

By: Rodriguez of Bexar

H.B. No. 3349

A BILL TO BE ENTITLED

AN ACT

relating to the retirement system in certain municipalities for  
firefighters and police officers.

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

SECTION 1. Sections 1.02(7) and (17), Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), are amended to read as follows:

(7) "Dependent child" means:

(A) a person who is less than 18 years of age and is a child of a deceased member or deceased retiree; or

(B) a person:

(i) who is at least 18 years of age;

(ii) who is mentally or physically disabled to the extent that the person is not capable of being self-supporting; and

(iii) whose natural or adoptive parent is a deceased member or deceased retiree [~~provided that, for the year immediately preceding the death of the member or retiree, the deceased member or retiree claimed the person as a dependent on the member's or retiree's federal income tax return~~].

(17) "Total salary" means all salary of a member:

(A) including:

(i) amounts picked up by the municipality

under Section 4.04(b) of this Act; and

(ii) amounts that would be included in salary but for an election under Section 125(d), 132(f)(4), 401(k), 402(e)(3), 402(h)(1)(B), or 457(b) of the code; and

(B) excluding [~~, except~~]:

(i) [~~(A)~~] overtime pay, field training officer's pay, bomb squad pay, SWAT team pay, K-9 pay, and hostage team pay; and

(ii) [~~(B)~~] pay for unused accrued vacation and sick leave, holiday pay, compensatory time pay, and bonus days leave, or any similar items of compensation that may be paid in the future.

SECTION 2. Section 4.02(a), Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) If a member takes unpaid leave as provided by the federal Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.), that member is entitled to make voluntary contributions for the leave period in the same amount as the member would have paid if the member had not taken the leave. Those payments must be made not later than the 30th day after the date the member returns from that leave. A computation of contributions under this section shall be made in the same manner as other computations under this Act. A municipality to which this Act applies shall pay to the fund an amount equal to the amount the municipality would have paid under Section 4.05(a) of this Act if the contributions made by the member under this section had been made by the member under Section 4.04(a)

1 of this Act. The payment shall be made by the municipality not  
2 later than the 30th day after the date of notification by the fund  
3 that the member has made the contributions under this section  
4 ~~[match an amount equal to twice the amount of each payment a member~~  
5 ~~makes to the fund under this subsection].~~

6 SECTION 3. Section 4.03, Chapter 824 (S.B. 817), Acts of the  
7 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's  
8 Texas Civil Statutes), is amended by amending Subsection (h) and  
9 adding Subsection (i) to read as follows:

10 (h) A municipality to which this Act applies shall pay to  
11 the fund an amount equal to the amount the municipality would have  
12 paid under Section 4.05(a) of this Act if the contributions made by  
13 the member under this section had been made by the member under  
14 Section 4.04(a) of this Act. The payment shall be made by the  
15 municipality not later than the 30th day after the date of  
16 notification by the fund that the member has made the contributions  
17 under this section ~~[double-match payments made to the fund under~~  
18 ~~this section].~~

19 (i) In the case of a member of the fund who dies while  
20 performing qualified military service as defined by Section 414(u)  
21 of the code, the survivors of the member are entitled to any  
22 additional benefits, other than benefit accruals relating to the  
23 period of qualified military service, that would have been provided  
24 if the member had returned to active service and then immediately  
25 died.

26 SECTION 4. Sections 4.05(a), (b), and (d), Chapter 824  
27 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993

(Article 6243o, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Subsection (a-1) of this section, a municipality to which this Act applies shall pay into the fund:

(1) an amount equal to double the sum total of all member contributions made in accordance with Section 4.04 of this Act for full pay periods ending before October 1, 2015; and

(2) an amount equal to 23.25 percent of the total salary of each fire fighter and police officer in the employment of the municipality for full pay periods ending after September 30, 2015.

(b) The payments into the fund by the municipality, both as to deductions and payments under Subsection (a) of this section ~~[double-matching amounts]~~, shall be made on the same day the contributions are deducted from the members' total salary.

(d) The municipality's payments to the fund ~~[double-matching amount]~~ under this section are ~~[is]~~ in place of all other payments previously required by law to be made by the municipality.

