

SUBJECT: Modifying the San Antonio police and firefighter retirement system

COMMITTEE: Pensions, Investments and Financial Services — committee substitute recommended

VOTE: 11 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Stephenson, Wu

0 nays

WITNESSES: For — Warren Schott and James Smith, San Antonio Fire and Police Pension Fund; (*Registered, but did not testify:* Rita Ostrander, Combined Law Enforcement Associations of Texas; Patrick Haggerty, El Paso Firemen and Policemen Pension Fund; Michael Trainer, San Antonio Fire and Police Pensioners Association; Frank Burney and Gail Jensen, San Antonio Fire and Police Pension Fund; Jimmy Rodriguez, San Antonio Police Officers Association)

Against — Christopher Steele, San Antonio Professional Firefighters Association (*Registered, but did not testify:* Joe Alderete III, Wayne Delanghe, Edward Guerra, and Javier Patlan, San Antonio Fire Department Local 624)

BACKGROUND: Vernon's Texas Civil Statutes art. 6243o governs the police and firefighter retirement systems for paid fire and police departments of certain municipalities with a population of between 1.3 million and 1.5 million (San Antonio).

The federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) establishes the rights and responsibilities of uniformed service members and their civilian employers. USERRA is intended to ensure that individuals who serve in the U.S. military are not disadvantaged or discriminated against in their employment.

The federal Heroes Earnings Assistance and Relief Tax Act, or HEART Act, includes provisions governing death, disability, and pension benefits.

Under the HEART Act, workers who leave their jobs for active military service are able to keep their employer-provided death and disability benefits.

DIGEST:

CSHB 3188 would revise several provisions related to the San Antonio Fire and Police Pension Fund, including provisions concerning service credit payments, retirees' death benefits, and the establishment of disability benefits.

Disbursements. The bill would establish that the fund's board of trustees had complete authority and power to disburse benefits or otherwise order payments from the fund. The disbursement of benefits could not be made without a record vote of the board.

Restoration of credit. Under CSHB 3188, a member of the retirement system who was exempted from making monthly payments into the fund during the time that the member was in any uniformed service of the United States could restore the credit for those contributions by paying into the fund an amount equal to what the member would have paid if the member had remained on active status in the fire or police department. This payment would have to be made in full within a period of time after the member's return to active status in the fire or police department that was equal to three times the amount of time the member was in active service with the uniformed service. The maximum period for payment could not exceed five years.

If the member did not make this payment within the specified time frame but would otherwise be eligible for credit under federal law, the member could receive the credit if the fund's board of trustees determined that the member had good cause for missing the payment deadline. The member would have to pay interest on the then current rate of the member's contribution from the date the payment was required to the date the payment was made, at an interest rate set by the board.

Suspension rights. The bill would state that an indefinite suspension or a suspension for a specific period of time would become final on the either

the date an administrative appeal of the suspension was finally adjudicated or, if no administrative appeal of the suspension was made, after the last day of the period for initiating an appeal had elapsed.

If a member of the fund died while on suspension, the member's beneficiary would have the same rights as any other beneficiaries of the fund.

However, if a member died while on indefinite suspension that had not become final as of the date of the member's death, the member's beneficiary would have the same rights as other beneficiaries only if the beneficiary provided sufficient evidence to the board that:

- an administrative appeal of the indefinite suspension to the municipality was being actively pursued at the member's time of death; and
- the member had a reasonable chance of having the indefinite suspension reversed or modified.

Disability retirement. CSHB 3188 would expand the authority of a retirement system's board of trustees to determine whether an active member of the fund was eligible to retire and receive either a regular or catastrophic disability retirement annuity. A member would be eligible for such benefits only if the member established to the satisfaction of the board that the member was permanently or catastrophically disabled, if the member was not disqualified from receiving a disability retirement annuity, and if the member met certain other statutory requirements. The board would be authorized to consider or require any other evidence it considered necessary or appropriate.

A member of the fund who was suspended for a specific period and who became disabled during that suspension would be eligible for a disability retirement annuity only if the member made up each contribution to the fund that was missed due to the suspension. These contributions would have to be made within 30 days after the later of the termination date of the suspension or the date the suspension became final.

A member who was placed on indefinite suspension that became final or who was terminated would not be entitled to a disability retirement annuity. This would not apply to a member placed on an indefinite suspension that was reversed or modified to be for a specific period.

If required by the board, a disability retiree who was awarded a catastrophic injury disability annuity would have to undergo a medical examination by any reputable physician or physician selected by the board.

