

BILL ANALYSIS

Senate Research Center

H.B. 3377
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Intergovernmental Relations
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Engrossed

DIGEST

Currently, Articles 6243g-1 and 6243g-3, V.T.C.S., provide for police officers pension systems in cities with populations of 1,200,000 or more. To date, these articles only apply to the City of Houston. Consolidation of these articles, with modifications, may make the administration of police officer pension systems in applicable cities simpler and more efficient. H.B. 3377 would repeal Articles 6243g-1 and 6243g-3, V.T.C.S., and set forth provisions regulating membership, credit in, and benefits and administration of public retirement systems for police officers in certain municipalities.

PURPOSE

As proposed, H.B. 3377 repeals Articles 6243g-1 and 6243g-3, V.T.C.S., and sets forth provisions regulating membership, credit in, and benefits and administration of public retirement systems for police officers in certain municipalities.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 109, V.T.C.S., by adding Article 6243g-4, as follows:

Art. 6243g-4. POLICE OFFICERS PENSION SYSTEM IN CERTAIN MUNICIPALITIES

Sec. 1. **PURPOSE.** Provides that the purpose of this article is to restate and amend the provisions of former law governing a police officers pension system in each city in this state having a population of 1.5 million or more to permit the consolidation of the terms of certain pension plans.

Sec. 2. **DEFINITIONS.** Defines “active member,” “average total district pay,” “base salary,” “board,” “code,” “dependent,” “dependent child,” “dependent parent,” “DROP,” “employee,” “former member,” “fund,” “inactive member,” “member,” “normal retirement date,” “pension,” “pension system” or “system,” “school,” “retired member,” “separation from service,” “service,” “surviving spouse,” and “total direct pay.”

Sec. 3. **PENSION BOARD.** Provides that the board of trustees of the pension system (board) that was created under Chapter 76, Acts of the 50th Legislature, Regular Session, 1947 (Article 6243g-1, V.T.C.S.), continues to be responsible for the general administration, management, and operation of the pension system, including the direction of investment and oversight of the fund’s assets. Sets forth the composition of the board. Sets forth the terms of office of board members elected as described by Subsections (b) (2) and (b) (3) of this section. Provides that a board member vacates the member’s seat on the board if the member is removed under Section 7 of this article or ceases to meet the qualifications of the seat. Prohibits an officer or employee of any employee or retiree organization or an employee of the pension system from being elected to, appointed to, or in any other way becoming a board member if it is so determined at the one-time election held for the pension system before October 1, 1999. Requires each board member to take an oath of office within a specific time frame.

Sec. 4. **BOARD MEMBER LEAVE AND COMPENSATION.** Provides that elected members of the board who are employees of the city’s police department are entitled to leave from their

employer to attend the official business of the pension system. Authorizes the pension system to elect to compensate the city for the loss of service of a member if the city employing an elected board member would withhold the any portion of the member's salary who is attending to official business of the pension system. Requires amounts to be remitted from the fund to the city, and the city to pay the board member's salary as if no loss of service had occurred, if the board, by an affirmative vote of at least four members makes this election. Authorizes the board, by an affirmative vote of at least four board members, to elect to reimburse board members who are not employees of the city for their time while attending to official business of the pension system. Prohibits the amount of reimbursement from exceeding \$350 per month for each affected board member.

Sec. 5. OFFICERS; MEETINGS; EMPLOYEES. Requires the board to annually elect, from its active and retired membership, a chairman. Requires the board to annually elect a vice chairman, and secretary from its membership. Authorizes the board to hire one or more employees whose positions and salaries shall be set by the board and who, acting under the direction of the board shall keep all of the records of and perform all of the clerical services for the pension system. Authorizes the board to employ professional investment managers and advisors to manage or advise the board regarding the management and investment of the fund. Authorizes these professional services to include certain investment services. Authorizes the board to employ certain professionals and pay for these services from the fund. Requires the board to hold regular monthly meetings at the time and place it designates by resolution. Authorizes the chairman, secretary, or any four members to call a special meeting. Provides that each board member is entitled to one vote. Requires adequate notice to be given to all board members of any proposed meeting by any method reasonably calculate to provide adequate notice of the meeting, unless waived in writing. Authorizes a notice to be delivered by certain methods with recordation of receipt by the receiving board member. Provides that if all board members attend a meeting, however, failure to give notice as required by this subsection is excused. Requires the board to keep accurate minutes of its meetings and records of its proceedings.

Sec. 6. GENERAL POWERS AND DUTIES. Requires the board to retain control over all money collected or to be collected for the pension system; to keep separate from all other funds all money for the use and benefit of the system; and to keep a record of all claims, receipts, and disbursements in one or more books maintained for that purpose. Requires the board to establish the policies and procedures for appropriate disbursements from the fund that it considers appropriate. Authorizes the board to reimburse a board member, officer, or employee of the board for liability imposed as damages because of an alleged act, error, or omission committed in the individual's capacity as fiduciary or co-fiduciary of the fund's assets, or as an officer or employee of the board and for costs and expenses incurred by a fiduciary or co-fiduciary officer or employee in defense of a claim or an alleged act, error, or omission, or may purchase from an insurer licensed to do business in this state, one or more insurance policies that provides for the reimbursement. Prohibits any reimbursement from being provided nor any insurance policy from being purchased that would provide for reimbursement of a board member or an officer or employee of the board for liability imposed or expenses incurred because of the individual's personal dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently. Requires the cost of reimbursement or insurance coverage to be paid from money in the fund. Requires the board to administer the pension system consistent with the applicable provisions of the code. Provides that the board is vested with the power to adopt written rules and guidelines consistent with this article for the administration of the pension system. Provides that the board has full discretion and authority to administer the pension system, to construe and interpret this article, and to perform all other acts necessary to carry out the purpose of this article. Provides that all board decisions are final and binding on all affected parties.