SECTION 5. Section 5.01, Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended by adding Subsection (f-2) and amending Subsection (g) to read as follows:

(f-2) The board shall compute the retirement annuity of a member who retires after September 30, 2015, at the rate of 2.375 percent of the member's average total salary for each of the first 20 years of service, plus five percent of the member's average total

1 salary for each of the next seven years of service, plus 2.5 percent  
2 of the member's average total salary for the next year of service,  
3 plus 0.5 percent of the member's average total salary for each of  
4 the next five years of service, with fractional years of service  
5 prorated based on full months served as a contributing member. In  
6 making the computation for a year, the year is considered to begin  
7 on the first day a contribution is made. A retirement annuity under  
8 this subsection may not exceed, as of the date of retirement, 87.5  
9 percent of the member's average total salary.

10 (g) A member may not receive an award from the fund for  
11 service retirement until the member has at least 20 years of service  
12 in the fire or police department and has also contributed the  
13 required amount of money for at least 20 years. In determining the  
14 number of years of service in a department, the member shall be  
15 given full credit for the period the member was an active member  
16 plus the time the member was actively engaged in service with any  
17 uniformed service in accordance with Section 4.03 of this Act and  
18 for absences taken under the Family and Medical Leave Act of 1993  
19 (29 U.S.C. Section 2601 et seq.), in accordance with Section 4.02 of  
20 this Act. Disciplinary suspensions of 15 days or less may not be  
21 subtracted from a member's service credit under this Act if the  
22 member has paid into the fund, within 30 days after the later of the  
23 termination date of each suspension or the exhaustion of any appeal  
24 with respect to the suspension, a sum of money equal to the amount  
25 of money that would have been deducted from that person's salary  
26 during that period of suspension if it had not been for that  
27 suspension. A municipality to which this Act applies shall pay to

the fund an amount equal to the amount the municipality would have paid under Section 4.05(a) of this Act if the contributions made by the member under this section had been made by the member under Section 4.04(a) of this Act. The payment shall be made by the municipality not later than the 30th day after the date of notification by the fund that the member has made the contributions under this section ~~[double-match a payment made under this subsection]~~. Members of the fund at the time of their retirement shall also receive service credit for all unused sick leave accumulated by them under Chapter 143, Local Government Code, but only to the extent the unused sick leave exceeds 90 days. Service credit for unused sick leave shall be prorated based on each full month of sick leave. A member's service credit under this section includes any service credit purchased in accordance with Subsections (k)-(m) of this section.

SECTION 6. Sections 5.015(d) and (e), Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article [62430](#), Vernon's Texas Civil Statutes), are amended to read as follows:

(d) The amount of a lump-sum payment to which a member making a Back DROP election is entitled shall be computed in the manner provided by this subsection and Subsection (d-1) of this section. The member's retirement annuity shall be computed in the manner provided by Section 5.01 of this Act, except that the amount of service credit and average total salary used in making that computation shall be determined in accordance with this subsection. For purposes of this subsection, the member's average

total salary shall be computed based on the member's Back DROP retirement date, which is the member's actual retirement date less the amount of time the member elects under Subsection (b)(1) of this section. For purposes of this subsection, the member's service credit shall be the member's service credit determined in accordance with Section 5.01(g) of this Act less the amount of time for:

(1) any service credit in excess of 33 [~~34~~] years of service, other than service credit for sick leave unused on the date of actual retirement;

(2) any service credit given for sick leave unused on the date of actual retirement; and

(3) any service credit in excess of 20 years but not in excess of the amount permitted under Subsection (b)(1) of this section that the member elects for computing the amount of the lump-sum payment.

(e) For purposes of computing the monthly pension of a member making a Back DROP election, the member's retirement annuity shall be computed in the manner provided by Section 5.01 of this Act, except that:

(1) the amount of service credit used in making that computation shall be the member's service credit determined in accordance with Section 5.01(g) of this Act less:

(A) the amount of time the member elects under Subsection (b)(1) of this section; and

(B) any service credit in excess of 33 [~~34~~] years of service excluding any service credit for sick leave unused on the

1 date of actual retirement; and

2 (2) the member's average total salary shall be  
3 computed as if the member's retirement date were the member's actual  
4 retirement date less the amount of time the member elects under  
5 Subsection (b)(1) of this section.

