

CHAPTER 358

H.B. No. 1560

AN ACT

relating to contributions to and benefits from fire fighters' retirement systems in certain cities.

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

SECTION 1. Sections 3(a), (c), and (f), Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Any person who has been duly appointed and enrolled and who has attained the age of 55 years or served actively for a period of 30 [35] years, regardless of age, that service having been performed in any rank, as a fully paid fireman, in one or more regularly organized fire departments in any city in this state covered by the provisions of this Act may retire *and be* [from that service or department and on retirement is] entitled

to receive from the fire fighter's relief and retirement fund of that city a monthly pension equal to 2-1/2 percent of his average monthly salary multiplied by the number of the person's years *and months* of service.

The maximum permissible *employer-derived* annual benefit is the lesser of \$90,000 or 100 percent of the participant's highest average annual compensation. Highest average annual compensation is the average compensation for the three consecutive calendar years of service with the department that produces the highest average. If the annual benefit begins before age 62, the maximum permissible annual benefit may not exceed the lesser of the actuarial equivalent of a \$90,000 annual benefit beginning at age 62 or the participant's highest average annual compensation. This actuarial adjustment may not reduce the \$90,000 limitation below \$75,000 if the benefit begins at or after age 55. If the annual benefit begins before age 55, the maximum permissible annual benefit may not exceed the greater of (1) the actuarial equivalent of a \$75,000 annual benefit beginning at age 55, (2) ~~or~~ the actuarial equivalent of a \$90,000 annual benefit beginning at age 62, or (3) \$50,000. To determine actuarial equivalence of a benefit beginning before age 62, the interest rate assumption is the rate adopted by the board of trustees in the proper administration of the fund, but not less than five percent. If the annual benefit begins after age 65, the benefit may not exceed the lesser of the actuarial equivalent of a \$90,000 annual benefit beginning at age 65 or the participant's highest average annual compensation. To determine actuarial equivalence of a benefit beginning after age 65, the interest rate assumption is the rate adopted by the board of trustees in the proper administration of the fund, but not more than five percent.

*Both the [The] \$90,000 limitation and the \$50,000 limitation will be automatically adjusted to new dollar limitation amounts as determined by the commissioner of the Internal Revenue Service for subsequent calendar years effective as of January 1 of those years. A [The] new limitation will apply to limitation years ending within the calendar year of the date of the adjustments.*

*The \$50,000 limitation applies only to participants whose service used in determining benefits under this section includes at least 20 years of service as a full-time fire fighter of the city.*

(c) The average monthly salary means the monthly average of the fireman's *total* salary for the highest 36 months during his period of service, excluding overtime pay, ~~and~~ any temporary pay in higher classifications, *educational incentive pay, assignment pay, Christmas Day bonus pay, and pay for automobile and clothing allowances. If at the time of death or disability a fire fighter has less than 36 months of service, his average salary will be computed as if he had been employed for the previous 36 months. For the period before his employment, the average salary will be computed as if the fire fighter had held the same rank he held when he became a member of the fund at the amount of salary for retirement fund benefit and contribution purposes that he would have received if he had been employed by the fire department during that period.*

(f) Any person who has been appointed and enrolled and ~~[either]~~ has attained the age of 50 years and served actively for a period of at least 25 years ~~[or has served actively for a period of 30 years, regardless of age]~~, and whose service was performed in any rank, as a fully paid fireman, in one or more regularly organized fire departments in any city covered by this Act may retire *and be entitled* ~~[early from that service or department and on retirement is eligible]~~ to receive from the fire fighter's relief and retirement fund of that city a reduced monthly pension equal to the pension described under Section 3(a) of this Act multiplied by a percentage determined by the board of trustees' actuary as the percentage necessary to provide an actuarially equivalent early retirement benefit.

