

January 16, 2024

Via Email

Amy Cardona
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Austin, TX 78701
Email: amy.cardona@prb.texas.gov

Re: Adoption of a Pension Plan by the Dallas Police and Fire Pension System Pursuant to Tex. Rev. Civ. Stat. Ann. art. 6243a-1, Section 2.025.

Ms. Cardona:

We represent the Dallas Police and Fire Pension System (the “System”) in connection with the above-referenced matter. We understand that the Pension Review Board (the “PRB”) has informed the System and City of Dallas that the System must secure the City’s approval of any plan the System’s board adopts under Article 6243a-1, § 2.025.¹ The PRB’s reading of the relevant statutes is erroneous. The System’s board has exclusive authority to adopt a pension plan under § 2.025, and § 2.025 exclusively governs this issue; no City approval is contemplated or needed.

Overview of the Statutory Framework

In 2017, the Legislature enacted comprehensive reforms to the System’s governing statute, Article 6243a-1, resulting in sweeping benefit, contribution, and governance changes to support the System’s long-term financial future. A central issue in the legislative process was the proper role for the City and the System’s board in determining that future. The Legislature struck a balance. In § 3.01(b), for example, the Legislature gave the City’s mayor authority to appoint a majority of the System’s board. But in § 2.025 the Legislature vested the System’s board, and the board alone, with the power to adopt a pension plan before the end of 2024.

Section 2.025 provides the exclusive process to adopt the plan mandated by its terms—namely, a pension plan that complies with funding and amortization requirements and takes into consideration the independent actuary’s recommendations regarding benefit changes or contribution rates. Section 2.025 is also self-executing: Any plan the System’s board adopts pursuant to § 2.025 has the force of law upon its adoption and remains in effect unless and until the Legislature enacts a law that preempts the plan. Critically, the Legislature did not give the City

¹ A copy of this provision is attached at “Tab A.”

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any role in adopting a pension plan under § 2.025, and the Legislature assigned the PRB a reporting function: It must timely report to the Legislature any actions that the System’s board takes under the statute.

Notwithstanding the role assigned to the System’s board under § 2.025, the PRB has asserted to the System and the City that the City has an independent right to approve the plan based on an entirely separate statute—§ 802.2015 of the Government Code.² But § 802.2015 does not apply to the plan-adoption process applicable to the System under § 2.025. Section 802.2015 is a *general* provision governing a whole swath of Texas public retirement systems. It addresses when systems must jointly develop a “funding soundness restoration plan” or FSRP with an “associated governmental entity.” *See generally* Tex. Gov’t Code § 802.2015, *et seq.* Section 802.2015 makes **no** provision for adopting or amending a pension plan. Nor does it address how a plan or amendment becomes effective. Only Article 6243a-1, § 2.025 does so. That makes § 2.025 the more specific statute, thus vesting exclusive, time-limited, and expansive rule-making authority in the System’s board for just that purpose. *See, e.g., Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 901 (Tex. 2000) (recognizing the “traditional statutory construction principle that the more specific statute controls over the more general.”).

The System is confident that a court would agree the Legislature intended for § 2.025 (and that provision alone) to govern the process for adopting any plan in 2024. The FSRP process under § 802.2015 is not implicated and is indeed inconsistent with § 2.025. In the interest of fostering a collaborative dialogue about these issues with the PRB, the System provides the following statutory analysis.

Section 2.025 Controls the Adoption of a Plan in 2024; no City Approval is Required

Article 6243a-1, § 2.025 provides an exclusive, time-limited process³ for the System to adopt the statutorily mandated plan and expressly grants the System’s board rulemaking authority to adopt such a pension plan. Under the statute, “the State Pension Review Board *shall* select an independent actuary who the board *shall* hire”; “the board *shall* by rule adopt a plan”; and “the State Pension Review Board *shall* submit a report to the legislature regarding actions taken under this section.” § 2.025(a)-(c) (emphasis added). These “use[s] of the word ‘shall’ in a statute evidence[] the mandatory nature of the duty imposed.” *See, e.g., In re City of Galveston*, 622 S.W.3d 851, 857 (Tex. 2021) (quotation marks omitted).

² A copy of this provision is attached at “Tab B.”

³ Article 6243a-1, § 2.025 expires on September 1, 2025.

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This mandatory amendment process has five steps:

- *First*, before July 1, 2024, the PRB must select an “independent actuary,” and the System must hire that actuary. § 2.025(a). This has already occurred: The System engaged Cheiron pursuant to the PRB’s directive.
- *Second*, the independent actuary must submit to the System’s board and the PRB, not later than October 1, 2024, an analysis determining whether the System “meets State Pension Review Board pension funding guidelines” and “recommendations regarding changes to benefits or to member or city contribution rates.” § 2025(a)(1)–(2). Cheiron’s analysis is underway.
- *Third*, no later than November 1, 2024, “*the [System’s] board* shall by rule adopt a plan” that complies with “funding and amortization requirements” set forth in Chapter 802 of the Government Code and considers the “independent actuary’s recommendations.” § 2.025(b) (emphasis added). Upon receipt of Cheiron’s analysis, the System’s board will begin its rulemaking process in compliance with the statute.
- *Fourth*, the System’s board must provide the PRB with Cheiron’s analysis and a “summary of any rules” the board adopts. § 2.025(b-1).
- *Fifth*, no later than December 1, 2024, the PRB must “submit a report to the legislature” providing a summary of the rules the System’s board adopted along with the independent actuary’s analysis. § 2.025(c).

The plan that the System’s board adopts under this process is self-executing: “Notwithstanding any other provision” of Article 6243a-1, “a rule adopted by the board under [§ 2.025(b)] that conflicts with a provision of this article remains in effect until: (1) a law that is enacted by the legislature and becomes law preempts the rule; or (2) the board amends the rule.” § 2.025(d)(1)–(2). Stated differently, any plan the board adopts under § 2.025 has the full force of Texas law unless the Legislature makes a different law or the System’s board amends the plan it adopted. This provision says nothing about the City—and deliberately so. After all, references to the City abound throughout Article 6243a-1. *See DeWitt v. Harris Cnty.*, 904 S.W.2d 650, 653 (Tex. 1995) (employing the “familiar canon of construction” that a court presumes the Legislature intended different meanings when it uses certain language in part of the statute, but different language elsewhere).

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The Government Code’s FSRP Provisions do not Override § 2.025 or Mandate City Approval of Any Plan the System’s Board Adopts

The System acknowledges that Subchapter C of Chapter 802 of the Government Code plays a substantive role in the process under § 2.025. But the plain terms of § 2.025 sharply limit that role. Most important for present purposes, under § 2.025, there is no requirement that the System jointly develop an FSRP with the City. Instead, any plan the System’s board adopts under § 2.025 must simply “compl[y] with funding and amortization period requirements applicable to the pension system under Subchapter C, Chapter 802, Government Code.” § 2.025(b)(1). Those requirements specify that the System cannot have an expected funding period that: (1) exceeds 30 years in three consecutive years, (2) exceeds 40 years after September 1, 2025, or (3) exceeds 30 years with a funded ratio less than 65 percent after September 1, 2025. Tex. Gov. Code § 802.2015. So long as the plan that the System’s board adopts under § 2.025 meets these requirements, Chapter 802 is fully satisfied regardless whether the City approves anything.

This conclusion follows from a plain-meaning interpretation of § 2.025. The Legislature’s reference to Chapter 802 does not import every aspect of Chapter 802 into § 2.025, and certainly not the requirement to jointly develop (with the City) an FSRP. A few examples drive this point home. Start with the procedural requirement that a Chapter 802 FSRP must be “adopted at open meetings of the respective governing bodies.” § 802.2015(e)(4). An open meeting requirement is plainly not a “funding” or “amortization” requirement applicable to the System. § 2.025(b)(1); *see Funding*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“The provision or allocation of money for a specific purpose, such as for a pension plan, by putting the money into a reserve fund or investments.”); *Amortize* (“To extinguish (a debt) gradually, often by means of a sinking fund. 2. To arrange to extinguish (a debt) by gradual increments.”). Likewise, the requirements in Chapter 802 for a retirement system to develop and approve of an FSRP “jointly” with the “associated governmental entity” are not “funding” or “amortization” requirements. *See, e.g.*, Tex. Gov. Code § 802.2015(c).

To read § 2.025 as the PRB proposes would also render part of the statute’s text meaningless. The restrictive phrase “funding and amortization period requirements” specifies and limits the portions of “Subchapter C, Chapter 802, Government Code” that the System must comply with in this process. The restrictive phrase must be given meaning because “effect” must be given “to all the statute’s words without treating any language as surplusage, if possible.” *E.g., City of Austin v. Quinlan*, 669 S.W.3d 813, 821 (Tex. 2023). To read § 2.025(b)(1) as incorporating *all* of the requirements imposed on the System in Subchapter C, Chapter 802 of the Government Code would contravene the Legislature’s will expressed in the text by effectively striking language as follows: “complies with ~~funding and amortization period~~ requirements applicable to the pension system under Subchapter C, Chapter 802, Government Code.”

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The PRB's Interpretation Renders Important Parts of the Statute Meaningless

The PRB's reading of the statutory framework would give primacy to Chapter 802's inapplicable FSRP provisions and engraft a City-approval requirement found nowhere in § 2.025's plain text. This would take a wrecking ball to § 2.025's carefully crafted process that only the System's board can implement, rendering the provision a nullity. That is impermissible. *See Brazos Elec. Power Coop. v. Tex. Comm'n on Env't'l Quality*, 576 S.W.3d 374, 384 (Tex. 2019) (rejecting an interpretation that renders statutory text meaningless).

Consider the implications of the PRB's interpretation. The Legislature's time-limited (only through 2024) process assigning plan-adoption responsibility to the System's board would be wiped away in favor of a City veto. This is the precise result the Legislature rejected in 2017 when it enacted § 2.025. What is more, this interpretation would defeat the self-executing nature of § 2.025, which ensures that any plan the board adopts has the full force of law unless the Legislature or the System's board (not the City) later says otherwise. In other words, the PRB seeks to override the Legislature's policy judgments about the best way to adopt a plan and which arm of government has authority to review the board's decisions.

The System's interpretation, in contrast, ensures that § 2.025 is implemented according to the Legislature's intent and the statute's plain text, under which the board has sole responsibility to adopt a plan in 2024 consistent with Chapter 802's funding and amortization requirements. And the System's interpretation preserves the important role assigned to the FSRP process under Chapter 802 after § 2.025 expires by its terms on September 1, 2025.

Conclusion

To sum up, the process under § 2.025 permits—and indeed requires—“*the [System's] board* [to] by rule adopt a plan.”⁴ City approval is not required. The statute's text is clear; there is no mention of the City in § 2.025, and the plain language commands the System's board to act. After the System fulfills its responsibility, the PRB's role is to report on the plan to the Legislature. It is then for the Legislature (not the City) to address any changes to “preempt[]” the plan that the System's board adopted. § 2.025(d)(1).

⁴ The System's reading of § 2.025 finds further support in legislative history. For example, one of the committee reports in the customary section that highlights where a bill assigns rulemaking authority explained: “Rulemaking authority is expressly granted to the board of trustees (board) in . . . Section 2.025.” Tex. Com. Rpt., 2017 Tex. H.B. No. 3158 (May 28, 2017); *see also* Art. 6243a-1, § 2.01(12) (“‘Board’ means the board of trustees created under Section 3.01 of this article for the purpose of administering the pension system.”). This is evidence that the Legislature was giving rulemaking authority to the System's board for the plan that Section 2.025 contemplates.