Sec. 7. REMOVAL OF BOARD MEMBER. (a) Authorizes an elected board member to be removed from the board either by a vote of the membership of the pension system at a removal election initiated and held or by a vote of five board members together with a decision to remove the board member made by a hearing examiner as provided by this section.

(b) Authorizes an appointed member of the board to be removed from the board by the administrative head of the city.

(c) Sets forth the initiation, time frame, and results of a removal election for the members

of the pension system.

(d) Requires the board to call a special election to be held within a specific time frame to fill the vacancy for the unexpired term of the person who was removed. Provides that the person who was removed is not eligible to run in the special election, but is eligible to run in all subsequent board elections.

(e) Authorizes a board member to be removed as provided by this subsection and Subsections (f) and (g) of this section, except as otherwise provided by Subsections (a) and (b) of this section. Requires the board or its designee and the board member whose removal is proposed to attempt to agree on the selection of an impartial hearing examiner, after an affirmative vote of the board to remove a member under Subsection (a) of this section. Requires the parties, if the parties do not agree on the selection of a hearing examiner not later than a certain time, on the next workday, to request a certain list of qualified neutral arbitrators. Authorizes the board member whose removal is proposed and the board or their designees to agree on one of the seven neutral arbitrators on the list. Requires each party or the party's designee to alternate striking a name for the list, and the name remaining is the hearing examiner, if the parties fail to agree before the 26th day after the date the board first votes to remove a board member. Requires the parties to strike names from a list on the next workday, if the 25th day falls on a Saturday, Sunday, or legal holiday. Requires the parties or their designees to agree on a date for a hearing that is within the period prescribed by Subsection (f) of this section.

(f) Sets forth the hearing process. Authorizes the hearing examiner's final decision to be to remove or not to remove a board member. Authorizes the board member to be removed only if the hearing examiner determines that the board member violated Chapter 121A, Property Code. Requires the pension system to pay the fees and cost of the hearing examiner. Requires the costs of a witness to be paid by the party who called the witness.

(g) Provides that a person removed from the board is entitled to have the hearing examiner's decision reviewed, if the hearing examiner's decision is to remove a board member. Sets forth the process of having the decision reviewed. Requires a board member to be reinstated if a majority of the active and retired members of the pension system participate favor overruling the hearing examiner's decision. Requires a replacement election to be held not later than the 30th day preceding election, if a majority did not vote to overrule the decision to remove a board member.

(h) Provides that during a certain period, a person's privileges as a board member are suspended.

Sec. 8. CONTRIBUTIONS BY MEMBERS. Requires each active member to pay 8-3/4 percent of the member's total direct pay into the pension system each month. Requires the payments to be deducted by the city from the salary of each active member monthly and paid to the pension system. Prohibits a person from being required or permitted to make any payments into the pension system after the person separates from service, except for the repayment of withdrawn contributions. Provides that this article does not increase or decrease the contribution obligation of any member that arose before September 1, 1999, or give rise to any claim for refund for any contributions made before that date.

Sec. 9. MONTHLY PAYMENT BY CITY. (a) Requires the city to make contributions to the fund after each payroll period in an amount previously agreed to by the city and board for fiscal years ending before June 30, 2002. Sets forth the contribution rate for the fiscal year ending June 30, 2002, and another rate for each fiscal year ending after June 30, 2002.

(b) Requires the city, in addition to the contributions required by Subsection (a) of this section, to contribute to the fund each month an amount equal to the aggregate payments the city would have paid during that month to members who have separated from service for unused sick leave, vacation pay, and accumulated overtime pay to which the members were entitled at the time of separation from service under certain circumstances, if requested to do so by the board. Prohibits members described by this section from

receiving these payments directly.

(c) Authorizes the governing body of a city, to which this article applies, by ordinance or resolution, to provide that the city pick up active member contributions required by Section 8 so that the contributions of all active members of the pensions system qualify as picked up contributions under Section 414(h)(2) of the code. Requires the city, board, and any other necessary party to implement an action as soon as practicable, if a governing body of a city adopts an ordinance or resolution under this section. Requires picked up contributions, as provided by this Subsection, to be included in the determination of an active member's total pay, deposited to the individual account of the active member on whose behalf they are made, and treated, for all purposes, other than federal tax purposes, in the same manner and with like effect as if they had been deducted from the salary of, and made by the active member.

Sec. 10. INVESTMENT OF SURPLUS. Requires the board to invest a surplus of funds in the manner provided by Chapter 802, Government Code, if the board determines that a surplus of funds exists in an amount exceeding the current demands upon the pension system. Authorizes the board to select an investment manager or investment advisor if the board determines the service is desirable. Requires selection of managers or advisors to be made from a firm that has made presentations in person or in writing to the board. Authorizes the board to terminate a contract with an investment advisor at any time and to terminate a contract with an investment manager by notice the board considers to be appropriate. Prohibits a contract from requiring the pension system to pay a penalty for early termination. Requires the costs of the investment management of advisory services to be paid from the fund.

