

SUBJECT: Amending the Houston firefighters' relief and retirement fund statute

COMMITTEE: Pensions and Investments — committee substitute recommended

VOTE: 4 ayes — Ritter, Telford, McClendon, Rose
0 nays
3 absent — Grusendorf, Martinez Fischer, Pena

SENATE VOTE: On final passage, April 10 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing

BACKGROUND: In 1997, the 75th Legislature enacted V.T.C.S., art. 6243e.2(1) to establish the Houston firefighters' relief and retirement fund, repealing the original statute enacted in 1975. In 1999, the 76th Legislature amended the statute to increase benefits paid to retired Houston firefighters and their beneficiaries. HB 1173 by Yarbrough designated up to \$4 million from the fund to be used to supplement the benefits of retired firefighters and other eligible beneficiaries. The act provided for a \$4,000 lump-sum benefit to retirees or survivors of firefighters killed in the line of duty. It also extended eligibility to participate in the deferred retirement option plan (DROP) — an enhanced retirement benefit program — from five to seven years after the firefighter had completed 20 years of participation in the pension fund.

In 2001, the 77th Legislature enacted HB 1569 by Yarbrough, increasing the monthly benefit for DROP participants by 2 percent of the member's original benefit for every full year of participation in the DROP and increasing eligibility to participate in the DROP from seven years to 10 years. The act also established a minimum benefit level for all retired firefighters and eligible beneficiaries, based on the federal "living wage" level. It increased the monthly benefit payable to retired or disabled members, other than DROP participants or eligible survivors, by \$25 beginning in July 2001, corresponding with a similar amount awarded in July 2000. The act also increased the lump-sum payment upon death, retirement, or disability from \$4,000 to \$5,000.

DIGEST: CSSB 297 would amend the statute governing the Houston firefighters' relief and retirement fund in regard to powers of the board, member benefits and contributions, the DROP program, and confidentiality of information.

Powers of the board. The trustees, executive director, and employees of the fund would be fully protected and free of liability for any action taken or admission made by them in good faith in the performance of their duties for the fund. The board or a committee sitting in review of medical or psychiatric records could consider the records of multiple individual applicants for disability benefits within a single closed session, but any action on an application would have to be taken on an individual basis. The board could use fund assets to pay for commemorative flags and similar memorabilia (with a value of less than \$75) and could distribute these memorabilia to survivors to honor firefighters' service. The board could accept gifts and donations to the fund.

Membership and contributions. CSSB 297 would increase an active member's required contribution to the fund from 7.7 percent to 8.35 percent of the member's salary at the time of the contribution. As of July 1, 2004, the contribution would increase to 9 percent of the member's salary.

The municipality's contribution rate would have to be composed of the normal cost plus the level percentage of salary payment required to amortize the unfunded actuarial liability over a constant period of 30 years, rather than the current 40-year fixed amortization rate.

Deferred retirement option plan (DROP). The bill would specify that a member's DROP account would be credited with earnings (rather than earnings or losses, as in current law) at an annual rate equal to the average annual return earned by the fund over the five preceding years, not including the year during which the credit was given. The credit to the member's DROP account would be at an annual rate of between 5 percent and 10 percent, regardless of actual earnings. A member who terminated active service after participating in the DROP would be entitled to receive a benefit, in addition to the member's service pension, equal to the balance of the member's DROP account. The bill would repeal the provision for a 1 percent annual administrative fee, if a member elected partial payments.

A salary earned or additional years of participation completed after the member's DROP election became effective could not be considered in the computation of retirement or death benefits, except for the limited purpose of percentage increases.

CSSB 297 would authorize certain surviving spouses to elect to maintain the DROP account with the fund if there were no eligible survivors in accordance with the member's beneficiary designation or if the member failed to file a valid beneficiary designation to the member's estate. An eligible beneficiary's share of a deceased member's DROP account would have to be distributed in a single lump-sum payment as soon as administratively practicable after the member's death, unless the surviving spouse made an election permitted by the above provision.