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Based on a plain reading of the statutes, the System's board is charged with adopting a plan that complies with § 2.025 and an FSRP under § 802.2015 is completely unnecessary. This is the precise result the Legislature envisioned when it adopted § 2.025. The reason is straightforward and obvious: After adopting a plan that complies with § 2.025, by definition, there will be no funding or amortization problems to solve under § 802.2015's FSRP regime.

The System—as it has publicly stated numerous times in recent months—remains committed to forging a consensus with the City on the best path forward for the System's thousands of dedicated beneficiaries. This is entirely consistent with § 2.025. After all, the board must adopt a plan before the 2025 legislative session begins, and the Legislature, as is its prerogative, reserves the right to preempt any plan the board adopts. It is therefore incumbent upon all stakeholders—the City, the System, and its beneficiaries—to remain focused on using all available resources to develop a mutually agreeable plan.

The System welcomes further dialogue on these and other issues relating to its upcoming obligations under Article 6243a-1. The System proposes that the parties set up a conference call in the next week to discuss their respective views of their statutory responsibilities to ensure an efficient and legally proper process under the statute.

Sincerely,



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cc: Tamara Aronstein (via email @ tamara.aronstein@prb.texas.gov)

Tab A

Vernon's Texas Statutes and Codes Annotated
Civil Statutes (Titles 78 to 111) (Refs & Annos)
Title 109. Pensions (Refs & Annos)
2. City Pensions

Vernon's Ann.Texas Civ.St. Art. 6243a-1

Art. 6243a-1. Pension system for police officers and firefighters in certain cities

Effective: September 1, 2023

[Currentness](#)

PART 1. PURPOSE

Amendment, Restatement, and Consolidation

Sec. 1.01. (a) The purpose of this article is to restate and amend the provisions of a former law governing the pension funds for police officers and fire fighters in certain municipalities (Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933, also known as [Article 6243a](#)) having previously been amended and restated to permit the consolidation of the terms of certain pension plans created under Sections 1, 11A, and 11B of that Act for the purpose of simply and accurately reflecting the joint administration of the plans.

(b) This article does not take away or reduce any accrued benefit contained in the plans created under former Article 6243a or under this article as it existed on or before August 31, 2017.

PART 2. GENERAL PROVISIONS

Definitions

Sec. 2.01. In this article:

(1) “415 compensation” means a member's wages, salary, and other amounts received for personal services rendered in the course of employment with the city during a limitation year and permitted to be treated as compensation for purposes of Section 415(c) of the code, including differential wage payments described in Section 414(u)(12) of the code. The term does not include amounts picked up under Section 4.03(i) of this article.

(2) “Active service” means any period that a member receives compensation as a police officer or fire fighter from either department for services rendered.

(3) “Actuarial equivalent” means a form of benefit differing in time, duration, or manner of payment from a standard benefit payable under this article but having the same value when computed using the assumptions set forth in this article.

(4) “Alternate payee” has the meaning given the term by Section 414(p) of the code or any successor provision.

(5) “Alternative investment” means an investment in an asset other than a traditional asset. The term includes an investment in private equity funds, private real estate transactions, hedge funds, and infrastructure.

(6) “Annual additions” means the sum of the following amounts credited to a member's account under any defined contribution plan maintained by the city for the limitation year:

(A) city contributions;

(B) member contributions, other than rollover contributions from a plan maintained by any employer other than the city;

(C) forfeitures; and

(D) amounts allocated after March 31, 1984, to an individual medical benefit account, as defined in Section 415(l)(2) of the code, that is part of a pension or annuity plan maintained by the city.

For any limitation year beginning before January 1, 1987, only that portion of member contributions equal to the lesser of member contributions in excess of six percent of 415 compensation or one-half of member contributions to the combined pension plan or any qualified defined contribution plan maintained by the city is treated as annual additions.

(7) “Annual benefit” means the aggregate benefit attributable to city and member contributions payable annually under the combined pension plan, or any plan maintained by the city, exclusive of any benefit not required to be considered for purposes of applying the limitations of Section 415 of the code to the combined pension plan, payable in the form of a straight life annuity beginning at age 62 with no ancillary benefits. Solely for purposes of computing the limitations under the combined pension plan, benefits actually payable to a pensioner are adjusted to the actuarial equivalent of a straight life annuity pursuant to Section 415(b) of the code even though no member may actually receive a benefit in the form of a straight life annuity.

(8) “[Article 6243a](#)” means Chapter 4, Acts of the 43rd Legislature, 1st Called Session, 1933 (former Article 6243a, Vernon's Texas Civil Statutes), pertaining to a pension system for police officers, fire fighters, and fire alarm operators in certain cities.

(9) “Assignment pay” means monthly pay, in addition to salary, granted to a Group B member and authorized by the city council for the performance of certain enumerated duty assignments.

(10) “Base pay” means the maximum monthly civil service pay from time to time established by the city for a person who holds the rank of “police officer” in the city's police department or the rank of “fire and rescue officer” in the city's fire department, exclusive of any other form of compensation. The term does not include compensation paid by the city to a person for prior periods of service or compensation that otherwise constitutes back pay unless the compensation is eligible back pay. The board may adopt rules and procedures necessary to include eligible back pay as base pay for purposes of this definition, including rules regarding how increases in benefits will be determined and administered.

(11) “Base pension” means the amount of retirement, death, or disability benefits as determined at the earliest of the time a Group B member and, solely for the purposes of Section 6.12 of this article, a Group A member:

(A) begins participation in DROP;

(B) leaves or left active service;

(C) dies; or

(D) becomes entitled to a disability pension under the combined pension plan.

Solely for purposes of this definition, when a member becomes entitled to a disability pension, the base pension shall be determined as of the date on which the disability pension begins.

(12) “Board” means the board of trustees created under Section 3.01 of this article for the purpose of administering the pension system.

(13) “Child” means a person whose parent, as recognized under the laws of this state, is a primary party.

(14) “City” means each municipality having a population of more than 1.18 million and located predominantly in a county that has a total area of less than 1,000 square miles.

(15) “City attorney” means the chief legal officer of a city.

(16) “City council” means the governing body of the city.

(17) “City manager” means the city manager of a city or the city manager's designee and includes, to the extent of any designation, an interim or acting city manager, chief financial officer, budget director, or assistant city manager. If a city does not have an individual serving in a position otherwise described by this subdivision, “city manager” means the mayor of that city.

(18) “City service incentive pay” means annual incentive pay, adjusted by the city from time to time, in addition to the salary of a member granted to the member under the authority of the city charter and received by the member during active service.

(19) “Code” means the United States Internal Revenue Code of 1986, as amended.

(20) “Combined pension plan” means any pension plan created pursuant to this article before September 1, 2017.

(21) “Computation pay” shall be used in determining the amount of the city's contribution under Section 4.02(d) of this article and a Group B member's contribution under Section 4.03(d) of this article and in determining the base pension to be paid to a Group B member or the benefits to be paid to the member's qualified survivors and means the sum of the following:

(A) the biweekly rate of pay of a member for the highest civil service rank the person holds, from time to time, as a result of a competitive examination; plus

(B) the educational incentive pay of a member, computed on a biweekly basis; plus

(C) the longevity pay of a member, as authorized by the legislature, computed on a biweekly basis; plus

(D) the city service incentive pay, computed on a biweekly basis, of a member.

The term includes only amounts actually paid in salary or payments made instead of salary to the member and member contributions picked up by the city, and does not include any imputed pay. Furthermore, any compensation received by a member, other than that noted in Paragraphs (A)-(D) of this subdivision (for example, compensation for overtime work, certification pay, and the pay a member would receive from the city in the form of assignment pay), will not be considered in determining the computation pay of a member. Any lump-sum payments for compensatory time, unused sick leave, unused vacation time, or city service incentive pay payable after a member leaves active service, dies, becomes disabled, or resigns, or after any other type of termination may not be considered in determining the computation pay of any member. Computation pay for a member for any given period is determined on the biweekly rates of pay due the member for the entire period. The term does not include compensation paid by the city to a person for prior periods of service or compensation that otherwise constitutes back pay unless the compensation is eligible back pay. The board may adopt rules and procedures necessary to include eligible back pay as computation pay for purposes of this definition, including rules regarding how increases in benefits will be determined and administered.

(22) "Department" means either the police department of the city, the fire department of the city, or both the police and fire departments of the city together.

(23) "Dependent parent" means a natural parent or parent who adopted a primary party and who immediately before the death of a primary party received over half of the parent's financial support from the primary party.

(24) "Disability retirement" means any period that a pensioner receives periodic disability compensation or a disability pension.

(25) "DROP" means the deferred retirement option plan established in accordance with Section 6.14 of this article.

(26) "Educational incentive pay" means incentive pay designed to reward completion of certain hours of college credit, adjusted by the city from time to time, that is paid to a member in addition to the member's salary.

(27) "Eligible back pay," except as otherwise provided by this definition, means additional compensation paid by the city to a member or pensioner:

(A) that constitutes back pay to the member's or pensioner's prior period of service and is otherwise considered taxable wages paid by the city to the member or pensioner for federal income tax purposes; and

(B) for which the pension system receives:

(i) an amount equal to the aggregate member and city contributions that the pension system would have collected with respect to the compensation for all time periods relating to the back pay compensation; and

(ii) interest, calculated using the pension system's actuarial rate of return assumptions in effect for the periods relating to the back pay, compounded annually, on the contribution amounts for the period from the date that the contributions would have been received if the back pay compensation had been paid during the relevant periods of prior service through the date the amount relating to the contributions for back pay is actually received by the pension system.

The term does not include any additional compensation paid by the city to a member or pensioner wholly or partly or directly or indirectly as the result of litigation instituted to recover back pay.

The pension system is not obligated to collect the additional contributions or interest described in Paragraph (B) of this subdivision from the member, pensioner, or city. The pension system may not recognize back pay as eligible back pay until the contributions and interest described in Paragraph (B) of this subdivision have been received.

(28) "Executive director" means the person designated by the board to supervise the operation of the pension system.

(29) "Fund" means all funds and property held to provide benefits to all persons who are or who may become entitled to any benefits under any plan within the pension system, together with all income, profits, or other increments.

(30) "Group A member" means any police officer or fire fighter included in Group A membership under Section 5.01(a)(1) of this article.

(31) "Group B member" means any police officer or fire fighter included in Group B membership under Section 5.01(a)(2) of this article.

(32) "Health director" means any qualified physician designated from time to time by the board.

(33) "Limitation year" means the plan year of the combined pension plan and any defined benefit plan or defined contribution plan of the city in which a member participates.

(34) "Longevity pay" means pay in addition to the salary of a member granted under [Section 141.032, Local Government Code](#), for each year of active service completed by a member in either department.

(35) "Member" means both Group A and Group B members.

(36) "Member's account" means an account established and maintained for a member with respect to the member's total interest in one or more defined contribution plans under this article or maintained by the city resulting in annual additions.

