

Texas Local Fire Fighters' Retirement Act

The statutory authority for your local fire fighters' pension system is the Texas Local Fire Fighters' Retirement Act (Texas Revised Civil Statutes Article 6243e). Each trustee and administrator should read the entire Act and refer to it in during each board meeting.

Short Title

Section. 1. This Act may be cited as the Texas Local Fire Fighters' Retirement Act.

Definitions

Section. 2. In this Act:

(1) "Contribution" means an amount of money paid by a municipality or other political subdivision to a retirement system or required to be paid periodically to a retirement system by or on behalf of a member of the retirement system for the purpose of financing benefits payable by the system.

(2) "Employee" means a person who regularly performs services for a fire department, who is a member of the retirement system that includes the fire department, and who regularly receives compensation for those services of at least \$200 a month. The term includes a person described by Subsection (d) of Section 9 of this Act who regularly receives compensation by the municipality or other political subdivision of at least \$200 a month.

(3) "Fund" means a trust fund established in conjunction with a fire fighters' retirement system for the purpose of holding assets to be used to finance benefits payable by the system.

(4) "Participating member" means an employee who is required to make periodic contributions to a retirement system or a volunteer who meets the requirements of Subsection (b) of Section 10 of this Act.

(5) "Regularly organized fire department" means a unit that is responsible primarily for fighting fires and responding to other emergencies each day and that has specialized equipment for use in performing those tasks.

(6) "Retiree" means a person who receives a benefit, other than a return of contributions, from a retirement system for services the person performed as a member.

(7) "Retirement system" means a fire fighters' retirement system established as provided by Section 4 of this Act.

(8) "Volunteer" means a person who regularly performs services for a fire department, who is a member of the retirement system that includes the fire department, and who either receives no compensation for those services or regularly receives compensation for those services of less than \$200 a month. The term includes a person described by Subsection (d) of Section 9 of this Act who either receives no compensation for service to a municipality or other political subdivision or regularly receives compensation for that service of less than \$200 a month.

(9) "Compensation" includes amounts of workers' compensation benefits received by an employee and by which the employee's salary is reduced.

(10) "Determination date" means:

(A) the day before the effective date of an addition or change adopted by the board of trustees of a retirement system under Section 7 of this Act; or

(B) the date of divorce for a member or retiree whose benefits under this Act are subject to a qualified domestic relations order.

(11) "Vested accrued benefit" means the amount of the monthly benefit that a person is entitled to receive based on the person's service credit and compensation history as of the determination date under the benefit formula and other terms established by a retirement system, including a vested percentage where

applicable, as those terms exist on the determination date. The vested accrued benefit of a member is calculated without regard to any optional form of payment the member may select at retirement. The term does not include cost-of-living increases that may be applied to a benefit after the determination date.

Application of Act

Section. 3. (a) This Act applies to each municipality in the state that has a regularly organized fire department not consisting exclusively of volunteers, except:

- (1) a municipality all of whose fire department personnel participate in the Texas Municipal Retirement System;
- (2) a municipality whose fire department is governed by another state law providing for retirement benefits for fire department personnel; and
- (3) a municipality that has in effect a program providing retirement benefits for fire department personnel that was established by charter or ordinance before September 1, 1989.

(b) This Act also applies to each municipality in the state that has a fire department that:

- (1) consists exclusively of volunteers;
- (2) was organized before September 1, 1989, and remains a regularly organized department; and
- (3) does not participate in the statewide program provided by Chapter 269, Acts of the 65th Legislature, Regular Session, 1977 (Article 6243e.3, Vernon's Texas Civil Statutes).

(c) If a municipality's fire department consists partly of employees participating in the Texas Municipal Retirement System and partly of employees or volunteers not participating in that retirement system, this Act applies to the persons who are not participating in the Texas Municipal Retirement System. In that circumstance, a provision of this Act that applies to members of a retirement system or to members of a fire department applies only to those members who are participating in a retirement system under this Act.

(d) If a municipality's fire department consists partly of volunteers participating in the statewide program provided by Chapter 269, Acts of the 65th Legislature, Regular Session, 1977 (Article 6243e.3, Vernon's Texas Civil Statutes), and partly of employees not participating in that program, this Act applies to the fire department personnel who are employees. In that circumstance, a provision of this Act that applies to members of a retirement system or to members of a fire department applies only to those members who are employees.

(e) In addition to the other applicability of this Act, this Act applies to a political subdivision that has a regularly organized fire department not consisting exclusively of volunteers, except a political subdivision whose fire department is governed by another state law providing for retirement benefits for full-time paid fire department personnel. If the political subdivision's fire department consists partly of volunteers eligible to participate in the program provided by Subtitle H, Title 8, Government Code, and partly of employees, this Act applies to fire department personnel who are employees.

Retirement system and trust fund

Section. 4. A fire fighters' retirement system and trust fund are established in each municipality or other political subdivision to which this Act applies. The board of trustees of each retirement system established by this Act shall hold or cause to be held in trust the assets appropriated or dedicated to the system or fund, separate from other money or accounts administered by the board of trustees or the municipality or other political subdivision, for the exclusive benefit of the members and retirees of the system and their beneficiaries.

