

## **BILL ANALYSIS**

Senate Research Center

S.B. 872  
By: Madla  
Intergovernmental Relations  
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As Filed

### **DIGEST**

Currently, the Fire Fighters and Police Pension Fund is a defined benefit plan which is a statutory trust created by the state legislature. The fund has a very aggressive asset allocation. This bill modifies Article 6243o, V.T.C.S., by allowing the fund to: seek a qualification letter from the IRS, change the death benefit annuity for surviving spouses and children, adopt a benefit formula, change cost of living allowances, grant certain one time increases, provide for a thirteenth check to retirees, clarify BackDROP language, and adopt an excess benefits plan.

### **PURPOSE**

As proposed, S.B. 872 modifies Article 6243o, V.T.C.S. by allowing the Fire Fighters and Police Pension Fund to: seek a qualification letter from the IRS, change the death benefit annuity for surviving spouses and children, adopt a benefit formula, change cost of living allowances, grant certain one time increases, provide for a thirteenth check to retirees, clarify BackDROP language, and adopt an excess benefits plan.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the board of trustees of the Fire Fighters and Police Pension Fund in SECTION 1 (Article 6243o, V.T.C.S.) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 6243o, V.T.C.S., as follows:

#### **ARTICLE 1. GENERAL PROVISIONS**

SECTION 1.01. PURPOSE. Sets forth the purpose of the Fire Fighters and Police Pension Fund (fund).

SECTION 1.02. DEFINITIONS. Defines "active fire fighter," "active police officer," "annual investment yield," "average total salary," "beneficiary," "code," "department," "dependent child," "dependent parent," "fire fighter," "member," "police officer," "retiree," "retirement," and "years of service." Redefines "retirement annuity," "surviving spouse," and "total salary." Deletes the definition of "board."

SECTION 1.03. APPLICABILITY. Makes no changes.

SECTION 1.04. STATUTORY TRUST. Requires the board of trustees of the Fire Fighters and Police Pension Fund (board) to hold the assets of the fund for the exclusive benefit of the members and retirees in trust. Prohibits a public or private entity, agency, or authority from altering contracts made by the board. Provides that the fund is independent of the control of a municipality

SECTION 1.05. EXEMPTIONS. Makes no changes.

SECTION 1.06. OTHER PENSION SYSTEM ESTABLISHED BY STATE LAW. Makes no changes.

## ARTICLE 2. ADMINISTRATIVE PROVISIONS

SECTION 2.01. BOARD OF TRUSTEES. Sets forth the composition and duties of the board. Requires the board to hold a run-off election in which the only eligible candidates are the two candidates who received the greatest number of votes cast, if no candidate receives a majority of the votes cast. Deletes a provision requiring the fund to be independent of the control of a municipality to which this Act applies. Makes conforming and nonsubstantive changes.

SECTION 2.02. TERMS OF TRUSTEES. Makes no changes.

SECTION 2.03. New heading: RESIGNATION OR REMOVAL OF TRUSTEES. Authorizes members of the board who are fire fighters or police officers to resign or be removed by a vote of the membership. Requires a trustee's term of service to end on the entry of an order by the board declaring that a majority of the votes cast in a removal election, rather than the results of a removal election, under this section favor removal. Makes conforming and nonsubstantive changes.

SECTION 2.04. OFFICERS. Requires the board to elect certain officers from among the trustees.

SECTION 2.05. EMPLOYEES. Makes no changes.

SECTION 2.06. MEETINGS. Requires a quorum of the board to be five members. Authorizes action requiring a vote to be taken by the board when a majority of the members are present. Provides that any action taken by less than a quorum is not binding on the board.

SECTION 2.07. COMMITTEES OF BOARD. Requires committees to be composed of not fewer than three nor more than four members of the board, rather than five. Deletes a provision authorizing all members of the board to attend committee meetings. Makes conforming changes.

## ARTICLE 3. GENERAL POWERS AND DUTIES OF BOARD

SECTION 3.01. GENERAL POWERS AND DUTIES OF BOARD. Sets forth the authority and power of the board. Requires the board to adopt, but not be limited to, certain rules necessary to its effective operation.

SECTION 3.02. APPLICATIONS; HEARING. Requires the board to consider applications for benefits of the fund for certain persons including dependent children. Authorizes the process for witnesses to be served on any member of the fire or police department, and on any other person the board deems to be an appropriate person. Authorizes a person to be compelled to attend and testify as in any judicial proceeding, on the failure of any witness to attend and testify.

SECTION 3.03. ORDERS FOR DISBURSEMENTS. Prohibits disbursements from being made without a record vote of the board. Deletes existing text regarding disbursements. Makes conforming changes.

## ARTICLE 4. MEMBERSHIP AND CONTRIBUTIONS

SECTION 4.01. MEMBERSHIP. Provides that a person becomes a member of the fund as a condition of continued employment, if the person has met certain conditions. Provides that a person will not become eligible for disability retirement benefits unless the person meets certain requirements. Deletes a provision requiring a person to be older than 18 at the time of appointment. Makes conforming and nonsubstantive changes.

SECTION 4.02. FAMILY AND MEDICAL LEAVE. Makes a nonsubstantive change.

SECTION 4.03. New heading: UNIFORMED SERVICE. Prohibits a member of the fund who enters any uniformed, rather than active military, service of the United States from certain acts regarding service with the uniformed service. Prohibits the amount of credit purchased under this section from exceeding the length of active service in a uniformed service required to be credited by law. Authorizes a person who became a member before October 1, 1997 and does not make a payment required under Subsection (c) of this section to be eligible for uniformed service credit under federal law. Authorizes a person to receive certain benefits, if the member makes certain payments. Makes conforming and nonsubstantive changes.

SECTION 4.04. MEMBER CONTRIBUTIONS. Requires certain percentages to be deducted from the total salary, rather than wages, of each fire fighter and police officer employed by a municipality. Requires contributions picked up by the municipality to be treated as employer contributions for the purpose of determining tax treatment of the amounts under the Code, rather than to be in accordance with Section 414(h)(2), Internal Revenue Code of 1986. Makes conforming and nonsubstantive changes.

SECTION 4.05. MUNICIPAL CONTRIBUTIONS. Requires member's deductions and double-matching amounts to be made on the same day contributions are deducted from the members' total salary, rather than pay. Require amounts, rather than funds, received from any source for the fund to be deposited in the fund.

SECTION 4.06. DEFICIENCY PAYMENT BY MUNICIPALITY. Makes no change.

SECTION 4.07. REFUND OF CONTRIBUTIONS. Makes nonsubstantive changes.

## ARTICLE 5. MEMBER BENEFITS

SECTION 5.01. RETIREMENT BENEFITS. Requires the board to compute the retirement annuity of a member who retires after September 30, 1995, but before October 1, 1997. Sets forth requirements for the computation of the retirement annuity of a member who retires after September 30, 1997. Prohibits a retirement annuity from exceeding 85 percent of the member's average total salary, as of the date of retirement. Requires the member to be given full credit for the period the member was an active member plus the time the member was actively engaged in service with any uniformed service. Prohibits disciplinary suspensions from being subtracted from a member's service credit, if the member has paid into the fund, within 30 days after the later of the termination date of each suspension, or the exhaustion of any appeal with respect to the suspension. Provides that members of the fund are to receive service credit for all unused sick leave accumulated, at the time of their retirement. Deletes the requirement that sick leave be based on fractional years prorated based on full months of sick leave. Deletes existing Subsection (f) prohibiting the retirement annuity for a member from exceeding 82.5 percent. Requires all monthly pensions being paid by the fund to retirees who retired before October 1, 1989 to be increased, with the first monthly payment due on or after October 1, 1997. Requires the amount of the increase to depend on the fiscal year ending September 30 in which the retiree retired and to be a percentage of the pension pay that would have been payable on October 1, 1997, but for this increase. Sets forth the schedule for the percentages. Makes conforming and nonsubstantive changes.

SECTION 5.015. BACKWARD DEFERRED RETIREMENT OPTION PLAN (BACK DROP). Requires a member of the fund to have at least 20 years and 1 month of service in the fire or police department, to be eligible to make a Back DROP election under this section, rather than the member contributing a portion his or her salary, as provided by this Act and having contributed and served under certain requirements. Provides that a member's retirement annuity, rather than the average annual salary, is computed in the manner provided by Sections 5.01(c) and (d) of this Act, whichever is applicable. Requires the member's average monthly pension, rather than salary, to be computed by dividing the member's retirement annuity by 12. Provides that the members retirement date is the member's Back

DROP date, solely for purposes of computing the monthly pension under this subsection. Provides that time for any service, rather than credit, given for sick leave unused on the date of actual retirement, and that any service, rather than service credit, may be used in the computation of the Back DROP date. Requires the member's retirement annuity to be computed under Section 5.01 (c) or (d) in order to compute the monthly pension of a member making a Back DROP election. Deletes a requirement that the retirement used in the computation is the member's actual retirement date, plus time representing any service credit given for sick leave unused on the actual retirement date. Deletes existing Subsection (g) regarding manner in which the board is required to implement this section. Makes conforming and nonsubstantive changes.

