

BILL ANALYSIS

Senate Research Center
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H.B. 1390
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, there is no option for retired firefighters to participate in a program that allows firefighters to put a portion of their retirement back into the firefighter's relief and retirement fund.

H.B. 1390 advances the administration of the Firefighter's Relief and Retirement Fund (fund) and provides additional flexibility for fund members or their survivors at no cost to the fund. This bill allows retirees to take advantage of a federal tax provision and pro-rate on a monthly basis, a benefit for participants in the Deferred Retirement Option Plan (DROP) that is currently only provided after a full year of DROP participation. Furthermore, this bill changes the way in which the annual supplement benefit is distributed to the benefit of lower-income retirees.

This bill also establishes a Post-Retirement Option Plan (PROP), an option currently in use in other local and state pension funds, which allows retirees who do not need their full monthly distribution each month to direct the fund to withhold part of that money until needed or required to be distributed pursuant to the Internal Revenue Code. This bill authorizes the board of trustees of the fund to receive the death certificate or pending death certificate upon the reported death of a member in order to expedite the issuance of death benefits to survivors.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of a municipality's Firefighters' Relief and Retirement Fund in SECTION 6 (Section 5A, Section 6243e.2(1), Revised Statutes) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1, Article 6243e.2(1), Revised Statutes, by adding Subdivisions (1-b), (13-a), (15-a), and (15-b), to define "beneficiary adult child," "normal retirement age," "PROP," and "PROP account."

SECTION 2. Amends Section 2, Article 6243e.2(1), Revised Statutes, by amending Subsections (b), (h), (j), (n), (p), and (r) and adding Subsections (h-1), (h-2), (p-1), and (s), as follows:

(b) Sets forth the membership requirement for the board of trustees of a municipality's Firefighters' Relief and Retirement Fund (board). Decreases from three to one the number of years that a person who is not a municipal officer or employee must reside in the municipality to be eligible to become a member of the board under certain conditions.

(h) Deletes existing text requiring the treasurer of the municipality to be the treasurer of the Firefighters' Relief and Retirement Fund (fund) and providing a penalty for a violation thereof.

(h-1) Authorizes the board to form a standing or ad hoc committee composed of any number of trustees of the board to further administrate the fund. Authorizes a committee comprised of all board members to only be established by order of the order of the board, fund rule, or policy and has the same power as the board to take certain actions.

(h-2) Authorizes a pension benefits committee established by the board to deliberate and act in place of the board, even if the committee is composed of fewer than all board

members, regarding each application for benefits submitted to the fund by a member or member's survivor. Provides that final action of the aforementioned committee is binding and is only subject to a right of appeal to the board under law, rule, or policy at the time the application is final. Provides that final action of the committee constitutes the final action of the board, including for purposes of filing an appeal to a district court under Section 12 of this article.

(j) Provides that six trustees of the board, rather than a majority thereof, constitute a quorum to transact the business of the board or any committee composed of all the trustees of the board. Requires an order of the board or a committee to be made by a vote recorded in the minutes of the proceedings of the board or committee. Deletes existing text to make nonsubstantive changes.

(n) Requires the board, not later than January 31st of each year, to provide to certain persons a detailed and itemized report of all receipts and disbursements with respect to the fund, together with a statement of fund administration, during the preceding fiscal year of the fund. Requires the board to provide other reports and statements or existing financial information concerning the fund as may be required or requested by certain persons. Deletes existing text specifying the municipality's treasurer as the person to whom said information is to be submitted.

(p) Authorizes the board to adopt rules, policies, and procedures, rather than rules and guidelines, to manage the fund according to certain terms and purposes.

(p-1) Provides that such rules, policies, or procedures adopted by the board are final and binding with respect to matters within the board's jurisdiction and authority.

(r) Requires the board to maintain at the offices of the fund each adopted rule, rather than the original thereof, policy, or procedure, rather than guideline, and to deliver to certain persons copies thereof.

(s) Provides that Title 9 (Trusts), Property Code, does not apply to the fund.