Sec. 11. SERVICE CREDIT. Provides that a member returns to service after an interruption in service is entitled to credit for previous service, to the extent provided by Section 19 of this article. Requires a member who is retiring to receive one-half day of service for each day for which the city is required to make contributions with respect to the member's unused sick leave, vacation pay, or accumulated overtime under Section 9(b) of this article, except to the extent the member elects to have the amounts credited to the member's deferred retirement option plan (DROP) account. Prohibits, under any circumstances, payment for the same days of unused sick leave, vacation pay, or accumulated overtime from being used to both increase a member's service and credit the member's DROP account. Provides that, notwithstanding Subsection (a) of this section, if a member has withdrawn the contributions made during any previous period of service, the previous period of service may not be counted in determining years of service unless the contributions are repaid to the pension system in accordance with Section 17 of this article. Prohibits a member from having any service credited for unused sick leave, vacation pay, or accumulated overtime until the date the member retires, at which time the member may apply some or all of the service to satisfy the requirements for retirement, although the member otherwise could not meet the service requirement without credit. Requires the board to determine the prior service to be credited to each employee of the police department who becomes an active member of the pension system. Requires the board to rely on personnel records of the city or the police department in determining prior service credits.

Sec. 12. RETIREMENT; AMOUNT OF PENSION; ANNUAL ADJUSTMENTS. (a) Provides that a member who separates from service after earning 20 or more years of service is eligible to receive a monthly service pension beginning in the month of separation from service. Provides that a member who separates from service with the city after November 23, 1998, after earning 10 or more but less than 20 years of service in any of the city's pension systems and who complies with all applicable requirements of Section 19 of this article is eligible to receive a monthly service pension, beginning in the month the individual attains 60 years of age. Prohibits a member from receiving a pension under this article while still an active member, except as provided by Subsection (f) of this section. Provides that all service pensions end with the month in which the retired member dies.

(b) Sets forth the monthly service pension for a member who separates from service after November, 23, 1998. Requires a member who separates from service after November 23, 1998, including a member who was a DROP participant, and begins to receive a monthly service pension to also receive a one-time lump-sum payment of \$5,000 at the same time the first monthly pension payment is made. Provides that the lump-sum payment under

this subsection is not available to a member who has previously received a \$5,000 payment under this section or Section 16 of this article.

(c) Requires the pension payable to each retired member to be adjusted annually, effective April 1 of each year, upward at a specific rate. Prohibits the amount of the annual adjustment from being less than three percent or more than eight percent of the pension being paid immediately before the adjustment, notwithstanding a greater or lesser increase in the consumer price index.

(d) Provides that a retired member who receives a service pension under this article is entitled to receive an additional \$88.05 each month beginning on the date the retired member's pension begins and continuing until the end of the month in which the retired member dies. Provides that this amount is intended to defray the retired member's group medical insurance costs and will be paid directly by the fund to the retired member for the retired member's lifetime.

(e) Requires the pension system, at the end of each calendar year beginning after 1998, and subject to the conditions provided by this subsection, to make a 13th benefit payment to each person who is receiving a service pension. Sets forth the amount of the payment. Authorizes the 13th payment to be made only for those calendar years in which the fund meets specific requirements.

(f) Authorizes an active or inactive member who is eligible to participate in the executive official pension plan established by Chapter 358, Acts of the 48th Legislature, Regular Session, 1943 (Article 6243g, V.T.C.S.), or a successor statute, while continuing employment with the police department, to participate in the executive official pension plan and if an active member, to make certain elections, or if an inactive member, to begin receiving a certain immediate pension benefit and to be entitled to all rights and privileges afforded a retired member under this article.

(g) Requires service pensions that began before September 1, 1999, notwithstanding anything to the contrary, to continue to be paid in accordance with applicable prior law and subject only to the adjustments that are specifically provided by this section.

Sec. 13. RESUMPTION OF SERVICE AS DEPARTMENT HEAD AFTER RETIREMENT. Requires the pension system to suspend all pension payments to a retired member who has separated from service and is subsequently appointed as the department head of the police department. Provides that the suspension of payments begins on the effective date of the person's appointment. Provides that the pension payments based on a person's previous period of service do not accrue during the pension payment suspension period, and contributions of the city and the department head for the subsequent service are payable during the period. Provides that the department head retains credit for all previous service and acquires credit for the subsequent service unless the department head is or becomes a DROP participant. Requires the pension benefits under this article to resume once the department head again separates from service.

Sec. 14. DEFERRED RETIREMENT OPTION PLAN. (a) Defines "DROP benefit."

(b) Authorizes an active member who has at least 20 years of service with the police department to file an irrevocable election to participate in DROP and receive a DROP benefit instead of the standard form of pension provided by this article with the pension system. Authorizes an election to be made under procedures established by the board, by an active member who has attained the required years of service.

(c) Provides that the monthly service pension and death benefits of an active member who becomes a DROP participant will be determined as if the active member had separated from service and begun receiving a pension on the effective date of the DROP election. Provides that an active member does not retire but does not accrue additional service credit beginning on the effective date of the election, and increases in pay that occur on or after that date may not be used in computing the active member's monthly service pension, but cost-of-living adjustments that occur on or after that date and that otherwise would be applicable to the pension will be made.