**SECTION 5.02. RETIREMENT BENEFITS AFTER CESSATION OF MEMBERSHIP.** Makes nonsubstantive changes.

**SECTION 5.03. ELIGIBILITY FOR DISABILITY RETIREMENT.** (a) Provides that an active member of the fund is eligible to retire and receive a disability retirement if the member meets certain requirements.

(b) Prohibits a member of the fund who received a disability before becoming a fire fighter or police officer or while a member of the uniformed service from being entitled to a disability retirement annuity based on that disability.

(c) Provides that members of the fund are eligible for a disability retirement annuity if the suspended member makes up each deducted contribution after the later of the termination date of the suspension or the exhaustion of any appeal with respect to the suspension. Makes conforming and nonsubstantive changes.

(d) - (f) Makes a nonsubstantive change.

**SECTION 5.04. DISABILITY RETIREMENT BENEFITS.** Authorizes an eligible member serving less than three years before the date of retirement to receive a disability retirement annuity equal to 50 percent of the member's average monthly total salary, and deletes the requirement that the formula exclude overtime pay. Makes conforming changes.

**SECTION 5.05. MEDICAL REEXAMINATION AND REDUCTION OF DISABILITY RETIREMENT BENEFITS.** Prohibits a retirement annuity from being completely discontinued, unless certain requirements are met. Makes conforming and nonsubstantive changes.

**SECTION 5.06. REMOVAL OF DISABILITY AND WAIVER ON REINSTATEMENT.** Makes no changes.

**SECTION 5.07. OUTSIDE INCOME PENSION REDUCTION.** Requires the board to require each disability retiree retiring after August 29, 1979, rather than August 22, 1979, to provide the board with a copy of the retiree's income tax return. Makes conforming and nonsubstantive changes.

**SECTION 5.08. New heading: DISCRETION OF DEPARTMENT CHIEF FOR EMPLOYMENT OF DISABILITY RETIREE.** Makes no changes.

**SECTION 5.09. COST-OF-LIVING INCREASES.** Requires the board to review the Consumer's Price Index for All Urban Customers (CPI-U), U.S. City Average, rather than the Moderate Income Families in Large Cities All Items. Deletes provisions regarding computation of an increase of all retirement annuities. Sets forth new provisions for computation of an increase of all retirement annuities.

**SECTION 5.10. INCREASE IN EXISTING RETIREMENT ANNUITIES.** Makes no changes.

SECTION 5.11. COORDINATION WITH FEDERAL LAW. (a) Requires a member's benefits to be reduced to the extent necessary to enable benefits to comply with Section 415 of the Code, if certain conditions apply.

(b) Provides that any member or beneficiary who receives any distribution from certain plans is entitled to have that distribution transferred directly to another eligible retirement plan of the member's or beneficiary's choice upon certain conditions.

(c) Prohibits the total salary taken into account for any purpose for any member of the fund from exceeding \$200,000 any year for an eligible participant, or \$150,000 per year for an ineligible participant. Requires the dollar limits to be adjusted from time to time under guidelines established by the Secretary of the Treasury. Provides that an eligible participant is any person who first became a member before 1996, and an ineligible participant is any member who is not an eligible participant, for purposes of this paragraph.

(d) Deletes a provision requiring accrued benefits to become 100 percent vested. Requires accrued benefits to become 100 percent vested for members who have completed 20 years of service or upon the earlier termination, or partial termination (if it affects the member) of the fund or on the complete discontinuance of contributions by the municipality to the fund.

(e) Makes nonsubstantive changes.

(f) Deletes a provision requiring the fund to be administered in accordance with Section 401(a)(25) of the code.

(g) Sets forth requirements for actuarial assumptions used for the determination of benefits.

(i) Deletes definition of "code."

(j) Authorizes the board to adjust the benefits of retired members and beneficiaries by increasing certain reduced benefits due to Section 415 of the Code, rather than reductions based on inflationary indexing. Authorizes the board to adjust the benefits of retired members and beneficiaries, including the restoration, rather than the payment, of benefits previously denied, if Section 415 of the Code is amended to permit the payment of amounts previously precluded under Section 415 of the Code.

(k) Requires the board by administrative rule to implement this Act in a manner that preserves the tax qualification of the fund and to revise any provision or program to the extent necessary to retain tax qualification.