SECTION 3. Amends Section 3, Article 6243e.2(1), Revised Statutes, by amending Subsections (g) and (l) and adding Subsections (g-1), (g-2), (g-3), and (n), as follows:

(g) Authorizes the board, from fund assets, to purchase from certain insurance entities to provide for the legal defense, liability and loss coverage, and insurable risk coverage of the fund. Authorizes the board, from fund assets, to provide legal defense of or indemnify and hold harmless the board members and employees of the fund from the effects and consequences of their acts, errors, omissions, or other conduct within the scope of their duties as trustees or employees, whether said acts are proved or alleged. Deletes existing text relating to indemnifying and holding harmless certain persons within their official capacity as fiduciaries or cofiduciaries.

(g-1) Authorizes the board to use fund assets to provide insurance coverage comparable to that provided by insurers under Subsection (g) by entering into a collective pool providing Texas governmental entities with self-insurance coverage. Provides that this subsection does not limit the ability of the board to provide any type of group or self-insurance coverage in a pool of governmental entities for fund employees and their beneficiaries as a benefit of employment.

(g-2) Creates this subsection from existing text of Subsection (g). Makes a conforming change.

(g-3) Creates this subsection from existing text of Subsection (g). Makes conforming changes.

(l) Provides that protection from liability provided by this subsection is cumulative of and in addition to any other constitutional, statutory, or common law official or governmental immunity, defense, and civil or procedural protection provided to the fund

as a governmental entity and to a fund trustee or employee as an official or employee of a governmental entity. Provides that this article does not grant an implied waiver of any immunity unless expressly provided.

(n) Authorizes the fund or an authorized representative thereof to obtain the death certificate or pending death certificate without prior notification or confirmation that otherwise may be required to expedite the issuance of death benefits from the fund to survivors in need of those benefits.

SECTION 4. Amends Section 4(b), Article 6243e.2(1), Revised Statutes, to entitle certain members to a monthly service pension beginning after, rather than on, the effective date of the termination of active service.

SECTION 5. Amends Section 5, Article 6243e.2(1), Revised Statutes, by amending Subsections (a), (i), (j), and (q) and adding Subsection (j-1), as follows:

(a) Requires a member to receive a prorated increase of 0.166 percent of the member's original benefit for each month of participation in the deferred retirement option plan (DROP) in that year for a member's final year of participation in DROP is not completed, but not beyond the member's 10th year in DROP. Makes a nonsubstantive change.

(i) Provides that the day immediately before the date of that DROP participant's election becomes effective is the last day used for computing and providing certain service pension or death benefits.

(j) Sets forth the distribution requirements for a DROP participant who dies before complete distribution of his or her DROP account has been made. Sets forth the distribution amounts for a spouse of the deceased member if he or she is survived by a spouse who was the member's spouse on the date the member's DROP election became effective, rather than the last day of active service.

(j-1) Provides that a person who is designated a beneficiary adult child in a valid beneficiary designation filed with the board is considered an eligible child only for the purposes of distributing a member's DROP account under Subsection (j). Provides that a designation under this subsection is distinct from a beneficiary designation under Subsection (j)(5).

(q) Authorizes a member to revoke a member's Back-DROP election by notifying the fund in writing not later than the earlier of specified dates.

SECTION 6. Amends Article 6243e.2(1), Revised Statutes, by adding Section 5A, as follows:

Sec. 5A. POST-RETIREMENT OPTION PLAN. (a) Sets forth the persons eligible to participate in the post-retirement option plan (PROP).

(b) Authorizes a PROP participant to elect to have all or part of a monthly service pension or other taxable benefits under this article, less certain group medical insurance costs, credited to the participant's PROP account. Requires a participant's PROP account to be credited with hypothetical earnings in the same manner as that of a member's DROP account under Section 5(d) of this article. Authorizes a participant to stop the amounts being credited to his or her PROP account and elect to resume receiving monthly service pension or other taxable benefits at any time.

(c) Requires a member or surviving spouse who elects to participate in the PROP to comply with the PROP election process established by the board.