Exemption from judicial process

Section. 5. All amounts in a trust fund of a retirement system subject to this Act and all rights accrued or accruing under this Act to any person are exempt from garnishment, attachment, execution, state and municipal taxation, sale, levy, and any other process and are unassignable.

Social Security

Section. 6. Provisions of a retirement system may not be integrated with social security as otherwise permitted under Sections 401(a)(4), (a)(5), and (l) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401).

Modification of benefits and eligibility

Section. 7. (a) The board of trustees of a retirement system may change the benefits or eligibility requirements for benefits payable from the retirement system, may provide for reinstatement by a member of service credit previously forfeited, and may adopt or change other requirements for the payment of benefits, except as otherwise prohibited by this Act.

(b) Before a board of trustees chooses to adopt or change a benefit or requirement for payment of benefits under this section, the proposed addition or change must be approved by:

(1) an eligible actuary selected by the board; and

(2) a majority of the participating members of the retirement system voting on the addition or change by secret ballot at an election held for that purpose at which at least 50 percent of all participating members of the retirement system vote.

(c) To be eligible to approve an addition or change under this section, an actuary must be either a fellow of the Society of Actuaries or a member of the American Academy of Actuaries.

(d) Except as provided by Subsection (e) of this section, if a board chooses to adopt an addition or change after it has been approved as provided by this section, the addition or change applies to all persons who are participating members of the retirement system on the effective date of the addition or change and all persons who became participating members during the time the addition or change remains in effect. The addition or change also may apply to:

(1) persons receiving monthly benefits; or

(2) former members of the fire department who meet an applicable length-of-service requirement for service retirement.

(e) An addition or change adopted under this section may not, without the written consent of the member, retiree, or eligible survivor under Section 15 of this Act, deprive a member of the retirement system, a retiree, or an eligible survivor of a right to receive a vested accrued benefit.

(f) The effective date of a change or addition adopted under this section is a date specified by the board of trustees that is not earlier than the date of adoption by the board. A change or addition may not be applied retroactive to its effective date unless required to maintain a plan's tax qualification status.

Recovery of amounts wrongfully obtained

Section. 8. The board of trustees of a retirement system subject to this Act may initiate or cause to be initiated a suit against any appropriate person to recover amounts paid or obtained from the trust fund through fraud, misrepresentation, theft, or other misapplication or by mistake. The board of trustees shall deposit amounts recovered under this section in the trust fund for the retirement system.

Membership

Section. 9. (a) Except as otherwise provided by this section, a person who is an employee of a fire department included within the coverage of a retirement system is a member of the retirement system if the person is younger than 36 years old on the date the person is certified under civil service as eligible for a beginning position with the department.

(b) Except as provided by Subsections (c), (d), (e), and (g) of this section, a person who performs services as a volunteer of a fire department included within the coverage of a retirement system is a member of the retirement system.

(c) A board of trustees established under this Act may, in accordance with Section 7 of this Act:

- (1) require a waiting period before retirement system membership begins;
- (2) include within the required membership of the retirement system categories of personnel, other than personnel performing services for the fire department, who perform emergency medical or fire department-related services; or
- (3) exclude from membership categories of fire department personnel not regularly directly engaged in the fighting of fires.

(d) If a board of trustees, under Subdivision (2) of Subsection (c) of this section, includes categories of personnel within the membership of a retirement system, for purposes of this Act, the personnel are considered employees or volunteers, as applicable, of the fire department and their service is considered as if it were performed for the fire department included within the coverage of the retirement system.

(e) As a condition of membership in a retirement system, a board of trustees may by order require persons to pass a physical examination given by a physician of the board's choice but may not require the persons to pay the cost of the examination.

(f) A board of trustees of a retirement system for a fire department may by order authorize membership in the retirement system for employees of the department who are 36 years old or older at the time they become employees but who first became fire fighters at an age younger than 36. Membership under an authorization is optional with each employee, except that an employee must, before beginning membership, pass any physical examination requirement established under Subsection (e) of this section.

(g) A service retiree of a retirement system may not rejoin or receive credit in the system for any postretirement service performed for the fire department included within the coverage of the system.

Service credit

Section. 10. (a) Service credit is earned in a retirement system for each month for which an employee makes the contribution required under this Act.

(b) Service credit is earned in a retirement system for each calendar year in which a volunteer answers at least 25 percent of all fire alarms determined by the board of trustees and attends at least 40 percent of all drills held by the fire department.

(c) A retirement system shall also grant service credit to a member who leaves the service of a fire department and later returns, if the break in service is attributable to service for any period as a member of the armed forces of the United States during a war or national emergency.

(d) Absence from service by an employee does not forfeit service credit accrued before the absence begins, unless membership is terminated. Absence from service by a volunteer does not forfeit service credit accrued before the absence begins.

(e) A board of trustees established under this Act may, in accordance with Section 7 of this Act, expand the circumstances under which service credit is earned.

Previous fire department service

Section. 11. (a) Except as provided by Subsection (c) of this section, a person who elects to become a member of a retirement system under an authorization adopted under Subsection (f) of Section 9 of this Act may establish credit in the retirement system for previous service performed for another fire department included within the coverage of a retirement system under this Act. To establish credit for the previous service, the person must deposit with the retirement system an amount determined by the board of trustees that is equal to the sum of:

- (1) the amount that the person would have contributed to the system if the person's previous fire department service had been performed for the department by which the person is employed, computed on the member contribution rate in effect in the retirement system at the time the service was performed and on the person's compensation for the previous service; and
- (2) interest on the amount described by Subdivision (1) of this subsection at the rate of eight percent, compounded annually, from the date the service was performed to the date of deposit.

(b) If a person makes the deposit described by Subsection (a) of this section, the municipality or other political subdivision served by the fire department that employs the person shall deposit with the retirement system an amount determined by the board that is equal to the sum of:

- (1) the amount that the municipality or other political subdivision would have contributed to the system if the person's previous fire department service had been performed for the department by which the person is employed, computed on the contribution rate of the municipality or other political subdivision in effect in the retirement system at the time the service was performed and on the person's compensation for the previous service; and
- (2) interest on the amount described by Subdivision (1) of this subsection at the rate of eight percent, compounded annually, from the date the service was performed to the date of deposit.

(c) A person may not establish credit under this section for service that is credited in another public retirement system, including another retirement system subject to this Act.

Service retirement

Section. 12. (a) A member of a retirement system is eligible for retirement for service if the member is at least 55 years old and has performed at least 20 years of service that is credited in the retirement system.

(b) Except as provided by Subsection (c) of this section, monthly benefits payable for service retirement are \$100 to a retiree whose service was not exclusively as a volunteer and \$25 to a retiree whose service was exclusively as a volunteer.

(c) A board of trustees established under this Act may, in accordance with Section 7 of this Act:

- (1) decrease the age or service requirements for service retirement from a particular retirement system; or
- (2) determine formulas for computing benefits, classes of permissible beneficiaries, and other requirements for payment of service retirement benefits, as long as the minimum benefits payable to a retiree are not less than the amounts provided by Subsection (b) of this section.

Section. 13. (a) A member of a retirement system who meets an applicable length-of-service requirement for service retirement benefits but does not meet the applicable age requirement for service retirement benefits may terminate employment with or otherwise discontinue service for the fire department and remain eligible to receive service retirement benefits from the retirement system on attaining the applicable age, as long as the member does not withdraw contributions in the retirement system.

(b) A member who terminates employment or otherwise discontinues service after meeting an applicable length-of-service requirement for service retirement may not be required to pay to the retirement system contributions that become due after the date of termination or discontinuance.

Disability retirement

Section. 14. (a) A member of a retirement system is eligible for retirement for disability if the member becomes physically or mentally disabled, except as the result of a condition the member had on the date the member became an employee or volunteer, in or in consequence of the performance of the member's duties as an employee or volunteer of the fire department included within the coverage of the retirement system.

(b) An application for disability retirement must be filed with the board of trustees of the retirement system of which the applicant is a member. The application must contain a sworn statement of the member's medical condition, signed by a physician attending the member, and a sworn statement of the circumstances under which the disability arose, signed by the member or another person who has reason to know those circumstances. The application also may contain other pertinent information to enable the board to determine whether the member is eligible for disability retirement.

(c) A board of trustees may require an applicant for disability retirement to be medically examined by one or more physicians of the board's choice but may not require the applicant to pay the cost of a medical examination required under this subsection.

(d) If a board of trustees determines that an applicant for disability retirement meets the eligibility requirements for disability retirement from the retirement system, the board shall retire the member.

(e) Except as provided by Subsection (f) of this section, monthly benefits payable for disability retirement are \$100 to a retiree whose service was not exclusively as a volunteer and \$25 to a retiree whose service was exclusively as a volunteer.

(f) A board of trustees established under this Act may, in accordance with Section 7 of this Act:

- (1) expand the circumstances under which disability retirement benefits become payable;
- (2) require periodic medical examinations of, periodic vocational rehabilitation examinations of, or periodic financial information from disability retirees to determine whether the retiree remains eligible to receive disability retirement benefits; or
- (3) determine formulas for computing benefits, classes of permissible beneficiaries, and other requirements for payment of disability retirement benefits, as long as the minimum benefits payable to a retiree who remains eligible for disability retirement resulting from the performance of duty are not less than the amounts provided by Subsection (e) of this section.

(g) The vested accrued benefit of a retiree under this section who is retired as of the determination date is subject to the terms established by the retirement system as those terms exist on the determination date and is payable to the retiree only if the retiree meets the eligibility requirements established by the board of trustees under this section.

(h) Notwithstanding any other provision of this Act, a disability retirement benefit is not a vested accrued benefit until a member becomes disabled under the terms of the retirement system.

