

## CHAPTER 173

## H.B. No. 1476

## AN ACT

relating to administration of retirement systems supervised by the fire fighters' pension commissioner.

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

SECTION 1. Section 2, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended by adding Subdivision (9) to read as follows:

(9) "Compensation" includes amounts of workers' compensation benefits received by an employee and by which the employee's salary is reduced.

SECTION 2. Section 7, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (d) and adding Subsection (f) to read as follows:

(b) Before a board of trustees chooses to adopt or change a benefit or requirement for payment of benefits under this section, the proposed addition or change must be approved by:

(1) an eligible actuary selected by the board; and

(2) a majority of the participating members of the retirement system voting *on the addition or change* by secret ballot at an election held for that purpose at which at least 50 percent of all participating members of the retirement system vote.

(d) Except as provided by Subsection (e) of this section, if a board chooses to adopt an addition or change after it has been approved as provided by this section, the addition or change applies to all persons who are participating members of the retirement system on the *effective date of the addition or change* [~~date of adoption~~] and all persons who became participating members during the time the addition or change remains in effect. The addition or change also may apply to:

(1) persons receiving monthly benefits; or

(2) former members of the fire department who meet an applicable length-of-service requirement for service retirement.

(f) *The effective date of a change or addition adopted under this section is a date specified by the board of trustees that is not earlier than the date of adoption by the board. A change or addition may not be applied retroactive to its effective date.*

SECTION 3. Section 9(a), Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Except as otherwise provided by this section, a person who is an employee of a fire department included within the coverage of a retirement system is a member of the retirement system if the person is younger than 36 years old *on the date the person is certified under civil service as eligible for a beginning position with* [~~at the time the person first becomes an employee of~~] the department.

SECTION 4. Section 10(d), Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

(d) Absence from service *by an employee* does not forfeit service credit accrued before the absence begins, unless membership is terminated. *Absence from service by a volunteer does not forfeit service credit accrued before the absence begins.*

SECTION 5. Section 14(a), Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A member of a retirement system is eligible for retirement for disability if the member becomes physically or mentally disabled, *except as the result of a condition the member had on the date the member became an employee or volunteer*, in or in consequence of the performance of the member's duties as an employee or volunteer of the fire department included within the coverage of the retirement system.

SECTION 6. Section 21(h), Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), as added by Chapter 104, Acts of the 72nd Legislature, Regular Session, 1991, is redesignated as Section 21(j) to read as follows:

(j) ~~[(h)]~~ The fire fighters' pension commissioner may conduct seminars or workshops for persons interested in issues pertaining to retirement systems under this Act. The commissioner may impose and collect a fee for attendance at a seminar or workshop in an amount that, in the aggregate, does not exceed the estimated costs of preparing for and conducting the seminar or workshop. Fees collected under this subsection shall be remitted to the comptroller of public accounts for deposit in an account in the general revenue fund to be known as the fire fighters' pension commissioner account. Amounts in the account may be appropriated only to the commissioner for the payment of administrative expenses.

SECTION 7. Section 22, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 22. APPEALS FROM LOCAL BOARD DECISIONS. (a) A person aggrieved by a decision of a board of trustees relating to eligibility for or amount of benefits payable by a retirement system may appeal the decision to the fire fighters' pension commissioner.

(b) An appeal under this section is begun by delivering a notice of appeal with the chairman, secretary, or secretary-treasurer of the board of trustees that made the decision. The notice must be delivered not later than the 20th day after the date of the decision and contain a brief description of the reasons or grounds for appeal. The aggrieved person must file a copy of the notice with the fire fighters' pension commissioner. ~~[The secretary or secretary-treasurer of the board of trustees that made the decision from which an appeal is taken shall file a transcript of all proceedings and papers relating to the matter with the fire fighters' pension commissioner not later than the 30th day after the date the officer of the board to whom the notice of appeal was delivered received the notice.]~~