- (d) Sets forth the computation of the amount of a member's DROP benefit and takes into account a 13th payment and unused sick leave, vacation pay, and accumulated overtime.
- (e) Provides that as of the end of each month an amount is credited to each active member's notional DROP account at the rate of one-twelfth of a hypothetical earnings rate on amounts in the account. Sets forth the computation for a hypothetical earnings rate. Authorizes the board to lower any future rate below the rate otherwise prescribed by this section, to the extent necessary to ensure that the DROP does not adversely affect the financial condition of the fund.
- (f) Authorizes a member, a member's spouse, or if there is no eligible spouse, any other person eligible to receive benefits under Section 16 of this article, as applicable, to receive an amount equal to the member's DROP account or revoke the member's DROP election and elect to receive benefits as provided by this article without regard to this section, if a DROP participant separates from service because of disability or death. Requires a revocation and election under this subsection to be made at the time and in the manner provided in a procedure that the board may adopt from time to time. Authorizes the board to adopt a procedure for revocation and election. Authorizes, alternatively, a retired member, a deceased member's spouse, or, if there is no spouse, the person entitled to receive benefits under Section 16 of this article may elect to receive a distribution that is equal to the member's DROP account and benefits as described by Subsection (c) of this section.
- (g) Authorizes a retired member, in lieu of receiving a lump sum DROP benefit on separation from service, who has been a DROP participant to leave the retired member's DROP account with the pension system, in which case interest will be credited to the DROP account in the manner described by this subsection. Requires interest credited for any month to be at the applicable annual interest rate as defined by Section 417 (e) (3) (A) (ii) (III) of the code and published by the Internal Revenue Service for June of the year preceding the calendar year in which the interest is credited.
- (h) Authorizes a retired member who is a DROP participant to elect to have part or all of the amount that would otherwise be paid as a monthly service pension, less any amount required to pay the retired member's share of group medical costs, credited to a DROP account, in which case the additional amounts will become eligible to be credited with hypothetical earnings in the same manner as the amounts described by Subsection (g) of this section.
- (i) Authorizes a retired member who has not attained age 70-1/2, whether or not a DROP participant before retirement, to elect to have part or all of an amount equal to the monthly service pension that a retired member would otherwise be entitled to receive, less any amount required to pay the retired member's share of group medical insurance costs, credited to a DROP in which case the amounts will become eligible to be credited with hypothetical earnings in the same manner as the amounts described by Subsection (g) of this section. Authorizes, a retired member who has elected to have monthly service pension benefits credited to a DROP account under this subsection or Subsection (h) of this section, to direct that the credits stop and the monthly service pension resume at any time. Prohibits such a member from resuming the credits after stopping them after September 1, 1999.
- (j) Authorizes a retired member who is a DROP participant, to elect to receive distribution of the DROP account in a one-time lump-sum payment or in any other form of distribution that is approved by the board and satisfies the requirements of Section 401(a) (9) of the code. Requires distributions to a deceased member's survivors, as described by Subsection (f) of this section, to be made in a lump-sum as soon as administratively feasible after the deceased member's death.
- (k) Requires any pension or DROP distribution that was being paid to be suspended and the monthly amount described by Subsection (d) of this section will again begin to be credited to the DROP account while the member continues to be an employee, if a retired member who is or was a DROP participant is rehired as an employee of the police

department. Provides that a new notional account will be created to receive the member's monthly credits if a member's DROP account has been completely distributed. Requires a member to be eligible to elect participation in DROP on the same basis as any other member if a retired member who was never a DROP participant is rehired as a member of the police department.

(l) Authorizes the board to take action as necessary to mitigate the unanticipated actuarial cost, including discontinuing acceptance of additional elections to participate in DROP, but the pension system shall continue to administer DROP for the members who were participating before the discontinuance of enrollment, if DROP causes any unanticipated actuarial costs.

Sec. 15. **DISABILITY BENEFITS.** (a) Requires an active member who becomes totally and permanently incapacitated for the performance of the member's duties as a result of a bodily injury received in, or illness caused by, the performance of those duties, on presentation to the board of proof of total and permanent incapacity, to be retired and to receive an immediate duty-connected disability pension equal to the greater of 50 percent of the member's average total direct pay at the time of retirement or the member's accrued service pension. Provides that the member is eligible for a duty-connected disability pension if the injury or illness involves a traumatic event that directly causes an immediate cardiovascular condition resulting in a total disability. Requires a disability pension granted by the board to be paid to the member for the remainder of the member's life or for as long as the incapacity remains.

(b) Provides that a member with 10 years or more of credited service who becomes totally and permanently incapacitated for the performance of the member's duties and is not eligible for either an immediate service pension or a duty-connect disability pension is eligible for an immediate monthly pension computed in the same manner as a service retirement pension but based on average total direct pay and service accrued to the date of the disability.

(c) Provides that a member who becomes entitled to receive a disability pension after November 23, 1998, is entitled to receive a one-time lump-sum payment of \$5,000 at the same time the first monthly disability pension payment is made, but only if the member has not previously received a \$5,000 payment under this section or Section 12 of this article. Requires a person to also receive \$88.05 beginning on the date the pension begins and continuing as long as the disability pension continues to help defray the cost of group medical insurance. Provides that a retired member whose disability pension was in pay status on November 23, 1998, is entitled to receive a one-time lump-sum payment of \$5,000 as soon as administratively feasible after November 23, 1998. Provides that the payment has no effect on the amount of the retired member's pension. Requires a 13th payment to also be paid to members who have retired under this section for any year in which a 13th payment is made to retired members.

(d) Prohibits a person from receiving a disability pension unless the person files an application for disability pension with the board not later than 180 days after separation from service, at which time the board shall have the person examined by a physician chosen and compensated by the board. Requires the physician to make a report and recommendations to the board regarding the extent of any disability and whether any disability that is diagnosed is a duty-connected disability. Prohibits a person from receiving a disability pension for an injury received on or illness incurred after separation from service.

(e) Provides that a retired member who has been retired for disability is subject at all times to reexamination by the board's physician and compensated by the board, and shall submit to further examination as the board may require. Authorizes the board to order disability payments stopped if the retired member refuses to submit to an examination. Requires the board to order a member's disability pension stopped if, a retired member who has been receiving a disability pension under this section recovers so that in the opinion of the board, the retired member is able to perform the usual and customary duties formerly prescribed by the police department, and the retired member is reinstated or offered reinstatement to the position, or to a position reasonably comparable in rank and

responsibility to the position, held at the time of separation from service, the board shall order the member's disability pension stopped.