- (37) “Nominations committee” means the nominations committee established under Section 3.011 of this article.
- (38) “Old plan” means any pension plan created pursuant to [Section 1 of Article 6243a](#).
- (39) “Pensioner,” “Group A pensioner,” or “Group B pensioner” means a former member of the pension system who is on either a service or disability retirement.
- (40) “Pension service” means the time, in years, and prorated for fractional years, that a member has contributed to the fund under the terms of the combined pension plan or any plan within the pension system, reduced to reflect refunds that have been received and not fully repaid.
- (41) “Pension system” means the fund and any plans created pursuant to this article or [Article 6243a](#) and that are intended to be qualified under Section 401(a) of the code.
- (42) “Plan A” means any plan created pursuant to [Section 11A of Article 6243a](#).
- (43) “Plan B” means any plan created pursuant to [Section 11B of Article 6243a](#).
- (44) “Police officer” or “fire fighter” means, as appropriate, a police officer, fire fighter, fire and rescue officer, fire alarm operator, fire inspector, apprentice police officer, apprentice fire fighter, or similar employee of either department as defined in the classifications of the human resources department of the city.
- (45) “Primary party,” “Group B primary party,” or “Group A primary party” means a member or pensioner.
- (46) “Qualified actuary” means either:
- (A) an individual who is a Fellow of the Society of Actuaries, a Fellow of the Conference of Consulting Actuaries, or a member of the American Academy of Actuaries; or
- (B) a firm that employs one or more persons who are Fellows of the Society of Actuaries, Fellows of the Conference of Consulting Actuaries, or members of the American Academy of Actuaries and are providing services to the pension system.
- (47) “Qualified domestic relations order” has the meaning provided by Section 414(p) of the code.
- (48) “Qualified survivor” means a person who is eligible to receive death benefits after the death of a primary party and includes only:

(A) a surviving spouse, if the spouse was continuously married to the primary party from the date when the primary party either voluntarily or involuntarily left active service as a member through the date of the primary party's death;

(B) all surviving, unmarried children who are either under 19 years of age or have a disability, as determined by the board under Section 6.06(o-2) of this article, and who were:

(i) born or adopted before the primary party either voluntarily or involuntarily left active service; or

(ii) born after the primary party left active service if the mother was pregnant with the child before the primary party left active service; and

(C) a surviving dependent parent of a primary party if the primary party is not survived by a spouse or child eligible for benefits.

(49) "Service retirement" means any period that a pensioner receives a retirement pension but does not include any period of disability retirement.

(50) "Spouse" means the person to whom a primary party is legally married under the laws of this state or any other state.

(51) "Traditional asset" includes stocks, bonds, and cash.

(52) "Trustee" means a member of the board.

(53) "Two-thirds vote," in reference to a vote of all the trustees, means a vote of 8 of the 11 trustees of the board.

Actuarial assumptions

Sec. 2.02. (a) If the amount of any benefit or contribution is to be determined on the basis of actuarial assumptions that are not otherwise specifically set forth for that purpose in this article, the actuarial assumptions to be used are those earnings and mortality assumptions being used on the date of the determination by the pension system's qualified actuary and approved by the board.

(b) The actuarial assumptions being used at any particular time shall be attached by the executive director as an addendum to this article and treated for all purposes as a part of any plan created by this article. The executive director shall promptly update any addendum to conform to any changed actuarial assumptions approved by the board.

(c) The actuarial assumptions may be changed by the pension system's qualified actuary at any time if approved by the board, but no such change in actuarial assumptions may result in any decrease in benefits accrued as of the effective date of the change.

<Text of Sec. 2.025 expires pursuant to (e)>

Independent actuarial analysis and legislative recommendations

Sec. 2.025. (a) Before July 1, 2024, the State Pension Review Board shall select an independent actuary who the board shall hire to perform an actuarial analysis of the most recently completed actuarial valuation of the pension system. The independent actuary shall submit the analysis to the State Pension Review Board and the board not later than October 1, 2024. The analysis must include the independent actuary's:

(1) conclusion regarding whether the pension system meets State Pension Review Board pension funding guidelines; and

(2) recommendations regarding changes to benefits or to member or city contribution rates.

(b) Subject to Subsection (d) of this section, not later than November 1, 2024, the board shall by rule adopt a plan that:

(1) complies with funding and amortization period requirements applicable to the pension system under Subchapter C, Chapter 802, Government Code; and

(2) takes into consideration the independent actuary's recommendations under Subsection (a)(2) of this section.

(b-1) The board shall provide a copy of the analysis prepared under Subsection (a) of this section and a summary of any rules adopted by the board under Subsection (b) of this section to the State Pension Review Board.

(c) Not later than December 1, 2024, the State Pension Review Board shall submit a report to the legislature regarding actions taken under this section. The report required under this section must include a copy of the analysis prepared under Subsection (a) of this section and a summary of rules adopted by the board under Subsection (b) of this section.

(d) Notwithstanding any other provision of this article, a rule adopted by the board under Subsection (b) of this section that conflicts with a provision of this article remains in effect until:

(1) a law that is enacted by the legislature and becomes law preempts the rule; or

(2) the board amends the rule and the amendment takes effect, provided the board may only amend the rule if the pension system complies with the funding and amortization period requirements applicable to the pension system under Subchapter C, Chapter 802, Government Code.

(e) This section expires September 1, 2025.

References to certain law

Sec. 2.03. A reference to a statute made in this article includes a reference to any regulation, rule, order, or notice made by a governmental entity with the authority under law to adopt the regulation, rule, order, or notice, and on which the governmental entity intends persons to rely, as appropriate.

PART 3. ADMINISTRATION

Board of trustees

Sec. 3.01. (a) The pension system shall be administered by the board. The board shall execute its fiduciary duty to hold and administer the assets of the fund for the exclusive benefit of members and their beneficiaries under [Section 802.203, Government Code, Section 67\(f\), Article XVI, Texas Constitution](#), and any other applicable law, in a manner that ensures the sustainability of the pension system for purposes of providing current and future benefits to members and their beneficiaries.

(b) Subject to Subsections (b-1) and (b-2) of this section, the board consists of 11 trustees who shall be selected and shall serve as follows:

(1) six trustees appointed by the mayor, in consultation with the city council;

(2) three trustees elected under rules adopted by the board by the members and pensioners of the pension system from a slate of nominees, in a number determined under the rules, selected and vetted by the nominations committee;

(3) subject to Subsection (b-3) of this section, one trustee who is a current or former police officer of the city nominated and elected by members of the pension system under rules adopted by the board; and

(4) subject to Subsection (b-3) of this section, one trustee who is a current or former fire fighter of the city nominated and elected by members of the pension system under rules adopted by the board.

(b-1) To be appointed or elected a trustee under this section, a person:

(1) must have demonstrated financial, accounting, business, investment, budgeting, real estate, or actuarial expertise; and

(2) may not be an elected official of the city.

(b-2) To be appointed or elected a trustee under Subsection (b)(1) or (2) of this section a person may not be an active member or pensioner.

(b-3) If the board determines that it is not possible to nominate or elect a trustee under Subsection (b)(3) or (4) of this section who meets the requirements of Subsection (b-1) of this section, the board shall notify the nominations committee and the nominations committee shall select, vet, and nominate a slate of persons, the number of which is determined by board rule, who meet the requirements of Subsection (b-1) of this section, and the members of the pension system shall elect a trustee from the slate of nominees to represent the interests of police officers or fire fighters, as appropriate, of the city on the board. The nomination

and election of a trustee under this subsection may be made without regard to whether the trustee is qualified under Subsection (b)(3) or (4), as applicable, of this section.

(b-4) A trustee is not required to reside in a particular city or county of this state.

(c) Repealed by [Acts 2017, 85th Leg., ch. 318](#) (H. B. 3158), § 1.52(1).

(d) A vacancy on the board in a trustee position under Subsection (b)(1) or (2) of this section shall be filled in the same manner as the original appointment, or election. The board by rule shall determine the manner by which a vacancy in a trustee position under Subsection (b)(3) or (4) of this section is filled.

(e) The mayor shall determine whether all trustees appointed under Subsection (b)(1) of this section hold office for staggered two-year terms or staggered three-year terms. The nominations committee shall determine whether all trustees elected under Subsection (b)(2), (3), or (4) of this section hold office for staggered two-year terms or staggered three-year terms. A trustee appointed or elected, as applicable, under Subsection (b)(1) or (2) of this section may not serve for more than six consecutive years on the board.

(f) The election of the trustees under Subsection (b)(2), (3), or (4) of this section, including an election under Subsection (b-3) of this section to fill a trustee position under Subsection (b)(3) or (4) of this section, shall be held under the supervision of the board, and the board shall adopt such rules governing the election procedure as it considers appropriate, as long as the rules are consistent with generally accepted principles of secret ballot and majority rule. The rules adopted by the board shall be recorded in the minutes of the board and made available to the members of any pension plan within the pension system.

(g) The board shall, in June of each odd-numbered year, elect from among its trustees a chairman, vice chairman, and a deputy vice chairman, each to serve for two-year terms. In addition, the board may elect, if it so chooses, a second deputy vice chairman to serve during the term of the incumbent chairman. The vice chairman shall be authorized to act in the place of the chairman in all matters pertaining to the board. In the absence of both the chairman and the vice chairman, the deputy vice chairman shall be authorized to act. In the absence of the chairman, vice chairman, and deputy vice chairman, the duties shall fall to the second deputy vice chairman.

(h) The executive director, or in the executive director's absence a member of the administrative staff designated by the board, shall serve as the secretary of the board.

(i) The board shall serve without separate compensation from the fund, but a trustee is entitled to reimbursement for travel expenses and, if applicable, to any appropriate compensation from the city as if the trustee were performing the trustee's regular functions for the police or fire department or for the city. The board shall meet not less than once each month and may meet at any time on the call of its chairman.

(j) The board has full power to make rules pertaining to the conduct of its meetings and to the operation of the pension system as long as its rules are not, subject to Subsections (j-1) and (j-2) of this section, inconsistent with the terms of this article, any pension plan within the pension system, or the laws of this state or the United States to the extent applicable. A board meeting may be held by telephone conference call or by videoconference call in accordance with [Sections 551.125 and 551.127, Government Code](#), except that [Section 551.125\(b\), Government Code](#), does not apply.

(j-1) Subject to Subsection (o)(2) of this section, the board may adopt a rule that conflicts with this article:

(1) to ensure compliance with the code, including Section 415 of the code, and other applicable federal law;

(2) subject to Subsections (j-5) through (j-8) of this section, to amortize the unfunded actuarial accrued liability of the pension system within a period that does not exceed 35 years, if the board determines the rule is appropriate based on the evaluations required under Subsection (j-5) of this section; or

(3) subject to Subsections (j-6) and (j-7) of this section and notwithstanding any other law, to increase the benefits provided under this article in any manner the board determines appropriate if the increase will not cause the amortization period of the unfunded actuarial accrued liability of the pension system to exceed 25 years, after taking into account the impact of the increase.

(j-2) Except as provided by Subsection (j-1) of this section or Section 4.02(b) of this article, a provision of any plan provided by the pension system may only be amended if approved by the board. An amendment described by this subsection:

(1) may not cause the amortization period of the unfunded actuarial accrued liability of the pension system to exceed 35 years, after taking into account the impact of the amendment, as determined by the board and reviewed by the State Pension Review Board; and

(2) is not required to be ratified by the legislature.