Death benefits

Section. 15. (a) A death benefit is payable as provided by this section on the death:

- (1) of a member of a retirement system that occurs in or in consequence of the performance of the member's duties as an employee or volunteer of the fire department included within the coverage of the retirement system;
- (2) of a member of a retirement system for any reason if the member met the applicable length-of-service requirement for service retirement at the time of death; or
- (3) of a retiree of a retirement system.

(b) Except as otherwise provided by this section, monthly benefits payable on the death of a member or retiree are:

- (1) \$100 to an eligible surviving spouse of a member or retiree whose service was not exclusively as a volunteer and \$16.67 to an eligible surviving spouse of a member or retiree whose service was exclusively as a volunteer;
- (2) if there is an eligible surviving spouse and a minor child, \$20 to the guardian of each minor child of a member or retiree whose service was not exclusively as a volunteer and \$6 to the guardian of each minor child of a member or retiree whose service was exclusively as a volunteer;
- (3) if there is no eligible surviving spouse at the time of death of the member or retiree or if the surviving spouse dies or becomes ineligible to receive benefits during the minority of a surviving child, \$40 to the guardian of each minor child of a member or retiree whose service was not exclusively as a volunteer and \$12 to the guardian of each minor child whose service was exclusively as a volunteer; and
- (4) if there is no eligible surviving spouse or minor child at the time of death of the member or retiree, a total of \$100 to one or more surviving dependent parents of a member or retiree whose service was not exclusively as a volunteer and a total of \$16.67 to one or more dependent parents of a member or retiree whose service was exclusively as a volunteer.

(c) To be eligible to receive benefits as a surviving spouse under this section, a person must remain unmarried after the death of the member or retiree. To be eligible to receive benefits as a surviving spouse of a deceased retiree, a person also must have married the deceased before the deceased's retirement. To be eligible to receive benefits as a surviving spouse of a deceased member who had terminated employment with or otherwise discontinued service for the fire department, a person also must have married the deceased before the termination or discontinuance.

(d) If a member or retiree for whom death benefits are payable under this section is survived by a child who is totally disabled as a result of physical or mental illness, injury, or retardation, the guardian of the child is entitled to receive for the benefit of the child and the duration of the child's disability any benefit that would be payable to the guardian of a surviving minor child.

(e) A board of trustees established under this Act may, in accordance with Section 7 of this Act:

- (1) expand the circumstances under which death benefits become payable; or
- (2) determine formulas for computing benefits, classes of permissible beneficiaries, exclusions from payment of benefits for certain causes of death, and other conditions for payment of death benefits.

(f) The vested accrued benefit that an eligible survivor receives under this section as the result of the death of a member or retiree on or before the determination date is subject to the terms established by the retirement system as those terms exist on the determination date.

(g) Notwithstanding any other provision of this Act, a death benefit is not a vested accrued benefit until the member or retiree for whom death benefits are payable dies.

Reduction of benefits during deficiency

Section. 16. If money available for benefits currently payable by a retirement system is insufficient to pay the full amount of those benefits, a board of trustees may proportionately reduce all benefit payments for the time necessary to prevent payments from exceeding money available to pay the benefits.

Person causing death of member or annuitant

Section. 17. (a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable to a person who would be entitled to the benefit had the convicted person predeceased the decedent. If no person would be entitled to the benefit, the benefit is payable to the decedent's estate.

(b) A retirement system is not required to pay a benefit under Subsection (a) of this section unless it receives actual notice of the conviction of the person who would have been entitled to the benefits. However, a retirement system may delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(c) For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

- (1) has pleaded guilty or nolo contendere to or has been found guilty by a court of an offense at the trial of which it is established that the person's intentional, knowing, or reckless act or omission resulted in the death of a person who was a member or annuitant, regardless of whether sentence is imposed or probated; and
- (2) has no appeal of the conviction pending and the time provided for appeal has expired.

Provisions applicable to boards of trustees generally

Section. 18. (a) A board of trustees established under this Act may receive, handle, control, manage, and disburse the fund for the retirement system, hear and determine all applications for retirement and claims for disability, either partial or total, and designate beneficiaries and participants as provided by this Act. The chairman and vice chairman of a board may swear witnesses for the purpose of taking testimony before the board on any matter related to the fund. A board may issue a subpoena addressed to a sheriff or constable to require the attendance of a witness or the production of books, records, or other documents that may be necessary and proper for the purposes of a proceeding before the board.

(b) A member of a board of trustees established under this Act takes office on the first meeting of the board that occurs after the member is elected or designated a member or assumes the position that makes the person a member ex officio. At the time a person takes office as a member of a board of trustees established under this Act, the person shall take an oath of office that the person will diligently and honestly administer the affairs of the retirement system and fund and will not knowingly violate or willingly permit to be violated any provision of this Act.

(c) A board of trustees established under this Act shall meet monthly at such times and places as the board by resolution designates and at other times at the call of the chairman. A majority of the trustees of a board is a quorum.

