucher signed by one, two, or three persons designated by the Board of Trustees. Subject to the approval of a majority of the participating members of the Fund, the Board of Trustees shall determine whether the signatures of one, two, or three persons are required for vouchers.

"(e) The city or town treasurer, as the treasurer of said Board of Trustees, shall be the custodian of the Firemen's Relief and Retirement Fund for such city and town under penalty of his official bond and oath of office. No member of said Board of Trustees shall receive compensation as such.

"(f) Said Board of Firemen's Relief and Retirement Fund Trustees of such city or town in this State shall annually and not later than the 31st day of January of each year after this Act takes effect, make and file with the Firemen's Pension Commissioner, herein provided for, a detailed and itemized report of all receipts and disbursements with respect to such Fund, together with a statement of their administration thereof and shall make and file such other reports and statements, or furnish such further information as, from time to time, may be required or requested by said Firemen's Pension Commissioner.

"(g) Said Board of Trustees shall have the power and authority to compel witnesses to attend and testify before it with respect to all matters connected with the operation of this Act in the same manner as is or may be provided for the taking of testimony before Notaries Public and its chairman shall have the power and authority to administer oaths to such witnesses.

"(h) A majority of all members shall constitute a quorum to transact business and any order of said Board of Trustees shall be made by vote to be recorded in the minutes of its proceedings.

"(i) If a vacancy occurs in the membership of said Board of Trustees by reason of the death, resignation, removal, or disability of any incumbent such vacancy shall be filled in the manner herein provided for the selection of such member to be so succeeded."

**SECTION 2.** Section 3B, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 3B. (a) This section applies to all cities having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census in which there is a 'full paid' fire department participating in a Firemen's Relief and Retirement Fund.

"(b) All of Section 3 of this Act applies to the Boards in these cities, except for those provisions which conflict, in which case this section controls.

"(c) The Board of Firemen's Relief and Retirement Fund Trustees shall consist of the following:

"(1) the mayor or his duly appointed and authorized representative;

"(2) the chief financial officer, or if there is no chief financial officer, then the city treasurer, city secretary, city clerk, or such other person or officer as by law, charter provision, or ordinance performs the duties of chief financial officer;

"(3) three (3) members of the regularly organized active fire department of the city, to be elected by ~~a majority vote of~~ the members of the department; and

“(4) two (2) legally qualified taxpaying electors of the city, who have resided in that city for the last three (3) years and are neither employees nor officers of that city, to be chosen by the unanimous vote of the members of the Board provided for in Subdivisions (1), (2), and (3) of this subsection.

“(d) The members of the fire department presently serving on the Board of Trustees shall continue in that capacity. Annually, on the first Monday in the month of January after the effective date of this section, the participating members of the Fund shall elect by secret ballot and certify one member of the Board for a three-year term. *The member elected to the Board must receive votes from a majority of the voting participating members of the Fund provided that at least eighty percent (80%) of all participating members vote in the election. A participating member is a person making contributions to the Fund on the date of the election.*

“(e) The two (2) appointed members shall be chosen on the third Monday in the month of January following the effective date of the section. One of the members shall be appointed for a term of one year and the other shall be appointed for a term of two (2) years. Annually, thereafter, on the third Monday in January, a qualified member will be chosen to serve as an appointed member for a two-year term.

“(f) The Board of Trustees shall elect annually from among their number a Chairman, Vice-Chairman and a Secretary.

“(g) Each member of the Board of Trustees shall, within ten (10) days after taking office, take an oath of office that he will diligently and honestly administer the affairs of the Firemen's Relief and Retirement Fund and that he will not knowingly violate or willingly permit to be violated any provision of this Act.

“(h) If an appointed member of the Board dies, resigns or is removed, the members provided for in Subdivisions (1), (2), and (3) of Subsection (c) shall choose another qualified person to fill the vacancy. The person chosen shall serve for the unexpired term of the person he is replacing.

“(i) The Secretary of the Board of Trustees shall, within seven (7) days after each meeting of the Board, forward true copies of the minutes of such meeting to each fire station and to each division of the fire department.”