(f) Authorizes the board to require any person who first becomes an active member of the pension system on or after September 1, 1999, and subsequently begins to receive a non-duty-connected disability pension to provide the board annually, on or before May 1 of the second year after the year the disability pension begins, a true and complete copy of those portions of the retired member's federal or, if applicable, state tax return, including appropriate schedules, for the previous calendar year that indicate the retired member's occupations and earned income for the previous calendar year. Authorizes the pension system to waive the requirement for filing a copy of a tax return or delay the due date until later in the same calendar year, if the retired member provides the board with a true and complete copy of an extension request that results in any automatic extension. Requires the board to reduce future disability payments according to a certain specific formula if the retired member is or has been receiving earned income from one or more employments, including self-employment, during the previous year.

(g) Provides that, for the purposes of this section, a member is totally and permanently incapacitated from performing duties if the member is prevented by a physical or mental injury or illness from performing duties in the police department after any reasonable accommodation offered by the police department and this condition is expected to be permanent.

Sec. 16. RIGHTS OF SURVIVORS. (a) Provides that a marriage, for the purposes of this article, is considered to exist only if the marriage is recorded in the records of the recorder's office in the county in which the marriage ceremony was performed or, in the case of a declaration of common-law marriage, if the declaration is signed by the member and member's common-law spouse before a notary public and filed with the board. Prohibits a marriage that is evidenced by a declaration of common-law marriage signed before a notary public after December 31, 1999, from being treated as effective earlier than the date on which it was signed before the notary public.

(b) Sets forth the manner in which an immediate monthly benefit is required to be paid by the board, if a retired member dies after becoming entitled to a service or disability pension.

(c) Provides that a member's surviving spouse, dependent child or children, or dependent parent or parents are entitled to receive a certain immediately computed benefit, if any active member who has not completed 10 years of service in the police department is killed or dies from any cause not associated with the actual performance of the member's official duty.

(d) Provides that if any active member has completed 10 or more years of service in the police department and is killed or dies from a cause not associated with the actual performance of the member's official duty, the member's surviving spouse, dependent child or children, or dependent parent or parents are entitled to receive benefits to an immediate benefit, computed in accordance with Subsection (b) of this section, but based on the deceased member's service and average total direct pay at the time of death. Provides that if any inactive member dies from any cause after completing 10 or more years of service in the police department, the member's surviving spouse, dependent child or children, or dependent parent or parents are entitled to receive benefits computed as provided in the preceding sentence and beginning at the time the member would have attained age 60, if the member had lived.

(e) Provides that a member's surviving spouse, dependent child or children, or dependent parent or parents are entitled to receive immediate benefits computed in accordance with Subsection (b) of this section, except that the benefit payable to the appropriate beneficiary is equal to 100 percent of the member's average total direct pay, computed as of the date of the death, if any active member is killed or dies from any cause associated with the member's duty.

(f) Provides that a surviving spouse who receives a survivor's benefit under this article is

entitled to receive an additional amount each month equal to \$88.50, beginning with the first payment of the survivor's benefit and continuing until the end of the month in which the surviving spouse dies.

(g) Provides that a surviving spouse or dependent who was in pay status on November 23, 1998, is entitled to receive a one-time lump-sum payment of \$5,000 as soon as administratively feasible after November 23, 1998. Provides that the surviving spouse or dependent who become eligible to receive benefits with respect to an active member who dies in active service after November 23, 1998, is entitled to receive a one-time lump-sum payment of \$5,000 at the time the first monthly pension benefit is paid, if the member has not already received a \$5,000 lump-sum payment under Section 12 or 15(c) of this article. Requires that the \$5,000 to be divided equally among the eligible dependents, if more than one dependent is eligible to receive payment under this subsection. Provides that this payment has no effect on the amount of the surviving spouse's or dependents' monthly pension, and prohibits it from being paid more than once.

(h) Requires that the monthly benefits of surviving spouses or dependants provided under this section, except the \$88.05 monthly payments described by Subsection (f) of this section, to be increased annually at the same time and by the same percentage as the pensions of retired members are increased in accordance with Section 12(c) of this article. Requires a 13th payment, in any year in which one is made pursuant to Section 12(e) of this article, to be made to survivors who are entitled to receive death benefits at that time.

(i) Requires that the monthly payments to continue to be made to the designated beneficiary of the member or survivor, or to the estate of the member or survivor if a beneficiary was not designated, in the same amount as the last monthly payment made to the member, survivor, or estate, until payments have been made for five years with respect to the member, if a member or an individual receiving a survivor's pension dies before monthly payments have been made for at least five years, leaving no person otherwise entitled to receive further monthly payments with respect to the member. Requires that the amount of each monthly payment over the five-year period to be the same as the monthly payment had the member would have received if the member had taken disability retirement on the date of death, if the member dies after becoming vested but before payments begin, leaving no survivors eligible for benefits. Authorizes a member to designate a beneficiary in lieu of the member's estate to receive the remaining payments in the event the member and all survivors die before payments have been received for five years. Provides that the member's estate or a beneficiary who is not a survivor or dependent is not entitled to receive the payment described by Subsection (g) of this section.

Sec. 17. TERMINATION OF EMPLOYMENT; REFUNDS; REDEPLOYMENT. (a) Provides that when any active member separates from service, either voluntarily or involuntarily, before becoming eligible for an immediate service retirement or disability pension, the member ceases to be an active member.

(b) Provides that a member who has not completed 20 years of service at the time of separation from service with the police department is entitled to a refund of the total of the contributions the member made to the pension system, plus any amount that was contributed for the member by the city and not applied in accordance with this section to provide the member with 10 years of service. Provides that the refund does not include interest, and neither the city nor the member is entitled to a refund of the contributions the city made on the member's behalf, except as expressly provided by this subsection. Provides that a member forfeits any service earned before separation from service, even if it is otherwise nonforfeitable, by receiving the refund.