(d) A board established under this Act shall keep accurate minutes and records of its proceedings and a record of all claims, receipts, and disbursements relating to the fund. An order of a board must be made by vote recorded in the minutes of its proceedings.

(e) A board established under this Act may make a disbursement from the fund only on a regular voucher signed by one or more persons designated by the board. Subject to the approval of a majority of the participating members voting by secret ballot at an election at which at least 50 percent of the participating members of the retirement system vote, a board established under this Act shall determine whether the signatures of one, two, or three persons are required for vouchers.

(f) A board of trustees established under this Act may designate a bank or, as applicable, the chief financial officer of the municipality or other political subdivision or the secretary-treasurer of the board to

be custodian of the assets of the retirement system. If the chief financial officer or the secretary-treasurer of the board is designated custodian, the person's official bond and oath of office are conditioned additionally on the faithful performance of the person's duties as custodian of the assets of the retirement system.

(g) A board of trustees established under this Act shall, not later than February 28 of each year, file with the fire fighters' pension commissioner a detailed and itemized report of all receipts and disbursements with respect to its fund during the fund's preceding fiscal year, together with a list of the members of the board. A board shall file such additional information as is required or requested from time to time by the fire fighters' pension commissioner.

(h) A vacancy in the office of a trustee of a board established under this section shall be filled for the remainder of the unexpired term in the manner that the office was previously filled.

Enforcement of Act

Section. 18A. (a) If a board of trustees fails or refuses to comply with an applicable requirement of this Act, the fire fighters' pension commissioner may issue a subpoena addressed to a sheriff or constable to require the production of books, records, or other documents that may be necessary to provide or determine compliance.

(b) The attorney general shall represent the fire fighters' pension commissioner in the enforcement of this Act and may file an appropriate pleading or action in a district court in Travis County to enforce a subpoena or secure a writ of mandamus to compel compliance with this Act.

Board of trustees for paid or part-paid fire department

Section. 19. (a) In each municipality and other political subdivision to which this Act applies and that has a fire department that does not consist exclusively of volunteers, the fire fighters' retirement system is governed by a board of trustees consisting of:

- (1) the mayor of the municipality or the mayor's designated representative or the chief operating officer of the political subdivision or the chief operating officer's designated representative, as applicable;
- (2) the chief financial officer of the municipality or other political subdivision or, if there is no officer denominated as chief financial officer, the person who performs the duties of chief financial officer or a person designated by the chief financial officer or by the person performing the duties of chief financial officer;
- (3) three members of the retirement system elected by participating members as provided by Subsection (b) of this section; and
- (4) two persons who reside in this state in the municipality or other political subdivision or within the extraterritorial jurisdiction of the municipality, who are not officers or employees of the municipality or other political subdivision, and who are elected by a majority vote of the members of the board of trustees determined as provided by Subdivisions (1), (2), and (3) of this subsection.

(b) During each period that begins on December 1 of one year and ends on January 31 of the following year, the participating members of a fire fighters' retirement system in a municipality or other political subdivision subject to this section shall elect by secret ballot and certify to the governing body of the municipality or other political subdivision a member to the board of trustees to serve a term of three years. To be elected a member of a board of trustees under this subsection, a person must be a participating member of the retirement system and receive a majority of the votes cast in the election, and at least 50 percent of all participating members of the retirement system must vote in the election.

(c) Annually, at a meeting in March, the members of a board of trustees determined as provided by Subdivisions (1), (2), and (3) of Subsection (a) of this section shall elect a member to the board, as provided by Subdivision (4) of Subsection (a) of this section, to serve a term of approximately two years

that expires on the day before the date of the first board meeting that occurs after the meeting at which a successor is elected.

(d) A board of trustees established under this section annually shall elect a chairman, vice-chairman, and secretary.

(e) The secretary of a board of trustees established under this section shall, not later than the seventh day after the date of a board meeting, forward accurate copies of the minutes of the meeting to each fire station and to each division of the fire department.

Board of trustees for volunteer fire department

Section. 20. (a) In each municipality to which this Act applies and that has a fire department consisting exclusively of volunteers, the fire fighters' retirement system is governed by a board of trustees consisting of:

- (1) the mayor of the municipality or the mayor's designated representative;
- (2) the municipal treasurer or, if there is no officer denominated as treasurer, the person who performs the duties of municipal treasurer; and
- (3) three members of the retirement system elected by participating members as provided by Subsection (b) of this section.

(b) During each period that begins on December 1 of one year and ends on January 31 of the following year, the participating members of a fire fighters' retirement system in a municipality subject to this section shall elect by secret ballot and certify to the governing body of the municipality a member to the board of trustees to serve a term of approximately three years that expires on the day before the date of the first board meeting that occurs after the election of a successor. To be elected a member of a board of trustees under this subsection, a person must be a member of the retirement system and receive a majority of the votes cast in the election, and at least 50 percent of all participating members of the retirement system must vote in the election.