SECTION 2. Section 4, Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4. Any fireman and beneficiaries of a fireman who retires or has retired or who receive benefits under Section 3, 6, or 11 of this Act, shall be entitled to an annual cost-of-living adjustment of his pension allowance and their benefits based on the Consumer Price Index for *All Urban Consumers* ~~[Urban Wage Earners and Clerical Workers]~~ as determined by the United States Department of Labor. The adjustment

must first be approved by a majority of the members of the board of firemen's relief and retirement fund trustees of the city and *the board of trustees'* [an] actuary. The adjusted pension allowance and adjusted benefits shall never be less than the amount granted the fireman or his beneficiaries on the date of his retirement or death without regard to changes in the consumer price index. The adjusted pension allowance or adjusted benefits may be increased by an amount to be determined by a majority of the board of firemen's relief and retirement fund trustees of the city and *the board of trustees'* [an] actuary.

SECTION 3. Section 5(a), Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Any fireman who has served in the fire department of the city for a period of at least 10 years and who has contributed to the fire fighter's relief and retirement fund of the city for a period of at least 10 years, shall be entitled to receive a pension allowance at the age of 55 years, provided that the following conditions are met:

(1) on termination of employment, the fireman shall leave his contributions in the fund, and shall not be required to make any further contributions to the fund;

(2) the pension allowance shall be based on the monthly average of the fireman's *total* salary for the highest 36 months during the fireman's service excluding overtime pay, [and] any temporary pay in higher classifications, *educational incentive pay, assignment pay, Christmas Day bonus pay, and pay for automobile and clothing allowances*; and

(3) the pension allowance shall be calculated by the formula, as set out in Section 3(a) of this Act, in effect at the time the fireman terminated his employment.

SECTION 4. Section 6(b), Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) If a person serving as an active fireman enrolled in a regularly active fire department becomes totally and permanently disabled from any cause for either physical or mental reasons after meeting the requirements to qualify for a service retirement benefit as described under Section 3(a) of this Act, the person is eligible to receive a disability pension under Subsection (a) of this section. In this Act, *a total disability is a disability caused by illness or bodily injury that makes a person unable to work for pay or profit or to engage in any business or occupation for which the person is suited by education, training, or experience. A total disability is permanent when it has continued without break for at least nine months and is expected to continue indefinitely.* [~~total and permanent disability" means an inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.~~]

SECTION 5. Section 6, Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended by adding Subsection (h) to read as follows:

*(h) If a fire fighter is receiving a weekly workers' compensation benefit because of the same injury that has entitled him to a disability benefit from this fund in accordance with this section and that has resulted in either total and permanent disability or partial disability, the disability benefit payable under Subsection (a) of this section shall be reduced by the monthly equivalent of the weekly workers' compensation benefit for as long as the weekly workers' compensation benefit is paid. If a totally and permanently disabled fire fighter receives a lump-sum payment in lieu of weekly workers' compensation benefits, the disability benefit payable under Subsection (a) of this section shall be reduced by the amount of the lump-sum settlement converted to equivalent monthly amounts. The method of conversion depends on the length of time the workers' compensation benefit would have been paid had it been paid weekly instead of in a lump sum.*

*If the weekly workers' compensation benefit would have been payable for life, the lump-sum payment shall be converted by the fund's actuary to an actuarially equivalent monthly life annuity using an annuity purchase rate that is based on*

*rates and tables applicable for the fund. The disability benefit payable under Subsection (a) of this section shall be reduced by this actuarially equivalent monthly annuity for the life of the fire fighter.*

*If the weekly workers' compensation benefit would have been payable for a specified period instead of the remaining lifetime of the fire fighter, the lump-sum payment shall be converted by the fund's actuary to an actuarially equivalent temporary life annuity payable for the specified period using an annuity purchase rate that is based on rates and tables applicable for the fund. The disability benefit payable under Subsection (a) of this section shall be reduced by this actuarially equivalent monthly annuity for the specified period.*

SECTION 6. Section 7, Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is repealed.

