

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2763
By: Flynn et al. (Taylor)
State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

There are concerns about the unfunded liabilities of the retirement fund and the pension systems for police officers in certain large cities. H.B. 2763 seeks to address this concern by revising pension benefits and contributions of police pension funds in certain municipalities. (Original Author's/Sponsor's Statement of Intent)

C.S.H.B. 2763 amends current law relating to the police pension fund in certain municipalities

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of the Police Pension Fund (board) in SECTION 9 (Section 11.01, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.)) of this bill.

Rulemaking authority previously granted to the board in SECTION 4 (Section 2.03, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.)) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.04, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), by adding Subdivisions (1-a), (1-b), (6-a), (8), (9), and (10), as follows:

- (1-a) Defines "actuarial experience study."
- (1-b) Defines "actuarially determined contribution rate."
- (6-a) Defines "normal cost."
- (8) Defines "plan year."
- (9) Defines "trustee."
- (10) Defines "unfunded actuarial amortization amount."

SECTION 2. Amends Sections 2.01 and 2.02, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as follows:

Sec. 2.01. BOARD OF TRUSTEES. Deletes existing text requiring the board of trustees of the police pension fund (board) to be organized immediately after the members have qualified and taken the oath of office.

Sec. 2.02. COMPOSITION OF BOARD. (a) Provides that the board is composed of eight trustees, rather than seven members, as follows:

- (1) the president of the municipality's police association or the president's designee, to serve during the president's term of office, rather than the

president of the municipality's police association to serve during the president's term of office except as provided by Subsection (b) of this section;

(2) two trustees, rather than one municipal financial staff employee, designated by the city manager, to serve at the pleasure of the city manager;

(3) two trustees designated by the city council, each to serve a staggered three-year term, rather than one legally qualified voter, designated by the mayor to serve a two-year term; and

(4) redesignates existing Subdivision (5) as Subdivision (4). Provides that the board includes three trustees elected by the members of the fund, each to serve a staggered three-year term, rather than three members of the fund elected by the members of the fund each to serve a three-year term.

Deletes existing Subdivision (4) providing that the board of trustees includes one legally qualified voter designated by the city council to serve a two year term.

(b) Deletes existing text providing that if the president of the municipality's police association is prevented by the constitution or bylaws of the association from serving as a member of the board of trustees or if the president is not a member of the fund, the member of the fund who holds the next highest ranking office in the association serves on the board in place of the president of the association for the term of the officer's office in the association. Redesignates existing Subsection (c) as Subsection (b) and makes a nonsubstantive change.

SECTION 3. Amends Article 2, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), by adding Section 2.021, as follows:

Sec. 2.021. QUALIFICATIONS OF TRUSTEES. (a) Requires a person, to be designated or elected a trustee under Section 2.02 of this Act, to have:

(1) demonstrated financial, accounting, business, investment, budgeting, or actuarial experience;

(2) a bachelor's degree from an accredited institution of higher education; or

(3) been vetted to verify that the person is capable of performing the duties and responsibilities of a trustee under this Act and determined qualified for designation or election, as appropriate, to the board by:

(A) the trustee serving on the board under Section 2.02(a)(1) of this Act; and

(B) a trustee designated by the city manager under Section 2.02(a)(2) of this Act.

(b) Provides that a person is presumed to have demonstrated the expertise described by Subsection (a)(1) of this section if the person has at least five years of full-time employment experience working in a field described by that subdivision.

(c) Provides that a person is not required to reside in the municipality to be designated or elected a trustee under Section 2.02 of this Act.

SECTION 4. Amends Section 2.03, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as follows:

Sec. 2.03. ELECTED TRUSTEES. Requires the board to provide by rule for the procedure for electing trustees described by Section 2.02(a)(4), rather than Section 2.02(a)(5), of this Act.

SECTION 5. Amends Article 2, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), by adding Section 2.035, as follows:

Sec. 2.035. TRUSTEE TRAINING. (a) Requires a person who is appointed or elected to the board and qualifies for office as a trustee to complete a training program that complies with this section.

(b) Requires the training program to provide the trustee with information regarding:

- (1) the law governing the pension fund's operations;
- (2) the programs, functions, rules, and budget of the fund;
- (3) the scope of and limitations on the rulemaking authority of the board;
- (4) the results of the most recent actuarial valuation of the fund; and
- (5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to a trustee in performing the trustee's duties, including the board's fiduciary duty to hold and administer the assets of the fund for the exclusive benefit of members and their beneficiaries under Section 802.203 (Fiduciary Responsibility), Government Code, Section 67(f) (relating to requirements of the board of trustees of a system or program that provides retirement and related disability and death benefits for public officers and employees and that does not participate in a statewide public retirement system), Article XVI, Texas Constitution, and any other applicable law.

SECTION 6. Amends Sections 2.09(a), (b), and (c), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as follows:

(a) and (b) Makes conforming changes to these subsections.

(c) Requires a decision to indemnify under this section (Insurance) to be made by five trustees, rather than be made by a majority of the board. Makes conforming changes.