**SECTION 3.** Section 7F, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 7F. This section applies to all cities and towns which are now within or which may hereafter come within the provisions of this Act. The Board of Trustees, as prescribed by law, of any such city or town may modify or change in any manner whatsoever any of the benefits provided hereunder and may modify or change in any manner whatsoever any of the eligibility requirements for such benefits provided that:

“(1) the change or modification is first approved by a qualified actuary selected by a four-fifths vote of the Board of Trustees of the Firemen's Relief and Retirement Fund; such qualified actuary shall, *if an individual*, 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;

“(2) a majority of the voting participating members of the pension fund vote for the change or modification by a secret ballot *provided at least eighty percent (80%) of all participating members vote in the election. A participating member is a person making contributions to the pension fund on the date of the election;*

“(3) the change or modification applies to all firemen, both paid and volunteer, in any department at the time of the change or modification and those who enter the department thereafter. The change or modification may, but need not, apply to firemen no longer in the department who are either receiving or are entitled to receive benefits under the department's pension plan; and

“(4) the change or modification does not deprive a member, without his written consent, of a right to receive benefits hereunder which have already become fully vested and matured in such member.”

**SECTION 4.** Section 10A-2, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 10A-2. (a) In all cities having fully paid firemen where Firemen's Relief and Retirement Funds now exist or shall be created under the provisions of this Act and having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census, the city or the governing body of the city shall deduct a percentage of [an amount equal to no less than three per cent (3%) nor more than nine per cent (9%) from] the monthly salary or compensation of each participating firefighter and contribute this amount to the Fund [member fireman; provided, however, that the total of the percentage contributed by such city to the Fund, plus the percentage, if any, contributed by such city under the Federal Social Security Act, shall not exceed:

"(1) nine per cent (9%) of the monthly salary, or

"(2) the total percentage contributed to the retirement of other full time employees of such city under the Texas Municipal Retirement System, or any other retirement system, whichever is greater].

"(b) The amount of the firefighters' monthly contributions [deductions which shall be contributed] to the Firemen's Relief and Retirement Fund shall be determined by majority [vote] of the voting participating [Fund] members provided that at least eighty per cent (80%) of all participating members vote in the election. A participating member is a person making contributions to the Fund on the date of the election.

"(c) Any city coming within the provisions set out in this Article shall also be required to contribute and appropriate monthly to the Fund an amount equal to the total sum paid into the Fund by salary deductions of the members, but said amount shall not exceed nine per cent (9%) of the monthly salary or compensation of the participating members of [subject to the limitations set out in Section 10A(a). Under no circumstances shall the city contribute an amount greater than the total sum paid into] the Fund [by salary deductions of members] unless authorized under Section 10A(e).

"(d) Money deducted from salaries or compensation as provided by this section and the payments and contributions provided by this section shall become and form a part of the Firemen's Relief and Retirement Fund of the city or town in which the contributing fireman serves.

"(e) In addition to the amount which the city is required to contribute, the governing body of a city may authorize the city to make an additional annual contribution to its Firemen's Relief and Retirement Fund in whatever amount the governing body of the city may fix.

"(f) Each person who shall hereafter become a fireman in any city which has a Firemen's Relief and Retirement Fund to which he is eligible for membership, shall become a member of such Fund as a condition of his appointment, and shall by acceptance of such position agree to make and shall make contributions required under this Act of members of such Fund, and shall participate in the benefits of membership in such Fund as provided in this Act, provided, however, that no person shall be eligible to membership in any such Fund who is more than thirty-five (35) years of age at the time he first enters service as a fireman; and provided, further, that any such person who enters service as a fireman may be denied or excused from membership in the Fund if the Board of Trustees of the Fund determines that such person is not of sound health. The applicant shall pay the cost of any physical examination required in such instance by the Board of Trustees.

"(g) Each person who is an active member of a Firemen's Relief and Retirement Fund previously organized and existing under the laws of this State at the effective date of this amendment shall continue as a member of such Fund and he shall retain and be allowed credit for all service to which he was entitled in the Fund of which he was a member immediately prior to the effective date of this amendment."