A DROP participant with a break in service could receive service credit for days worked after the regular expiration of the permitted DROP period. The service credit would be limited to the number of days in which the participant experienced a break in service or the number of days required to constitute 10 years of DROP participation, whichever was smaller.

Disability pension benefits. The board would have to review on a case-by-case basis existing benefit payments to members, and to survivors of deceased members, who retired as a result of a disability with at least 20 years of service under a prior statute governing the fund. The review would have to determine whether the member's disability was an on-duty disability that satisfied other requirements of the statute. A determination that a member's disability was an on-duty disability would apply only on a prospective basis beginning with January 1 of the calendar year in which the determination was made and would not affect the amount of the member's or survivor's benefits. The board would have to make its review and determination on the basis of medical evidence and any other relevant nontestimonial evidence submitted in connection with the prior application for benefits, except that if the board found that the historical file was insufficient to make a determination, it could accept supplemental evidence of a probative nature.

Death benefits. Any benefit an eligible spouse could be granted under supplemental benefits would have to be reduced in the same proportion as the reduced benefit under this provision. The amount by which the eligible

spouse's benefit was reduced would be divided among any other eligible survivors as if the member did not have an eligible spouse. This provision could not be construed to effect any reduction to an eligible spouse otherwise payable under service benefit provisions.

If a member was not survived by an eligible spouse, child, or parent, the \$5,000 death benefit would be paid to the deceased member's estate or to the member's court-approved small estate through its legal representative. If a member failed to designate a beneficiary properly, the benefit provided would be payable to the member's estate or to the member's court-approved small estate through its legal representative on application by the estate or a legal representative.

Calculation and payment of benefits. The amounts of all benefits that a member or member's beneficiaries could become entitled to receive from the fund would have to be computed on the basis of the schedule of benefits in effect for the fund at the member's election, either on the date the member left active service or on the date the member ceased to carry out his or her regular duties as a firefighter.

An authorization to receive a benefit "beginning on the effective date of the member's termination of active service" would include authority for the member to elect instead to make his or her pension effective on the date the member ceased to carry out regular duties as a firefighter.

If one or more people had received a power of attorney to direct distribution of benefits to any eligible person and the fund received conflicting directions as to those distributions, the fund would have to withhold benefits until the final result of judicial proceedings determined which directive prevailed, or until the fund received a signed agreement between attorneys-in-fact, and principals, if applicable, on distribution directives that completely resolved the conflict. The fund could not be made a party to any proceeding involving the distribution of benefits under conflicting directives.

Related military service. A member engaged in active duty in any of the U.S. military services would have to receive credited pension service for the period of military service, if the member returned to employment with the fire department with an honorable discharge within the period required by federal

law and the period of military service did not exceed the period prescribed by law. If a member sustained an injury while on military leave under the terms of the federal law, pension benefits would be payable based on the off-duty disability benefit provisions of this state pension act. If a member died while on military leave under the terms of the federal law, death benefits would be payable to eligible survivors based on the off-duty death benefits. The board could make, maintain, and amend policies and procedures as desirable or necessary to implement the federal law.

Amounts received in error. The fund could offset amounts received wrongly or in error from the fund by any person or beneficiary by making deductions from future benefit payments otherwise payable to the person or the person's beneficiaries. Deductions from future payments for an overpayment could be made only for an overpayment made during the three years preceding the date when the board discovered the overpayment. The board could not recover an overpayment from a recipient if the overpayment was made more than three years before the date the board discovered the error. This limitation would not apply to an overpayment that a reasonable person should have known the person was not entitled to receive. This remedy would not be exclusive of any other remedy available to the fund.

Service credit for members previously with a similar fund. The bill would delete a requirement for a firefighter to pay for the physical examination that he or she must pass to receive service credit with the fund for prior service with another municipal fire department with a similar fund. The board would not have to select the physician that performed the examination.

