

Chapter 707

AN ACT

relating to participation in and benefits and administration of retirement systems for firefighters in certain municipalities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.02, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended by adding Subdivision (13) to read as follows:

(13) "Spouse" means an individual to whom a member is legally married under Subtitle A, Title 1, Family Code, or a comparable law of another jurisdiction, provided that, in the case of an informal marriage in this state, the marriage must be evidenced by a declaration of informal marriage recorded in accordance with Subchapter E, Chapter 2, Family Code.

SECTION 2. Section 2.03(c), Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Each election is by secret written ballot on a date the board of trustees determines. Only persons who have been nominated may be listed on the written ballot. Nominations may be made in person, by mail, or by telephone to the office of the fund and must be received between September [~~October~~] 1 and September [~~October~~] 15.

SECTION 3. Section 2.11, Chapter 183 (S.B. 598), Acts of the

1 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's
2 Texas Civil Statutes), is amended to read as follows:

3 Sec. 2.11. RULEMAKING. The board of trustees shall adopt
4 rules and perform reasonable activities it considers necessary or
5 desirable for the efficient administration of the fund and to
6 maintain the qualified status of the fund under Section 401(a) of
7 the Internal Revenue Code.

8 SECTION 4. Article 2, Chapter 183 (S.B. 598), Acts of the
9 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's
10 Texas Civil Statutes), is amended by adding Section 2.13 to read as
11 follows:

12 Sec. 2.13. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS,
13 RETIREES, ANNUITANTS, OR BENEFICIARIES. (a) Information contained
14 in records in the custody of the fund concerning an individual
15 member, retiree, annuitant, or beneficiary is confidential under
16 Section 552.101, Government Code, and may not be disclosed in a form
17 identifiable with a specific individual unless:

18 (1) the information is disclosed to:

19 (A) the individual or the individual's attorney,
20 guardian, executor, administrator, conservator, or other person
21 who the administrator of the fund determines is acting in the
22 interest of the individual or the individual's estate;

23 (B) a spouse or former spouse of the individual
24 after the administrator of the fund determines that the information
25 is relevant to the spouse's or former spouse's interest in member
26 accounts, benefits, or other amounts payable by the fund;

27 (C) a governmental official or employee after the

1 administrator of the fund determines that disclosure of the
2 information requested is reasonably necessary to the performance of
3 the duties of the official or employee; or

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

6 (2) the information is disclosed pursuant to a
7 subpoena and the administrator of the fund determines that the
8 individual will have a reasonable opportunity to contest the
9 subpoena.

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

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

16 SECTION 5. Section 5.04, Chapter 183 (S.B. 598), Acts of the
17 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's
18 Texas Civil Statutes), is amended by amending Subsection (b) and
19 adding Subsection (b-1) to read as follows:

20 (b) The three percent factor used in this section may be
21 changed to some other percent if the change:

22 (1) is first approved by the board's actuary;

23 (2) is approved by the board of trustees;

24 (3) applies [~~only~~] to one or any combination of the
25 following groups:

26 (A) firefighters who are employed on an active,
27 full-time basis in the fire department at the time of the change;

1 (B) firefighters who begin service with the fire
2 department after the change becomes effective; and

3 (C) members who retire under Section 5.06 of this
4 Act after the change becomes effective; and

5 (4) does not reduce a member's benefit for service
6 credit accumulated before the date of the change.

7 (b-1) In determining whether to approve an increase in the
8 factor under Subsection (b) of this section, the board's actuary
9 shall take into consideration whether the fund has reserves
10 sufficient to enable the payment of a cost-of-living adjustment
11 under Section 9.04(a) of this Act to all current members and
12 survivors at a level that is equal to the average percentage
13 increase in the Consumer Price Index for All Urban Consumers as
14 determined by the United States Department of Labor for the 10
15 annual periods preceding the proposed effective date of the change.

16 SECTION 6. Section 7.02, Chapter 183 (S.B. 598), Acts of the
17 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's
18 Texas Civil Statutes), is amended to read as follows:

19 Sec. 7.02. SURVIVING SPOUSE OF RETIREE. (a) On the death of
20 a retiree, the retiree's surviving spouse is entitled to receive an
21 immediate monthly benefit from the fund of 75 percent of the
22 retirement benefit that was being paid to the retiree if the spouse:

23 (1) was married to the retiree at the time of the
24 retiree's retirement; or

25 (2) married the retiree after the retiree's retirement
26 and was married to the retiree for at least 24 consecutive months.