(j-3) The board may correct any defect, supply any omission, and reconcile any inconsistency that may appear in this article in a manner and to the extent that the board believes would:

(1) be expedient for the administration of the pension system;

(2) be for the greatest benefit of all members, pensioners, and qualified survivors; and

(3) not adversely affect the benefits of a member, pensioner, or qualified survivor.

(j-4) The board has full discretion and authority to construe and interpret the combined pension plan and to do all acts necessary to carry out the purpose of the combined pension plan. A decision of the board is final and binding on all affected parties.

(j-5) Not later than January 1, 2018, the board shall conduct an evaluation of:

(1) how benefits are computed under this article to identify potential means of abusing the computation of benefits to inflate pension benefits received by pensioners; and

(2) the impact, including the impact on the combined pension plan, of establishing one or more alternative benefit plans, including a defined contribution plan or a hybrid retirement plan that combines elements of both a defined benefit plan and a defined contribution plan, for newly hired employees of the city and for members who voluntarily elect to transfer to an alternative benefit plan.

(j-6) The board may not adopt a rule under Subsection (j-1)(2) or (3) of this section unless the rule has first been reviewed by the State Pension Review Board and the State Pension Review Board finds that implementation of a rule under:

(1) Subsection (j-1)(2) of this section complies with the amortization period prescribed by that subdivision and Subsection (j-8) of this section; or

(2) Subsection (j-1)(3) of this section complies with the amortization period prescribed by that subdivision.

(j-7) The board shall provide the State Pension Review Board with a copy of a proposed rule for purposes of Subsection (j-6) of this section at least 90 days before the date the board intends to implement the rule.

(j-8) The board may not adopt a rule under Subsection (j-1)(2) of this section based on an evaluation under Subsection (j-5)(2) of this section if the board determines implementation of the rule would cause the amortization period of the unfunded actuarial accrued liability of the combined pension plan or any plan established under this article by the pension system to exceed 35 years, after taking into account implementation of the rule.

(j-9) At least twice each year, the board shall have a meeting to receive public input regarding the pension system and to inform the public about the health and performance of the pension system. The State Pension Review Board is entitled to all documents and other information provided to the public or that are the basis for information provided to the public, as determined by the State Pension Review Board, for purposes of this subsection and shall independently review the information to ensure its validity.

(j-10) An employee or other agent acting on behalf of the pension system or the city must certify to the State Pension Review Board that any information provided by the pension system or city, as appropriate, under this article or other law is accurate and based on realistic assumptions.

(k) The board has full power, through the chairman, to issue process for witnesses and to administer oaths to witnesses and examine witnesses as to any matter affecting retirement, disability, or death benefits under any pension plan within the pension system, and to compel witnesses to testify. In addition, the board may request investigative services from either department in connection with any matter before the board.

(l) The board has the responsibility for the administration of the pension system and shall order payment from the fund in accordance with the terms of the appropriate plans within the pension system. Money from the fund may not be paid except on order of the board.

(m) The board has full power to invest the assets of the fund in accordance with Section 4.07 of this article.

(n) Six trustees of the board constitute a quorum at any meeting.

(o) No action may be taken by the board except at a meeting. Except as otherwise specifically provided by this article or other law:

(1) no action shall be taken during a board meeting without the approval of a majority of the trustees of the board; and

(2) no action otherwise authorized by this article or other law may be taken that establishes an alternative benefit plan, reduces the city contribution rate, increases the member contribution rate, or reduces benefits, including accrued benefits, without the approval of at least a two-thirds vote of all the trustees of the board.

(o-1) Only actions of the board taken or approved of during a meeting are binding on the board, and no other written or oral statement or representation made by any person is binding on the board or the pension system.

(p) The board may file suit on behalf of the pension system in a court of competent jurisdiction regardless of the court's location. The board has sole authority to litigate matters on behalf of the pension system. Notwithstanding Chapter 15, Civil Practice and Remedies Code, or any other law, an action against the pension system or the board shall be brought in a court of competent jurisdiction located in the city or county in which the pension system is located.

(q) The board may purchase from one or more insurers one or more insurance policies that provide for the reimbursement of a trustee or employee of the pension system for liability imposed as damages caused by, and for costs and expenses incurred by the individual in defense of, an alleged act, error, or omission committed by the individual in the individual's capacity as a fiduciary or employee of the pension system. The board may not purchase an insurance policy that provides for the reimbursement of a trustee or employee of the pension system due to the trustee's or employee's dishonesty, fraudulent breach of trust, lack of good faith, intentional fraud or deception, or intentional failure to act prudently.

(r) The board shall adopt a code or codes of ethics consistent with [Section 825.212, Government Code](#). In adopting or amending a code or codes of ethics, the board may consider comments on the policy from the city attorney of the city. The board shall:

(1) review the code or codes of ethics on an annual basis and amend the code or codes as the board considers necessary;

(2) file a copy of the code or codes of ethics adopted or amended in accordance with this subsection with the State Pension Review Board; and

(3) provide a copy of the code or codes of ethics adopted or amended in accordance with this subsection to the city attorney.

(s) The board shall develop an Internet website designed to give active members and pensioners access to the information concerning the pension system and the individual's participation in the pension system required by [Section 802.106, Government Code](#), as well as information concerning the financial health of the pension system.

Nominations committee

Sec. 3.011. (a) Subject to Subsection (b) of this section, the nominations committee consists of:

(1) the executive director, who is a nonvoting member; and

(2) the president, chair, or other executive head of the following organizations or their successor organizations, or that person's designee:

(A) the Dallas Black Firefighters Association;

(B) the Black Police Association of Greater Dallas;

(C) the National Latino Law Enforcement Organization;

(D) the Dallas Fraternal Order Police Lodge 588;

(E) the Dallas Police Association;

(F) the Dallas Fire Fighters Association, International Association of Fire Fighters Local No. 58;

(G) the Dallas Hispanic Firefighters Association, Inc.;

(H) the Dallas Police Retired Officers Association;

(I) the Dallas Retired Firefighters Association;

(J) the Retired Black Firefighters Association of Dallas; and

(K) the Dallas Hispanic Retired Fire Fighters Association.

(b) If an organization described by Subsection (a)(2) of this section elects not to participate on the nominations committee, is prohibited from participating on the nominations committee under Subsection (g) of this section, or ceases to exist, the nominations committee members appointed under that subsection consist only of representatives of the remaining organizations, if any.

(c) The executive director shall serve as presiding officer of the nominations committee.

- (d) The nominations committee shall meet at the call of the presiding officer.
- (e) The nominations committee shall nominate trustees to the board in accordance with Sections 3.01(b)(2) and (b-3) of this article.
- (f) A person serving on the nominations committee under Subsection (a)(2) of this section serves without compensation and may not be reimbursed for travel or other expenses incurred while conducting the business of the nominations committee. The executive director may not receive additional compensation for service on the nominations committee.
- (g) An organization described by Subsection (a)(2) of this section may not participate on the nominations committee unless the organization is in good standing with the secretary of state, if applicable.
- (h) Chapter 2110, Government Code, does not apply to the nominations committee.
- (i) The nominations committee may establish policies and procedures governing its operations.

Removal of trustees

Sec. 3.012. (a) In accordance with procedures adopted by board rule, a trustee:

- (1) appointed under Section 3.01(b)(1) of this article may be removed by the mayor for cause; and
- (2) elected under Section 3.01(b)(2), (3), or (4) of this article may be removed by the nominations committee for cause.

(b) It is a cause for removal of a trustee from the board that the trustee:

- (1) does not have at the time of taking office the qualifications required by Section 3.01(b) or (b-1)(1) of this article, subject to Subsection (b-3) of that section;
- (2) does not maintain during service on the board the qualifications required by Section 3.01(b) or (b-1)(1) of this article, subject to Subsection (b-3) of that section;
- (3) is ineligible for membership under Section 3.01(b-1)(2) or (b-2) of this article; or
- (4) is absent from more than 40 percent of the meetings that the trustee is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(c) The validity of an action of the board is not affected by the fact that it is taken when a cause for removal of a trustee exists.

(d) If the executive director has knowledge that a potential cause for removal exists, the executive director shall notify the chairman of the board of the potential cause. The chairman shall then notify the mayor or nominations committee, as appropriate, that a potential cause for removal exists. If the potential cause for removal involves the chairman, the executive director shall notify the vice chairman or next highest ranking officer of the board, who shall then notify the mayor or nominations committee, as appropriate, that a potential cause for removal exists.

Trustee training

Sec. 3.013. (a) A person who is appointed or elected to the board and qualifies for office as a trustee shall complete a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing the pension system's operations;

(2) the programs, functions, rules, and budget of the pension system;

(3) the scope of and limitations on the rulemaking authority of the board;

(4) the results of the most recent formal audit of the pension system;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B) other laws applicable to a trustee in performing the trustee's duties, including the board's fiduciary duties described under Section 3.01(a) of this article;

(6) the code or codes of ethics adopted under Section 3.01(r) of this article and any applicable ethics policies adopted by the Texas Ethics Commission; and

(7) financial training regarding the risks of investing in alternative investments.

(c) The executive director shall create a training manual that includes the information required by Subsection (b) of this section. The executive director shall distribute a copy of the training manual annually to each trustee. On receipt of the training manual, each trustee shall sign and submit to the executive director a statement acknowledging receipt of the training manual.

Professional consultants

Sec. 3.02. In addition to the authority of the board to employ the services of certain consultants set forth in this article, the board has the authority to employ the services of any professional consultant recommended by the executive director, including investment advisors and investment managers, whenever the services of the consultants are considered necessary or desirable and in the best interests of the pension system, as determined by the board in consultation with the executive director. A professional consultant shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

Chief investment officer

Sec. 3.025. The executive director may hire a chief investment officer, subject to confirmation by the board, to assist the pension system regarding the investment of assets of the fund. Compensation for a chief investment officer hired under this section shall be made in accordance with Section 4.01 of this article.

Legal advisor

Sec. 3.03. (a) The city attorney of the city may ex officio be the legal advisor to the board.

(b) Subject to Subsection (b-1) of this section, the city attorney or an assistant city attorney may attend board meetings and may advise the board on any matter on which the pension system requests a legal opinion from the city attorney.

(b-1) The city attorney or an assistant city attorney is not required to provide an opinion under Subsection (b) of this section unless the opinion is requested by the city council on behalf of the pension system. The city attorney or assistant city attorney may decline to provide the opinion if the subject matter of the request is too dependent on disputed facts to permit a generalized opinion, as determined by the city attorney or assistant city attorney.

(c) The board may retain other attorneys to serve as legal advisors to the board. The executive director may hire a chief legal officer, subject to confirmation by the board, or other attorneys if necessary to carry out the business of the pension system. Compensation for a chief legal officer or other attorneys hired under this subsection shall be made in accordance with Section 4.01 of this article.

Appointment of executive director

Sec. 3.04. (a) The board has the authority to appoint an executive director to assist the board with administering the pension system and ensure that records are kept of the proceedings of the board. Subject to Subsection (a-1) of this section, a person appointed executive director under this section:

(1) must have, to the extent possible, relevant experience in managing a similarly situated business entity; and

(2) may not be a current or former trustee.

(a-1) During any period in which the most recent actuarial valuation of the pension system indicates that the period needed to amortize the unfunded actuarial accrued liability of the pension system exceeds 35 years, the board shall, to the extent lapsed investments are a significant portion of the pension system's assets, ensure that the executive director appointed under Subsection

(a) of this section has, or hires staff that has, appropriate experience in managing a business entity with lapsed investments in a manner that resulted in the improved liquidity or profitability of the business entity.

(b) Subject to Subsections (b-1) and (b-3) of this section, the executive director may select any number of persons the executive director determines appropriate to assist the executive director in carrying out the executive director's duties under this section. Subject to Section 4.01 of this article, the titles and salaries of persons selected to assist the executive director shall be determined by the executive director.

(b-1) The executive director may not select a person to assist the executive director who is an active, former, or retired police officer or fire fighter of the city.

(b-2) The executive director shall establish the organizational structure of pension system employees to optimize administration of the pension system.

(b-3) A former or retired employee of the city may not before the second anniversary of the first day of the month following the date the person terminated employment with the city serve the pension system in any capacity other than as a trustee. Except as specifically provided by this article, including Section 3.01(b)(3) or (4) of this article, or other law, an employee of the city may not serve the pension system in any capacity.

(c) The executive director and those persons selected to assist the executive director may be considered employees of the city. Unless otherwise delegated to the executive director, the board shall have the ultimate authority to retain, discipline, or terminate the engagement of the executive director.

(d) If acting in the executive director's own discretion, the executive director owes a fiduciary duty to the pension system and shall ensure the sustainability of the pension system for the purpose of providing current and future benefits to members of the pension system and their beneficiaries. If the executive director is acting at the direction of the board and not exercising the executive director's own discretion, the executive director does not owe a fiduciary duty under this subsection.

PART 4. FINANCES

Payment of Administrative and Professional Services Fees

Sec. 4.01. (a) The board shall pay for all costs of administration out of the income from the fund when in the judgment of the board the costs are necessary, including the cost of:

- (1) salaries and benefits for the executive director and administrative staff;
- (2) office expenses;
- (3) expenses associated with securing adequate office space and associated utilities;

(4) compensation for professional consultants, professional investment managers, or other persons providing professional services; and

(5) any other expenses approved by the board.

(b) Repealed by [Acts 2017, 85th Leg., ch. 318](#) (H.B. 3158), § 1.52(2).

(c) No expenditure for the costs of administration, including the payment of any fee for professional consultants, professional investment management services, or any other person providing professional services, may be made from the fund without the approval of the board.

(d) After the board has developed an annual budget for the pension system, the budget shall be presented to the city manager for comment. The city manager may request the board to reconsider the appropriation for any expenditure at a board meeting, but the board shall make the final determination concerning any appropriation.

Use of public funds

Sec. 4.02. (a) The financial share of the cost of the pension system to be paid out of the public treasury shall be as provided by this section.

(b) Funds contributed by the city as its share of the amount required to finance the payment of benefits under the pension system may be used for no other purpose. The city is not responsible for the payment of any administrative or professional service fees of the pension system. Any change to the contributions required to be made to the pension system by the city may only be made:

(1) by the legislature;

(2) by a majority vote of the voters of the city; or

(3) in accordance with a written agreement entered into between the pension system, by at least a two-thirds vote of all trustees of the board, and the city, provided that a change made in accordance with this subdivision may not increase the period required to amortize the unfunded actuarial accrued liability of the fund.

(c) Funds shall be appropriated by the city to carry out various other provisions contained in this article that authorize expenditures in connection with the administration of the pension system.

(d) Subject to Section 4.025 of this article, the city shall make contributions to the pension system biweekly in an amount equal to the sum of:

(1) the greater of:

(A) 34.5 percent of the aggregate computation pay paid to members during the period for which the contribution is made; or

(B) the applicable amount set forth below:

(i) \$5,173,000 for the biweekly pay periods beginning with the first biweekly pay period that begins after September 1, 2017, and ends on the last day of the first biweekly pay period that ends after December 31, 2017;

(ii) \$5,344,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (i) of this paragraph;

(iii) \$5,571,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (ii) of this paragraph;

(iv) \$5,724,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (iii) of this paragraph;

(v) \$5,882,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (iv) of this paragraph;

(vi) \$6,043,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (v) of this paragraph;

(vii) \$5,812,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (vi) of this paragraph;

(viii) \$6,024,000 for the 26 biweekly pay periods immediately following the last biweekly pay period described by Subparagraph (vii) of this paragraph through the biweekly pay period that ends after December 31, 2024; and

(ix) \$0 for each subsequent biweekly pay period beginning with the first biweekly pay period following the last biweekly pay period described by Subparagraph (viii) of this paragraph; and

(2) except as provided by Subsection (e) of this section, an amount equal to 1/26th of \$13 million.

(e) The city is required to pay the contribution amount described by Subsection (d)(2) of this section only through the last biweekly pay period that ends after December 31, 2024.

(f) Repealed by [Acts 2017, 85th Leg., ch. 318](#) (H.B. 3158), § 1.52(3).

City or member contributions if no unfunded actuarial liabilities

Sec. 4.025. Notwithstanding Section 4.02 or 4.03 of this article, if the pension system has no unfunded actuarial liability according to the most recent actuarial valuation, the annual normal costs must be equally divided between the city and the members unless equally dividing the costs would increase the member contribution rates beyond the rates prescribed by Section 4.03 of this article. The board shall adjust the city contribution rates under Section 4.02 of this article and the member contribution rates under Section 4.03 of this article accordingly, and certify the adjusted rates. After the completion of a subsequent actuarial valuation showing unfunded actuarial liabilities, the contribution rates applicable under Sections 4.02 and 4.03 of this article apply.

Member contributions

Sec. 4.03 (a) Subject to Subsection (a-1) of this section and except as provided by Section 4.025 of this article, each Group A member of the combined pension plan shall have 13.5 percent of base pay deducted from the member's wages on a biweekly basis, and the contributions shall be promptly remitted to the fund by the city.

(a-1) If a Group A member is assigned, for any period, to a job-sharing program or any similar work schedule that is considered by the member's department to be less than a full-time work schedule, the member's contributions are determined by multiplying the applicable contribution rate by a fraction, the numerator of which is the number of hours the member actually worked during the period and the denominator of which is the number of hours the member would have worked during the period if the member had been working a full-time work schedule.

(b) Each member shall contribute to the fund under the applicable terms of this article until the member leaves active service with either department. If a member leaves active service with a department, the member shall cease making contributions.

(c) Each Group B member shall authorize the city to deduct from the member's salary a percentage of the member's computation pay. The authorization shall be in writing and filed with the executive director.

(d) Subject to Subsection (d-1) of this section and except as provided by Section 4.025 of this article, for pay periods starting on or after September 1, 2017, each Group B member shall have 13.5 percent of the member's computation pay deducted from the member's wages on a biweekly basis and the contributions shall be promptly remitted to the fund by the city.

(d-1) If a Group B member is assigned, for any period, to a job-sharing program or any similar work schedule that is considered by the member's department to be less than a full-time work schedule, the member's contributions are determined by multiplying the applicable contribution rate by a fraction, the numerator of which is the number of hours the member actually worked during the period and the denominator of which is the number of hours the member would have worked during the period if the member had been working a full-time work schedule.

(d-2) For purposes of Subsection (d) of this section, "computation pay" includes computation pay paid to a Group B member during any period the member is receiving workers' compensation.

(e) The city shall determine the frequency of deductions for member contributions, as long as there is at least one deduction each month.

(f) Each Group B member shall contribute to the fund beginning on the effective date of the member's Group B membership.

(g) The percentage of base pay contributed by Group A members or computation pay contributed by Group B members may not be altered except by an adjustment under Section 4.025 of this article.

(h) The only purposes for which member contributions to the fund and the investment income derived from member contributions may be applied are:

(1) to the payment of benefits prescribed by this article;

(2) to the payment of such administrative and professional service costs of the pension system as are provided for under Section 4.01 of this article or as may be within the discretion of the board to incur; and

(3) to invest any surplus in accordance with Section 4.07 of this article.

(i) Member contributions under this article or any payments a member is entitled to make under this article to receive additional pension service may be picked up by the city under the terms of an appropriate resolution of the city council.

Refund of Group B member contributions

Sec. 4.04 (a) Except as provided by Subsection (d) or (e) of this section, a Group B member who, either voluntarily or involuntarily, leaves active service is entitled to a refund from the fund of the total amount of the member's Plan B and Group B contributions, without interest, that were paid beginning with the effective date of the member's Group B membership or membership in Plan B. A refund under this subsection results in a total cancellation of pension service credit and the member and any person who would otherwise take by, through, or under the member is not entitled to any benefits from the pension system.

(b) Old plan or Plan A contributions paid to the fund by a Group B member may not be refunded from the fund.

(c) A Group B member who desires a refund of the Plan B or Group B contributions under Subsection (a) of this section must make written application for the refund with the executive director. In no case may any refund be made to a Group B member before the expiration of 30 days after the date the person leaves active service.

(d) Subject to Subsection (k) of this section, if a Group B member with less than five years of pension service either voluntarily or involuntarily leaves active service and fails to make written application for a refund of contributions within three years after the date of the notice described by Subsection (j) of this section made by the board, the person forfeits the right to withdraw any portion of the contribution, and the total amount of Plan B and Group B contributions the person made will remain in the fund. If the Group B member described by this subsection dies after leaving active service, the deceased member's designee may apply for the refund of the person's contributions, resulting in an appropriate loss of pension service if the application is filed with the executive director within three years after the date of the notice described by Subsection (j) of this section made by the board. Subject to Subsection (k) of this section, if a Group B member's designee fails to apply for a refund of the Group B member's

contributions within the three-year period described by this subsection, the designee forfeits any right to the contributions, and the total amount of the Plan B and Group B contributions made by the Group B member will remain in the fund.

(e) Subject to Subsection (k) of this section, if a Group B member with five or more years of pension service either voluntarily or involuntarily leaves active service and fails to make written application for a refund of the person's Plan B and Group B contributions within three years after the date of the notice described by Subsection (j) of this section made by the board, the person forfeits the right to withdraw any portion of the contributions, and the total amount of the contributions will remain in the fund. A Group B member described by this subsection may, however, apply for a Group B retirement pension under Section 6.02 of this article or, if the Group B member dies before the member is eligible to apply for a Group B retirement pension, the member's qualified survivors may apply for Group B death benefits under Sections 6.06, 6.061, 6.062, and 6.063 of this article. If the Group B member dies before the member is eligible to apply for a Group B retirement pension and the member has no qualified survivors, the Group B member's designee may apply for a refund of the Group B member's Plan B and Group B contributions, resulting in a total cancellation of pension service. Subject to Subsection (k) of this section, if a Group B member's designee fails to apply for a refund of the Group B and Plan B member's contributions within the three-year period described by this subsection, the designee forfeits any right to the contributions, and the total amount of the Plan B and Group B contributions made by the Group B member will remain in the fund.

(f) Subject to Subsections (g) and (h) of this section, a Group B member, other than a Group B member who elects or has elected to receive a Group A benefit or a benefit determined under the old plan or Plan A, who either voluntarily or involuntarily leaves active service with five or more years of pension service is entitled to:

(1) subject to Subsection (f-1) of this section, have the total amount of the person's Plan B and Group B contributions to the fund refunded in accordance with Subsection (a) of this section, which results in a loss of all of the person's accrued pension service; or

(2) if the Group B member first entered active service before January 1, 1999, elect to take a refund of less than the total amount of the person's Plan B and Group B contributions while leaving a sufficient amount to retain pension service amounting to five or more years.

(f-1) A Group B member who elects to receive a refund under Subsection (f)(1) of this section and any person who would otherwise take by, through, or under the member is not entitled to any benefits from the pension system.

(g) If a Group B member elects a refund of a portion of the person's contributions under Subsection (f)(2) of this section, the amount of the refund shall equal the total amount of the person's Plan B and Group B annual contributions, without interest, for each full year of pension service canceled, computed based on the earliest contributions made.

(h) A Group B member who first entered active service on or after January 1, 1999, is entitled to have the total amount of the person's Group B contributions refunded under Subsection (a) of this section in accordance with Subsection (f)(1) of this section, but may not receive a refund of less than the total amount in accordance with Subsection (f)(2) of this section.

(h-1) A Group B member who leaves active service and later returns to active service is permitted to repay to the fund any previously withdrawn employee contributions and receive pension service in accordance with Section 5.07(d) of this article as a Group B member to the extent that before again leaving active service, the Group B member repays to the fund the previously

withdrawn contributions with interest, calculated at the interest rate from time to time used in the pension system's actuarial rate of return assumptions, compounded annually, on the previously withdrawn contributions.

(i) If a person becomes a Group B member under Section 5.01(b) of this article and again, either voluntarily or involuntarily, leaves active service and makes application for a refund of contributions under this section, the person is entitled to a refund from the fund of the following:

(1) the amount of Group B contributions to the fund, without interest, that were paid from the date the person returned to active service following service or disability retirement; plus

(2) the excess, if any, of:

(A) the person's Plan B and Group B contributions to the fund, without interest, that were paid from the effective date of the person's original Group B or Plan B membership in Plan B until the time the person originally left active service because of the service or disability retirement; less

(B) the total amount of benefits the person received during service or disability retirement.

(j) On the 58th anniversary of the birth of a Group B member described by Subsection (d) or (e) of this section, or on the board's receipt of notice of the death of the Group B member, the board shall, by registered or certified mail, return receipt requested, attempt to notify the Group B member or designee, as applicable, of the status of the person's entitlement to a refund of contributions from the fund.

(k) A Group B member or designee described by Subsection (d) or (e) of this section shall have the person's right, title, interest, or claim to a refund of the Group B member's contributions reinstated only on the board's grant of their written request for a reinstatement and refund. The board's decision shall be based on a uniform and nondiscriminatory basis.

Investment counselor; qualifications

Sec. 4.05. (a) The board may employ from time to time an investment counselor to advise the board in the investment and reinvestment of the assets of the fund. Only the following are eligible for employment as an investment counselor:

(1) any organization whose regular business functions include rendering investment advisory services to pension and retirement funds and that is registered as an "investment adviser" under the Investment Advisers Act of 1940; and

(2) any bank, as defined in the Investment Advisers Act of 1940, that maintains a trust department and offers investment services to pension and retirement funds.

(b) The investment counselor shall receive such compensation as may be determined by the board and as authorized by Section 4.01 of this article.

Investment custody account or master trust agreements

Sec. 4.06. (a) If the board contracts for investment management services as authorized by Section 4.07 of this article, it may, with respect to every such contract, also enter into an investment custody account agreement, designating one or more banks as custodian or master trustee for any assets of the fund.

(b) Under a custody account or master trust agreement, the board shall require the designated bank to perform the duties and assume the responsibilities of a custodian in relation to the investment contract to which the custody account or master trust agreement is established.

(c) The authority of the board to make a custody account or master trust agreement is supplementary to its authority to make an investment management contract. Allocation of assets to a custody account or master trust shall be coordinated by the executive director, as authorized by the board, and the bank designated as custodian or master trustee for the assets.

(d) Any custody account or master trust agreement made by the board shall establish such compensation for the custodian or master trustee as may be determined by the board and as authorized by Section 4.01 of this article.

Investment of surplus

Sec. 4.07. (a) Subject to Section 4.071 of this article, if the board determines that there is in the fund a surplus exceeding a reasonably safe amount to take care of current demands on the pension system, the board may invest or direct the investment of the surplus for the sole benefit of the pension system.

(b) In making investments and supervising investments, trustees shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to probable income from the assets as well as the probable safety of their capital.

(c) The board has the ultimate responsibility for the investment of funds. The board may exercise this responsibility directly by purchasing or selling securities or other investments, or it may exercise discretion in determining the procedure that it deems most efficient and beneficial for the pension system in carrying out the responsibility. The board may contract for professional advisory services regarding the purchase or sale of securities or other investments pursuant to Section 3.02 of this article. A professional advisory service shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

(d) The board also has the authority to contract for professional investment management services. Any contract that the board makes with an investment manager shall set forth the board's investment policies and guidelines. A professional investment management service shall receive such compensation as may be determined by the board in accordance with Section 4.01 of this article.

(e) The board, in exercising its control, may at any time, and shall at frequent intervals, monitor the investments made by any investment manager and shall enforce full compliance with the requirements of the board.

(f) If the board contracts for and receives professional advisory services or professional investment management services, the board has no greater liability under the terms of this section than otherwise provided for under the Government Code or the Texas Trust Code.

(g) A bank or trust company that has custody and trustee powers and a contract with the board to provide assistance in making investments shall be the custodian or master trustee of any of the securities or other assets of the fund. Pursuant to Section 4.06 of this article, the board may designate a bank to serve as custodian or master trustee, or subcustodian or submaster trustee, to perform the customary duty of safekeeping as well as duties incident to the execution of transactions. As the demands of the pension system require, the board shall withdraw from the custodian or master trustee money previously considered surplus in excess of current cash and proceeds from the sale of investments. The money may without distinction be used for the payment of benefits pursuant to each of the plans within the pension system and for other uses authorized by this article and approved by the board.

(h) The board through policy shall establish an investment advisory committee composed of trustees and outside investment professionals to review investment related matters as prescribed by the board and make recommendations to the board. A majority of the members of the committee established under this subsection must be outside investment professionals.

Board approval of certain alternative investments

Sec. 4.071. (a) The executive director, an investment manager, a provider of professional investment management services or professional advisory services, or any other person delegated authority to invest or reinvest pension system assets under this article may not invest pension system assets in a single alternative investment unless the board votes to approve the investment by at least a two-thirds vote of all the trustees.

(b) The board may adopt rules necessary to implement this section.

Actuarial valuation

Sec. 4.08. (a) The board has the authority to employ a qualified actuary to provide a continuing observation of the operation of the pension system and to make recommendations and give advice to the board about the condition of the assets of the fund and the administration of the pension system. A qualified actuary shall receive such compensation as is determined by the board in accordance with Section 4.01 of this article.

(b) A qualified actuary shall perform continuing actuarial observation of the assets of the fund not less than once every two years and make a report of the condition of the assets of the fund to the board. The board may require more frequent reports.

(c) On written request by the city, the executive director shall make available to the city's actuary or auditor the information and documents provided to or used by the pension system's actuary or auditor in conducting an actuarial valuation under this article or preparing any other document prepared under this article.

Rewards, donations, and contributions

Sec. 4.09. Any reward, donation, or contribution given to any member as payment or gratuity for service performed in the line of duty shall be turned over to the chief of the member's department, who shall, in turn, forward the reward, donation, or contribution to the executive director of the pension system for deposit in the fund.

PART 5. MEMBERSHIP

Membership in combined pension plan

Sec. 5.01. (a) Except as provided by Subsection (a-1) of this section, the membership of the combined pension plan is composed of the following persons:

(1) Group A members:

(A) police officers or fire fighters who are on active service and who as of February 28, 1973, had filed a written statement with the pension system of their desire to participate in either the old plan or Plan A;

(B) police officers and fire fighters who are on active service and who were employed and receiving compensation from the city as a police officer or a fire fighter before March 1, 1973, and who made contributions to either the old plan or Plan A attributable to any period of employment before March 1, 1973; and

(C) except as provided by Subsection (b) of this section, persons who elect to become Group A members under that subsection; and

(2) Group B members:

(A) police officers and fire fighters who are on active service and who were formerly members of either the old plan or Plan A and who, as of April 30, 1973, had filed a written statement with the pension system of their desire to participate in Plan B;

(B) police officers and fire fighters who are on active service and who on or after March 1, 1973, and before January 1, 1993, became members of Plan B;

(C) as a condition of employment, any police officer or fire fighter who is initially employed as a police officer or a fire fighter by the city on or after January 1, 1993;

(D) as a condition of return to active service and except as provided by Subsection (b) of this section, former members of the old plan or Plan A who left active service before March 1, 1973;

(E) as a condition of return to active service and except as provided by Subsection (c) of this section, former Group B members who are no longer on active service, whether or not the persons were ever a member of the old plan, Plan A, or the combined pension plan;

(F) Group A members who are on active service and meet the requirements and make an election under Subsection (d) of this section; and

(G) persons who are on active service and make an election under Subsection (e) of this section.

(a-1) Group A or Group B members do not include any employee of the city who is:

(1) required by ordinance or who elects, in accordance with an ordinance, to participate in an alternative benefit plan established under Section 3.01(j-1)(2) of this article based on an evaluation under Section 3.01(j-5)(2) of this article; or

(2) required by ordinance to participate in an alternative benefit plan established under [Section 810.002, Government Code](#).

(b) A person who has received an old plan, Plan A, or combined pension plan retirement or disability pension on or after March 1, 1973, may, if the person returns to active service, elect to participate as a Group A or Group B member by filing a written application for membership with the executive director not later than 60 days after the date of return to active service. If the person described by this subsection does not elect to become a Group A or Group B member, the person shall on leaving active service receive a retirement pension in an amount that is unadjusted for the period of return to active service if the person meets all of the requirements of Group A membership.

(c) A Group B pensioner who was never a member of the old plan, Plan A, or the combined pension plan before January 1, 1993, may, if the person returns to active service, elect to become a Group B member by filing a written application for membership with the executive director not later than 60 days after the date of return to active service. If the person described by this subsection does not elect to again become a Group B member, on leaving active service, if the person meets all applicable requirements of this article, the person shall receive benefits in an amount equal to the amount the person was receiving as of the day before the day the person returned to active service, and the person's base pension shall be the same as the base pension originally computed before the return to active service.

(d) A person who is on active service and is a Group A member may, before the person participates in DROP, irrevocably elect to become a Group B member by filing a written application with the executive director. On and after the filing of the application, the Group A member shall make contributions to the fund at the rate applicable to Group B members. However, the contributions do not, by themselves, establish Group B membership. Group B membership is contingent on the satisfaction of the following conditions:

(1) the person must, before the person elects to participate in DROP, pay an amount to the fund equal to the difference between the contributions the person would have made to the fund had the person been a Group B member for the entire period the person could otherwise have been a Group B member before making application for membership and the contributions the person actually made during that period, plus interest calculated in accordance with procedures adopted by the board from time to time; and

(2) the payments described by this subsection must be completed before the earlier of the date on which the person begins participation in DROP or leaves active service in accordance with procedures adopted by the board from time to time.

(d-1) If the fund does not receive payment under Subsection (d)(1) of this section by the date prescribed by Subsection (d)(2) of this section, all payments made under Subsection (d)(1) of this section, as well as those contribution amounts paid by the person after the person's application for Group B membership that are in excess of the Group A member contribution rate, shall be returned without accrued interest to the person, or in the event of the person's death to the person's designee, as applicable.