SECTION 7. Section 10(a), Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The city shall contribute and appropriate each month to the fund an amount equal to 14 percent of the total monthly payroll, excluding overtime pay, ~~and~~ any temporary pay in higher classifications ~~[classification]~~ of the fire department of the city, *educational incentive pay, assignment pay, Christmas Day bonus pay, and pay for automobile and clothing allowances.* Each ~~and each~~ full-time fireman shall pay into the pension fund 13.70 percent of his total monthly salary, excluding overtime pay, ~~and~~ any temporary pay in higher classifications, *educational incentive pay, assignment pay, Christmas Day bonus pay, and pay for automobile and clothing allowances* ~~[classification]~~. The governing body of the city may authorize the city to make an additional contribution to its fire fighter's relief and retirement fund in whatever amount the governing body of the city may fix. The firemen, by a majority vote in favor of an increase in contributions above the 13.70 percent, shall increase each member's contribution above 13.70 percent in whatever amount the pension board recommends.

SECTION 8. Sections 11(d), (e), (f), (i), and (j), Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) Each deceased member's child under the age of 22 ~~[18]~~ is entitled to receive, if there is a surviving spouse, an immediate monthly pension equal to .375 percent of the fireman's average monthly salary at the time of death multiplied by the number of years of the fireman's service, assuming 20 years of service if service is less than 20 years. If there is no surviving spouse, each deceased member's child under the age of 22 ~~[18]~~ is entitled to receive twice the amount that would be paid if there were a surviving spouse. The total amount of benefits being paid to the children of a deceased member may not exceed 37.50 percent of the member's average monthly salary at the time of death. Payments to a child shall be made whether or not a spouse survives and shall continue after the death of a surviving spouse but shall cease on the earliest of the child's death, marriage, or attainment of age 22 ~~[18]~~.

(e) The spouse's monthly benefit is payable for life if the fireman was either retired or eligible to retire under Section 3(a) *or (f)* or Section 6(b) of this Act at the date of the fireman's *termination of service with the fire department* ~~[death]~~. Otherwise, the spouse's monthly benefit ceases on the earlier of the spouse's death or remarriage. After all payments cease, any excess of the member's total contributions at the date of the member's death over any retirement and death benefits shall be paid to the member's estate.

(f) If a deceased or retired member leaves no surviving spouse or children eligible to receive a benefit under this section but is survived by one or more dependent parents, the dependent parent, or one of the surviving parents designated by the board of trustees, is entitled to receive ~~[as]~~ a monthly pension *equal to the amount that would have been payable to a surviving spouse who was two years younger than the deceased member,* ~~the amount otherwise payable to the surviving spouse~~. If a deceased member leaves no surviving spouse, children, or dependent parent eligible to receive a benefit as provided in this section, the member's total contributions, less any amount previously paid to the member, shall be paid to the member's estate.

(i) The board of trustees shall determine all questions of dependency, and their determination shall be final and conclusive on all parties. All unmarried, legitimate, and legally adopted children under age 22 [18], in the absence of a determination to the contrary, are considered dependent.

(j) On a majority vote of the board of trustees, benefits to [~~minor~~] children *under age 22* may be increased to an amount not to exceed the maximum approved by an actuary.

SECTION 9. Section 23, Chapter 183, Acts of the 64th Legislature, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 23. The city shall pick up the fire fighter contributions to the fund required by Section 10(a) of this Act, or such contributions as are authorized by vote as provided by Section 10(a), whichever are higher. Fire fighter contributions will be picked up by a reduction in the monetary compensation of the affected fire fighters. Contributions picked up shall be treated as employer contributions in accordance with Section 414(h)(2), federal Internal Revenue Code, for the purpose of determining tax treatment of the amounts under the federal Internal Revenue Code. These contributions are not includable in the gross income of a fire fighter until the time that they are distributed or made available to the fire fighter. Fire fighter contributions picked up as provided by this section shall be deposited to the individual account of each affected fire fighter and shall be treated as the monthly contributions of each individual fire fighter for all other purposes of this Act. This section takes effect on January 1, 1986, and remains in effect as long as the plan covering fire fighters of the city is a qualified retirement plan under Section 401(a), federal Internal Revenue Code, and its related trust is tax exempt under Section 501(a), federal Internal Revenue Code, or until a time that the board by a majority vote elects to discontinue the pickup of fire fighter contributions *by [to]* the city.

SECTION 10. 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 23, 1987, by a non-record vote. Passed by the Senate on May 21, 1987, by a viva-voce vote.

Approved June 11, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment.