

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Created in 1937, the Office of Fire Fighters' Pension Commissioner (office) performs two basic activities: monitoring and assisting 122 individual local pension plans organized under the Texas Local Fire Fighters' Retirement Act (TLFFRA), and administering a separate statewide system for more than 200 volunteer departments, known as the Texas Emergency Services Retirement System (TESRS). A separate governor-appointed board of trustees sets policy for the system and manages the fund's assets.

The office is subject to the Sunset Act and will be abolished September 1, 2013, unless continued by the legislature. The Sunset Advisory Commission found that the special treatment the office provides to local TLFFRA plans is outdated and that needed oversight and assistance can be provided without having a separate office. The Sunset Advisory Commission thus recommends abolishing the office. Also, the state continues to need the statewide TESRS system, but a separate governor-appointed commissioner is not needed to administer that system.

As proposed, S.B. 220 amends current law relating to the abolition of the office of the fire fighters' pension commissioner and the transfer and disposition of its functions relating to the Texas Emergency Services Retirement System and the Texas local firefighters retirement systems.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the fire fighters' pension commissioner in relation to Subtitle H, Title 8, Government Code, is transferred to the state board of trustees of the Texas Emergency Services Retirement System in SECTION 5.01.

Rules adopted under rulemaking authority previously granted to the fire fighters' pension commissioner in connection with or relating to the Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.) expire on September 1, 2013, under SECTION 5.03 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.01. Amends Section 861.001, Government Code, by adding Subdivision (5-a), to define "executive director" to mean the person appointed executive director under Section 865.0095.

SECTION 1.02. Amends Section 861.008, Government Code, as follows:

Sec. 861.008. IMMUNITY FROM LIABILITY. Provides that the state board of trustees (state board), executive director, rather than the firefighters' pension commissioner (commissioner), and employees of the Texas Emergency Services Retirement System (TESRS) are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty or prerogative in connection with the administration of TESRS.

SECTION 1.03. Amends Section 862.001(a), Government Code, to change a reference to the commissioner to the executive director.

SECTION 1.04. Amends Section 862.0025(a), Government Code, to make a conforming change.

SECTION 1.05. Amends Sections 864.005(a), (d), and (f), Government Code, as follows:

(a) Changes a reference to the commissioner to the executive director.

(d) Makes conforming changes.

(f) Requires the state board, rather than the commissioner, to set a date for a hearing on continuation or termination of the annuity if the state board has reason to believe that a ground for termination of a continuing disability retirement annuity exists. Requires the state board, after notice and a hearing, to adopt an order terminating the continuing disability retirement annuity if the state board determines that a ground for termination exists. Makes conforming changes.

SECTION 1.06. Amends Section 864.010(a), Government Code, to change a reference to the commissioner to the executive director.

SECTION 1.07. Amends Sections 864.016(a), (b), (c), (e), (f), and (g), Government Code, as follows:

(a) Requires the executive director to make a determination of the merits of the claim for a death benefit annuity and issue a decision to the claimant. Makes conforming changes.

(b) Authorizes a person aggrieved by a decision of a local board relating to eligibility for or the amount of benefits under this subtitle to appeal the decision to the state board, rather than the commissioner.

(c) Requires the aggrieved person appealing a local board decisions under this section to file a copy of the notice with the state board, rather than the commissioner.

(e) Requires the state board, rather than the commissioner, after a hearing under Subsection (d) (relating providing that an appeal of a local board decisions under this section is held in Austin and is a contested case under Chapter 2001 (Administrative Procedure), conducted as a de novo hearing by the State Office of Administrative Hearings (SOAH)), to decide each appeal from a local board decision, issue a written opinion, and notify the local board and the claimant if the state board, rather than the commissioner, overrules the local board's decisions.

(f) Deletes existing text authorizing a person aggrieved by a decision of the commissioner under this section to appeal the decisions to the state board and requiring the state board to decide each appeal based on the hearing record. Deletes existing Subsection (g) designation. Provides that a final decision of the state board under this section is subject to judicial review under Chapter 2001. Provides that the standard of review is by substantial evidence. Provides that venue of appeal is only in a district court in Travis County. Deletes existing text prohibiting a decision of the state board from being appealed to a court or subject to any other legal process.

SECTION 1.08. Amends Chapter 865, Government Code, by adding Section 865.0011, as follows:

Sec. 865.0011. SUNSET REVIEW. Provides that the state board of TESRS is subject to review under Chapter 325 (Texas Sunset Act) but is not abolished under that chapter. Requires the state board to be reviewed during the period in which state agencies scheduled to be abolished in 2025, and every 12th year after that year, are reviewed.

SECTION 1.09. Amends Section 865.002, Government Code, by adding Subsections (c), (d), and (e), as follows:

(c) Prohibits a person from being a trustee or an employee of TESRS employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of emergency services, including firefighting, or public retirement systems; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of emergency services, including firefighting, or public retirement systems.

(d) Defines "Texas trade association" in this section.

(e) Prohibits a person from serving as a trustee or acting as the general counsel to the state board or TESRS if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists) because of the person's activities for compensation on behalf of a business or an association related to the operation of the state board.

SECTION 1.10. Amends Chapter 865, Government Code, by adding Section 865.0035, as follows:

Sec. 865.0035. STATE BOARD MEMBER TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the state board from voting, deliberating, or being counted as a member in attendance at a meeting of the state board until the person completes a training program that complies with this section.

(b) Requires that a training program provide the person with information regarding this subtitle, the programs, functions, rules, and budget of TESRS, the results of the most recent formal audit of the system, the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest, and any applicable ethics policies adopted by the system or the Texas Ethics Commission.

(c) Entitles a person appointed to the state board to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

SECTION 1.11. Amends Section 865.005(c), Government Code, to change references to the commissioner to the executive director.

SECTION 1.12. Amends Section 865.006, Government Code, by adding Subsection (c), as follows:

(c) Requires the state board to develop and implement policies that:

(1) clearly separate the policy-making responsibilities of the state board and the management responsibilities of the executive director and the staff of TESRS; and

(2) provide the public with a reasonable opportunity to appear before the state board and to speak on any issue under the jurisdiction of the state board.

SECTION 1.13. Amends Chapter 865, Government Code, by adding Section 865.0061, as follows:

Sec. 865.0061. WRITTEN POLICY ON MANAGING AND ADMINISTERING CONTRACTS. Requires the state board to adopt a written policy, including procedures,

to guide staff in managing and administering contracts entered into by or on behalf of TESRS. Requires that the written policy adopted under this section, at a minimum:

(1) address how TESRS plans for contracting needs and develops solicitation documents; reviews, evaluates, and awards contract proposals; manages and approves contract changes; identifies performance issues and resolves contract disputes; monitors contract expenditures; and closes out contracts; and

(2) require TESRS to maintain a central location for filing contracts and information related to contracts entered into by or on behalf of TESRS.

SECTION 1.14. Amends Section 865.007(c), Government Code, to change a reference to the commissioner to the executive director.

SECTION 1.15. Amends Chapter 865, Government Code, by adding Section 865.0095, as follows:

Sec. 865.0095. EXECUTIVE DIRECTOR. (a) Requires the state board, by a majority vote of all members, to appoint a person other than a member of the board to serve at the board's will as executive director.

(b) Requires a person, in order to be eligible to serve as the executive director, to be a citizen of the United States and have executive ability and experience necessary to conduct the duties of executive director.

SECTION 1.16. Amends Sections 865.010, 865.011, and 865.013, Government Code, as follows:

Sec. 865.010. New heading: EXECUTIVE DIRECTOR'S DUTIES. (a)-(c) Changes references to the commissioner to the executive director.

(d) Provides that the state board, rather than the commissioner, is responsible for recovering any fraudulently acquired benefits. Requires the state board, rather than the commissioner, to notify the appropriate local board and the claimant and hold a hearing if it appears that fraud has occurred. Requires the state board, rather than the commissioner, to seek action in a court if after the hearing the state board, rather than the commissioner, determines that benefits have been or are being fraudulently acquired.

Sec. 865.011. RECORDS AND REPORTS. (a)-(c) Makes conforming changes.

(d) Requires the state board to electronically submit a report to the governor, the lieutenant governor, the speaker of the house of representatives, the Legislative Budget Board, and the State Pension Review Board if:

(1) as a result of an event or action, there is a significant change to the actuarial valuation of TESRS's assets or liabilities, including the extent to which the system's liabilities are unfunded;

(2) there is any change to the contributions made to or benefits paid from the system; or

(3) an actuarial valuation must be corrected or repeated because of the use of erroneous information or assumptions used in the valuation.

(e) Requires that a report submitted under Subsection (d)(1) include and consider the effect alternative contributions and benefit structures would have on the actuarial valuation of the system, including changes in the state's contribution under Section 865.015 (State Contributions), as well as state funding of administrative expenses.

(f) Requires the state board to determine the meaning of "significant change" for purposes of Subsection (d)(1), which must include circumstances in which there is an increase in the time required to amortize the unfunded liabilities of TESRS to a period that exceeds 30 years, assuming a maximum state contribution under Section 865.015.

(g) Authorizes that a report required under Subsection (d) be combined with any other report required by this chapter or other law.

Sec. 865.013. MONITORING OF CONTRIBUTION SUBMISSION. Makes a conforming change.

SECTION 1.17. Amends Section 865.014(c), Government Code, to change a reference to the commissioner to the executive director.

SECTION 1.18. Amends Section 865.017(a), Government Code, to change a reference to the commissioner to the executive director.

SECTION 1.19. Amends Section 865.018, Government Code, by amending Subsection (b) and adding Subsections (c), (d), and (e), as follows:

(b) Changes a reference to the commissioner to the executive director.

(c) Requires that an actuarial valuation conducted under this section include:

(1) an analysis clearly shown in the valuation based on the assumptions that there is no state contribution to the fund, including no state funding of administrative expenses, and a maximum state contribution to the fund, including state funding of administrative expenses; and

(2) the number of years required to amortize the unfunded actuarial liabilities of TESRS under each assumption under Subdivision (1).

(d) Requires the state board, at least once every five years, with the assistance of the actuary, to:

(1) audit the actuarial valuation required under this section; and

(2) conduct an actuarial experience study, the contents of which are determined by the state board in consultation with the actuary.

(e) Provides that the actuarial valuation and experience study required under Subsection (d) are not required to be conducted concurrently.

SECTION 1.20. Amends Sections 865.019(a) and (c), Government Code, to change references to the commissioner to the executive director.

SECTION 1.21. Amends Sections 865.020(c) and (d), Government Code, to change references to the commissioner to the executive director.

SECTION 1.22. Amends Chapter 865, Government Code, by adding Section 865.021, as follows:

Sec. 865.021. COMPLAINT FILES. (a) Requires that TESRS maintain a system to promptly and efficiently act on complaints filed with the system. Requires that the system maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and the disposition of the complaint.

(b) Requires that TESRS make information available describing its procedures for complaint investigation and resolution.

(c) Requires that TESRS periodically notify the complaint parties of the status of the complaint until final disposition.

ARTICLE 2. AMENDMENTS TO CIVIL STATUTES

SECTION 2.01. Amends Sections 22 and 22A, Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.), as follows:

Sec. 22. APPEALS FROM LOCAL BOARD DECISIONS. (a) Authorizes a person aggrieved by a decision of a board of trustees relating to eligibility for or amount of benefits payable by a retirement system to appeal the decision to SOAH, rather than the fire fighters' pension commissioner.

(b) Makes a conforming change.

(b-1) Requires the board of trustees to refer the matter to SOAH by submitting notice of the appeal to that office as soon as practicable after receiving a notice of appeal under Subsection (b) of this section.

(c) Provides that an appeal under this section, rather than an appeal under this section to the fire fighters' pension commissioner, is held in Austin and is a contested case under Chapter 2001, Government Code, rather than under the Administrative Procedure and Texas Register Act (Article 6252-13a, V.T.C.S.), conducted as a de novo hearing by SOAH.

Sec. 22A. ATTORNEY. Makes a conforming change.

SECTION 2.02. Amends Section 27(d), Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.), to delete existing text requiring the board of trustees, not later than December 31 of each year, to submit to the fire fighters' pension commissioner a copy of the investment policies adopted by the board.

SECTION 2.03. Amends Sections 30(b) and (c), Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.), as follows:

(b) Requires that each municipality or other political subdivision picking up contributions to continue to compute federal income tax withholding as if these contributions were employee wages until the first payroll period that begins after the date the United States Internal Revenue Service determines or a federal court rules that under Section 414(h), Internal Revenue Code of 1986 (26 U.S.C. Section 414(h)), the contributions are not includable in the gross income of a member until they are distributed or made available, rather than after the date the fire fighters' pension commissioner files with the secretary of state a notice stating that the United States Internal Revenue Service has determined or a federal court has ruled that under Section 414(h), Internal Revenue Code of 1986 (26 U.S.C. Section 414(h)), the contributions are not includable in the gross income of a member until they are distributed or made available.

(c) Provides that a pick up of employee contributions takes effect in a municipality or other political subdivision on January 1 of the year following the year in which:

(1) the governing body of the municipality or other political subdivision by ordinance has adopted the pick up;

(2) the pick up has been approved by majority vote of the participating members of the retirement system at an election by secret ballot at which at least 50 percent of the participating members vote; and

(3) the United States Internal Revenue Service issues, rather than the fire fighters' pension commissioner has filed with the secretary of state a notice stating that the United State Internal Revenue Service has issued, a determination that the plan covering employees of the municipality or other political subdivision is a qualified retirement plan under Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)), and that its related trust is tax exempt under Section 501(a) of that code (26 U.S.C. Section 501(a)).