Confidentiality of information. The bill would specify that information about an individual member, retiree, or beneficiary contained in records in the fund's custody would not be public information unless it was disclosed to the individual or to his or her attorney, guardian, executor, administrator, or conservator, or other legal representative of the person's estate or court-approved small estate. Such information could be disclosed to a spouse or former spouse of the person or to their attorneys, if the information concerned the spouse's or former spouse's interest.

The fund could disclose the status or identity of members, former members, retirees, deceased members, or beneficiaries as well as their dates of service,

date of death, last rank held, and the divisions of the fire department in which the person had served.

The fund could publish a retiree's address, e-mail address, telephone number, dates of service, last rank held, and the divisions of the fire department in which the person had served within compilations or directories concerning fund retirees. The fund, in its sole discretion, could provide or distribute those compilations as it deemed to be in the best interest of the retirees in general. A retiree could prevent the publication of the retiree's information by giving advance written notice to the fund.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 297 would clarify the statute governing the Houston firefighters' pension fund to improve administration of the fund. It would continue efforts begun in 1997 to clean up a statute that is difficult to understand because of piecemeal amendments to the original law enacted in 1975.

The bill would increase member contributions in two steps in order to reach a 9 percent contribution level by July 1, 2004. This requirement would be offset in part by the changes in credit to the DROP account. The bill would change the actuarial period used to determine the municipality's amortization rate to a constant 30-year period, consistent with similar requirements for statewide pension funds.

CSSB 297 would recognize and help effectuate the Texas "small estate" procedure of the Probate Code in connection with qualified member's estate. It also would eliminate a 1 percent administration fee for maintenance of DROP accounts, allow surviving spouses to retain monies in an existing DROP account, and allow the fund to review certain files with regard to a class of beneficiaries awarded disability benefits before 1993 in order to determine if the disabilities were work-related.

The bill would allow publication of a retiree directory with an opportunity for individual retirees to request exclusion. However, it would keep members' records confidential except for disclosure in limited circumstances, such as to a person's attorney or executor or to a spouse or former spouse when that person's interest in the fund was involved.

CSSB 297 would affect only the city of Houston and the firefighters' fund. Both groups have agreed to the bill's language, and they support this effort to streamline current law.

**OPPONENTS
SAY:**

Given current economic uncertainties, particularly in regard to investments, now would not seem an appropriate time to increase pension benefits. The fund's actuarial analysis determined that the bill's addition of a floor and a ceiling of 5 to 10 percent of credit to members' DROP accounts would be cost-neutral. While this could prove true in the long term, short-term losses to the fund would be likely, given recent investment history.

The bill's provision allowing a 30-year rolling amortization of unfunded liabilities almost certainly would reduce required contributions in the short term, though any differences would have to be paid back with interest over the long term. The 40-year fixed amortization rate in current law would provide more short-term stability to the fund.

Excluding the fund's trustees, executive director, and employees from liability for any action taken or admission made in good faith in performing their duties would remove protections for fund members, beneficiaries, and other interested parties from misfeasance.

NOTES:

According to the bill's fiscal note, increasing the member contribution rate from 7.7 percent to 9 percent of salary by July 1, 2004, would increase the city's statutory contribution rate from 15.4 percent to 18 percent. That increase would be less than the amount the actuarial analysis suggested would be required actuarially, even without realizing deferred asset losses. As such losses were realized, the city contribution rate would be expected to increase to 34 percent in 2007.

The committee substitute changed the Senate engrossed version of SB 297 by deleting provisions under which:

- a gathering of any number of trustees to investigate, research, or review prospective or current investments, without formal action, would not be a deliberation or meeting for purposes of the open meetings act;

- the board could delegate all or part of its duties concerning benefits to a pensions benefits committee; and
- the board could delegate the making of fund policies and procedures and the conduct of other administrative matters to a personnel and procedures committee.

The substitute also specifies that a deduction for an overpayment made by the fund would be allowed only for an overpayment made during the three years prior to the time the board discovered the overpayment.