(c) The municipal treasurer is the secretary-treasurer of a board of trustees established under this section. A board of trustees established under this section annually shall elect a chairman and a vice-chairman to preside in the absence or disability of the chairman.

Fire Fighters' Pension Commissioner

Section. 21. (a) The governor shall appoint, with the advice and consent of the senate, a fire fighters' pension commissioner from lists, each containing not fewer than three nor more than 10 nominees, that are submitted by the State Firemen's and Fire Marshals' Association of Texas and the Texas State Association of Fire Fighters.

(b) A person is not eligible for appointment as the fire fighters' pension commissioner if the person or the person's spouse:

- (1) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the office of the commissioner;
- (2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the office of the commissioner; or
- (3) uses or receives a substantial amount of tangible goods, services, or money from the office of the commissioner other than compensation or reimbursement authorized by law for the fire fighters' pension commissioner.

(c) Appointment of the fire fighters' pension commissioner shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

(d) The fire fighters' pension commissioner serves a term of four years.

(e) The office of the fire fighters' pension commissioner shall be located in Austin.

(f) Repealed by Acts 2001, 77th Leg., ch. 327, Sec. 1, eff. Sept. 1, 2001.

- (g) The fire fighters' pension commissioner is entitled to reimbursement by the state for actual and necessary expenses incurred in performing functions of the office.
- (h) The office of fire fighters' pension commissioner is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2013.
- (i) Any reference in law to the firemen's pension commissioner means the fire fighters' pension commissioner provided by this section.
- (j) The fire fighters' pension commissioner may conduct seminars or workshops for persons interested in issues pertaining to retirement systems under this Act. The commissioner may impose and collect a fee for attendance at a seminar or workshop in an amount that, in the aggregate, does not exceed the estimated costs of preparing for and conducting the seminar or workshop. Fees collected under this subsection shall be remitted to the comptroller of public accounts for deposit in an account in the general revenue fund to be known as the fire fighters' pension commissioner account. Amounts in the account may be appropriated only to the commissioner for the payment of administrative expenses.
- (k) A person may not serve as the fire fighters' pension commissioner or act as the general counsel to the commissioner or to the office of the fire fighters' pension commissioner if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the office of the fire fighters' pension commissioner.

General duties of the Fire Fighters' Pension Commissioner

Section. 21A. (a) The fire fighters' pension commissioner shall provide to the commissioner's employees and to the state board of trustees of the Fire Fighters' Relief and Retirement Fund established under the Texas Statewide Volunteer Fire Fighters' Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes), as often as necessary, information regarding their qualifications for office or employment and their responsibilities under applicable laws relating to standards of conduct for state officers or employees.

(b) The fire fighters' pension commissioner or the commissioner's designee shall develop a system of annual performance evaluations. All merit pay for employees of the commissioner must be based on the system established under this subsection.

(c) The fire fighters' pension commissioner or the commissioner's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the office of the fire fighters' pension commissioner to avoid the unlawful employment practices described by Chapter 21, Labor Code; and
- (2) an analysis of the extent to which the composition of the office's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(d) A policy statement prepared under Subsection (c) of this section must:

- (1) be updated annually;
- (2) be reviewed by the state Commission on Human Rights for compliance with Subsection (c)(1) of this section; and
- (3) be filed with the governor's office.

(e) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (d) of this section. The report may be made separately or as a part of other biennial reports made to the legislature.

(f) The fire fighters' pension commissioner shall hear appeals as provided by this Act and may examine the records and accounts of boards of trustees established under this Act and adopt rules and prescribe forms for the administration of this Act and shall classify and coordinate the reports of the various boards of trustees and shall verify any and all applications of the boards of trustees.

(g) The fire fighters' pension commissioner shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commissioner during the preceding fiscal year, other than funds of the Fire Fighters' Relief and Retirement Fund established under the Texas Statewide Volunteer Fire Fighters' Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes). The annual report must be in the form and reported in the time provided by the General Appropriations Act.

Text of subsec. (h) as added by Acts 2001, 77th Leg., ch. 13, Sec. 3

(h) The office of the fire fighters' pension commissioner shall maintain a file on each written complaint filed with the office. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the office;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the office closed the file without taking action other than to investigate the complaint.

(h-1) The fire fighters' pension commissioner shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability can be provided reasonable access to the programs administered by the commissioner.

(i) The office of the fire fighters' pension commissioner shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the office's policies and procedures relating to complaint investigation and resolution.

(j) The office of the fire fighters' pension commissioner, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

(k) The fire fighters' pension commissioner or the commissioner's designee shall provide to employees of the office of fire fighters' pension commissioner information and training on the benefits and methods of participation in the state employee incentive program.

Appeals from local board decisions

Section. 22. (a) A person aggrieved by a decision of a board of trustees relating to eligibility for or amount of benefits payable by a retirement system may appeal the decision to the fire fighters' pension commissioner.

(b) An appeal under this section is begun by delivering a notice of appeal with the chairman, secretary, or secretary-treasurer of the board of trustees that made the decision. The notice must be delivered not later than the 20th day after the date of the decision and contain a brief description of the reasons or grounds for appeal. The aggrieved person must file a copy of the notice with the fire fighters' pension commissioner.