The bill would allow the board of trustees to restore a retirement annuity that had been reduced due to a retiree's income from other employment. The restored annuity would have to be the same as the annuity before the reduction, plus any applicable cost-of-living increases that had occurred during the period the annuity was reduced.

Benefits upon death of officer or retiree. The bill would expand the definition of a dependent child to mean either a natural or adopted child who was an adult with a physical or mental disability. The bill would remove the requirement that, in order to be eligible for any applicable fund benefits, a dependent child must have been claimed by a deceased member as a dependent for tax purposes during the year preceding the member's death. A child who was adopted after the date of a member's retirement would not be entitled to a death benefit annuity.

The bill would remove the requirement that the pension fund board consider the municipality's finding as to whether a deceased member was killed in the line of duty.

For the purpose of calculating the death benefit annuity due to the family of a member killed in the line of duty, the bill would establish a method for calculating the member's total salary. The annuity would be equal to:

- the total salary the member received during the 12-month period before the date of the member's death, if the member served 12

- months or more before the date of the member's death;
- the average monthly total salary the member received before the date of the member's death multiplied by 12, if the member served at least two months but less than 12; or
- the average daily total salary the member received before the date of the member's death multiplied by 360, if the member served less than two months before the date of the member's death.

The bill would specify that the right of a member's surviving spouse or dependent child to annuity payments would not be affected by either the surviving spouse or dependent child's marriage if the marriage took place on or after October 1, 1995.

A surviving spouse or dependent child who was married before October 1, 1995, and whose marriage resulted in the termination of annuity benefits would be entitled to 100 percent of the annuity in effect on the date of termination, plus any applicable cost-of-living increases, if:

- the surviving spouse or dependent child was unmarried on October 1, 1995; or
- the marriage of the surviving spouse or dependent child was terminated after October 1, 1995.

"Slayer" provision. The bill would deny death benefits to a person who was the principal or an accomplice in willfully bringing about the death of a member or beneficiary whose death would otherwise benefit the person.

The board would have to make a determination during a board meeting that a person willfully brought about the death, and the determination would have to be based on a preponderance of the evidence presented. The board's determination would not be controlled by any other finding in any other forum, regardless of whether the other forum considered the same or another standard of proof.

HEART Act. The bill would make the survivors of a member of the fund who died while performing qualified military service entitled to certain

additional benefits that would have been provided if the member had died after returning to active status in the fire or police department.

Other provisions. The bill would make technical changes to current statute and revisions designed to effect compliance with other federal laws, as well as to maintain the fund's tax-exempt status.

The bill would state that the mayor of a municipality to which the bill applied would serve on the board of trustees, or could appoint a designee to serve on the board, only for the duration of the mayor's term in office. A member of the governing body of the municipality who served on the board could serve only for the duration of their term serving the governing body, whether the member was elected or appointed.

The bill also would prescribe the manner in which the mayor or governing body, respectively, fills an applicable vacancy on the board.

The bill would take effect October 1, 2019.

**SUPPORTERS
SAY:**

CSHB 3188 would make overdue updates to the statute governing the San Antonio Fire and Police Pension Fund in order to conform statutory language to certain federal regulations. The bill also would clarify language to address situations that have arisen since the statute was last updated and give the fund's board of trustees greater flexibility to make decisions on a case-by-case basis as appropriate.

The bill would go beyond the baseline of benefits and protections established under federal law to provide the fund's board of trustees greater flexibility to allow members who served in the U.S. military to purchase service credit. The board also would be given the ability to waive the requirement that a retiree receiving a catastrophic disability pension undergo a medical examination. Such a waiver would be appropriate in situations when a retiree has an obvious catastrophic disability and further examination would be unnecessary or burdensome.

The bill also would remove the requirement that a dependent child must

have been claimed as a dependent by a deceased member for federal income tax purposes. This would allow the board greater flexibility to address situations that may have arisen in members' lives since their retirement.

A "slayer" provision, denying a death benefits to a person who benefited from a member or beneficiary's death and who the board determined was responsible for or an accomplice to the death, would prevent criminals from benefiting financially from their crime.

The question of benefits to spouses of firefighters goes beyond the purpose of this legislation, though it may be appropriate to address in the future.

**OPPONENTS
SAY:**

CSHB 3188 improperly would grant more authority to the pension fund's board of trustees, which could lead to long-term fund instability.

The bill should expand the fund's benefits to members' surviving spouses and dependent children to include special benefits for the spouses of firefighters who die from certain kinds of cancers.