(c) Requires the board to notify each member of the pension system of the right to a refund as authorized by this section.

(d) Requires a member to apply to the board for a refund within one year after the date of separation from service. Provides that failure to apply for the refund within a one-year period results in a forfeiture of the right to a refund except for an inactive member whose

right to a pension is nonforfeitable. Authorizes, however, the board to reinstate any amount forfeited and allow the refund on application by the former member.

(e) Provides that heirs, executors, administrators, personal representatives, or assignees are not entitled to apply for and receive the refund authorized by this section except as provided by Section 16(c) of this article.

(f) Requires a person to be reinstated as an active member of the pension system, if a person who separates from service and receives a refund is subsequently reemployed as an employee of the police department. Prohibits prior service of an active member with the police department from being counted toward a retirement pension unless the member pays, not later than the 90th day after the date of a subsequent separation from service, an amount equal to any contributions previously refunded to the member under this section to the pension system. Provides that, except as provided by Section 18, a person is not eligible to repay any withdrawn contributions unless the person is reemployed by the police department of the city for which the prior service was performed.

(g) Authorizes a member who is contesting an indefinite suspension action, on application to the board, to receive a return of the member's contributions and be separated from service on receipt of the contributions. Provides that otherwise, a suspended member is considered to have a separation from service when a final decision of the arbitrator adverse to the member is rendered.

(h) Authorizes city contributions made under Section 9(b) of this article, based on unused sick leave, vacation pay, and accumulated overtime pay of a member who has separated from service to be applied, at the election of a member seeking a refund, to pay a refund of member contributions if the contributions are not used under Section 11(c) of this article to satisfy a service requirement for retirement.

Sec. 18. EMPLOYMENT BY ANOTHER DEPARTMENT (a) Prohibits credit, except as provided by this section, from being allowed to any person for service with any department in the city other than the police department. Provides that, except as provided by this section, a person's service will be computed from the date of entry into the service of the police department until the date of separation from service with the police department, if the person is transferred to or from some other department of the city to or from the police department.

(b) Requires, solely for purposes of determining whether a person has a sufficient number of years of service to receive a retirement pension, and not for purposes of determining the amount of the pension or DROP credit, a person who is employed in any full-time position with the city after November 23, 1998, and has or obtains any credited service with the pension system after that date, to receive service credit for any period of full-time employment with the same city. Prohibits, however, a person from receiving credit for service with both the police department and any other department of the city for the same period.

(c) Requires, notwithstanding Section 17 of this article and Subsection (b), a former member of the pension system to be permitted to repay withdrawn contributions and restore service credit previously earned with the pension system, even if the former member is not reemployed by the police department, the member meets certain criteria, and repays to the pension system the withdrawn contributions within a specific time frame.

Sec. 19. PERSONS REJOINING OR TRANSFERRED BY CITY; SERVICE CREDIT; DOUBLE BENEFITS; RETURN TO SERVICE. (a) Provides that an employee who has retired under this article or under former law governing the pension system and is or has been transferred by action of the city to a classified position in a police department included in the pension system again becomes an active member of the pension system as of the effective date of the transfer.

(b) Provides that a person who rejoins the pension system under this section is entitled to receive service credit for each day of service and work performed by the person in a classified position in the police department, except for any period during which the person

is a DROP participant. Requires the board to add service earned after the transfer to the prior service the active member accrued in a classified position in the police department. Prohibits, however, an active member from receiving service credit under this article, except to the extent provided by Section 18, for service performed for the city other than in a classified position in the police department.

(c) Provides that contributions of the city and the active member become payable as for other active members of the pension system after a transfer described by this section.

(d) Provides that a member who has transferred and subsequently retires is entitled to receive a pension based on a specific computation.

(e) Requires a retired member to repay to the pension system benefits received during the period, if a retired member receives both pension benefits and a salary from a classified position in the police department that covers the same period. Requires the board to withhold payment of pension benefits under this article if it is determined that a retired member is receiving both pension benefits from the fund and a salary from the police department that cover the same period. Requires the city attorney or a private attorney chosen by the board, on request of the board, to file suit in a court of competent jurisdiction to recover pension benefits owed to the pension system under this section.

(f) Provides that this article does not authorize the return to service with a police department or the resumption of active membership in the pension system by a retired member except as specifically provided by Sections 13 or 14 of this article or this section.

Sec. 20. DONATIONS. Authorizes the pension system to accept gifts and donations. Requires the gifts and donations to be added to the fund for the use of the pension system.

Sec. 21. DETERMINATION OF BENEFITS; PROVISION OF INFORMATION. Authorizes the board to require any member, survivor, or other person or entity to furnish information the board requires for the determination of benefits under this article. Authorizes the board to withhold payment of a pension or other benefits if a person or entity does not cooperate in the furnishing or obtaining of information required as provided by this section.

Sec. 22. LEGAL ADVICE. Requires the city attorney of the city to handle all legal matters for the pension system that are referred by the board without additional compensation for the service. Authorizes the board, however, to employ outside legal counsel to the exclusion of, or to assist, the city attorney and to pay reasonable compensation for the service from the fund.

Sec. 23. MEMBERS IN MILITARY SERVICE. (a) Prohibits a member of the pension system engaged in active uniformed service from being required to make monthly payments into the fund and from losing any previous years' service with the city because of the uniformed service. Requires the uniformed service to count as continuous service in the police department if the member returns to the city police department after discharge from the uniformed service as an employee within the period required by the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), as amended, and the uniformed service does not exceed the period for which a person is entitled to have service counted pursuant to that Act.