6 SECTION 7. Section 5.03(c), Chapter 824 (S.B. 817), Acts of  
7 the 73rd Legislature, Regular Session, 1993 (Article 6243o,  
8 Vernon's Texas Civil Statutes), is amended to read as follows:

9 (c) Except as provided by Subsection (d) of this section, a  
10 member of the fund who is on suspension and who becomes disabled as  
11 a result of an injury sustained or disease contracted while the  
12 member is on suspension is eligible for a disability retirement  
13 annuity under Subsection (a) or (a-1) of this section, as  
14 applicable, if the suspended member makes up each deducted  
15 contribution lost by reason of the suspension not later than the  
16 30th day after the later of the termination date of the suspension  
17 or the exhaustion of any appeal with respect to the suspension. A  
18 municipality to which this Act applies shall pay to the fund an  
19 amount equal to the amount the municipality would have paid under  
20 Section 4.05(a) of this Act if the contributions made by the member  
21 under this section had been made by the member under Section 4.04(a)  
22 of this Act. The payment shall be made by the municipality not  
23 later than the 30th day after the date of notification by the fund  
24 that the member has made the contributions under this section  
25 ~~[double-match all contributions made by a member under this~~  
26 ~~subsection]~~.

27 SECTION 8. Section 5.04(a), Chapter 824 (S.B. 817), Acts of



the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) A member who is eligible to retire and receive a disability retirement annuity under Section 5.03(a) of this Act is entitled to receive an annuity from the fund equal to:

(1) 50 percent of the member's average total salary if the date of retirement is on or before September 30, 2015, or 47.5 percent of the member's average total salary if the date of retirement is after September 30, 2015, if the member has served three years or more before the date of retirement;

(2) 50 percent of the member's average monthly salary as of the date of retirement multiplied by 12 if the date of retirement is on or before September 30, 2015, or 47.5 percent of the member's average monthly salary as of the date of retirement multiplied by 12 if the date of retirement is after September 30, 2015, if the member has served at least two months and less than three years before the date of retirement; or

(3) 50 percent of the member's average daily salary as of the date of retirement multiplied by 360 if the date of retirement is on or before September 30, 2015, or 47.5 percent of the member's average daily salary as of the date of retirement if the date of retirement is after September 30, 2015, if the member has served less than two months before the date of retirement.

SECTION 9. Section 5.05(c), Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) For those retired because of disability on or after

August 30, 1971, the disability retirement annuity may not be reduced to an amount that is less than the product of:

(1) 2.375 [~~2.25~~] percent multiplied by the number of years that the retiree served in the department and contributed a portion of salary as a member of the fund multiplied by the retiree's average total salary, if the retiree served three years or more before the date of retirement;

(2) 2.375 [~~2.25~~] percent multiplied by the number of years that the retiree served in the department and contributed a portion of salary as a member of the fund multiplied by the retiree's average monthly salary as of the date of retirement multiplied by 12, if the retiree served at least two months and less than three years before the date of retirement; or

(3) 2.375 [~~2.25~~] percent multiplied by the number of years that the retiree served in the department and contributed a portion of salary as a member of the fund multiplied by the retiree's average daily salary as of the date of retirement multiplied by 360, if the member has served less than two months before the date of retirement.

SECTION 10. Section 5.09, Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article [62430](#), Vernon's Texas Civil Statutes), is amended by amending Subsection (a) and adding Subsection (a-2) to read as follows:

(a) At or before its regular meeting in the month of March, the board annually shall review the Consumer's Price Index for All Urban Consumers (CPI-U), U.S. City Average or the nearest equivalent published by the United States Bureau of Labor

1 Statistics for the preceding calendar year. If that index shows an  
 2 increase during the preceding calendar year in the cost of living as  
 3 compared with that index at the close of the previous year, the  
 4 board shall order an increase of all service, disability, and death  
 5 benefit retirement annuities by a percentage that varies by the  
 6 date of the member's service or disability retirement, or, in the  
 7 case of a member who died before retirement, the date on which the  
 8 member died. If the member's service retirement, disability  
 9 retirement, or death before retirement occurred before August 30,  
 10 1971, the annuity shall be increased by a percentage equal to the  
 11 percentage increase in the cost of living index. If the member's  
 12 service retirement, disability retirement, or death before  
 13 retirement occurred on or after August 30, 1971, but before October  
 14 1, 2003 [~~1999~~], or a later date the board may designate under  
 15 Subsection (a-2) of this section, the annuity shall be increased as  
 16 follows: if the percentage increase in the cost of living index is  
 17 eight percent or less, the annuity shall be increased by a  
 18 percentage equal to the percentage increase, and if the percentage  
 19 increase in the cost of living index is more than eight percent, the  
 20 annuity shall be increased by eight percent plus a percentage equal  
 21 to 75 percent of the percentage increase that is more than eight  
 22 percent. If the member's service retirement, disability  
 23 retirement, or death before retirement occurred on or after October  
 24 1, 2003 [~~1999~~], or a later date the board may designate under  
 25 Subsection (a-2) of this section, the annuity shall be increased by  
 26 a percentage equal to 75 percent of the percentage increase in the  
 27 cost of living index. A percentage increase in annuities shall be

rounded to the nearest one-tenth percentage point for a cost of living increase.

(a-2) The board may designate another date for the date October 1, 2003, in Subsection (a) of this section, provided that the designation will not cause the fund's ratio of actuarial value of assets to actuarial accrued liability to be less than 90 percent as of the date of the board's action.

SECTION 11. Section 5.10, Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (c), (d), (f), and (j) and adding Subsection (b-1) to read as follows:

(b) A distributee may elect, at the time and in the manner prescribed by the board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. ~~[Any member or beneficiary who is entitled to receive any distribution that is an eligible rollover distribution as defined by Section 402(c)(4) of the code is entitled to have that distribution transferred directly to another eligible retirement plan of the member's or beneficiary's choice on providing direction to the fund regarding that transfer in accordance with procedures established by the board.]~~

(b-1) For purposes of Subsection (b) of this section:

(1) "Eligible retirement plan" means an individual retirement account described by Section 408(a) of the code, an individual retirement annuity described by Section 408(b) of the code, an annuity plan described by Section 403(a) of the code, a

1 qualified trust described by Section 401(a) of the code, an  
 2 eligible deferred compensation plan described by Section 457(b) of  
 3 the code that is maintained by an eligible employer described by  
 4 Section 457(e)(1)(A) of the code, or an annuity contract described  
 5 by Section 403(b) of the code that accepts the distributee's  
 6 eligible rollover distribution. However, in the case of an  
 7 eligible rollover distribution to a designated beneficiary who is  
 8 not the surviving spouse, or the spouse or former spouse under a  
 9 qualified domestic relations order, an eligible retirement plan is  
 10 an individual retirement account or individual retirement annuity  
 11 only.

12 (2) "Eligible rollover distribution" means a  
 13 distribution of all or any portion of the balance to the credit of  
 14 the distributee. The term does not include:

15 (A) a distribution that is one of a series of  
 16 substantially equal periodic payments, paid not less frequently  
 17 than once a year, made over the life, or life expectancy, of the  
 18 distributee or the joint lives, or joint life expectancies, of the  
 19 distributee and the distributee's designated beneficiary;

20 (B) a series of payments for a specified period  
 21 of 10 years or more;

22 (C) a distribution to the extent such  
 23 distribution is required under Section 401(a)(9) of the code; or

24 (D) the portion of a distribution that is not  
 25 includable in gross income, unless the distributee directs that the  
 26 eligible rollover distribution be transferred directly to a  
 27 qualified trust that is part of a defined contribution plan that

1 agrees to separately account for the portion that is includable in  
2 gross income and the portion that is not, or to an individual  
3 retirement account or individual annuity.

4 (3) "Direct rollover" means a payment by the  
5 retirement system to the eligible retirement plan specified by a  
6 distributee.

7 (4) "Distributee" means a member or former member.  
8 The term includes a member's or former member's surviving spouse or  
9 designated beneficiary and a member's or former member's spouse or  
10 former spouse who is the alternate payee under a qualified domestic  
11 relations order, as defined by Section 414(p) of the code, with  
12 regard to the interest of the spouse or former spouse.

13 (c) The total salary taken into account for any purpose  
14 under this Act [~~for any member of the fund~~] may not exceed the 2009  
15 annual compensation limitations under Section 401(a)(17) of the  
16 code, which are \$360,000 [~~\$200,000 per year~~] for an eligible member  
17 [~~participant~~] or \$245,000 [~~\$150,000 per year~~] for an ineligible  
18 member [~~participant~~]. For purposes of this subsection, an eligible  
19 member is any employee who first became a member in a year  
20 commencing before 1996 and an ineligible member is any other  
21 member. The [~~These~~] dollar limits shall be [~~periodically~~] adjusted  
22 annually for cost-of-living increases as provided by Section  
23 401(a)(17) of the code [~~in accordance with guidelines provided by~~  
24 ~~the United States secretary of the treasury. For purposes of this~~  
25 ~~subsection, an eligible participant is any person who first became~~  
26 ~~a member before 1996, and an ineligible participant is any member~~  
27 ~~who is not an eligible participant~~].