27 (b) For purposes of Subsection (a)(1) of this section, with

1 respect to an informal marriage established in this state, a
2 surviving spouse is considered married to a retiree as of the date a
3 declaration of informal marriage was recorded in accordance with
4 Subchapter E, Chapter 2, Family Code.

5 SECTION 7. Section 9.04, Chapter 183 (S.B. 598), Acts of the
6 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's
7 Texas Civil Statutes), is amended by amending Subsections (a) and
8 (b) and adding Subsections (a-1), (a-2), (a-3), (a-4), and (b-1) to
9 read as follows:

10 (a) Subject to this section and except ~~[Except]~~ as provided
11 by Section 5.05 of this Act, a person receiving a retirement or
12 survivor's benefit under this Act is entitled each calendar year to
13 a ~~[an annual]~~ cost-of-living adjustment of that person's benefit
14 calculated in accordance with this section.

15 (a-1) The annual cost-of-living adjustment under this
16 section:

17 (1) is based on the collective adjustment amount
18 calculated in accordance with Subsection (a-2) of this section and
19 allocated among persons eligible for an adjustment under this
20 section in a manner and in an amount determined by the board of
21 trustees;

22 (2) may take effect at any time during a given calendar
23 year, as determined by the board of trustees; and

24 (3) may not reduce a person's benefit to an amount less
25 than the person received when the benefit first was paid to that
26 person.

27 (a-2) The collective adjustment amount described by

1 Subsection (a-1) of this section:

2 (1) is an amount equal to the actuarial value, as
3 determined by the board's actuary based on the interest and
4 mortality assumptions adopted by the board of trustees for the most
5 recent actuarial valuation of the fund, of the percentage [any]
6 increase in the Consumer Price Index for All Urban Consumers as
7 determined by the United States Department of Labor for the
8 applicable determination period immediately preceding the date the
9 cost-of-living adjustment is to take effect, multiplied by the
10 total amount of benefits payable in the month immediately preceding
11 the date an adjustment is to take effect to persons who are eligible
12 to receive an adjustment under this section; and

13 (2) if applicable:

14 (A) is reduced by an amount that the board's
15 actuary determines is necessary to maintain the financial stability
16 of the fund; or

17 (B) is increased in accordance with Subsection
18 (b) of this section.

19 (a-3) For purposes of Subsection (a-2) of this section, the
20 applicable determination period is the shorter of:

21 (1) 12 months; or

22 (2) the period since the last adjustment [increase in
23 benefits] under this section.

24 (a-4) In determining whether to reduce the collective
25 adjustment amount under Subsection (a-2) of this section, the
26 board's actuary may not take into consideration the cost of future
27 adjustments under this section.

1 (b) The board of trustees may increase the collective [~~If~~
2 ~~an~~] adjustment amount under Subsection (a-2) [~~(a)~~] of this section
3 if:

4 (1) [~~would exceed one percent of a person's benefit,~~
5 ~~the portion of the adjustment that exceeds one percent of the~~
6 ~~benefit may not be made under this section unless~~] the board's
7 actuary has advised the board of trustees that the increase
8 [~~adjustment~~] would not impair the financial stability of the fund;
9 and

10 (2) the increase [~~adjustment~~] has been approved by the
11 affirmative vote of a majority of the board of trustees. [~~If an~~
12 ~~adjustment under Subsection (a) of this section would be one~~
13 ~~percent or less of a person's benefit, the adjustment may not be~~
14 ~~made under this section unless the board's actuary has advised the~~
15 ~~board of trustees that the adjustment would not impair the~~
16 ~~financial stability of the fund.~~]

17 **(b-1) In determining whether an adjustment would impair the**
18 **financial stability of the fund under Subsection (b) of this**
19 **section, the board's actuary shall take into consideration the cost**
20 **of future adjustments under this section.**

21 SECTION 8. Section 11.01, Chapter 183 (S.B. 598), Acts of
22 the 64th Legislature, Regular Session, 1975 (Article 6243e.1,
23 Vernon's Texas Civil Statutes), is amended to read as follows:

24 Sec. 11.01. INVESTMENTS. The board of trustees in its sole
25 discretion may invest, reinvest, or change the assets of the fund.
26 The board of trustees shall invest the funds in whatever
27 instruments or investments the board considers prudent. In making

1 investments for the fund, the board of trustees shall discharge its
2 duties with the care, skill, prudence, and diligence under the
3 circumstances then prevailing that a prudent person acting in a
4 similar capacity and familiar with such matters would use in the
5 conduct of an enterprise of a similar character and with similar
6 aims. [~~PERMITTED INVESTMENTS. When the board of trustees~~
7 ~~determines that there is in the fund a surplus exceeding the~~
8 ~~reasonable, safe amount necessary to take care of the current~~
9 ~~demands on the fund, the surplus, or so much of it as the board of~~
10 ~~trustees considers prudent, may be invested in:~~