(e) A person who is on active service and has never been a member of any plan within the pension system may elect to become a Group B member on a prospective basis by filing a written application for membership with the executive director.

Effective date of Group B membership

Sec. 5.02. (a) The effective date of Group B membership for a person who becomes a Group B member under Section 5.01(a)(2)(A) or (B) of this article is the date the Group B member first became a member of Plan B.

(b) The effective date of Group B membership for a person who becomes a Group B member pursuant to Section 5.01(a)(2)(C) of this article is the day the person begins active service.

(c) The effective date of Group B membership for a person who becomes a Group B member and is described by Section 5.01(a)(2)(D) of this article is the date of the person's return to active service.

(d) The effective date of Group B membership for a person who again becomes a Group B member and is described by Section 5.01(a)(2)(E) of this article is the person's original effective date of Group B membership, adjusted for any period for which the person was not on active service or has withdrawn some, but not all, contributions to the fund pursuant to Section 4.04 of this article. If, however, the person withdraws all contributions to the fund in accordance with Section 4.04 of this article, and the person does not replace the previously withdrawn contributions together with interest as provided by Section 4.04(h-1) of this article, the effective date of the person's membership is the date of return to active service.

(e) The effective date of membership for a person who becomes a Group B member pursuant to Section 5.01(b) of this article is the date on which written application for the membership is filed with the executive director. The effective date of membership for a person who becomes a Group A member pursuant to Section 5.01(b) of this article is the person's original effective date of membership in the old plan, Plan A, or the combined pension plan, whichever is applicable.

(f) The effective date of Group B membership for a Group B pensioner who again becomes a Group B member pursuant to Section 5.01(c) of this article is the pensioner's original effective date of membership, adjusted for any period the person was not on active service.

(g) The effective date of Group B membership for a person who joins this plan pursuant to Section 5.01(d) of this article is March 1, 1973.

(h) A person described by Subsection (a), (c), (d), (e), (f), or (g) of this section shall be given full pension service for the time the person was a contributing member of the old plan, Plan A, the combined pension plan, and Plan B, and the pension service shall be counted as if it had been earned while a Group B member. Neither the length of time persons described by Subsection (a), (c), (d), (e), (f), or (g) of this section received a retirement or disability pension, whether under the old plan, Plan A, the

combined pension plan or Plan B, nor the amount of any benefits paid to the person shall have any effect on the pension service earned by the person. No pension service may be earned while on service retirement or disability retirement, or when the person was not on active service. Except as provided by Sections 5.08 and 5.09 of this article, a person described by Subsection (a), (c), (d), (e), (f), or (g) of this section may not be allowed to contribute to the fund in order to receive pension service for the time the person was not on active service, regardless of whether the person was actually receiving a pension.

(i) The effective date of Group B membership for a person who becomes a Group B member pursuant to Section 5.01(e) of this article is the date on which written application for Group B membership is filed with the executive director.

Termination of Group B membership

Sec. 5.03. (a) Group B membership, whether by voluntary application or as a condition of employment, may be terminated by the Group B member only when the person ceases to be on active service.

(b) Once a police officer or fire fighter becomes a Group B member, whether by voluntary application or as a condition of employment, the person may never transfer the membership to become a Group A member and may never transfer the membership to any pension plan for police officers and fire fighters that may be created in the future unless the terms of that plan allow the transfer.

(c) A Group B member who is on active service and was a former contributing member of either the old plan or Plan A may elect, when applying for either a retirement or disability pension if applicable, to terminate membership and receive a Group A retirement or disability pension under the applicable provisions of this article, if the Group B member's application for retirement or disability pension is granted by the board.

(c-1) A Group B member who is not on active service and was a former contributing member of either the old plan or Plan A may elect, when applying for a retirement pension, to terminate membership and receive a Group A retirement pension under the applicable provisions of this article, if the Group B member's application for retirement pension is granted by the board.

(d) If a Group B member described by Subsection (c) or (c-1) of this section has elected and been granted a Group A retirement or disability pension under the applicable provisions of this article, the person is entitled to a reimbursement from the fund. The reimbursement shall be equal to that portion of the person's contributions to the fund, without interest, from the person's effective date of Group B membership until the time the person left active service that is in excess of the total amount the person would have contributed as a Group A member or as a member of the old plan or Plan A for the same period. A Group B member desiring a refund of excess contributions must make written application for the refund with the executive director within three years after the date the person's Group A retirement or disability pension, whichever is applicable, begins, otherwise, the person will lose all right, title, interest, or claim to the refund until such time as the board grants the refund in response to the person's written request. The refund shall be made as soon as practicable after written application is filed with the executive director.

Group B membership may be declared inactive

Sec. 5.04. (a) Except as provided by Subsection (d)(1) of this section, if a Group B member with less than five years of pension service either voluntarily or involuntarily leaves active service, the person's Group B membership remains active as long as the person has not withdrawn the person's contributions pursuant to Section 4.04 of this article.

(b) Except as provided by Subsection (d)(2) of this section, if a Group B member with five or more years of pension service either voluntarily or involuntarily leaves active service, the person's Group B membership remains active as long as the person has not withdrawn the person's entire contributions pursuant to Section 4.04 of this article.

(c) Except as provided by Subsection (d)(3) of this section, if the board receives valid information that a Group B primary party has died, the board shall, by registered or certified mail, return receipt requested, attempt to notify:

(1) the qualified survivors of the primary party of the procedures for applying and qualifying for death benefits under Section 6.06, 6.061, 6.062, or 6.063 of this article; or

(2) if the primary party does not have any qualified survivors, the primary party's designee of the procedures for applying for a refund of the primary party's contributions, if applicable, in accordance with Section 4.04 of this article.

(d)(1) Subject to the provisions of Subdivision (5)(A) of this subsection, the membership of a Group B member described by Subsection (a) of this section shall be declared inactive and all of the person's accrued pension service voided if the person does not return to active service within three years after the date of the notice described by Subdivision (4) of this subsection.

(2) Subject to the provisions of Subdivision (5)(B) of this subsection, the membership of a Group B member described by Subsection (b) of this section shall be declared inactive and all of the person's accrued pension service voided if the person does not file an application for a Group B retirement pension with the board within three years after the date of the notice described by Subdivision (4) of this subsection.

(3) Subject to the provisions of Subdivision (5)(C) of this subsection, if a primary party described by Subsection (c) of this section:

(A) does not have any qualified survivors, the designee has no right, title, interest, or claim for a refund of the primary party's contributions to the fund if the designee does not file an application for the primary party's contributions within three years after the date of the notice described in Subsection (c) of this section; or

(B) has qualified survivors, the qualified survivors have no right, title, interest, or claim to the primary party's death benefits if the qualified survivor does not file an application for the benefits within three years after the date of the notice described in Subsection (c) of this section.

(4) On the 58th anniversary of the birth of a Group B member described by Subsection (a) or (b) of this section, the board shall, by registered or certified mail, return receipt requested, attempt to notify:

(A) the member of the status of the member's entitlement to benefits or contributions from the fund; or

(B) if the board receives valid information that the member has died, the qualified survivors of the deceased person or, if none exists, the designee of the deceased person.

(5)(A) A Group B member described by Subdivision (1) of this subsection shall have the person's Group B membership and pension service reinstated on the person's return to active service.

(B) A Group B member described by Subdivision (2) of this subsection shall have the person's Group B membership and pension service reinstated on the person's return to active service or on the grant of the person's written request to the board of the person's desire to apply for a Group B retirement pension under Section 6.02 of this article.

(C) A primary party's qualified survivors or designee, as appropriate, described by Subdivision (3) of this subsection shall have their right, title, interest, or claim to the primary party's refund of the party's contributions reinstated on the board's grant of their written request.

Pension service

Sec. 5.05. (a) Subject to Subsection (d) of this section and except as provided by Subsection (e) of this section, a member shall receive pension service for the time, computed in years and fractional years for months and days, completed as a member of the combined pension plan, the old plan, Plan A, or Plan B.

(b) A member who elects to pay contributions for time spent on military leave, authorized non-uniformed leave of absence, or for an apprenticeship or probationary period, or for any other reason provided for by this article may receive pension service for the time for which the member is contributing only to the extent provided under Section 5.07(d), 5.08, or 5.09 of this article.

(c) If a member, either voluntarily or involuntarily, leaves active service and later returns to active service, the person shall receive full pension service for the period of the person's original membership, if the person did not withdraw the person's contributions pursuant to Section 4.04 of this article. If, however, the member had withdrawn the person's contributions and did not replace the previously withdrawn contributions as required by Section 4.04 of this article, the member forfeits any pension service attributable to any period of time for which the respective contributions were not repaid.

(d) If a member is assigned, for any period, to a job-sharing program or any similar work schedule that is considered by the member's department to be less than a full-time work schedule, the member's pension service is determined by multiplying the pension service that could have been earned for full-time work during the period by a fraction, the numerator of which is the number of hours the member actually worked during the period and the denominator of which is the number of hours the member would have worked during the period if the member had been working a full-time work schedule. This proration may not affect the computation of pension service for a member during any period the member is on leave:

(1) because of an illness or injury; or

(2) receiving periodic payments of workers' compensation.

(e) Notwithstanding any other provision in this section, a member may not receive pension service attributable to nonqualified service to the extent the pension service would result in either more than five years of permissive service attributable to nonqualified service being taken into account, or any permissive service being taken into account before the member has

completed at least five years of active service. In this subsection, “permissive service” and “nonqualified service” have the meanings described by Section 415(n)(3) of the code.

Vested rights of Group B members

Sec. 5.06. (a) If a Group B member accrues five years of pension service, whether the pension service is accrued while a Group B member or while a member of the old plan, Plan B, Plan A, the combined pension plan, or a combination of the plans, the Group B member has vested rights and is eligible to apply for a retirement pension in accordance with Section 6.02 of this article.

(b) If a Group B member has vested rights as determined under Subsection (a) of this section, and the Group B member either voluntarily or involuntarily leaves active service before becoming eligible to receive any benefits under Section 6.02 of this article, the person shall be provided with a letter approved by the board and signed by the executive director that, barring unrepaid refunds, clerical error, miscalculation, or other error, is incontestable and shall state:

- (1) the total amount of pension service the Group B member had accrued until the date the person left active service;
- (2) the total amount of contributions the Group B member made under the terms of Plan B and the combined pension plan; and
- (3) the monthly retirement pension due the Group B member at age 58.

Purchase of pension service by Group B members

Sec. 5.07. (a) A Group B member who is on active service and has previously elected not to become a contributing member of the old plan or Plan A may purchase pension service from the fund for that period during which the member performed active service with either department until the effective date of the member's Group B membership. No pension service may be given to the Group B member except to the extent that payment is made for the pension service in accordance with Subsection (d) of this section.

(b) Payment for the purchase of pension service under Subsection (a) of this section shall be equal to the amount of contributions the Group B member would have made to the old plan and Plan A had the member been a contributing member of either of the plans during the period for which the pension service is being purchased, plus interest calculated in accordance with procedures adopted by the board from time to time.