(c) An appeal under this section to the fire fighters' pension commissioner is held in Austin and is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) conducted as a de novo hearing by the State Office of Administrative Hearings.

Attorney

Section. 22A. A board of trustees may employ an attorney to represent the board in one or all legal matters, including a hearing on appeal to the fire fighters' pension commissioner. At the request of a

board of trustees, the city attorney of the municipality of which the board is a part shall, without additional compensation, represent the board in one or all legal matters.

Actuary

Section. 23. (a) A board of trustees established under this Act may employ an actuary to provide actuarial services.

(b) The cost of actuarial services may be paid from assets of the fund.

Certified public accountant

Section. 24. (a) A board of trustees established under this Act may employ a certified public accountant or a firm of certified public accountants to perform an audit of the fund in accordance with Section 12.102, Title 110B, Revised Statutes.

(b) The cost of an audit may be paid by the municipality or other political subdivision or from the assets of the fund.

Other Expenses

Section. 25. (a) Except as provided by Subsection (b) of this section, a board of trustees established under this Act may pay from assets of the fund all costs reasonably and lawfully incurred by the retirement system and the costs of actual expenses incurred by board members in the performance of their duties on the board. A member of the board may not receive compensation for service on the board.

(b) The annual amount of payments from a fund under this section, excluding legal and medical fees, may not exceed:

- (1) 1 percent of the book value of the assets of the fund for the first \$1 million in book value; and
- (2) 1/4 of 1 percent of the book value of the assets of the fund that exceeds \$1 million.

Gifts accepted from any source

Section. 26. The board of trustees of a retirement system established under this Act is authorized to accept and receive for the use and benefit of the fund, in addition to member contributions and contributions of the municipality or other political subdivision, gifts of money from any source.

Investment of assets

Section. 27. (a) A board of trustees established under this Act shall keep a sufficient amount of cash on hand to make payments as they become due under the retirement system. If a board determines that the fund of its retirement system contains an amount in excess of the amount needed to make payments as they become due, the board may invest any portion of the excess.

(b) In making investments for a retirement system, its board of trustees shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.

(c) A board of trustees established under this Act may not invest in the stock or bonds of one corporation more than five percent of the book value of the assets of a fund. A retirement system may not own more than five percent of the voting stock of one corporation.

(d) A board of trustees established under this Act shall adopt formal investment policies that emphasize safety and diversity as well as liquidity for benefit payments. In developing those policies, the board of trustees shall give special consideration to the preferred investment practices of the Government Financial Officers Association. Not later than December 31 of each year, the board of trustees shall submit to the fire fighters' pension commissioner a copy of the investment policies adopted by the board.

Investment manager and counseling service

Section. 28. (a) The board of trustees of a retirement system established under this Act may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under Subsection (a) of this section, an investment manager must be:

- (1) registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.);
- (2) a bank as defined by that Act; or
- (3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the board of trustees shall specify policies, requirements, and restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the board of trustees adopts for investments of the system.

(d) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the board of trustees must act prudently and in the interest of the participants and beneficiaries of the retirement system.

(e) A trustee is not liable for the acts or omissions of an investment manager appointed under this section, nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(f) A board of trustees established under this Act may employ professional investment counselors to assist and advise the board in the investment of the assets of the fund or to evaluate the performance of an investment manager appointed under this section. The investment counseling service must be provided by an organization whose business functions include performing continuous investment advisory service to public retirement systems.

(g) The cost of investment managing or counseling services may be paid by the municipality or other political subdivision or from the assets of the fund.

(h) A retirement system established under this Act is exempt from Subchapter C, Chapter 802, Government Code, except Sections 802.205 and 802.207.

Contributions

Section. 29. (a) Each person who is a member of a retirement system as a current fire department employee shall make contributions to the system. Except as provided by Subsection (d) of this section, a contribution required under this subsection is computed on the employee's periodic compensation at a rate determined by majority vote of the employees of the department who are members, at an election by secret ballot at which at least 50 percent of those employees vote. Except as provided by Section 30 of this Act, the payroll officer of the municipality or other political subdivision shall deduct the contributions required under this subsection each payroll period and submit them to the retirement system.

(b) A municipality or other political subdivision that has employees who are participating members of a retirement system shall make contributions to the system each payroll period. Except as provided by Subsection (d) of this section, contributions required under this subsection are computed on the total compensation paid to the employees who are participating members of the system. A municipality or other political subdivision is required to make contributions under this subsection at the same rate paid by employees or 12 percent, whichever is the smaller rate. The governing body of a municipality or other political subdivision by ordinance may adopt a rate of employer contributions that is greater than the rate required by this subsection.

(c) Contributions by a municipality or other political subdivision determined under Subsection (b) or (d) of this section are payable each payroll period to the retirement system.