(c) An appeal under this section ~~to [before]~~ the fire fighters' pension commissioner is held in Austin and is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) conducted as a de novo hearing *by the State Office of Administrative Hearings.*

~~[(d) A board of trustees from whose decision an appeal is taken under this section may choose an attorney to represent the board before the fire fighters' pension commissioner. At the request of a board of trustees, the city attorney of the municipality of which the board is a part shall, without additional compensation, represent the board before the fire fighters' pension commissioner.]~~

SECTION 8. The Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes) is amended by adding Section 22A to read as follows:

Sec. 22A. ATTORNEY. *A board of trustees may employ an attorney to represent the board in one or all legal matters, including a hearing on appeal to the fire fighters' pension commissioner. At the request of a board of trustees, the city attorney of the municipality of which the board is a part shall, without additional compensation, represent the board in one or all legal matters.*

SECTION 9. Section 23(b), Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The cost of actuarial services may be paid from assets of the fund[, ~~except that costs for actuarial valuations and special actuarial studies under Section 7 of this Act may be paid from the fund not more than once every two years~~].

SECTION 10. Section 25(c), Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) The annual amount of payments from a fund under Subsections (a) and (b) of this section, *excluding legal and medical fees*, may not exceed:

(1) 1 percent of the book value of the assets of the fund for the first \$1 million in book value; and

(2) 1/4 of 1 percent of the book value of the assets of the fund that exceeds \$1 million.

SECTION 11. Section 27, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A board of trustees established under this Act shall keep a sufficient amount of cash on hand to make payments as they become due under the retirement system. If a board determines that the fund of its retirement system contains an amount in excess of the amount needed to make payments as they become due, the board may invest any portion of the excess in:

(1) bonds or other interest-bearing obligations and securities of the United States, the state, or a political subdivision of the state;

(2) shares and share accounts of savings and loan associations to the extent that the shares and share accounts are insured by the Federal Savings and Loan Insurance Corporation;

(3) first-lien real estate mortgage securities insured by the Federal Housing Administration;

(4) bonds of companies incorporated within the United States;

(5) common and preferred stocks of companies incorporated within the United States that, unless the stocks are bank or insurance stocks, are listed on an exchange registered with the Securities and Exchange Commission or its successor;

(6) guaranteed investment contracts offered by insurance companies;

(7) money market funds;

(8) mutual funds *and other pooled funds*;

(9) international stocks traded as American depository receipts; and

(10) over-the-counter stocks.

(e) *A board of trustees established under this Act shall adopt a written investment policy stating how assets of the retirement system that it administers may be invested.*

SECTION 12. Section 28, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 28. INVESTMENT MANAGER AND COUNSELING SERVICE. (a) *The board of trustees of a retirement system established under this Act may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.*

(b) *To be eligible for appointment under Subsection (a) of this section, an investment manager must be:*

(1) *registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.);*

(2) *a bank as defined by that Act; or*

(3) *an insurance company qualified to perform investment services under the laws of more than one state.*

(c) *In a contract made under this section, the board of trustees shall specify policies, requirements, and restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the board of trustees adopts for investments of the system.*

(d) *In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the board of trustees must act prudently and in the interest of the participants and beneficiaries of the retirement system.*

(e) *A trustee is not liable for the acts or omissions of an investment manager appointed under this section, nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.*

(f) *A board of trustees established under this Act may employ professional investment counselors to assist and advise the board in the investment of the assets of the fund or to evaluate the performance of an investment manager appointed under this section. The investment counseling service must be provided by an organization whose business functions include performing continuous investment advisory service to public retirement systems.*

(g) ~~(f)~~ *The cost of investment managing or counseling services may be paid by the municipality or from the assets of the fund.*

(h) *A retirement system established under this Act is exempt from Subchapter C, Chapter 802, Government Code, except Sections 802.205 and 802.207.*

