

CHAPTER 824

S.B. No. 817

AN ACT

relating to the retirement system for fire fighters and police officers in certain municipalities.

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

ARTICLE 1. GENERAL PROVISIONS

SECTION 1.01. PURPOSE. The purpose of the fund is to provide for the protection of pensions in a municipality to which this Act applies for fire fighters and police officers and their beneficiaries because of the hazardous nature of the professions of fire fighting and law enforcement.

SECTION 1.02. DEFINITIONS. In this Act:

- (1) "Board" means the board of trustees of a fund to which this Act applies.
- (2) "Fund" means the fire fighters and police officers pension fund of a municipality to which this Act applies.
- (3) "Retirement annuity" means monthly pension benefits.
- (4) "Surviving spouse" means a widow or a widower.

SECTION 1.03. APPLICABILITY. This Act applies to paid fire and police departments of a municipality with a population between 750,000 and 1,000,000, according to the most recent federal census.

SECTION 1.04. STATUTORY TRUST. (a) The fund is a statutory trust and is not a subdivision of government.

(b) The board shall hold in trust the assets of the fund for the benefit of the members and retirees of the fund and their beneficiaries and for defraying reasonable administrative expenses of the fund.

(c) The fund may not be diverted, transferred, or used for any purpose inconsistent with this Act and with the instruments governing the fund.

(d) A public or private agency or authority may not alter or impair any contract made by the board or under the authority or direction of the board.

**SECTION 1.05. EXEMPTIONS.** A retirement annuity from the fund is exempt from garnishment, assignment, attachment, judgments, other legal process, and inheritance or other taxes established by this state.

**SECTION 1.06. OTHER PENSION SYSTEM ESTABLISHED BY STATE LAW.** Notwithstanding any other law, if the employees of the fire or police department who have been members of the fund are included in another pension system established by state law, the board shall act for any similar board created by that law with regard to the receipt and payment of amounts owed to the employees under this Act. Employees of a department who are members of the fund and are not included in the other pension system may not participate in any payment under this section.

## ARTICLE 2. ADMINISTRATIVE PROVISIONS

**SECTION 2.01. BOARD OF TRUSTEES.** (a) The fund is governed by a board of trustees consisting of the following nine members:

(1) the mayor of a municipality to which this Act applies;

(2) two members of the governing body of a municipality to which this Act applies, appointed by that governing body;

(3) two active fire fighters below the rank of fire chief, elected by secret ballot by majority vote of the members of the fire department who are contributing members of the fund;

(4) two active police officers below the rank of police chief, elected by secret ballot by majority vote of the members of the police department who are contributing members of the fund;

(5) a retiree or beneficiary representative of the fire department, elected by secret ballot by majority vote of the retirees, or the surviving spouses of the retirees, from the fire department; and

(6) a retiree or beneficiary representative of the police department, elected by secret ballot by majority vote of the retirees, or the surviving spouses of the retirees, from the police department.

(b) The board, through its secretary, shall administer the required elections of the retiree or beneficiary representatives by mailing ballots to out-of-town retirees or beneficiaries. Only retirees and surviving spouses of members properly enrolled on the pension rolls are eligible to be elected as retiree or beneficiary representatives.

(c) The fund is independent of the control of a municipality to which this Act applies.

**SECTION 2.02. TERMS OF TRUSTEES.** (a) The mayor of a municipality to which this Act applies serves on the board for the term of the mayor's office.

(b) The two members of the municipal governing body serve on the board for the term of the office to which they are elected.

(c) The two active fire fighters below the rank of fire chief serve on the board for staggered four-year terms, with one member's term expiring every two years.

(d) The two active police officers below the rank of police chief serve on the board for staggered four-year terms, with one member's term expiring every two years.

(e) The retiree or beneficiary representatives serve on the board for staggered four-year terms, with one member's term expiring every two years.

**SECTION 2.03. REMOVAL OF TRUSTEES.** (a) The members of the board who are fire fighters or police officers may be removed by a vote of the membership of their respective departments.

(b) The members of the board who are retiree or beneficiary representatives may be removed by a vote of the group eligible to elect them.

(c) A petition for removal under this section must be filed with the board within 45 days after the date the first signature on the petition is obtained. A signature is invalid if it is not dated.

(d) A removal election under this section must be held within 30 days after the date the board certifies that a proper petition for a removal election has been signed by at least 20 percent of the membership from which the trustee was elected. A trustee's term of service ends on the entry of an order by the board declaring the results of a removal election under this section favor removal.

(e) On the date the board enters an order under Subsection (d) of this section, the board shall call a special election to be held not less than 20 nor more than 30 days after that date to fill the vacancy for the unexpired term of the trustee who was removed. The trustee who was removed is not eligible to run in the special election but is eligible to run in all subsequent board elections for the category in which the trustee was removed.

**SECTION 2.04. OFFICERS.** (a) The board shall elect a chairman, a vice-chairman, and a secretary.

(b) The treasurer of the board is the treasurer of a municipality to which this Act applies.

**SECTION 2.05. EMPLOYEES.** The board may employ an executive director and staff as needed to administer the fund.

**SECTION 2.06. MEETINGS.** The board shall hold regular monthly meetings and special meetings at the call of the chairman or on written demand by a majority of the members of the board.

**SECTION 2.07. COMMITTEES OF BOARD.** (a) The chairman of the board may appoint committees that report to the board.

(b) Only members of the board may be appointed to committees under this section.

(c) Committees shall be composed of not fewer than three nor more than five members of the board, except as otherwise specifically provided by the board.

(d) Only members of committees may vote as committee members.

(e) The board may direct staff and advisors to assist the committees.

(f) All members of the board may attend committee meetings.

(g) Members of committees serve at the pleasure of the board.

(h) Permanent or standing committees may not be appointed.

### ARTICLE 3. GENERAL POWERS AND DUTIES OF BOARD

**SECTION 3.01. GENERAL POWERS AND DUTIES OF BOARD.** (a) The board has complete authority and power to:

- (1) administer the fund;
- (2) order payments from the fund as required by this Act; and
- (3) control the fund independently.

(b) The board shall adopt rules relating to:

- (1) the disbursement of the fund's assets;
- (2) the designation of beneficiaries of the fund; and
- (3) the name of the board and the fund.

(c) The board shall report annually to the governing body of the municipality regarding the condition of the fund and the receipts and disbursements of the fund.

**SECTION 3.02. APPLICATIONS; HEARINGS.** (a) The board shall consider all cases for membership in the fund and for the retirement and benefits of the members of the fund and all applications for benefits by surviving spouses, children, and dependent parents.

(b) The board shall give notice to persons asking for membership in the fund or for a benefit to appear before the board and offer sworn evidence.

(c) Any contributing member of the fund who is in good standing in the fire or police department may:

(1) appear in person or by attorney to contest the application for membership participation in the fund or for an annuity or benefit by any person claiming to be entitled to an annuity or benefit, either as a member or beneficiary; and

(2) offer supporting testimony.

(d) The chairman of the board may issue process for witnesses, administer oaths to those witnesses, and examine any witness in any manner affecting retirement or a benefit under this Act. The process for witnesses may be served on any member of the fire or police department. On the failure of any witness to attend and testify, that person may be compelled to attend and testify as in any judicial proceeding, according to the practice in a justice court.

**SECTION 3.03. ORDERS FOR DISBURSEMENTS.** (a) The board shall issue orders for disbursements signed by the chairman or vice-chairman of the board and the secretary of the board to the appropriate persons. The order shall state the purposes for the payments. The board shall keep a record of those orders.

(b) At each monthly board meeting, the board shall send to the treasurer of the board a written list of persons entitled to the payment from the fund, stating the amount and reason for payment. The list must be certified and signed by the chairman or vice-chairman of the board and the secretary of the board.

(c) The fund may not be disbursed without a record vote of the board.

(d) A quorum of the board is five members. When a quorum is present, action of the board that requires a vote may be taken by a majority of the members present.

#### ARTICLE 4. MEMBERSHIP AND CONTRIBUTIONS

**SECTION 4.01. MEMBERSHIP.** (a) A person becomes a member of the fund as a condition of employment if the person:

(1) has been properly appointed and enrolled as a fire fighter or police officer of a municipality to which this Act applies in a position or office established and classified by municipal ordinance;

(2) has served the probationary period for the position;

(3) has served for six months as a fire fighter or police officer of the municipality; and

(4) was not younger than 18 and had not attained the age of 36 at the time of appointment.

(b) The drawing of compensation by an officer or employee in the fire or police department for service in that department does not of itself make that person a member of the fund.

(c) The regularity of an appointment as a fire fighter or police officer of a municipality to which this Act applies may not be presumed from the serving of the full probationary period, if any. The service of the probationary period by an officer or employee as a fire fighter or police officer of a municipality to which this Act applies does not constitute the creation of a position or office to which a proper appointment has been made for purposes of this Act.

**SECTION 4.02. REINSTATEMENT.** A former fund member who has reentered the fire or police department may not be barred from membership in the fund because of age as long as the member can qualify for a 30-year pension on or before the member's 65th birthday.