(d) Contributions required under Subsections (a) and (b) of this section are computed on the average compensation of all employees of the department for the preceding year, if this method of computation is adopted by majority vote of the employees of the department who are members, at an election by secret ballot at which at least 50 percent of the participating members vote, and is also adopted by ordinance of the governing body of the municipality or other political subdivision. The average compensation of department employees shall be computed for each 12-month period as determined by the board of trustees.

(e) Each person who is a member of a retirement system as a current fire department volunteer shall contribute to the system an annual amount determined by majority vote by secret ballot of the volunteers of the department who are participating members of the retirement system. A municipality may at any time make the member contributions required under this subsection on behalf of its volunteers and any other contributions the municipality chooses to make to the retirement system.

(f) Payment of member contributions required under this Act are conditions of employment and participation in the retirement system to which the contributions are due.

(g) Except as otherwise provided under Section 7 of this Act, a member of a retirement system may withdraw all of the member's accumulated contributions to the system if the member terminates service for the fire department included within the coverage of the system for a reason other than service or disability retirement. The estate of a deceased member may withdraw all of the deceased member's accumulated contributions if a survivor or alternative monthly benefit is not payable as a result of the death. A withdrawal of contributions cancels a person's membership and credit in the retirement system.

Pick up of employee contributions

Section. 30. (a) A municipality or other political subdivision may pick up the employee contributions required by Subsection (a) of Section 29 of this Act for all compensation that is earned by participating members of the retirement system on or after the effective date of the pick up. Employee contributions picked up as provided by this section are in lieu of deductions of employee contributions from paychecks or warrants and shall be paid by the municipality or other political subdivision to the retirement system from the same source of funds that is used in paying compensation to the members. A pick up of employee contributions shall be accompanied by a reduction in the compensation of members, an offset against a future increase in member compensation, or a combination of compensation reduction and offset against a compensation increase. Unless otherwise determined by the governing body of the municipality or other political subdivision and approved by majority vote of the participating members at an election by secret ballot, a pick up of contributions results in a corresponding reduction in compensation.

(b) Contributions picked up as provided by this section shall be treated as employer contributions in determining tax treatment of the amounts under the Internal Revenue Code of 1986. Each municipality or other political subdivision picking up contributions shall continue, however, to compute federal income tax withholding as if these contributions were employee wages until the first payroll period that begins 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. Employee contributions picked up as provided by this section shall be deposited to the credit of the individual account of each affected member and shall be treated for all other purposes of this Act as if the contributions had been deducted from the compensation of members. Picked up contributions are not includable in a computation of contribution rates of the municipality or other political subdivision.

(c) 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 fire fighters' pension commissioner has filed with the secretary of state a notice stating that the United States 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)).

(d) A pick up of employee contributions is terminated in a municipality or other political subdivision on January 1 of the year following the year in which:

- (1) the termination has been approved by a two-thirds 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
- (2) the governing body of the municipality or other political subdivision has repealed the ordinance that adopted the pick up of employee contributions.

Termination of participation in Act

Section. 31. (a) A retirement system for a fire department not consisting exclusively of volunteers may not be terminated or merged into another retirement system without the approval of the board of trustees of the retirement system and the approval of the participating members of the system in the manner described by Subdivision (2) of Subsection (b) of Section 7 of this Act provided 51 percent of the volunteers first petition the board for such change.

(b) The board of trustees of a retirement system for a fire department consisting partly of employees and partly of volunteers may transfer assets actuarially attributable to the volunteers from the retirement system under this Act to the statewide program provided by the Texas Statewide Volunteer Fire Fighters' Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes), if the board obtains approval as provided by Section 7 of this Act provided 51 percent of the volunteers first petition the board for such change.

(c) The fire fighters' pension commissioner shall determine whether retirement systems for fire departments consisting exclusively of volunteers are inactive, for purposes of this Act, because of the infrequency of their submission of contributions and reports required by this Act or other law. The commissioner shall, not later than June 1, 1992, notify the boards of trustees of retirement systems determined inactive under this subsection of that determination. This Act does not apply after December 31, 1992, to a retirement system determined inactive under this subsection unless before that date, the retirement system has completed an actuarial study of the retirement system and agreed to provide financing to the retirement system determined by the actuary to be sufficient to finance an actuarially

sound system. The board of trustees of an inactive retirement system may, in lieu of agreeing to actuarially sound financing, elect to transfer the assets of the retirement system to the statewide program provided by the Texas Statewide Volunteer Fire Fighters' Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes).

Confidentiality of information about members, retirees, annuitants, or beneficiaries

Section. 32. (a) Information contained in records that are in the custody of a retirement system established under this Act concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual;

(B) the individual's attorney, guardian, executor, administrator, conservator, or other person who the board of trustees of the retirement system determines is acting in the interest of the individual or the individual's estate;

(C) a spouse or former spouse of the individual if the board of trustees determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed under an authorization of the board of trustees that specifies the reason for the disclosure.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.

(c) A determination and disclosure under Subsection (a) of this section may be made without notice to the individual member, retiree, annuitant, or beneficiary.