(d) Accrued benefits under this Act become 100 percent vested for a member on the earlier of:

(1) the date the member has completed 20 years of service;

(2) the earlier termination or partial termination of the pension plan created by this Act, if it affects the member; ~~or~~

(3) the complete discontinuance of contributions by the municipality to the fund; or

(4) the date the member attains normal retirement age.

(f) Distribution of benefits must begin not later than April 1 of the year following the later of the calendar year in ~~during~~ which the member becomes 70-1/2 years of age, or the calendar year in which the employee retires, and must otherwise conform to Section 401(a)(9) of the code and the regulations under that section of the code, including the incidental benefit rule.

(j) Notwithstanding any other provision of this Act, the limit on maximum benefits imposed by Section 415 of the code and Subsection (a) of this section shall be adjusted each year to the extent permitted by cost-of-living increases announced by the secretary of the treasury under Section 415(d) of the code and applicable law. Any such benefit increases shall apply to members who have terminated employment, including members who have begun receiving benefits before the effective date of the change, and any benefits previously denied. Benefits paid to make up for benefits previously denied are not considered to be extra compensation earned after retirement, but shall be considered the delayed payment of benefits earned before retirement. [To the extent

~~permitted by law, the board may adjust the benefits of retired members and beneficiaries by increasing any retirement benefit that was reduced because of Section 415 of the code. If Section 415 of the code is amended to permit the payment of amounts previously precluded under Section 415 of the code, the board may adjust the benefits of retired members and beneficiaries, including the restoration of benefits previously denied. Benefits paid under this subsection are not considered as extra compensation earned after retirement but as the delayed payment of benefits earned before retirement.]~~

SECTION 12. Sections 6.02(a) and (g), Chapter 824 (S.B. 817), Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Subject to Section 6.03 of this Act and the provisions of this section, if a member or retiree receiving a disability pension under Section 5.04(a) ~~[5.03(a)]~~ of this Act dies leaving a surviving spouse or at least one dependent child, the surviving spouse and the children are entitled to receive from the fund an aggregate death benefit annuity, computed and payable from the date of the member's death. The surviving spouse may elect the annuity in an amount that is equal to ~~[either]~~:

(1) 50 percent of the member's average total salary, if the surviving spouse is the surviving spouse of a disability retiree who was awarded a disability pension before October 1, 2015; [or]

(2) 47.5 percent of the member's average total salary;



1 or

2           (3) the same percentage of the member's average total  
3 salary that the member would have been entitled to receive as a  
4 retirement annuity if the member could have retired on the date of  
5 death.

6           (g) A child who is adopted after the date of retirement of  
7 the member is not entitled to a death benefit under this Act. A  
8 child who is born after the date of retirement of the member is not  
9 entitled to a death benefit annuity under this Act unless the  
10 retiree was married to the other parent of the child on the date of  
11 retirement. A surviving spouse of a retiree whose status as a  
12 surviving spouse resulted from a marriage after the date of the  
13 retirement of the retiree is entitled to receive only the benefits,  
14 if any, provided under Subsection (g-1) of this section or Section  
15 6.08 of this Act.

16           SECTION 13. Section 6.06, Chapter 824 (S.B. 817), Acts of  
17 the 73rd Legislature, Regular Session, 1993 (Article 6243o,  
18 Vernon's Texas Civil Statutes), is amended to read as follows:

19           Sec. 6.06. COMMON-LAW MARRIAGES. Common-law marriages are  
20 not recognized under this Act and benefits may not be conferred on  
21 common-law spouses as beneficiaries unless a declaration of  
22 informal marriage was made and recorded under Sections 2.402 and  
23 2.404, Family Code, ~~[and their subsequent amendments,~~ or any  
24 successor statutes, before the member's death. The date the  
25 declaration of informal marriage is recorded is the date of  
26 marriage for the purpose of determining whether any benefit is to be  
27 awarded to a surviving common-law spouse as a beneficiary.

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1       SECTION 14.   This Act takes effect October 1, 2015.