**SECTION 4.03. MILITARY SERVICE.** (a) A member of the fund who enters active military service may not:

(1) be required to make the monthly payments into the fund provided by this Act as long as the member is engaged in active military service; or

(2) lose any seniority rights or retirement benefits provided by this Act by virtue of that military service.

(b) Not later than the 90th day after the date of the member's reinstatement to an active status in the fire or police department, the member must file with the secretary of the board a written statement of intent to pay into the fund an amount equal to what the member would

have paid if the member had remained on active status in the department during the period of the member's absence in military service.

(c) The member must make the payment described by Subsection (b) of this section in full within an amount of time after the member's return that is equal to twice the amount of time the member was absent, except that the maximum period for payment may not exceed four years.

(d) Except as provided by Subsection (f) of this section, if the member does not comply with Subsections (b) and (c) of this section, the member shall lose all credit toward the member's retirement annuity for the length of time the member was engaged in active military service.

(e) The amount of credit purchased under this section may not exceed the length of the active military service authorized by law.

(f) If a member does not make the payment required under Subsection (c) of this section within the required amount of time and the member is eligible for credit under federal law, the member shall also pay interest, compounded annually, on the then current rate of a member's contribution from the date the payment was required to the date the payment was made. The board shall set the rate of interest.

(g) A disability resulting from either injury or disease contracted while engaged in military service does not entitle a member to a disability retirement annuity.

(h) A municipality to which this Act applies shall double-match payments made to the fund under this section.

**SECTION 4.04. MEMBER CONTRIBUTIONS.** There shall be deducted from the wages of each fire fighter and police officer in the employment of a municipality to which this Act applies a percentage of the member's total salary, excluding overtime pay, according to the following schedule:

- (1) 11.16 percent for full pay periods after September 30, 1993, but before October 1, 1994;
- (2) 11.32 percent for full pay periods after September 30, 1994, but before October 1, 1995;
- (3) 11.50 percent for full pay periods after September 30, 1995, but before October 1, 1996;
- (4) 11.66 percent for full pay periods after September 30, 1996, but before October 1, 1997;
- (5) 11.82 percent for full pay periods after September 30, 1997, but before October 1, 1998;
- (6) 12 percent for full pay periods after September 30, 1998, but before October 1, 1999;
- (7) 12.16 percent for full pay periods after September 30, 1999, but before October 1, 2000;
- (8) 12.32 percent for full pay periods after September 30, 2000, but before October 1, 2001; and
- (9) 12.50 percent for full pay periods after September 30, 2001.

**SECTION 4.05. MUNICIPAL CONTRIBUTIONS.** (a) A municipality to which this Act applies shall pay into the fund an amount equal to double the sum total of all member contributions made in accordance with Section 4.04 of this Act.

(b) The payments into the fund by the municipality, both as to deductions and double-matching amounts, shall be made on the same day the contributions are deducted from the members' pay.

(c) Any donations made to the fund and all funds received from any source for the fund shall be deposited in the fund at the earliest opportunity.

(d) The municipality's double-matching amount under this section is in place of all other payments previously required by law to be made by the municipality.

(e) The municipal contribution and retirement annuities are a part of the compensation for services rendered to the municipality. This Act is of the essence of the contract of

employment and appointment of the fire fighters and police officers of a municipality to which this Act applies.

**SECTION 4.06. DEFICIENCY PAYMENT BY MUNICIPALITY.** A municipality to which this Act applies shall pay the deficiency, if any, between the amount available to pay all retirement annuities and other benefits owed under this Act and the amount required by this Act to pay those benefits.

**SECTION 4.07. NO REFUND OF CONTRIBUTIONS.** A member of the fund is not entitled to any refund from the fund of any portion of the money deducted from the member's pay for the benefit of the fund. That money is public money and the property of the fund for the benefit of the members qualifying for benefits and for their beneficiaries.

#### ARTICLE 5. MEMBER BENEFITS

**SECTION 5.01. RETIREMENT BENEFITS.** (a) If a member of the fund has contributed a portion of that member's salary as provided by this Act and has contributed and served for 20 years or more in the fire or police department, the board shall, on the application of the member for a retirement annuity, authorize a retirement annuity to the member.

(b) The board shall compute the retirement annuity of a member who retires after September 30, 1991, on the basis of the average of the member's total salary, excluding overtime pay, for the highest three years of the last five years, computed from the date of retirement, of the member's pay at the rate of two percent for each of the first 20 years served, plus 3 1/2 percent for each of the next 10 years served, plus one percent for each of the next five years served, with fractional years prorated based on full months served as a contributing member, but the annuity may not exceed, as of the date of retirement, 80 percent of the average so determined.

(c) A member may not receive an award from the fund for service retirement until the member has served at least 20 years in the fire or police department and has also contributed the required amount of money for at least 20 years. In determining the number of years of service in a department, the member shall be given full credit for the time the member was actively engaged in military service in accordance with Section 4.03 of this Act. Disciplinary suspensions of 15 days or less may not be subtracted from a member's service credit under this Act if the member has paid into the fund within 30 days after the termination date of each suspension a sum of money equal to the amount of money that would have been deducted from that person's salary during that period of suspension if it had not been for that suspension. A municipality to which this Act applies shall double-match a payment made under this subsection.

(d) If a member of the fire or police department has served for 30 years or more in either department and has contributed a portion of that member's salary as provided by this Act for the same period, that member is retired automatically from service on the member's 65th birthday.

(e) If, on a member's 65th birthday, the member has served less than 30 years in either department and has not contributed a portion of that member's salary as provided by this Act for that period, the member may continue service and contributions until the total service equals and the contributions have been made for 30 years.

(f) Except as provided by Subsection (g) of this section, members of the fund at the time of their retirement shall receive service credit for all unused sick leave accumulated by them under Chapter 143, Local Government Code, and its subsequent amendments, with fractional years prorated based on full months of sick leave.

(g) The retirement annuity for a member under Subsection (f) of this section may not exceed, as of the date of retirement, 80 percent of the average, determined under that subsection and under the ordinances of a municipality to which this Act applies, that exceeds 90 days of accumulated sick leave.

**SECTION 5.02. RETIREMENT BENEFITS AFTER CESSATION OF MEMBERSHIP.** (a) A person who has qualified for a retirement annuity under this Act but who has subsequently ceased to be a member of the fund or a properly enrolled member of the fire or police department, by whatever means or for whatever reason, is entitled to a retirement

annuity from the fund that accrued to that person before the time that person ceased to be a member of the fund or a properly enrolled member of the fire or police department if the person or the person's beneficiary in the event of the person's death files an application for the retirement annuity with the board within four years after the date that person ceased to be a member of the fund or a properly enrolled member of the fire or police department.

(b) A retirement annuity under Subsection (a) of this section begins the first full calendar month after the month in which the application is filed with the board.

(c) The amount of the retirement annuity under Subsection (a) of this section is the lesser of:

(1) the amount established as of the date the person ceased to be a member of the fund or a properly enrolled member of the fire or police department; or

(2) the amount established as of the date the person or the person's beneficiary filed an application under this section.

**SECTION 5.03. ELIGIBILITY FOR DISABILITY RETIREMENT.** (a) A member of the fund is eligible to retire and receive a disability retirement annuity if the member:

(1) makes a written application for disability retirement with the board;

(2) is permanently disabled through injury or disease so as to incapacitate the member from the performance of duties and has been off active duty for a continuous period of not less than 30 days before the date of the application for disability retirement; and

(3) is a member in good standing of the fire or police department in which the member is employed at the time of retirement.

(b) A member of the fund who has a disability resulting from injury or disease incurred while the member was engaged in active military service is not entitled to a disability retirement annuity based on that disability.

(c) Except as provided by Subsection (d) of this section, a member of the fund who is on suspension and who receives a total and permanent disability resulting from an injury or disease incurred while the member is on suspension is eligible for a disability retirement annuity if the suspended member makes up each deducted contribution lost by reason of the suspension not later than the 30th day after the date the contribution would have been deducted from the member's pay. A municipality to which this Act applies shall double-match all contributions made by a member under this subsection.

(d) A member of the fund who is on indefinite suspension is not eligible for a disability retirement annuity until the final determination of the suspension and all appeals of that determination are exhausted. A member of the fund who is on indefinite suspension is not entitled to a disability retirement annuity if the member is finally discharged. A member of the fund who is on indefinite suspension but who is restored to duty or who is given a suspension for a specific period is eligible for a disability retirement annuity as provided by Subsection (a) of this section.

(e) A member of the fund who applies for disability retirement under this section is subject to medical examination as determined by the board.

(f) This section does not affect any rights under Section 5.02 of this Act.

**SECTION 5.04. DISABILITY RETIREMENT BENEFITS.** (a) A member who is eligible to receive a disability retirement annuity is entitled to receive from the fund 50 percent of the average of the member's total salary, excluding overtime pay, for the highest three years of the last five years, computed from the date of retirement or, if the member has served less than three years before the date of retirement, 50 percent of the member's average monthly salary, excluding overtime pay, or a theoretical monthly average if service is less than a full month.

(b) All fractional years under this section are prorated based on full months served on the fire or police department as a contributing member of the fund.

(c) The amount of 50 percent of the average total salary, excluding overtime pay, is the maximum amount of disability retirement annuity for total and permanent disability.

**SECTION 5.05. MEDICAL REEXAMINATION AND REDUCTION OF DISABILITY RETIREMENT BENEFITS.** (a) The board may cause a disability retiree to undergo a

medical examination or examinations by any reputable physician or physicians selected by the board. Based on the examination, the board shall determine whether the disability retirement annuity shall be continued, decreased, restored to the original amount if it had been decreased, or discontinued, except that a disability retirement annuity may not be discontinued unless the disability retiree has first been accepted for reinstatement in that person's former position or status in the fire or police department by the chief of the respective department.

(b) For those retired because of disability before August 30, 1971, the board may change the disability retirement annuity provided by this Act, in accordance with any change in the degree of disability, except that the percentage used to compute the annuity may not, except in the case of discontinuance, be reduced to less than two percent of the base pay of a private each month, for each year that the retiree has served and contributed a portion of salary as provided by this Act, based on the greater of:

(1) the rate of pay at the time of the original granting of the disability retirement annuity; or

(2) a minimum base pay of \$200 each month.

(c) For those retired because of disability on or after August 30, 1971, the disability retirement annuity may not be reduced to less than two percent, for each year that the retiree has served and contributed a portion of salary, of the average of the member's total salary, excluding overtime pay, for the highest three years of the last five years, computed from the date of retirement, or if the member has served less than three years before the date of retirement, 50 percent of the member's average monthly salary, excluding overtime pay, or a theoretical monthly average if service is less than a full month. All fractional years shall be prorated based on full months served on the fire or police department as a contributing member of the fund before the date of retirement.

(d) If a disability retiree, after notice, fails to undergo a medical examination as provided by this section, the board may reduce or entirely discontinue the retiree's disability annuity payments.

#### SECTION 5.06. REMOVAL OF DISABILITY AND WAIVER ON REINSTATEMENT.

(a) If a disability retiree applies for reinstatement to the department from which that person retired, the disability retiree, in addition to complying with any applicable civil service laws, shall file a written application with the board for a discontinuance of that person's disability retirement annuity, subject to medical examination, indicating that the person has recovered from the disability for which that person has been receiving disability retirement annuity payments and certifying to the board that the chief of the department from which that person was retired approves that person's reinstatement.

(b) The applicant must execute a waiver on a form prescribed by the board in which the applicant waives a second disability retirement annuity resulting from the same disability that was the basis of the first disability at a higher rate than the applicant was receiving at the time of the reinstatement for a period of three years after reinstatement. After three years of reinstated service, any subsequent disability retirement annuity is computed as any other disability retirement annuity.

(c) If the applicant is required to undergo retraining and is compensated during a period before being officially reinstated, the applicant's monthly disability retirement annuity shall be reduced by the amount of any monthly departmental payroll benefit, to the extent that the latter is greater.

(d) The board may approve the discontinuance of a disability retirement annuity as provided by this Act.

SECTION 5.07. OUTSIDE INCOME PENSION REDUCTION. (a) The board shall require each disability retiree retiring after August 22, 1979, to provide the board annually not later than May 1 of each year with a true and complete copy of the retiree's income tax return for the previous year.

(b) If the retiree received income from other employment, including self-employment, during the preceding year, the board may reduce the retiree's disability retirement annuity by the amount of \$1 for each month for each \$2 of income earned by the retiree from the other employment during each month of the previous year, except that the disability



retirement annuity may not be decreased below an amount based on two percent of the retiree's average salary, excluding overtime pay, computed at the time of retirement under Section 5.04 of this Act for each year of service in the department.

**SECTION 5.08. DISCRETION OF DEPARTMENT CHIEF FOR EMPLOYMENT OF DISABILITY RETIREE.** (a) A disability retirement annuity may not be granted or continued if the chief of the member's department will provide the member employment within the department commensurate with that person's physical and mental capabilities.

(b) A determination under this section is solely within the discretion of the department chief and must be reasonably exercised.

**SECTION 5.09. COST-OF-LIVING INCREASES.** (a) At or before its regular meeting in the month of March, the board annually shall review the Consumer's Price Index for Moderate Income Families in Large Cities—All Items or the nearest equivalent published by the United States Bureau of Labor Statistics for the preceding calendar year. If that index shows an increase during the preceding calendar year in the cost of living as compared with that index at the close of the previous year, the board shall order an increase of all retirement annuities by the number of full percentage points closest to the exact amount of the increase of that index, except that any increased retirement annuities are payable only at the rate of 75 percent of the applicable cost-of-living percentage for those retirees, and the beneficiaries of those retirees, who were retired on and after August 30, 1971.

(b) The retirement annuities to which this section applies shall be computed as of the month of January before that March board meeting and shall continue in effect for at least one full year until there has been an additional increase to that cost-of-living index and the board enters another order as provided by this section.

(c) The cost-of-living increase paid to any retiree or beneficiary of a member or retiree during the first full year after the effective date of the retirement shall be prorated on the basis of full months retired.

**SECTION 5.10. INCREASE IN EXISTING RETIREMENT ANNUITIES.** Effective October 1, 1993, all retirement annuities for members who retired before October 1, 1989, or to the combined beneficiaries of the retirees are increased by \$100 per month.

**SECTION 5.11. COORDINATION WITH FEDERAL LAW.** (a) A member or beneficiary of a member of the fund may not accrue a service retirement annuity; disability retirement annuity; death benefit, whether death occurs in the line of duty or otherwise; or any other benefit under this Act in excess of the benefit limits applicable to the fund under Section 415 of the code. The board shall reduce the amount of any benefit that exceeds those limits by the amount of the excess.

(b) Annual compensation for which benefits may be paid under this Act may not exceed \$200,000 for each member or another limit applicable under Section 401(a)(17) of the code.

(c) Accrued benefits under this Act become 100 percent vested for all members on termination of the fund or on occurrence of another event described in Section 401(a)(17) of the code and become 100 percent vested for a member on the date the member becomes 65 years of age and has completed 20 years of service.

(d) Amounts representing forfeited nonvested benefits of terminated members may not be used to increase benefits payable from the fund but may be used to reduce contributions for future plan years.

(e) Distribution of benefits must begin not later than April 1 of the year following the calendar year during which the member becomes 70 1/2 years of age and must otherwise conform to Section 401(a)(9) of the code.

(f) The fund shall be administered in a manner complying with Section 401(a)(25) of the code, relating to actuarial assumptions.

(g) This section applies to any benefit regardless of when accrued.

(h) The board may adopt rules to administer this section. A rule adopted by the board under this subsection is final and binding.

(i) In this section, "code" means the Internal Revenue Code of 1986 and its subsequent amendments.

## ARTICLE 6. DEPENDENT'S BENEFITS

**SECTION 6.01. MEMBER'S BENEFICIARY RIGHTS.** A member of the fund has, in addition to all rights accruing from the person's membership, the same right to receive benefits as a beneficiary that a nonmember who is a beneficiary has in similar circumstances if the member's spouse also is a member of the fund.

**SECTION 6.02. DEATH BENEFIT ANNUITY FOR SURVIVING SPOUSES AND CHILDREN.** (a) If a contributing member in good standing or a retiree dies before or after retirement, leaving a surviving spouse, one or more children under the age of 17 years, or one or more unmarried children 17 years of age or older but under 19 years of age who attend a public or private educational institution, the surviving spouse and the children are entitled to receive from the fund the same percentage of the member's average total salary that the member would have been entitled to receive as a retirement annuity, except that the percentage may not exceed the percentage to which a member with 25 years of service credit would be entitled. One-half of the death benefit annuity under this subsection shall be awarded to the eligible surviving spouse and one-half to the eligible child or children.

(b) A child resulting from any marriage occurring after the date of retirement of the member from a spouse who was not the spouse on the date of retirement is not entitled to a retirement annuity under this Act.

(c) If there are no children, the surviving spouse is entitled to receive an amount not to exceed 57.50 percent of the average total salary, excluding overtime pay, of the deceased member computed as provided under Subsection (a) of this section.

(d) If there is no surviving spouse, the children are entitled to receive not more than 28.75 percent of the average total salary computed as provided under Subsection (a) of this section, except that if the board determines on investigation that the eligible children are destitute, the board may increase the death benefit annuity to an amount not to exceed 40 percent of that average total salary. The amount awarded under this subsection to any child shall be paid by the board to the legal guardian of the child.

(e) A surviving spouse of a member of the fund who died before retirement is entitled to at least 50 percent of the member's average total salary that the member would have been entitled to receive as a retirement annuity.

(f) A surviving spouse of a member of the fund is entitled to a death benefit annuity based on the member's retirement benefits in effect on the date of retirement.

(g) A child of the member who is so mentally or physically disabled as to be incapable of being self-supporting to any extent, if otherwise qualified and regardless of age, has the rights of a child under 17 years of age, except that any death benefit annuity paid under this subsection to any mentally or physically disabled child shall be reduced to the extent of any state pension or aid, including Medicaid, or any state-funded assistance received by the child, regardless of whether the funds were made available to the state by the federal government. In no other instance under this Act is a child entitled to any benefit after becoming 19 years of age.

**SECTION 6.03. LIMITATION ON AMOUNT OF SURVIVING SPOUSE'S DEATH BENEFIT ANNUITY.** (a) The death benefit annuity of a surviving spouse of a member of the fund who is killed in the line of duty is governed by this section.

(b) The board shall consider the finding of a municipality to which this Act applies that a member was killed in the line of duty as a guideline for its determination in applying this section. On an application for survivor's benefits by a surviving spouse or child, the fund shall pay the normal benefits payable under Section 6.02 of this Act. When a benefit is payable under this section, the death benefit annuity shall be recomputed, applying Subsection (c) of this section, and any deficiency payment shall be paid to the eligible beneficiaries.

(c) Notwithstanding the formulas for computing the total amounts of annuities otherwise provided by this section, if a member is killed in the line of duty, the member's surviving spouse and dependent children are entitled to a death benefit annuity equal to the total salary, excluding overtime pay, of the member at the time of death. Rules provided by this section relating to qualification and disqualification for and apportionment of benefits apply to a death benefit annuity computed under this subsection. A death benefit annuity computed

under this subsection is subject to the same cost-of-living adjustments that apply to pensions for service retirement.

**SECTION 6.04. REMARRIAGE; BENEFITS AFTER TERMINATION OF MARRIAGE.** (a) The right of a surviving spouse or dependent child to annuity payments under this Act terminates on the remarriage of the surviving spouse, either statutory or common law, or on the marriage of the child, as applicable.

(b) If the remarried surviving spouse or married dependent child becomes unmarried, that person is entitled, on application, to the greater of 75 percent of the annuity that was in effect on the date of termination or a minimum annuity of \$800 each month for as long as that person remains unmarried.

**SECTION 6.05. AFFIDAVIT OF MARITAL STATUS.** (a) A surviving spouse, a dependent beneficiary under this Act, or the guardian of a surviving spouse or dependent beneficiary may be required by the board to file an affidavit annually concerning the person's marital status or the marital status of the person's wards or to give an affidavit to the board at other times when probable cause exists to suspect the possibility of marriage.

(b) If the surviving spouse, dependent beneficiary, or guardian fails or refuses to file an affidavit required under Subsection (a) of this section or if an incomplete, incorrect, or false affidavit is filed, the board may suspend annuity payments to that person indefinitely until the person complies with the requests and orders of the board.

**SECTION 6.06. COMMON-LAW MARRIAGES.** Common-law marriages are not recognized under this Act and benefits may not be conferred on common-law spouses as beneficiaries unless a declaration of informal marriage was made under Section 1.92, Family Code, and its subsequent amendments before the member's death.

**SECTION 6.07. SURVIVING SPOUSE'S RIGHT TO SINGLE ENTITLEMENT.** Unless otherwise provided by law, a surviving spouse is not entitled to more than one annuity from the fund.

**SECTION 6.08. LUMP-SUM DEATH BENEFIT.** (a) Except as provided by Subsection (b) of this section, a surviving spouse whose status as such resulted from any marriage after the date of the retirement of the member is entitled to a lump-sum death benefit because of the member's death in the amount of:

- (1) \$10,000 if the marriage occurred 10 years or more before the member's death;
- (2) \$7,500 if the marriage occurred 7½ years before but less than 10 years before the member's death;
- (3) \$5,000 if the marriage occurred five years or more but less than 7½ years before the member's death; and
- (4) \$2,500 if the marriage occurred 2½ years or more but less than five years before the member's death.

(b) A surviving spouse under this section is not entitled to a lump-sum death benefit if a child is entitled to receive benefits under this Act.

**SECTION 6.09. DEATH BENEFIT ANNUITIES TO DEPENDENT PARENTS.** (a) If a contributing member in good standing of the fire or police department or a retiree dies before or after retirement and leaves no surviving spouse or child but leaves surviving a father and mother wholly dependent on that person for support, the dependent father and mother are entitled to receive one-third of the average total salary, excluding overtime pay, of the deceased member based on the same number of years of the member's pay as is currently provided for computations of retirement annuities under Section 5.01(a) of this Act, the annuity to be equally divided between the father and mother as long as they are wholly dependent. If there is only one dependent, either father or mother, the board shall grant the surviving dependent an annuity not to exceed one-fourth that average total salary as computed under this subsection.