ARTICLE 3. CONFORMING CHANGES TO OTHER LAW

SECTION 3.01. (a) Reenacts Sections 54.353 and 54.3531, Education Code, as added by Section 17, Chapter 359 (S.B. 32), Acts of the 82nd Legislature, Regular Session, 2011, as a nonsubstantive redesignation of the two versions of Section 54.208, Education Code, as amended by Chapters 1285 (H.B. 2013) and 1299 (H.B. 2347), Acts of the 81st Legislature, Regular Session, 2009, to conform to the reenactment of Section 54.208, Education Code, and the addition of Section 54.2081, Education Code, by Chapter 959 (H.B. 1163), Acts of the 82nd Legislature, Regular Session, 2011, and Section 54.353, Education Code, and amends them as follows:

Sec. 54.353. **FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES.** (a) Requires the governing board of an institution of higher education to exempt from the payment of tuition and laboratory fees any student enrolled in one or more courses offered as part of a fire science curriculum who:

(1) is employed as a firefighter by a political subdivision of this state; or

(2) is currently, and has been for at least one year, an active member of an organized volunteer fire department participating in TESRS or a retirement system established under the Texas Local Fire Fighters Retirement Act or who holds certain certifications, rather than is currently, and has been for at least one year, an active member of an organized volunteer fire department in this state, as defined by the fire fighters' pension commissioner, who holds certain certifications.

(b)-(f) Makes no change to these subsections.

Sec. 54.3531. **PEACE OFFICERS ENROLLED IN CERTAIN COURSES.** (a)-(f) Makes no change to these subsections.

(b) Repealers: Sections 54.208 (Firefighters Enrolled in Fire Science Courses) and 54.2081 (Peace Officers Enrolled in Certain Courses), Education Code.

SECTION 3.02. Amends Section 572.003(b), Government Code, to delete the fire fighters' pension commissioner from the list of persons included in the definition of "appointed officer of a major state agency" in this chapter.

SECTION 3.03. Amends Section 614.152(3), Government Code, to redefine "state fire agency."

SECTION 3.04. Amends Section 2155.148, Government Code, as follows:

Sec. 2155.148. New heading: **CERTAIN PURCHASES FOR TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM.** (a) Provides that TESRS, rather than the fire fighters' pension commissioner, is delegated all purchasing functions relating to the purchase of goods or services from funds other than general revenue funds for a purpose the state board of trustees of TESRS, rather than the Texas statewide emergency services personnel retirement fund, determines relates to the fiduciary duties of the retirement system. Makes a conforming change.

(b) Requires TESRS to acquire goods or services by any procurement method approved by the state board of trustees of TESRS that provides the best value to the retirement system. Requires TESRS to consider the best value standards provided by Section 2155.074 (Best Value Standard for Purchase of Goods or Services). Makes conforming changes.

(c) Requires the comptroller [effective September 1, 2013, the TFC] to procure goods or services for TESRS at the request of TESRS and authorizes TESRS to use the services of the comptroller in procuring goods or services. Makes conforming changes.

ARTICLE 4. REPEALER

SECTION 4.01. Repealer: Section 802.103(c) (relating to authorizing a public retirement system that is subject to Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, V.T.C.S.), and that has total assets with a book value, as of the last day of the fiscal year, of less than \$50,000, to submit to the State Pension Review Board for that year, instead of the financial report otherwise required by this section to be published and submitted, a copy of the financial report it submits to the firemen's pension commissioner), Government Code.

Repealer: Section 861.001(3) (defining "commissioner"), Government Code.

Repealer: Section 18(g) (relating to requiring a board of trustees to file certain information with the fire fighters' pension commissioner), Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.).

Repealer: Section 18A (Enforcement of Act), Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.).

Repealer: Section 21 (Fire Fighters' Pension Commissioner), Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.).

Repealer: Section 21A (General Duties of Fire Fighters' Pension Commissioner), Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.).

Repealer: Section 31(c) (relating to procedure regarding inactive retirement systems for fire departments composed exclusively of volunteers), Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.).

ARTICLE 5. TRANSITION

SECTION 5.01. (a) Requires the state board of trustees of TESRS to appoint an executive director under Section 865.0095, Government Code, as added by this Act.