(b) Requires the city to make its regular monthly payments into the fund on behalf of each member while the member is engaged in uniformed service. Provides that a member's spouse, dependent children, dependent parent, or estate is entitled to receive a refund in the same manner as described by Section 16(c) of this article, if a member who has less than 10 years of service in the pension system dies directly or indirectly as a result of the uniformed service.

Sec. 24. ACTIONS FOR FUNDS MISAPPLIED. Authorizes the board to recover by civil action from any offending party or from the party's bondsman, if any, any money paid out or obtained from the fund through fraud, misrepresentation, theft, embezzlement, or misapplication and may institute, conduct, and maintain the action in the name of the board for the use and benefit of the fund. Requires payments due on behalf of a dependent child to be paid to the dependent child's guardian, if any, or if none to the person with whom the dependent child is living, except

the board may make payments directly to a dependent child in an appropriate case and to withhold payments otherwise due on behalf of any person if the board has reason to believe the payments are not being applied on behalf of the person entitled to receive them. Authorizes the board to request a court of competent jurisdiction to appoint a person to receive and administer the payments due to any dependent child or person under a disability.

Sec. 25. FEDERAL TAX QUALIFICATION OF FUND. (a) Provides that the fund described by this article is intended to qualify under Section 401(a) of the code and is for the exclusive benefit of the members and their survivors. Prohibits any part of the corpus or income of the fund from ever being used for, or diverted to, any purpose other than the benefit of members and their survivors as provided by this article.

(b) Prohibits a member or survivor of a member of the pension system from accruing a retirement pension, disability retirement allowance, death benefit allowance, DROP benefit, or any other benefit under this article in excess of the benefit limits applicable to the fund under Section 415 of the code. Requires the board to reduce the amount of any benefit that exceeds those limits by the amount of the excess. Requires the benefits a member would otherwise receive from the fund to be reduced to the extent necessary to enable the benefits to comply with Section 415 of the code, if total benefits under this fund and the benefits and contributions to which any member is entitled under any other qualified plans maintained by the city that employs the member would otherwise exceed the applicable limits under Section 415 of the code.

(c) Provides that any member or survivor who receives any distribution that is an eligible rollover distribution as defined by Section 402(c)(4) of the code is entitled to have that distribution transferred directly to another eligible retirement plan of the member's or survivor's choice on providing direction to the pension system regarding that transfer in accordance with procedures established by the board.

(d) Prohibits the total salary taken into account for any purpose for any member of the pension system from exceeding \$200,000 for any year for an eligible participant, or \$150,000 a year for an ineligible participant. Requires these dollar limits to be adjusted from time to time in accordance with guidelines provided by the United States Secretary of the Treasury. Provides that an eligible participant is a person who first became an active member before 1996, and an ineligible participant is a member who is not an eligible participant.

(e) Provides that accrued benefits under this article become 100 percent nonforfeitable for a member on the date the member has completed 10 years of service. Prohibits a reversion of funds to the employer if the pension system or the fund is terminated or partially terminated or city contributions to the fund are discontinued completely. Requires the fund, on complete or partial termination or discontinuance of city contributions, to be held by the pension system to be used exclusively for benefits for members and their surviving spouses and dependents, and the affected employees' rights to the benefits, to the extent funded, to be nonforfeitable if not already nonforfeitable under this subsection.

(f) Prohibits amounts representing forfeited nonvested benefits of terminated members from being used to increase benefits payable from the fund.

(g) Provides that distribution of benefits must begin not later than April 1 of the year following the calendar year during which the member entitled to the benefits becomes 70-1/2 years of age or terminates employment with the employer, whichever is later, and must otherwise conform to Section 401(a)(9) code.

(h) Provides that if the amount of any benefit is to be determined on the basis of actuarial assumptions that are not otherwise specifically set forth for that purpose in this article, the actuarial assumptions to be used are those earnings and mortality assumptions being used on the date of the determination by the pension system's actuary and approved by the board. Requires the actuarial assumptions being used at any particular time to be attached as an addendum to a copy of this article and treated for all purposes as a part of this article. Authorizes the actuarial assumptions to be changed by the pension system's actuary at any

time if approved by the board, but a change in actuarial assumptions may not result in any decrease in benefits accrued as of the effective date of the change.

(i) Authorizes the board, to the extent permitted by law, to adjust the benefits of retired members and survivors by increasing any benefit that was reduced because of Section 415 of the code. Authorizes the board to adjust the benefits of retired members or their surviving spouses or dependents, including the restoration of benefits previously denied, if Section 415 of the code is amended to permit the payment of amounts previously precluded under that section. Provides that benefits paid under this subsection are not considered as extra base salary earned after retirement but as the delayed payment of benefits earned before retirement.

(j) Authorizes the board to make any change in this article to the extent that the change is necessary to assure compliance with the qualification requirements of Section 401 of the code or any other federal law.

Sec. 26. EXCESS BENEFIT PLAN. (a) Provides that a separate, nonqualified, unfunded excess benefit plan is created outside the fund.

(b) Defines “excess benefit plan” or “plan,” “qualified plan,” “maximum benefit,” “excess benefit participant,” and “unrestricted benefit.”

(c) Provides that an excess benefit participant who is receiving benefits from the pension system is entitled to a monthly benefit under this excess benefit plan in an amount equal to the lesser of the member’s unrestricted benefit less the maximum benefit or the amount by which the member’s monthly benefit from the fund has been reduced because of the limitations of Section 415 of the code.

(d) Provides that if a spouse, dependent child, or dependent parent is entitled to preretirement or postretirement death benefits under a qualified plan after the death of an excess benefit participant, the surviving spouse, dependent child, or dependent parent is entitled to a monthly benefit under the excess benefit plan equal to the benefit determined in accordance with this article without regard to the limitations under Section 25(b) of this article or Section 415 of the code, less the maximum benefit.