SECTION 5.12. THIRTEENTH CHECK. Authorizes the board to issue a thirteenth pension check, effective for any fiscal year ending after 1996 under certain conditions. Requires the thirteenth pension check to be paid to each retiree in pay status at the time of disbursement and the amount to be equal to the pension check paid immediately before the disbursement of the retiree's thirteenth check, except under certain circumstances. Provides that authorization of a thirteenth check is subject to the discretion of the board and prohibits the authorization for one year from obligating the board to authorize a thirteenth check for any other year.

## ARTICLE 6. DEPENDENT'S BENEFITS

SECTION 6.01. MEMBER'S BENEFICIARY RIGHTS. Makes no changes.

SECTION 6.02. DEATH BENEFIT ANNUITY FOR SURVIVING SPOUSES AND CHILDREN. (a) Provides that a surviving spouse and the children of an active member are entitled to receive an aggregate death benefit annuity of the same percentage of the member's

average total salary that the member would have received as a retirement annuity if the member could have retired on the date of death, subject to Sections 6.03 and 6.08. Requires death benefits to be awarded to the surviving spouse, rather than the eligible surviving spouse, and the dependent child or children, rather than the eligible child or children.

(b) Prohibits a child who is born after the date of retirement of the member from being entitled to a death benefit annuity under this Act unless the member was married to the other parent of the child on the date of retirement. Deletes a prohibition regarding the issuance a retirement annuity to children from any marriage.

(c) Provides that a surviving spouse of a retiree who was not married to the retiree until after his or her retirement is entitled to receive only the benefit, if any, provided under Section 6.08 of this Act. Provides that the surviving spouse is entitled to receive a death benefit annuity of a certain amount and prohibits the percentage used in computing the amount from exceeding the percentage to which a member with 25 years of service would have been entitled. Deletes certain percentage amounts.

(d) Provides that the dependent children are entitled to receive an aggregate death benefit annuity of a certain amount and prohibits the percentage used in computing the amount from exceeding the percentage to which a member with 25 years of service would have been entitled. Deletes certain percentage amounts. Authorizes the board to increase the death benefit annuity to two thirds (2/3) of a certain amount.

(e) Deletes existing text.

(f) Deletes existing text. Redesignated from existing Subsection (g). Provides that children under 18 years of age, rather than 17, are entitled to certain benefits. Makes conforming and nonsubstantive changes.

**SECTION 6.03. New heading: DEATH BENEFIT ANNUITY FOR SPOUSE OF MEMBER KILLED IN LINE OF DUTY.** Requires a death benefit annuity computed under this subsection to be divided in the same manner as described in Section 6.02(a). Makes conforming and nonsubstantive changes.

**SECTION 6.04. REMARRIAGE; BENEFITS AFTER TERMINATION OF MARRIAGE.** Requires certain benefits to be provided, rather than applied. Makes nonsubstantive changes.

**SECTION 6.05. AFFIDAVIT OF MARITAL STATUS.** Requires certain persons to give an affidavit to the board in any case in which marriage could affect the benefits of the surviving spouse or dependent child. Deletes the requirement for an affidavit to be filed annually and at other times. Sets forth actions board may take if the dependent, spouse, child or beneficiary fails to file an affidavit. Makes conforming and nonsubstantive changes.

**SECTION 6.06. COMMON-LAW MARRIAGES.** Makes no changes.

**SECTION 6.07. SURVIVING SPOUSE'S RIGHT TO SINGLE ENTITLEMENT.** Provides that any surviving spouse who has been married to more than one deceased member or retiree is entitled to receive a death benefit annuity with respect to the deceased member or retiree that will provide the highest benefit. Makes conforming and nonsubstantive changes.

**SECTION 6.08. LUMP-SUM DEATH BENEFIT.** Makes a nonsubstantive change.

**SECTION 6.09. DEATH BENEFIT ANNUITIES TO DEPENDENT PARENTS.** Sets forth provisions for a contributing member who leaves a surviving father and mother who are dependent on that person for support (dependent parents). Requires an application for benefits under Subsection (a) to be accompanied by a copy of the deceased member's or retiree's tax return filed for the last year ending prior to the member's death or an explanation stating why return can not be provided. Makes conforming and nonsubstantive changes.

SECTION 6.10. New heading: SUSPENSION RIGHTS. Provides that the member's beneficiaries, rather than dependent parents, have the same rights as any beneficiaries of any other member under this Act. Makes conforming changes.