SECTION 7. Amends Article 2, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), by adding Sections 2.10, 2.11, and 2.12, as follows:

Sec. 2.10. ACTION INCREASING AMORTIZATION PERIOD. Provides that, notwithstanding any other provision of this Act, the rate of contributions to the pension fund is prohibited from being reduced or eliminated, a new monetary benefit payable by the pension fund is prohibited from being established, and the amount of a monetary benefit from the fund is prohibited from being increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the pension fund would be increased to a period that exceeds 25 years.

Sec. 2.11. ACTUARIAL VALUATIONS. (a) Requires the assumptions and methods adopted by the board and used to prepare an actuarial valuation of the pension fund's assets and liabilities to be consistent with generally accepted actuarial standards.

(b) Requires any assumed rate of return adopted by the board under this Act to be reviewed as part of each actuarial valuation conducted on or after January 1, 2020.

Sec. 2.12. INVESTMENT RETURN ASSUMPTIONS; ACTUARIAL EXPERIENCE STUDY REQUIRED. (a) Requires the board, except as provided by Section 67(f)(3) (relating to the board of trustees of a certain program selecting legal counsel and an actuary and adopting sound actuarial assumptions), Article XVI, Texas Constitution, and notwithstanding Section 11.01 of this Act, to adopt an assumed rate of return of seven percent to be used in the preparation of any actuarial valuation conducted on or after September 1, 2019, and before January 1, 2020.

(b) Provides that this section expires January 2, 2020.

SECTION 8. Amends Sections 6.01, 6.03, and 6.04, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as follows:

Sec. 6.01. New heading: CONTRIBUTION OF MEMBERS AND PARTICIPATION IN FUND; WAGE DEDUCTIONS. Requires each member, subject to modification under Section 11.01 of this Act, to make contributions to the fund, and authorizes the municipality to deduct 12 percent of the member's monthly wages as contributions to the fund for service rendered after August 31, 2019, rather than requiring each member to make contributions to the fund, except in a time of national emergency, and authorizing the municipality to deduct a sum of not less than one percent and not more than 10 percent of the member's monthly wages as contributions to the fund. Deletes existing text requiring the board to determine the percentage deducted from monthly wages, as provided by Section 2.01 of this Act, within the minimum and maximum deductions provided by this section or as otherwise provided by Section 11.01 of this Act.

Sec. 6.03. CONTRIBUTIONS BY MUNICIPALITY. (a) Creates this subsection from existing text. Requires the municipality, subject to modification under Section 11.01 of this Act and not later than the 15th business day after the first day of the municipality's fiscal year, to contribute to the fund 18 percent of payroll based on authorized positions, as determined by the municipality, rather than requiring the municipality, acting under the advice of the actuary for the fund, to contribute to the fund contributions expressed as a percentage of payroll or compensation for each member, in such amounts and at such times as are required to pay the municipality's normal cost and interest on any unfunded actuarial requirement at the rate of interest assumed in the actuarial valuation. Deletes existing text requiring the municipality to also include in the contribution to the fund sufficient money to pay the costs of administration of the fund, including the costs of periodic actuarial evaluations and annual statements to the members of the fund.

(b) Requires the municipality, not later than December 31 of the year following the year in which the municipality makes a contribution under Subsection (a) of this section, to:

(1) calculate the difference, if any, between the amount of the municipality's actual payroll for the applicable fiscal year and the amount of payroll on which its contribution under Subsection (a) of this section was based; and

(2) contribute to the fund an amount equal to the municipality's applicable contribution rate multiplied by the amount of the difference calculated under Subdivision (1) of this subsection.

Sec. 6.04. MUNICIPALITY'S LIABILITY. (a) Creates this subsection from existing text. Prohibits the municipality, except as provided by this section, rather than notwithstanding any other provision of this Act, from being held liable or responsible for any claim or asserted claim for benefits under the fund, but requires all claims to be paid from the money for which provisions have been made under the terms of the plan and fund.

(b) Requires the municipality to pay the pension fund, in the manner provided by Subsection (d) of this section, money in an amount sufficient to offset any negative financial impact to the fund, as determined by the actuary for the fund, caused by a unilateral action taken by the municipality, including a reduction by the municipality in the number of the municipality's police officers.

(c) Requires the actuary for the fund, as part of the actuary's actuarial valuation of the fund, to annually determine whether a reduction in the number of municipal police officers by a municipality had a negative financial impact to the fund.

(d) Requires the municipality, if the actuary determines a negative financial impact to the fund has occurred under this section, to:

(1) provide additional funding to the fund in the time frame prescribed for making contribution increases under Section 11.01(b-1) of this Act; and

(2) continue to provide the funding described by Subdivision (1) of this subsection until the negative impact of the action is eliminated as determined by the actuary for the fund.

