

## **BILL ANALYSIS**

Senate Research Center  
76R5628 BDH-D

S.B. 454  
By: Madla  
Intergovernmental Relations  
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As Filed

### **DIGEST**

Currently, under S.B. 1568, 75th Legislature, the San Antonio Fire and Police Retiree Health Care Fund (fund) was established as a separate and distinct statutory trust. S.B. 1568 provided the transfer of the administration and management of the fund to the newly created Firefighters' and Police Officers' Retiree Health Care Fund Board of Trustees (board). The fund was originally established pursuant to the respective Fire and Police Collective Bargaining Agreements to provide post-employment health care benefits to San Antonio Fire Fighters and Police Officers who retired on or after October 1, 1989. This bill would clarify the administrative provisions, power, and authority of the Firefighters' and Police Officers' Retiree Health Care Fund Board of Trustees.

### **PURPOSE**

As proposed, S.B. 454 clarifies the administrative provisions, power, and authority of the Firefighters' and Police Officers' Retiree Health Care Fund Board of Trustees.

### **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 Section 1.02, Article 6243q, V.T.C.S., as follows:

Sec. 1.02. DEFINITIONS. Defines "active member," "beneficiary," "collective bargaining agreement," "firefighter," "police officer," "retiree," and "trustee." Redefines "board." Makes conforming changes.

SECTION 2. Amends Section 1.04, Article 6243q, V.T.C.S., as follows:

Sec. 1.04. New heading: FUND; STATUTORY TRUST. Provides that the firefighters' and police officers' retiree health care fund (fund) is established for each municipality to which this Act applies. Requires the board of trustees of a fund established under Section 1.04 of Article 6243q, V.T.C.S. (board) to administer and hold in trust the assets of the fund for the exclusive benefit of the beneficiaries of the fund, rather than members and retirees of the fund and their spouses in retirement. Authorizes the board to pay from the fund reasonable administrative expenses incurred in administering the fund. Prohibits a public or private entity from altering or impairing any contract made by the board or under the authority or direction of the board.

SECTION 3. Amends Section 1.05, Article 6243q, V.T.C.S., to provide that health benefits paid or payable by the fund are exempt from garnishment, other legal processes, and inheritance or other taxes. Makes a nonsubstantive change.

SECTION 4. Amends Sections 2.01(a) and (b), Article 6243q, V.T.C.S., to provide that the firefighters' and police officers' retiree health care fund is governed by a nine-member board of trustees, and sets forth qualifications for each member. Requires the board, through its secretary, to administer the required elections of the active members and retiree trustees, rather than firefighter and police officer representative members. Requires the board to hold a runoff election between the two candidates receiving the most votes if no candidate receives a majority of the votes cast for a trustee position.

SECTION 5. Amends Section 2.02, Article 6243q, V.T.C.S., by amending the section heading, as follows:

Sec. 2.02. New heading: TERMS OF TRUSTEES

SECTION 6. Amends Sections 2.02(c), (d), and (e), Article 6243q, V.T.C.S., to provide that two active members of the fund who are firefighters, two active police officer members, and the retiree representatives serve for staggered four-year terms. Makes a conforming change.

SECTION 7. Amends Section 2.03, Article 6243q, V.T.C.S., by amending the section heading, as follows:

Sec. 2.03. New heading: RESIGNATION OR REMOVAL OF TRUSTEES.

SECTION 8. Amends Sections 2.03(a), (c), and (d), Article 6243q, V.T.C.S., to authorize a trustee who is a retiree or an active member of the fund to resign or to be removed by a vote of the group eligible to elect the trustee. Requires a removal election to be held within 30 days after the date the board certifies that a petition for a removal election has been signed by persons eligible to vote to elect the trustee, rather than the membership from which the board member was elected. Provides that a trustee's, rather than board member's, term ends by the board declaring that a majority of the votes cast in, rather than the results of, a removal election favor removal. Provides that a trustee who was removed is not eligible to run in the special election but is eligible to run in all subsequent elections in which the person is otherwise eligible to run, rather than for the category in which the person is a member. Deletes existing Subsection (a) regarding certain members of the board who may be removed. Makes conforming changes.

SECTION 9. Amends Section 2.04, Article 6243q, V.T.C.S., to provide that the treasurer, rather than finance director, of the municipality is the treasurer of the board. Makes conforming changes.

SECTION 10. Amends Section 2.06, Article 6243q, V.T.C.S., as follows:

Sec. 2.06. New heading: MEETINGS; QUORUM. Provides that five trustees constitute a quorum. Authorizes the board to act with the consent of a majority of the members who are present at a board meeting at which a quorum is present. Makes conforming changes.

SECTION 11. Amends Sections 2.07(b), (c), (f), and (h), Article 6243q, V.T.C.S., to require a committee to be composed of no fewer than three and not more than four trustees, rather than five members of the board. Authorizes all trustees to attend committee meetings. Prohibits, rather than authorizes, permanent or standing committees from being appointed. Makes conforming changes.

SECTION 12. Amends Section 3.01, Article 6243q, V.T.C.S., to provide that the board has certain authorities and powers. Authorizes the board to contract with a municipality or other entity to receive certain services. Requires the board to adopt rules necessary for the board's effective operation. Requires the board to take any action necessary to ensure that contributions to the fund and benefits received from the fund are exempt from federal taxes and excluded from a beneficiary's taxable income. Makes conforming changes.

SECTION 13. Amends Section 3.02, Article 6243q, V.T.C.S., to provide that the municipality has the authority and power to take certain actions. Makes a conforming change.