(b) The board may, on its own initiative, make a thorough investigation, determine the facts as to the dependency with respect to an application for benefits made under Subsection (a) of this section, and at any time, on the request of any beneficiary or any contributor to the fund, reopen any award made to any member or dependent of any member who is receiving annuity payments under this section and discontinue those payments as to all or any of them. The

findings of the board under this section and all annuities granted under this section are final on all parties unless set aside or revoked by a court of competent jurisdiction.

**SECTION 6.10. SUSPENSION RIGHTS OF DEPENDENT PARENTS.** If a member dies who is under suspension at the time of death, including an indefinite suspension that has not become final, the member's dependent parents have the same rights as any other member under this Act.

**SECTION 6.11. DEATH BENEFIT FOR ACTIVE MEMBER'S ESTATE.** (a) If a member of the fire or police department in active service dies and does not leave an eligible surviving spouse, a child under 17 years of age, a child under 19 years of age who is attending school, a mentally or physically disabled child, or a dependent father or mother, the estate of the deceased member is entitled to a death benefit payment in the amount of \$10,000 from the fund.

(b) The death benefit under this section is not payable if the deceased member of the fund is survived by one or more beneficiaries.

## ARTICLE 7. INVESTMENTS AND FINANCIAL PROVISIONS

**SECTION 7.01. TREASURER'S DUTIES.** (a) All money of the fund is payable to the treasurer of the fund for the use of the fund.

(b) The duties imposed on the treasurer under this Act are additional duties for which the treasurer is liable under oath and bond as the treasurer of a municipality to which this Act applies.

(c) The treasurer is not entitled to compensation for serving as the treasurer of the fund.

**SECTION 7.02. ACCOUNTS.** The accounts of the fund and of the members shall be kept separately.

**SECTION 7.03. RESERVE RETIREMENT FUND.** (a) The board shall determine a reasonably safe amount of surplus necessary to defray reasonable expenses of administering the fund.

(b) All other assets shall be designated as reserve retirement funds.

(c) Only the board may invest and manage the reserve retirement funds for the sole benefit of the plan participants and their beneficiaries.

**SECTION 7.04. INVESTMENT POWERS OF THE BOARD.** (a) The board shall cause the reserve retirement funds to be invested in a manner consistent with the care, skill, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims.

(b) The board shall diversify the investment of the fund to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. In investing the assets of the fund, the board shall be bound by the documents and instruments governing the fund.

(c) The board may directly manage the investments of the fund or may choose and contract for professional management services. If the fund owns real estate, it may, at its discretion, establish corporations described by Section 501(c)(25), Internal Revenue Code of 1986 (26 U.S.C. Section 501), and its subsequent amendments, to hold title to the real estate.

(d) The board shall have the ultimate responsibility for the investment of the reserve retirement funds. The board may purchase securities or engage in limited partnerships or make other investments not specifically provided by this Act and shall have the authority of exercising discretion in determining the nature, type, quality, and size of any investment consistent with the investment policies it establishes.

**SECTION 7.05. PROFESSIONAL CONSULTANTS.** (a) The board may contract for professional investment management services, financial consultants, independent auditors, and actuaries. Only the board may enter into those contracts and may establish a reasonable fee for compensation.

(b) The board may designate its own custodian or master custodian to perform the customary duties involving the safekeeping of the assets and the execution of transactions of

either domestic or foreign securities. The board may engage in a securities lending program consistent with the benefits to plan participants and their beneficiaries.

**SECTION 7.06. INVESTMENT MANAGER QUALIFICATIONS.** In appointing investment managers, the board shall require that the investment manager be:

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

#### ARTICLE 8. MISCELLANEOUS PROVISIONS

**SECTION 8.01. REPEALER.** Chapter 105, Acts of the 47th Legislature, Regular Session, 1941 (Article 6243f, Vernon's Texas Civil Statutes), is repealed.

**SECTION 8.02. EFFECTIVE DATE.** This Act takes effect October 1, 1993.

**SECTION 8.03. RESTATEMENT.** Unless otherwise expressly provided by this Act, this Act is intended to be a restatement of Chapter 105, Acts of the 47th Legislature, Regular Session, 1941 (Article 6243f, Vernon's Texas Civil Statutes), and is not intended to impliedly repeal, reduce, or enhance any pension entitlement that existed as of September 30, 1993, under that Act or to change the meaning of any of the provisions of that Act.

**SECTION 8.04. 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 May 6, 1993: Yeas 31, Nays 0; passed the House on May 21, 1993, by a non-record vote.

Approved June 19, 1993.

Effective Oct. 1, 1993.