SECTION 5. Section 10A-3, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 10A-3. (a) This section applies to all cities which have a population of two hundred forty thousand (240,000) or less according to the last preceding Federal Census which adopt the provisions of this section by majority vote of the participating members of the fund and adopted by ordinance.

"(b) A city having a Firemen's Relief and Retirement Fund shall deduct an amount equal to a percentage of [not less than three percent (3%) nor more than nine percent (9%)] of the average monthly salary or compensation as computed in Subsection (d) of this section from each participating member's salary. [The total percentage contributed by the city to the fund; plus the percentage, if any, contributed by the city under the Federal Social Security Act, shall not exceed:

"(1) nine percent (9%) of the average monthly salary; or

"(2) the total percentage contributed to the retirement of other full time employees of the city under the Texas Municipal Retirement System, or any other retirement system, whichever is greater.]

"(c) The percentage of the monthly deductions which is contributed to the Firemen's Relief and Retirement Fund as provided in this section shall be determined by a majority of the voting participating [vote of the fund] members of the pension fund provided at least eighty percent (80%) of all participating members vote in the election. A participating member is a person making contributions to the pension fund on the date of the election.

"(d) The average monthly salary or compensation shall be computed by dividing the total gross monthly pay for all firemen for the immediately preceding twelve (12) months by the total number of firemen paid in the immediately preceding twelve (12) months. The average monthly salary shall be recalculated each year.

“(e) Monthly contributions to the fund shall start on a date to be established by the board of trustees and shall continue for the following 12-month period.

“(f) Any city adopting the provisions of this section shall appropriate and contribute monthly to the fund an amount equal to the total sum paid into the fund by salary deductions of the members, *but said amount shall not exceed nine percent (9%) of the average monthly salary or compensation as computed in Subsection (d) multiplied by the number of participating members of the fund* [~~Under no circumstances shall the city contribute an amount greater than the total sum paid into the fund by salary deductions of members~~] unless authorized by Subsection (h) of this section.

“(g) Money deducted from salaries or compensation as provided by this section and payments and contributions of the city as provided by this section shall become a part of the Firemen’s Relief and Retirement Fund of the city in which the contributing fireman serves.

“(h) In addition to the amount which the city is required to contribute, the governing body of a city may authorize an annual contribution to its Firemen’s Relief and Retirement Fund in any amount it may fix.

“(i) Any person who may become a fireman and is eligible for membership in the city Firemen’s Relief and Retirement Fund shall become a member of that fund as a condition of his appointment, make the contributions required of members by this Act, and participate in the benefits of membership in the fund. No person is eligible for membership in the fund if he is more than thirty-five (35) years of age at the time he first enters service as a fireman or if the board of trustees of the fund determines that the person entering the service is not in sound health. The applicant shall pay the cost of any physical examination required by the board of trustees to determine eligibility.

“(j) Any person who is an active member of a Firemen’s Relief and Retirement Fund previously organized and existing under the laws of this state on the date that this section is adopted by the city shall continue as a member of that fund and retain and be allowed credit for all service to which entitled prior to the date of adoption.”

**SECTION 6.** Section 21, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 21. (a) In computing the time or period for retirement for length of service as herein provided, less than one (1) year out of service or any time served in the armed forces of the Nation during war or National emergency shall be construed as continuous service, but if out more than one (1) year and less than five (5) years, credit shall be given for prior service, but deduction made for the length of time out of service. If out of service more than five (5) years no previous service shall be counted, provided however, that if a fireman be out of service over five (5) years through no fault of his own and subsequently returns to the department, this period of time shall not be counted against him in so far as his retirement time is concerned. Any fireman joining any regularly organized fire department coming within the provisions of this Act after the effective date hereof shall be entitled to benefits hereunder after he has filed a statement that he desires to participate in the benefits from the Firemen’s Relief and Retirement Fund, as provided in Section 10 or Section 10B of this Act, but he shall not be entitled to any disability benefits on account of any sickness or injury received before the statement was filed.