SECTION 14. Amends Article 3, Article 6243q, V.T.C.S., by adding Sections 3.04 and 3.05, as follows:

Sec. 3.04. INSURANCE. Authorizes the board to use fund assets to purchase insurance from any insurer licensed to do business in this state that provides for reimbursements of the fund and any trustee, officer, or employee of the fund for certain liability and costs. Prohibits the board from purchasing insurance for reimbursement of a trustee, officer, or employee of the fund for liability imposed on the trustee, officer, or employee because of the person's dishonesty, fraud, lack of good faith, or intentional failure to act prudently.

Sec. 3.05. INDEMNITY. Authorizes the board to indemnify a trustee, officer, or employee of the fund for liability imposed as damages because of an alleged act, error, or omission committed by the person in the capacity of a fiduciary, officer, or employee and for reasonable costs and expenses incurred in defense of a claim of an alleged act, error, or omission, if insurance purchased by the board under Section 3.04 of this Act is unavailable, insufficient, inadequate, or otherwise not in effect. Prohibits the board from indemnifying a trustee, officer, or employee of the fund for liability or expenses incurred because of the person's personal dishonesty, fraud, lack of good faith,

or intentional failure to act prudently. Prohibits a trustee from voting on a matter of the trustee's own indemnification or being counted in determining whether a quorum is present for the vote. Authorizes the board to adopt a policy establishing a method for presentation, approval, and payment of claims for indemnification. Authorizes the board to indemnify a former trustee, officer, or employee of the fund under this section for an alleged act, error, or omission committed by the person in the capacity of a fiduciary, officer, or employee and for reasonable costs and expenses incurred in defense of a claim of an alleged act, error, or omission, if insurance purchased by the board under Section 3.04 of this Act is unavailable, insufficient, inadequate, or otherwise not in effect. Authorizes the board to authorize indemnification of a trustee, officer, or employee of the fund, or a former trustee, officer, or employee of the fund under this section regardless of when the alleged act, error, or omission occurred, provided that the person is considered liable for the alleged act, error, or omission in relation to the person's capacity as a current or former trustee, officer, or employee of the fund.

SECTION 15. Amends Section 4.01, Article 6243q, V.T.C.S., to require membership in the fund to be determined by the collective bargaining agreements, rather than agents of the firefighters and police officers recognized under Chapter 174B, Local Government Code.

SECTION 16. Amends Section 4.02, Article 6243q, V.T.C.S., to require contributions to the fund to be determined in accordance with the collective bargaining agreements, rather than collectively bargained agreements between the municipality and the exclusive bargaining agents of the firefighters and police officers under Chapter 174, Local Government Code. Provides that the municipal contribution to and health benefits paid from the fund are part of the compensation for services rendered to the municipality. Deletes text regarding contributions. Makes conforming changes.

SECTION 17. Amends Section 4.03, Article 6243q, V.T.C.S., as follows:

Sec. 4.03. New heading: RIGHTS OF BENEFICIARIES AND MEMBERS; ASSOCIATION. Provides that beneficiaries and members, rather than a member, of the fund are entitled to all rights otherwise provided to the beneficiaries or members under any state or federal statute, rather than the federal Employee Retirement Income and Security Act of 1974 (29 U.S.C. Section 1001 et seq.). Authorizes the board to take any action necessary to ensure that the fund is classified as a voluntary employee's beneficiary association, rather than is entitled to all rights otherwise provided to it under any state or federal statute.

SECTION 18. Amends Section 5.01, Article 6243q, V.T.C.S., to require the retirement health benefits to be determined with the collective bargaining agreements. Makes conforming changes.

SECTION 19. Amends Section 6.01, Article 6243q, V.T.C.S., to require the treasurer to submit monthly reports to the board showing all fund receipts and disbursements. Provides that duties imposed on the treasurer and any service provided to or on behalf of the fund by the treasurer under a contract with a municipality are considered additional duties for which the treasurer is liable under oath and bond as the treasurer, rather than finance director, of the municipality. Makes conforming changes.

SECTION 20. Amends Section 6.03(a), Article 6243q, V.T.C.S., to require the board to determine a reasonable safe amount of surplus, rather than assets, necessary to defray reasonable expenses of the fund.

SECTION 21. Amends Section 6.04(c), Article 6243q, V.T.C.S., to authorize the board at its discretion, to establish an organization, rather than a corporation, described by Section 501(c)(25), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(25), if the funds own real estate.

SECTION 22. Amends Section 6.05, Article 6243q, V.T.C.S., to authorize the board to contract for attorneys. Authorizes the board to engage in a securities lending program consistent with the benefits payable to, rather than plan participants and their, beneficiaries.

SECTION 23. Amends Section 7.01, Article 6243q, V.T.C.S., to prohibit a trustee, the executive director, or any employee of the fund from performing certain actions. Requires the board to develop standards of conduct and financial disclosure requirements to be observed by each member of the board and by the executive director in the performance of the board's and executive director's official duties. Deletes text regarding direct or indirect financial interest. Deletes existing Subsection (c) regarding standards of conduct and financial disclosure requirements.

SECTION 24. Repealer: Article 8, Article 6243q, V.T.C.S. (Transition; Effective Date; Emergency).  
Repealer: Section 3.03, Article 6243q, V.T.C.S. (Orders for Payments).

SECTION 25. Effective date: October 1, 1999.

SECTION 26. Provides that the changes in law made by this Act have no effect on the terms of a contract entered into before the effective date of this Act.

SECTION 27. Emergency clause.