11 [~~(1) direct obligations of or obligations the~~
12 ~~principal and interest of which are guaranteed by the United States~~
13 ~~or its agencies or instrumentalities,~~

14 [~~(2) short-term investment funds, mutual funds, or~~
15 ~~their equivalent that are rated as investment quality or higher by a~~
16 ~~nationally recognized investment rating firm,~~

17 [~~(3) fully collateralized or direct repurchase~~
18 ~~agreements, including direct and reverse security repurchase~~
19 ~~agreements and security lending agreements that:~~

20 [~~(A) have a defined termination date,~~

21 [~~(B) are secured by obligations described by this~~
22 ~~section or by cash, and~~

23 [~~(C) are pledged with a third party selected or~~
24 ~~approved by a majority vote of the board of trustees,~~

25 [~~(4) corporate bonds, including convertible bonds,~~
26 ~~collateralized mortgage obligations, and asset-backed securities,~~
27 ~~rated as investment quality or higher by a nationally recognized~~

1 ~~investment rating firm,~~

2 ~~[(5) common stocks, preferred stocks, and convertible~~
3 ~~preferred stocks of companies incorporated in the United States and~~
4 ~~foreign stocks that are designated in United States dollars and~~
5 ~~that are registered with the Securities and Exchange Commission and~~
6 ~~listed on a United States exchange or by the National Association of~~
7 ~~Securities Dealers Automated Quotations,~~

8 ~~[(6) foreign equity and fixed income investments,~~

9 ~~[(7) mutual funds, common funds, and their equivalents~~
10 ~~that contain only items listed in Subdivisions (1)-(6) of this~~
11 ~~section, and~~

12 ~~[(8) convertible stocks and bonds recognized as~~
13 ~~investment quality or higher by a nationally recognized investment~~
14 ~~rating firm or by the investment manager.]~~

15 SECTION 9. Section 11.03, Chapter 183 (S.B. 598), Acts of
16 the 64th Legislature, Regular Session, 1975 (Article 6243e.1,
17 Vernon's Texas Civil Statutes), is amended to read as follows:

18 Sec. 11.03. INVESTMENT POLICY. (a) The board of trustees
19 shall adopt and maintain a written investment policy regarding the
20 investment of fund assets.

21 (b) The board of trustees may not adopt an amendment to the
22 investment policy adopted under this section unless the proposed
23 amendment is approved by the affirmative vote of a majority of the
24 members of the board at not fewer than three regular meetings of the
25 board. [~~LIMITATIONS ON INVESTMENTS. The fund may not own more than~~
26 ~~five percent of the voting stock of any one corporation. Under an~~
27 ~~investment measure at market.~~

1 ~~[(1) total fixed-income investments should not~~
2 ~~represent less than 30 percent of the value of the investment~~
3 ~~portfolio,~~

4 ~~[(2) total investments in common stocks should not~~
5 ~~represent more than 70 percent of the value of the investment~~
6 ~~portfolio,~~

7 ~~[(3) total investments in common stocks and bonds of~~
8 ~~foreign corporations may not represent more than 20 percent of the~~
9 ~~value of the investment portfolio, and~~

10 ~~[(4) total investments in any one corporation may not~~
11 ~~represent more than five percent of the value of the investment~~
12 ~~portfolio.]~~

13 SECTION 10. Sections 9.04(c) and (d), Chapter 183 (S.B.
14 598), Acts of the 64th Legislature, Regular Session, 1975 (Article
15 6243e.1, Vernon's Texas Civil Statutes), are repealed.

16 SECTION 11. As soon as practicable after the effective date
17 of this Act, the board of trustees of the firefighters relief and
18 retirement fund shall adopt the written investment policy required
19 by Section 11.03, Chapter 183 (S.B. 598), Acts of the 64th
20 Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's
21 Texas Civil Statutes), as amended by this Act.

22 SECTION 12. This Act takes effect September 1, 2009.

David Newkirk

President of the Senate

John Strawn

Speaker of the House

I certify that H.B. No. 2829 was passed by the House on April 28, 2009, by the following vote: Yeas 149, Nays 0, 1 present, not voting.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 2829 was passed by the Senate on May 21, 2009, by the following vote: Yeas 31, Nays 0.

Datsy Spaw
Secretary of the Senate

APPROVED: 19 JUN '09

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2 PM O'CLOCK
JUN 19 2009

Colby Hunter III