SECTION 13. Section 29(e), Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) *Each person who is a member of a retirement system as a current fire department volunteer shall contribute to the system an annual amount of not less than \$3 nor more than \$5. The amount must be determined by majority vote by secret ballot of the volunteers of the department who are participating members of the retirement system. A municipality may at any time make the member contributions required under this subsection on behalf of its volunteers and any other contributions the municipality chooses to make to the retirement system.*

SECTION 14. Section 30, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is amended by adding Subsection (d) to read as follows:

(d) *A pick up of employee contributions is terminated in a municipality on January 1 of the year following the year in which:*

(1) *the termination has been approved by a two-thirds vote of the participating members of the retirement system at an election by secret ballot at which at least 50 percent of the participating members vote; and*

(2) *the governing body of the municipality has repealed the ordinance that adopted the pick up of employee contributions.*

SECTION 15. The Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes) is amended by adding Section 32 to read as follows:

**Sec. 32. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS, RETIREES, ANNUITANTS, OR BENEFICIARIES.** (a) *Information contained in records that are in the custody of a retirement system established under this Act concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be disclosed in a form identifiable with a specific individual unless:*

(1) *the information is disclosed to:*

(A) *the individual;*

(B) *the individual's attorney, guardian, executor, administrator, conservator, or other person who the board of trustees of the retirement system determines is acting in the interest of the individual or the individual's estate;*

(C) *a spouse or former spouse of the individual if the board of trustees determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system; or*

(D) *a person authorized by the individual in writing to receive the information; or*

(2) *the information is disclosed under an authorization of the board of trustees that specifies the reason for the disclosure.*

(b) *This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.*

(c) *A determination and disclosure under Subsection (a) of this section may be made without notice to the individual member, retiree, annuitant, or beneficiary.*

SECTION 16. The Texas Statewide Volunteer Fire Fighters Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes) is amended by adding Section 12A to read as follows:

*Sec. 12A. BENEFITS FOR MEMBER OF DEPARTMENT THAT CEASES TO EXIST.*

(a) *The commissioner shall continue to administer benefits of the pension system for members and retirees who performed service for a former member fire department that has not withdrawn from the pension system under Section 12 of this Act and has ceased to exist.*

(b) *The governing body of a political subdivision in which a former member fire department described by Subsection (a) of this section was located shall perform the duties provided by Section 23 of this Act for the members and retirees who performed service for the former member fire department.*

SECTION 17. Section 14(b), Texas Statewide Volunteer Fire Fighters Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The surplus may be invested in:

(1) bonds or other interest-bearing obligations and securities issued by governmental entities;

(2) shares or share accounts of savings and loan associations insured by the Federal Savings and Loan Insurance Corporation;

(3) shares and share accounts of banks insured by the Federal Deposit Insurance Corporation;

(4) first lien real estate mortgage securities insured by the Federal Housing Administration under the National Housing Act, as amended;

(5) investments made by a life insurance company in order to effect a group annuity contract; ~~[or]~~

(6) corporation bonds, preferred stocks, and common stocks;

(7) *mutual funds; and*

(8) *international stocks traded as American depository receipts.*

SECTION 18. Section 19(o), Texas Statewide Volunteer Fire Fighters Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(o) *After a hearing conducted by the State Office of Administrative Hearings, the [The] commissioner shall determine each appeal ~~[hear all appeals]~~ from a local board ~~[boards]~~ of trustees decision ~~[trustees' decisions]~~ and issue a written opinion ~~[opinions]~~ in compliance with the procedures required by this Act.*

SECTION 19. Section 21(c), Texas Statewide Volunteer Fire Fighters Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) *After a hearing conducted by the State Office of Administrative Hearings, the [The] board shall determine each appeal ~~[hear appeals]~~ from a ~~[the]~~ commissioner's decision ~~[decisions].~~*

SECTION 20. This Act takes effect September 1, 1993.

SECTION 21. 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 by the House on April 1, 1993, by a non-record vote; passed by the Senate on May 7, 1993, by a viva-voce vote.

Approved May 17, 1993.

Effective Sept. 1, 1993.