

BILL ANALYSIS

C.S.H.B. 3188
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that provisions relating to the retirement system for fire fighters and police officers in certain large municipalities, such as San Antonio, need certain technical updates, revisions, and clarifications. C.S.H.B. 3188 seeks to address this issue by applicably revising provisions relating to the retirement system for fire fighters and police officers in a municipality with a population between 1.3 million and 1.5 million.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3188 amends Vernon's Texas Civil Statutes to revise provisions relating to the retirement system for fire fighters and police officers in a municipality with a population between 1.3 million and 1.5 million. The bill, with respect to the board of trustees of the fire fighters and police officers pension fund:

- establishes that the term of a mayor or the mayor's qualified mayoral designee on the board expires on the date the mayor ceases to be mayor of the municipality for any reason;
- establishes that the term of a member of the governing body of the municipality who is on the board expires on the day the member ceases to be a member of the municipal governing body for any reason and clarifies that this provision applies to such a member who is elected or appointed; and
- provides for the statutorily prescribed manner by which the mayor or governing body, respectively, fills an applicable vacancy on the board.

The bill establishes that the board has complete authority and power to disburse benefits from the fund.

C.S.H.B. 3188 repeals a provision requiring the board to issue orders for disbursements of benefits signed by the presiding officer or assistant presiding officer of the board and the secretary of the board to the appropriate persons and to keep a record of those orders. The bill clarifies that disbursements of benefits may not be made without a record vote of the board.

C.S.H.B. 3188, with respect to membership in and contributions to the fund regarding a member of the fund who enters any uniformed service of the United States:

- revises certain provisions regarding the restoration of credit not established during the period the member was engaged in active service in any uniformed service and authorizes an otherwise eligible member who does not comply with certain payment deadlines to restore credit to receive credit for uniformed service if the board determines that the member had good cause for the noncompliance; and
- entitles the survivors of a member who dies while performing qualified military service to any additional benefits, other than benefit accruals relating to the period of qualified military service, that would have been provided if the member had returned to active status in the fire or police department and then terminated employment as the result of death.

C.S.H.B. 3188, with respect to certain provisions relating to a member's eligibility for disability retirement benefits:

- revises the provisions setting out the conditions under which an applicable active member is eligible to retire and receive a regular disability retirement annuity or a catastrophic injury disability retirement annuity, including revisions specifying that an otherwise eligible member is eligible for the respective annuity only if the member establishes to the satisfaction of the board certain facts regarding the applicable member's disability and only if the applicable member is not disqualified from receiving the respective annuity because the member is on a certain indefinite suspension or is terminated by the municipality, as specified by the bill;
- authorizes the board to consider or require any evidence the board considers necessary or appropriate to make a determination concerning a regular disability retirement annuity or a catastrophic injury disability retirement annuity;
- restricts eligibility to a disability retirement annuity for a member who becomes disabled as a result of an injury sustained or disease contracted while the member is on suspension to those members who are disabled while on suspension for a specific period, including a member whose indefinite suspension is reversed or modified to a suspension for a specific period, and revises the deadline by which such a member must make up each contribution not made by the member by reason of the suspension; and
- includes a member who is terminated by the municipality among the members who are not entitled to a disability retirement annuity.

C.S.H.B. 3188, with respect to the calculation of the respective disability retirement benefits based on time of service, specifies that the applicable average monthly salary or average daily salary is the average monthly total salary and the average daily total salary.

C.S.H.B. 3188, with respect to the provisions governing the medical reexamination of a disability retiree and the reduction of disability retirement benefits:

- clarifies that the requirement for a disability retiree who is awarded a catastrophic injury disability annuity to undergo a medical examination is applicable only if the examination is required by the board;
- specifies that, for an applicable member who retired because of disability on or after August 30, 1971, the disability retirement annuity may not be reduced to less than a specified amount, except in the case of discontinuance of the annuity; and
- provides for the proration of fractional years with respect to computations of reductions for an applicable member who retired because of disability before August 30, 1971.

C.S.H.B. 3188, with respect to the provisions governing the reduction of an annuity based on the outside income of a retiree, authorizes the board to restore a disability retirement annuity that has been reduced by the board based on income received from a member's other employment and

provides for the amount of the restored annuity. This provision does not require the board to allow or deny cost-of-living increases in any other circumstances.

C.S.H.B. 3188, for purposes of the provision prohibiting the accrual of a service retirement annuity, disability retirement annuity, death benefit, or any other benefit under the provisions governing the system from exceeding benefit limits applicable to the fund under the Internal Revenue Code of 1986:

- authorizes a member or former member, the member's or former member's surviving spouse or designated beneficiary, and a member's or former member's spouse or former spouse who is the alternate payee under a qualified domestic relations order, with regard to the interest of the spouse or former spouse, to elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by such a distributee in a direct rollover;
- defines "eligible retirement plan" and "eligible rollover distribution" for purposes of that authorization;
- increases the applicable caps on certain salary amounts that may be taken into account for purposes of the annual compensation limitation under the code, effective January 1, 2017, and specifies that, for purposes of those applicable caps, an eligible member is any employee who first became a member before 1996 and an ineligible member is any other member;
- replaces the requirement that the caps be periodically adjusted in compliance with certain federal guidelines with a requirement that the caps be adjusted annually for cost-of-living increases as provided by the code;
- revises the date on which accrued benefits for a member under those provisions become 100 percent vested and the date on which the distribution of such benefits must begin;
- requires the distribution of benefits to conform to certain regulations under the code, including regulations governing the incidental death benefit distribution requirements;
- provides for required adjustments to the limitations on benefits imposed by certain provisions of the code to the extent permitted by cost-of-living increases announced by the U.S. secretary of the treasury; and
- specifies that such a cost-of-living increase applies to members who have terminated employment and any benefits previously denied and that benefits paid to make up for benefits previously denied are considered the delayed payment of benefits earned before retirement and not extra compensation earned after retirement.

C.S.H.B. 3188, with respect to the death benefit annuity for surviving spouses and children, establishes that a child who is adopted after the date of retirement of the applicable member is not entitled to a death benefit annuity and, with respect to the death benefit annuity for the spouse and children of a member killed in the line of duty:

- clarifies that the requirement that an eligible surviving child of a deceased retiree be awarded 100 percent of an applicable death benefit annuity is the result of the surviving spouse of the deceased retiree not meeting certain eligibility requirements for an annuity on the date of the retiree's death;
- removes the requirement that the board consider the finding of the applicable municipality that a member was killed in the line of duty as a guideline for the board's determination under provisions relating to a death benefit annuity for the spouse and children of a member killed in the line of duty; and
- changes the method of determining the death benefit annuity to which the surviving spouse and dependent children of a member killed in the line of duty are entitled by removing the total salary of the member at the time of death as the death benefit annuity and replacing it with a schedule of benefits based on the period for which the member

served before the date of the member's death.

C.S.H.B. 3188, with respect to the effect of a marriage on benefits:

- applies provisions relating to the entitlement of a surviving spouse or dependent child whose marriage terminated to 100 percent of the annuity that was in effect on the termination of benefits to a surviving spouse or dependent child whose marriage took place before October 1, 1995, and resulted in a termination of benefits under the law in effect at the time of the marriage;
- specifies that such benefits are payable from the date the marriage terminated;
- entitles such a surviving spouse or dependent child to any applicable cost-of-living increase that took place on or after the date the marriage terminated; and
- requires such a spouse or child to be living at the time of an application to be eligible for benefits.

C.S.H.B. 3188, with respect to common-law spouses as beneficiaries, clarifies that the date the declaration of an informal marriage is recorded under the applicable Family Code provision is the date of marriage for the purpose of determining whether any benefit is to be awarded to a surviving common-law spouse as a beneficiary.

C.S.H.B. 3188 removes a provision specifying that the findings of the board and all annuities granted under provisions relating to death benefit annuities to dependent parents are final on all parties unless set aside or revoked by a court of competent jurisdiction.

C.S.H.B. 3188 clarifies certain suspension rights with respect to the beneficiaries of a member who dies while on indefinite suspension that has not become final by specifying that the member's beneficiaries have the same rights as the beneficiaries of any other member only if the member's beneficiaries provide sufficient evidence to the board to establish to the board's satisfaction that an administrative appeal of the suspension to the municipality was being actively pursued at the time of death and that the member had a reasonable chance of having the suspension reversed or modified to be a suspension for a specific period.

C.S.H.B. 3188 establishes that an indefinite suspension or a suspension for a specific period becomes final on the date any administrative appeal of the suspension to the municipality has been finally adjudicated by the municipality or, if no administrative appeal of the suspension is made, after the last day of the period for initiating an administrative appeal has elapsed.

C.S.H.B. 3188, for purposes of the provision establishing that the election by a surviving spouse to receive a lump-sum death benefit annuity payment does not affect the amount of the annuity payable to a dependent child of a deceased member, specifies that the provision applies while a death benefit annuity is payable to the surviving spouse.

C.S.H.B. 3188 sets out provisions applicable to the denial of benefits when the member's or beneficiary's death is caused by a survivor to provide that:

- a person who is the principal or an accomplice in wilfully bringing about the death of a member or beneficiary whose death would otherwise result in a benefit or benefit increase to the person is not eligible for, or entitled to, that benefit or benefit increase;
- the board must determine during a meeting of the board that a person wilfully brought about the death;
- the determination must be based on a preponderance of the evidence presented; and
- such a determination is not controlled by any other finding in any other forum, regardless of whether the other forum considered the same or another standard of proof.

C.S.H.B. 3188 repeals Section 3.03(a), Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes).

EFFECTIVE DATE

October 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3188 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include provisions establishing that:

- certain board determinations and interpretations are final and binding on applicable entities with regard to the retirement system; and
- certain provisions increasing applicable monthly benefits payable to an eligible person do not limit the board's discretion to reduce or discontinue disability retirement benefits based on a required medical examination.

The substitute removes language specifying that certain determinations and actions of the board are solely in the board's discretion.