SECTION 6.11. DEATH BENEFIT FOR ACTIVE MEMBER'S ESTATE. Provides that the estate of the deceased member is entitled to a death benefit payment from the fund or the refund of the member's contributions that were picked up by the municipality, if an active member dies and does not leave a surviving spouse, a child under 18, rather than 17, and certain other persons. Makes conforming changes.

SECTION 6.12. THIRTEENTH CHECK. Requires the board to authorize disbursement of a thirteenth check to each beneficiary in pay status at the time of the disbursement for any year in which the board authorizes disbursement of a thirteenth pension check to retirees. Requires the amount of the thirteenth check to be determined in the same manner as determining a thirteenth check for a retiree.

SECTION 6.13. NO REDUCTION IN BENEFITS. Requires the amendments of this Act to be effective on October 1, 1997, and prohibits the benefits from being reduced for any beneficiary who is in pay status before October 1, 1997.

#### ARTICLE 7. INVESTMENTS AND FINANCIAL PROVISIONS

SECTION 7.01. TREASURER'S DUTIES. Makes no changes.

SECTION 7.02. ACCOUNTS. Makes no changes.

SECTION 7.03. RESERVE RETIREMENT FUND. Makes no changes.

SECTION 7.04. INVESTMENT POWERS OF THE BOARD. Provides that the fund may establish organizations, rather than corporations, if a fund owns real estate as described in Section 501(c)(2), rather than (c), of the Internal Revenue Code.

SECTION 7.05. PROFESSIONAL CONSULTANTS. Authorizes the board to contract with attorneys, among other professionals.

SECTION 7.06. INVESTMENT MANAGER QUALIFICATIONS. Makes no changes.

#### ARTICLE 7A. STANDARDS OF CONDUCT AND FINANCIAL DISCLOSURE REQUIREMENTS

SECTION 7.51. POLICY. Prohibits a member of the board or the executive director from making certain transactions with the fund. Deletes a provision regarding the standards of conduct and financial disclosure requirements. Makes nonsubstantive changes.

#### ARTICLE 8. EXCESS BENEFIT PLAN FOR FIRE FIGHTERS AND POLICE OFFICERS

SECTION 8.01. CREATION OF PLAN. Sets forth requirements for a separate, nonqualified excess benefit plan outside the fund.

SECTION 8.02. DEFINITIONS. Defines "excess benefit plan," "qualified plan," "maximum benefit," "excess benefit participant," and "unrestricted benefit."

SECTION 8.03. EXCESS BENEFIT ENTITLEMENT. Sets forth requirements for amounts to be received by an excess benefit participant who is receiving benefits from the fund. Provides that certain persons are entitled to a monthly benefit under the excess benefit plan equal to the benefit determined in accordance with Article 6 of this Act without regard to the limitations under Section 5.11(a) of this Act or Section 415 of the Code, less the

maximum benefit. Requires any benefit to which a person is entitled to be paid at the same time and in the same manner if the benefit would have been paid from the fund if payment of the benefit is not precluded by Section 5.11(a) of this Act. Prohibits any excess from benefitting the participant or any beneficiary be permitted to elect to defer the receipt of all or any part of a payment due under this article.

SECTION 8.04. MANNER OF ADMINISTRATION. Requires the plan to be administered by the board. Requires the responsibilities of the board to be the same for the excess benefit plan as for the fund, except as provided to the contrary by this section. Provides that certain persons are to perform services for the excess benefit plan, but prohibits these persons' fees from being paid by the fund. Requires the actuary to advise the board of the amount of benefits that may not be provided from the fund, and to show the amount of contributions that will be made to the excess benefit plan rather than to the fund.

SECTION 8.05. FUNDING OF BENEFITS. Prohibits contributions from being accumulated under this excess benefit plan to pay future retirement benefits. Requires municipal contributions that would be made to the fund to be reduced to an amount to meet the requirements for retirement benefits under the excess benefit plan until the next payment of municipal contributions is expected to be made to the fund. Requires the city to pay to the excess benefit plan the amount necessary to satisfy the obligation to pay monthly retirement benefits from this excess benefit plan, under certain conditions. Requires the board to satisfy the obligation of this excess benefit plan to pay retirement benefits out of the municipal contributions transferred for that month. Sets forth requirements for division of municipal contributions otherwise required to be made to the fund. Prohibits municipal contributions made to provide retirement benefits from being commingled with any other qualified plans.

SECTION 8.06. EXEMPTIONS. Provides that benefits under this article are exempt from garnishment, assignment, attachment, judgment, and other legal process in the same manner as retirement annuities mentioned in Section 1.05.

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Emergency clause.