“(b) Members of the fund who have forfeited previously credited service may become eligible to have their forfeited service reinstated under terms established by the board provided that:

“(1) the service reinstatement is first approved by a qualified actuary selected by a four-fifths vote of the board of trustees of the Firemen’s Relief and Retirement Fund; such qualified actuary shall 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; and

“(2) a majority of the voting participating members vote for the reinstatement by a secret ballot provided that at least eighty percent (80%) of all participating members vote in said election. A participating member is a person making contributions to the pension fund on the date of the election.”

**SECTION 7.** Section 23A, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon’s Texas Civil Statutes), is amended to read as follows:

“Section 23A. (a) This section applies to the Firemen’s Relief and Retirement Fund in any city having a population of less than two hundred forty thousand (240,000), according to the last preceding Federal Census.

“(b) Whenever, in the opinion of the Board of Trustees, there is on hand in the Firemen’s Relief and Retirement Fund a surplus over and above a reasonably safe amount to take care of current demands upon such fund, such surplus, or so much thereof as in the judgment of the Board is deemed proper, may be invested in bonds or other interest-bearing obligations and

securities of the United States, the State of Texas, or any county, city or other political subdivision of the State of Texas; in shares or share accounts of savings and loan associations, where such shares or share accounts are insured under and by virtue of the Federal Savings and Loan Insurance Corporation; in first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act of the United States, as amended from time to time; ~~and~~ in ~~such~~ corporation bonds, preferred stocks and common stocks *and in such Guaranteed Investment Contracts offered by insurance companies, Money Market Funds, and Mutual Funds* as the Board may deem to be proper investments for the fund.

“(c) In making each and all of such investments the Board shall exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital.

“(d) No more than fifty percent (50%) of the fund shall be invested at any given time in corporate stocks, nor shall more than five percent (5%) of the fund be invested in corporate bonds and stocks issued by any one corporation, nor shall more than five percent (5%) of the voting stock of any one corporation be owned.

“(e) Stocks eligible for purchase shall be restricted to stocks of companies incorporated within the United States which have paid dividends for ten (10) consecutive years or longer immediately prior to the date of purchase and which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Securities and Exchange Commission or its successors.”

**SECTION 8.** Section 23D, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

“Section 23D. In cities having a population of eight hundred thousand (800,000) or less according to the last preceding Federal Census, and only in such cities, the Board of Trustees of a Firemen's Relief and Retirement Fund coming under the provisions of this Act may employ an actuary *to provide actuarial services required by the fund* ~~[no more than once every three (3) years]~~ and pay his compensation out of the Pension Fund; *however, compensation for actuarial valuations and special actuarial studies of changes in benefits or eligibility requirements as permitted by Section 7F can be paid out of the pension fund no more frequently than once every two (2) years.*”

**SECTION 9.** Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes), is amended by adding Section 23H to read as follows:

“Section 23H. (a) *This section applies to all cities and towns which are now within or which may hereafter come within the provisions of this Act.*

“(b) *The board of trustees shall have the power to authorize payment from the assets of the fund for legal fees, medical fees, and other fees and expenses incurred by board members in the performance of their duties as board members.*

“(c) *The board of trustees shall have the power to authorize payment from the assets of the fund for expenses other than those listed in Subsection (b) of this section provided that said expenses are first approved by a majority of the voting participating members of the fund provided at least eighty percent (80%) of all participating members vote in the election. A participating member is a person making contributions to the pension fund on the date of the election.*

“(d) *The annual amount of expenses allowed in Subsections (b) and (c) of this section shall not exceed one percent (1%) of the fund's assets up to one million dollars (\$1,000,000) plus one-fourth of one percent (1/4 of 1%) of the fund's assets in excess of one million dollars (\$1,000,000).*

“(e) *In no event shall the assets of the fund be used to pay salaries to members of the board of trustees.*”

**SECTION 10. EMERGENCY.** 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.

Passed the Senate on April 18, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 17, 1985, by the following vote: Yeas 134, Nays 0, one present not voting.

Approved: June 15, 1985

Effective: August 26, 1985