(e) Requires any benefit to which a person is entitled under this section to be paid at the same time and in the same manner as the benefit would have been paid from the pension system if payment of the benefit from the pension system had not been precluded by Section 25(b) of this article. Prohibits an excess benefit participant or any beneficiary from electing to defer the receipt of all or any part of a payment due under this section.

(f) Requires the board to administer the plan, and the board’s designee to also carry out the business of the board with respect to the plan. Provides that, except as otherwise provided by this section, the rights, duties, and responsibilities of the board and the board’s designee are the same for the plan as for the funds of the pension system.

(g) Requires the consultants, independent auditors, attorneys, and actuaries selected to perform services for the fund to also perform services for the plan, but the fees for their service may not be paid by the fund. Requires the actuary engaged to perform services for the fund to advise the board of the amount of benefits that may not be provided from the fund solely by reason of the limitations of Section 415 of the code and the amount of employer contributions that will be made to the plan rather than to the fund.

(h) Prohibits contributions from accumulating under the plan to pay future retirement benefits. Requires each payment of city contributions that would otherwise be made to the fund under Section 9 of this article to be reduced by the amount determined by the board or its designee as necessary to meet the requirements for retirement benefits under the plan, including reasonable administrative expenses, until the next payment of city contributions is expected to be made to the pension system. Requires the city to then pay to the plan from the withheld contributions, not earlier than 30 days before the date of each distribution of monthly retirement benefits is required to be made from the plan, the

amount necessary to satisfy the obligation to pay monthly retirement benefits from the plan. Requires the board or its designee to satisfy the obligation of the plan to pay retirement benefits from the employer contributions so transferred for that month.

(i) Provides that employer contributions otherwise required to be made to the pension system under Section 9 of this article and any other qualified plan shall be divided into those contributions required to pay retirement benefits under this section and those contributions paid into and accumulated to pay the maximum benefits permitted under the qualified plan. Prohibits employer contributions made to provide retirement benefits under this section from being commingled with the money of the fund forming part of the pension system or any other qualified plan.

Sec. 27. AGREEMENT TO CHANGE BENEFITS. Provides that, notwithstanding any law to the contrary, the board or a designee of the board is responsible for representing the interests of the pension system and all pension issues and benefits affecting the pension system or its members and beneficiaries under this article. Authorizes the board to enter into a written agreement with the city on behalf of the pension system and members and beneficiaries of the pension system if the agreement is approved by the board and signed by the mayor and the board or the board's designee. Authorizes a pension benefit or allowance provided by this article to be increased under certain circumstances.

Sec. 28. NONREDUCTION, NONALIENATION, AND NONASSIGNMENT OF BENEFITS. (a) Prohibits the holding, seizure, taking, subjection to, detention, or levy upon by virtue of any execution, attachment, garnishment, injunction, or other writ, and provides that no order or decree and no process may issue out of or by any court of this state for the payment or satisfaction, in whole or in part, out of the funds held by or due from the pension system, of any debt, damage, claim, demand, or judgment against any member, survivor, dependent, or any other person, either before or after an order for its disbursement by the board, and no amounts due or to become due to any member or survivor under this article.

(b) Prohibits any part of the funds or any claim to the funds from being directly or indirectly assigned or transferred. Provides that any attempt to transfer or assign any part of the funds or a claim to the funds is void.

(c) Requires the funds to be held, kept, and disbursed for the purposes provided by this article, and for no other purpose, except that a retired member, survivor, or dependent, at the person's discretion, may have deducted from the person's pension the monthly premium cost of any group insurance program in which the retired member is participating.

(d) Prohibits a benefits payable under this article from being reduced or discontinued for any person except under the terms applicable to the benefit at the time the person becomes eligible to receive the benefit.

(e) Provides that this section does not prevent the division of the benefits accrued by a member under any court order determined by the board or its designee to be a qualified domestic relations order and the payment of a share of a retired member's benefits or contributions to an alternate payee in accordance with the order.

SECTION 2. Repealers:

(1) Article 6243g-1, V.T.C.S., (Chapter 76, Acts of the 50th Legislature, Regular Session, 1947) (Police Officers' Pension System in cities of 1,200,000 or More).

(2) Article 6243g-3, V.T.C.S. (Police officers' retirement plan in certain cities).

SECTION 3. (a) Requires the board of trustees of each pension system to which Article 6243g-4, V.T.C.S., as added by this Act, applies to hold an election among all of its members, not later than September 30, 1999. Requires the board to select an independent party not affiliated with the board, the pension system, or any employee or retiree organization to conduct and tabulate the results of the election. Provides that each active, inactive, or retired member of the pension system is eligible to vote in the

election and has one vote.

(b) Sets forth the required ballot format to allow for voting alternatively for certain propositions.

(c) Makes application of Subsection (b) (1) prospective. Provides that if a majority of the votes at the election favor the proposition described by Subsection (b) (2) of this section, it has immediate effect as law and applies to each vacancy on the board of trustees that occurs on or after its effective date; however, if a majority of the votes at the election do not favor the proposition described by Subsection (b) (2) of this section, it has no effect.

SECTION 4. Provides that the monthly benefits of a person who retires or retired after November 23, 1998, and before January 1, 2000, is determined by the benefit formula in effect immediately before the effective date of this Act, notwithstanding Section 12(b), Article 6243g-4, V.T.C.S., as added by this Act.

SECTION 5. Requires each pension system to which Article 6243g-4, V.T.C.S., as added by this Act, applies to reimburse each member of the system who has repaid to the system previously refunded contributions for any interest paid on the amounts repaid.

SECTION 6. Effective date: September 1, 1999.

SECTION 7. Emergency clause.