(d) Authorizes a PROP participant to elect to receive partial payments from his or her PROP account, subject to rules and procedures adopted by the board. Authorizes the board to establish rules and procedures concerning the partial payments. Authorizes a participant who elects partial payments to elect to receive

his or her entire remaining PROP account balance in a single lump-sum payment. Provides that if at any time after the initial credit to the PROP account balance becomes zero, the account closes and the participant's participation in the PROP ceases and in such a case, the person is ineligible to participate in the PROP again.

(e) Requires an election by a member or surviving spouse to receive a single lump-sum payment or partial payments to be made in a manner and at a time that satisfies certain requirements.

(f) Authorizes the board, by rule or policy, to permit a member's surviving spouse to elect to participate in the PROP by choosing either or both of specified options.

(g) Provides that a surviving spouse PROP participant and the PROP account thereof are subject to this section and any additional rules adopted by the board relating to PROP accounts and participants generally or to that of surviving spouses and participants particularly. Authorizes the board, by rule, to further restrict or define in reasonable categories, who is a surviving spouse of a member for purposes of this section.

(h) Sets forth the manner in which a participant's PROP account balance is distributed if a member who is a PROP participant dies before complete distribution of the participant's PROP account has been made.

(i) Requires that only benefits taxable under the code may be credited to a PROP account.

(j) Authorizes the board to set a date after which additional members or surviving spouses will not be allowed to elect to participate in the PROP.

(k) Authorizes the board to set a date after which the crediting of additional benefits of a member or surviving spouse to a PROP account is not allowed.

(l) Authorizes the board, by rule or policy, to limit the number of distribution transactions for all PROP participants or for any category of PROP participants.

(m) Authorizes the board, by rule or policy, to establish a minimum dollar amount allowed for crediting of benefit amounts to a PROP account.

(n) Authorizes the board to adopt rules, policies, or procedures as necessary to implement or administer this section.

SECTION 7. Amends Sections 6(b), (c), and (e), Article 6243e.2(1), Revised Statutes, to make conforming changes.

SECTION 8. Amends Section 10A(f), Article 6243e.2(1), Revised Statutes, as follows:

(f) Sets forth the procedures for determining a certain lump-sum payment amount. Prohibits certain benefits from being included in a retired member's or eligible survivor's annual retirement or survivor benefit.

SECTION 9. Amends Sections 11(f), (g), and (m), Article 6243e.2(1), Revised Statutes, as follows:

(f) Makes conforming changes.

(g) Authorizes a member to designate in a trust document accepted by the fund a trustee to receive certain benefits. Authorizes an eligible survivor or beneficiary to designate a trustee under this subsection on or after the death or incapacity of the member. Authorizes a parent or legal guardian of the eligible survivor to make the aforementioned designation if the eligible survivor or beneficiary is disabled or a minor child.

(m) Deletes existing text requiring the benefit to be paid to the decedent's estate if no beneficiary is entitled to the benefit as a result of certain action.

SECTION 10. Amends Sections 12(a) and (b), Article 6243e.2(1), Revised Statutes, to make conforming and nonsubstantive changes.

SECTION 11. Amends Section 13(b) and (d), Article 6243e.2(1), Revised Statutes, as follows:

(b) Sets forth procedural requirements for an applicant relating to the conduction of a physical examination for admittance into the fund. Provides that an applicant's membership in the fund is effective on acceptance by the board, rather than on being appointed to the position of probationary firefighter.

(d) Requires the municipality to make contributions to the fund once every two weeks, rather than monthly, in a specified amount. Makes a conforming change.

SECTION 12. Amends Section 14(a), Article 6243e.2(1), Revised Statutes, to set forth requirements relating to the accrual of certain benefits or allowances. Requires any benefit accruals limited under this subsection to be determined, rather than certified, by a qualified actuary selected by the board.

SECTION 13. (a) Effective date: upon passage or September 1, 2007, except as provided by Subsection (b).

(b) Effective date, Section 5A, Article 6243e.2(1), Revised Statutes: October 1, 2007.