(b) Provides that effective September 1, 2013:

(1) the office of the fire fighters' pension commissioner is abolished and the term of the person holding that position expires; and

(2) all powers, duties, obligations, and rights of action of the fire fighters' pension commissioner under:

(A) Subtitle H, Title 8, Government Code, as provided by Article 1 of this Act, are transferred to the:

(i) executive director of TESRS appointed under Section 865.0095, Government Code, as added by this Act; or

(ii) state board of trustees of TESRS established under Section 865.001 (Composition of State Board), Government Code; and

(B) Section 2155.148, Government Code, are transferred to TESRS.

(c) Provides that the furniture, computers, other property and equipment, files, and related materials used by the fire fighters' pension commissioner are transferred to the executive director of TESRS in connection with the transfers required by Subsection (b) of this section.

(d) Provides that a rule adopted by or on behalf of the fire fighters' pension commissioner in connection with or relating to Subtitle H, Title 8, Government Code, in effect on September 1, 2013, continues in effect until it is amended or repealed by the state board of trustees of TESRS.

(e) Transfers and reappropriates the unobligated and unexpended balance of any appropriation made to the fire fighters' pension commissioner in connection with or relating to Subtitle H, Title 8, Government Code, for the state fiscal biennium ending August 31, 2013, to the state board of trustees of TESRS for the purpose of implementing the powers, duties, obligations, and rights of action transferred to that system under Subsection (b) of this section.

(f) Provides that notwithstanding the amendment by this Act of Section 572.003(b), Government Code, Section 572.003(d) (defining "appointed officer of a major state agency"), Government Code, does not apply to the abolition of the office of the fire fighters' pension commissioner by this Act.

(g) Makes application of Section 864.016(f), Government Code, as amended by this Act, prospective.

SECTION 5.02. Provides that the change in law made by this Act to Section 865.002, Government Code, regarding prohibitions on members of the state board of trustees of TESRS does not affect the entitlement of a member serving on the board immediately before September 1, 2013, to continue to serve and function as a member of the board for the remainder of the member's term. Provides that the change in law made to that section applies only to a member appointed on or after September 1, 2013.

SECTION 5.03. (a) Provides that effective September 1, 2013, all powers, duties, obligations, and rights of action of the fire fighters' pension commissioner under the Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.) are, except as provided by Subsection (e) of this section, terminated as provided by Article 2 of this Act.

(b) Provides that in connection the requirements of Subsection (a) of this section, property and records other than those described by Section 5.01(c) of this article are transferred to the comptroller in accordance with Section 325.017(e) (relating to requiring an abolished state agency or state committee to transfer property and records to the comptroller or designated state agency), Government Code.

(c) Provides that a rule adopted by the fire fighters' pension commissioner in connection with or relating to the Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.) expires on September 1, 2013.

(d) Provides that effective September 1, 2013, the unobligated and unexpended balance of any appropriations made to the fire fighters' pension commissioner in connection with or relating to the Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.), for the state fiscal biennium ending August 31, 2013, is transferred to the general revenue fund in accordance with Section 325.017(c) (relating to providing that all money in a dedicated fund of an abolished state agency or advisory committee is transferred to the General Revenue Fund on a certain date), Government Code.

(e) Transfers any administrative hearing on appeal to the fire fighters' pension commissioner under Section 22, Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.), without change in status to SOAH.

SECTION 5.04. Requires the attorney general to continue any proceeding involving the office of the fire fighters' pension commissioner that is pending on the effective date of this Act in accordance with the law in effect on the date the proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 5.05. Provides that the changes in law made by this Act apply only to a proceeding involving an appeal under Section 864.016, Government Code, as amended by this Act, or Section 22, Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.), as amended by this Act, that is commenced on or after the effective date of this Act. Provides that a proceeding involving an appeal commenced before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5.06. Provides that Sections 325.017 (Procedure After Termination) and 325.020 (Relocation of Employees), Government Code, apply in relation to the abolition of the office of the fire fighters' pension commissioner. Provides that in the event of a conflict between those sections and a provision of this Act, this Act prevails.

SECTION 5.07. Requires the governor to appoint a person to complete the transfers if the transfers required under Sections 5.01 and 5.03 of this article are not complete by September 1, 2013.

SECTION 5.08. Provides that to the extent of any conflict, this Act prevails over another Act of the 83rd Legislature, Regular Session, 2013, relating to nonsubstantive additions to and corrections in enacted codes.

ARTICLE 6. EFFECTIVE DATE

SECTION 6.01. Effective date: upon passage or September 1, 2013.