SECTION 9. Amends Section 11.01, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as follows:

Sec. 11.01. MODIFICATION OF BENEFITS, MEMBERSHIP QUALIFICATIONS, ELIGIBILITY REQUIREMENTS, AND CONTRIBUTIONS. (a) Authorizes the board, subject to Section 2.10 of this Act and except as otherwise provided by this section, with the approval of at least six board members, to modify, rather than authorizing the board notwithstanding any other provision of this Act, with the approval of at least four board members, to modify:

(1) benefits provided by this Act, including the multiplier by which a pension benefit amount provided under Article 7 of this Act is calculated, except that any increase in benefits is subject to Subsection (b) of this section;

(2) makes no changes to this subdivision;

(3) eligibility requirements for pensions or benefits, including the age at which a member is eligible to retire; or

(4) subject to Subsection (b) of this section, the contribution rates provided by Sections 6.01 and 6.03 of this Act, rather than the percentage of wage deductions provided by Section 6.01 of this Act, except that any increase in wage deductions is subject to Subsection (b)(2) of this section.

(b) Prohibits the board of trustees, notwithstanding any other provision of this Act, from modifying the contribution rates expressly provided by Sections 6.01 and 6.03 of this Act before January 1, 2025. Requires the board, if, on or after January 1, 2025, the fund's most recent actuarial valuation recommends an actuarially determined contribution rate that exceeds the aggregate contribution rates provided by Sections 6.01 and 6.03 of this Act, as modified under this section, if applicable, to:

- (1) calculate the difference between the actuarially determined contribution rate and the aggregate contribution rates; and
- (2) by rule, increase the contribution rates applicable under Sections 6.01 and 6.03 of this Act by 50 percent of the difference calculated under Subdivision (1) of this subsection.

(b-1) Prohibits an increase in contribution rates under Subsection (b) of this section from taking effect before:

- (1) the January 1 following the date on which the board of trustees approved the applicable actuarial valuation, if the approval occurred at least three months before the first day of the municipality's fiscal year; or
- (2) the first day of the municipality's fiscal year that begins more than three months after the date the board approved the applicable actuarial valuation, if the approval occurred less than three months before the first day of the municipality's next fiscal year.

Deletes existing text authorizing the board, notwithstanding any other provision of this Act, with the approval of a majority of the members of the fund, to increase either benefits provided by this Act or the percentage of wage deductions provided by Section 6.01 of this Act, except that, if the actuary for the fund certifies that an increase is necessary to maintain an actuarially sound plan, the board is authorized, with the approval of at least four board members, to increase the percentage of wage deductions.

(c) Authorizes the board, notwithstanding any other provision of this Act, with the approval of at least five board members, rather than four board members, to provide for refunds, in whole or in part, with or without interest, of accumulated contributions made to the fund by members who leave the municipality's service before qualifying for a pension.

(d) Prohibits actions authorized under this section from being made unless first reviewed by a qualified actuary selected by the board, rather than prohibiting actions authorized under Subsection (a) or (b) of this section from being made unless first reviewed by a qualified actuary selected by at least four board members. Requires an actuary who is an individual, to qualify, to be a Fellow of the Society of Actuaries or a member of the American Academy of Actuaries, rather than a Fellow of the Society of Actuaries, a Fellow of the Conference of Actuaries in Public Practice, or a member of the American Academy of Actuaries.

SECTION 10. (a) Defines "board of trustees" and "pension fund" for purposes of this section.

(b) Provides that, as soon as practicable after the effective date of this Act:

- (1) the city manager and city council are required to designate trustees for the board of trustees in accordance with Sections 2.02(a)(2) and (3), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as amended by this Act, whose terms are to begin November 1, 2019; and
- (2) the members of the pension fund are required to elect, in accordance with a procedure adopted by the existing board of trustees for that purpose, three trustees to the board of trustees in accordance with Section 2.02(a)(4), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as amended by this Act, whose terms are to begin November 1, 2019.

(c) Provides that, notwithstanding the terms stipulated by Sections 2.02(a)(2), (3), and (4), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as amended by this Act, as applicable:

(1) the city manager and the city council are required to designate one of the initial trustees appointed under Section 2.02(a)(2) or (3), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as amended by this Act, as applicable, to serve a term of two years; and

(2) the existing board of trustees are required to designate one of the initial trustee positions elected under Section 2.02(a)(4), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as amended by this Act, to serve a one-year term and another of the initial trustee positions to serve a two-year term.

(d) Provides that, notwithstanding the term of a trustee serving on the board of trustees immediately before the effective date of this Act, effective October 31, 2019, the term of a trustee serving on the board under Sections 2.02(a)(2), (3), (4), and (5), Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as those subdivisions existed immediately before the effective date of this Act, expires.

SECTION 11. Makes application of Sections 6.01 and 6.03, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as amended by this Act, prospective.

SECTION 12. Provides that, notwithstanding Section 6.03, Chapter 325 (H.B. 2259), Acts of the 75th Legislature, Regular Session, 1997 (Article 6243p, V.T.C.S.), as it existed immediately before the effective date of this Act, a municipality subject to that section is not required to pay interest on any unfunded actuarial requirement that is outstanding under that section on the effective date of this Act.

SECTION 13. Effective date: upon passage or September 1, 2019.