(c) Subject to Subsection (d) of this section, a Group B member who is on active service may repay the fund all or a portion of the employee contributions withdrawn by an alternate payee pursuant to the terms of a qualified domestic relations order with interest, calculated at the interest rate from time to time used in the pension system's actuarial rate of return assumptions, compounded annually, on the contributions for the period from the date the contributions were withdrawn until the date the principal and accrued interest are repaid, and receive pension service as a Group B member, in accordance with Subsection (d) of this section, for the period for which the contributions and interest were paid.

(d) If payment of the entire amount of pension service a member is entitled to under Subsection (a) or (c) of this section or under Section 4.04(h-1) of this article is not completed by the earlier of the date the Group B member begins participation in DROP or the date the member leaves active service, pension service will be provided only for the number of full years of pension

service that the contributions and interest paid under those provisions will purchase, computed based on the most recent years for which the member was entitled to purchase pension service. Except for pension service that is picked up by the city under the authority of Section 414(h)(2) of the code, a fractional year of pension service may be purchased only if less than a full year of pension service is available for purchase.

(e) The amounts paid but insufficient to purchase one or more whole years of pension service that remain available for purchase, including any interest paid by the Group B member, must be returned to the Group B member or, if the Group B member has died, to the Group B member's designee, without any accrued interest on the returned money.

(f) Notwithstanding any other provision of this section, any amounts that have been picked up and paid by the city may not be paid to a member or designee, and the member shall be given credit for all years, and fractions of years, of pension service that can be purchased with the picked-up contributions.

Members in uniformed services

Sec. 5.08. (a) In this section, "service in the uniformed services" has the meaning assigned by the federal Uniformed Services Employment and Reemployment Rights Act of 1994 ([38 U.S.C. Section 4301 et seq.](#)), as amended.

(a-1) A member who is reemployed by the city after an absence due to service in the uniformed services shall receive contributions, benefits, and pension service that are no less favorable than those required by Section 414(u) of the code in accordance with the procedure described by Subsection (c) of this section.

(b) To the extent a provision of this section that was in effect before November 25, 1996, would provide a member who was on active service with the pension system before November 25, 1996, with greater rights, the prior provision of this section applies.

(c) Payment for credit for pension service under this section shall be made in accordance with Section 5.07 of this article and a uniform and nondiscriminatory procedure adopted by the board.

Non-uniformed leave of absence

Sec. 5.09. (a) An "authorized non-uniformed leave of absence" means any leave of absence that meets one of the following requirements:

(1) the leave of absence was unpaid and granted by the member's department in accordance with the federal Family and Medical Leave Act of 1993 ([29 U.S.C. Section 2601 et seq.](#)); or

(2) the leave of absence was unpaid and was an official leave authorized and certified by the chief of the member's department as being beneficial to the department.

(b) Subject to the requirements of this section and any procedures adopted by the board, a member may receive pension service for time spent away from the member's department on an authorized non-uniformed leave of absence. To receive pension service under this section, the member must file with the executive director a written application to pay to the fund both:

(1) the member contributions the member would have made to the fund had the member remained on active service and had there been no change in the member's position or hours of work during the period of the authorized non-uniformed leave of absence; and

(2) the contributions the city would have made to the fund on the member's behalf had the member remained on active service and had there been no change in the member's position or hours of work during the period of the authorized non-uniformed leave of absence.

(b-1) Contributions made under Subsection (b)(2) of this section may not be refunded to the member.

(b-2) The written application described by Subsection (b) of this section must be filed before the member's authorized non-uniformed leave of absence begins, unless the pension system determines that it would not be reasonable to expect the member to file the application before the authorized non-uniformed leave of absence begins, in which case the application must be filed as soon as circumstances permit, as determined by the pension system.

(b-3) To receive pension service under this section, the following additional conditions must also be met:

(1) if the member's contribution rate, the city's contribution rate, or both the member's and city's contribution rates change before the end of the member's authorized non-uniformed leave of absence, the percentage required to be paid by the member also changes, so that the amount paid by the member in accordance with this section always equals the amount that would have been contributed by the member, and by the city on the member's behalf had the member remained on active service;

(2) payment of contributions as set forth in Subsection (b) of this section shall begin coincident with the beginning of the applicable authorized non-uniformed leave of absence and shall be made monthly to the executive director for deposit in the fund, unless the board authorizes the deferment of the payments, in which case the payments must include interest calculated in accordance with Subsection (b-4) of this section;

(3) no pension service will be granted to the member until the member returns to active service, and if the member does not return to active service, the contributions paid, including any interest paid, will be returned to the member except as provided by Subsection (c) of this section;

(4) if the board authorizes the deferment of the payments under Subdivision (2) of this subsection, the payment must be made either by authorizing the deduction of pro rata portions of the total amount due from the member's salary over a one-year period, or by cash payment made to the executive director within one year after the date of the member's return to active service, except that the board may approve a longer period for making the payment if it finds that the one-year limit would work a financial hardship on the member;

(5) the member must return to active service within 90 days after the date the member's authorized non-uniformed leave of absence expires, or if the member's authorized non-uniformed leave of absence does not have a fixed expiration date, within a reasonable time to be determined by the board, or the member forfeits the right to pay for the leave time; and

(6) no member may ever be allowed to pay leave of absence contributions under this section for any time in excess of the time actually spent on an authorized non-uniformed leave of absence.

(b-4) For purposes of Subsection (b-3)(2) of this section, interest is calculated from the date the member's payment was first due, at the interest rate from time to time used in the pension system's actuarial rate of return assumptions, compounded annually until the date the principal and accrued interest are repaid in full.

(c)(1) If a member of the combined pension plan is disabled or dies while on an authorized non-uniformed leave of absence, the member or the member's designee is entitled to a refund of contributions pursuant to Section 4.04 of this article or the member or the member's qualified survivors are entitled to benefits under the provisions of this article, to the extent applicable.

(2) A member who is disabled or dies while on an authorized non-uniformed leave of absence pursuant to this section may receive no pension service for any portion of the period of the leave, except that if the member had, before the member's disability or death, paid for contributions while on an authorized non-uniformed leave of absence in accordance with this section, the member shall receive pension service for the leave time actually paid for at the time of the member's disability or death. The member may receive no pension service for any portion of the period of leave for which contributions were not paid to the executive director for deposit in the fund.

PART 6. BENEFITS

Group A retirement pension

Sec. 6.01. (a) A Group A member must have 20 years of pension service to be eligible for a Group A retirement pension under this section. A member's benefit election under this section, once approved, is irrevocable.

(a-1) If a Group A pensioner returns to active service as a police officer or fire fighter with the city, the person's Group A retirement pension ceases until that person again leaves active service with the city.

(a-2) If a Group A pensioner resumes employment with the city in a capacity other than as a police officer or fire fighter, the pensioner's Group A retirement pension continues during the period of employment, except the pensioner may not accrue additional credit for pension service during this period. Additional credit for pension service does not accrue during any period in which a Group A pensioner becomes employed by the city unless the additional credit is attributable to active service as a police officer or fire fighter with the city.

(b) At age 50 a Group A member is eligible to begin drawing a monthly Group A retirement pension. A monthly Group A retirement pension equals 50 percent of the base pay per month, plus 50 percent of any longevity pay the Group A member was receiving at the time the member left active service. Although the number of years used in the computation of longevity pay remains fixed at the earlier of the time a Group A member leaves active service or begins participation in DROP, the monthly rate of longevity pay used in this computation is subject to change in the event of an amendment to the state law governing longevity pay. The monthly Group A retirement pension benefits of Group A pensioners shall be adjusted from time to time in a like manner.

(c) In addition to the amount computed under Subsection (b) of this section, at age 50, a Group A member is eligible to begin drawing an annual Group A retirement pension. An annual retirement pension equals 50 percent of the difference between the annualized amount of city service incentive pay and longevity pay. In determining city service incentive pay and longevity pay for purposes of this element of the annual Group A retirement pension only the following apply:

(1) City service incentive pay is calculated in the same manner as the city service incentive pay is calculated for members currently on active service except:

(A) the annual salary of a Group A pensioner used in calculating city service incentive pay is determined on the basis of the last city civil service rank held by the Group A pensioner when the person was on active service; however, if the rank no longer exists, its closest equivalent shall be determined by the board and applied; and

(B) the annual salary of a Group A pensioner as determined under Paragraph (A) of this subdivision shall be that amount in effect on the last day of September of each year the Group A pensioner's annual retirement pension is calculated.

(2) Longevity pay shall be calculated as 12 times the amount of monthly longevity pay the Group A pensioner was receiving at the time such person left active service, except that the monthly rate of longevity pay used in this computation is subject to change if an amendment to state law governing longevity pay is enacted.

(d) The element of annual retirement pension computed under Subsection (c)(1) of this section is subject to the following limitations:

(1) it shall be prorated for the year in which the pensioner begins receiving a retirement pension;

(2) it shall be payable only to those Group A pensioners who, as Group A members on active service, received city service incentive pay and who receive a monthly Group A retirement pension as determined under Subsection (b) of this section on the last day of September of each year; and

(3) it shall be paid to Group A pensioners as long as the city continues to pay city service incentive pay to Group A members on active service.

(4) Notwithstanding Subsections (b) and (c) of this section, a Group A member with a minimum of 20 years of pension service may apply for an actuarially reduced retirement pension to begin no earlier than when the member attains age 45 but before the member attains age 50. The Group A member who has made an application may receive a retirement pension calculated under Subsections (b) and (c) of this section reduced by two-thirds of one percent per month for each whole calendar month the benefit is payable before the month in which the Group A member attains age 50.

(e) At age 55 a Group A member is eligible to begin drawing a monthly retirement pension computed as follows:

(1)(A) at the rate of three percent of base pay for each year, prorated for fractional years, of pension service, with a maximum of 32 years of pension service, or 96 percent of base pay; or

(B) if the Group A member had 34 or more years of pension service as of April 30, 1990, then the member's retirement pension is calculated at the rate calculated under the terms of the combined pension plan in effect on April 30, 1990, if the resulting amount would be greater than the amount calculated under Paragraph (A) of this subdivision; plus

(2) one-half of the longevity pay the Group A member was receiving at the time the person left active service; plus

(3) 1/24th, without subsequent adjustment, of the annualized amount of the city service incentive pay the Group A member received at the time the person left active service.

(f) For purposes of Subsection (e) of this section, base pay and longevity pay are the amounts in effect on the earlier of the date the member begins participation in DROP or the date benefits are to begin, without subsequent adjustment.

(g) Notwithstanding Subsection (e) of this section, a Group A member with 20 or more years of pension service may apply for an actuarially reduced Group A retirement pension beginning on or after the date the Group A member attains age 50 but before the person attains age 55. The Group A member may receive a retirement pension calculated under Subsection (e) of this section reduced by two-thirds of one percent per month for each whole calendar month the benefit is payable before the month in which the Group A member attains age 55.

(h) Entitlement to the Group A retirement pension described by this section is subject to the following conditions:

(1) a written application must be filed with the executive director;

(2) the grant of a Group A retirement pension by the board must be made at a meeting of the board held during the month the retirement pension is to become effective, or as soon after that as administratively possible; and

(3) the Group A member must no longer be on active service.

Group B retirement pension

Sec. 6.02. (a) If a Group B member has accrued five or more years of pension service, is no longer on active service with the department, has not withdrawn the member's contributions, and otherwise meets the age and pension service requirements under the applicable provision of this section, the member may apply for a Group B retirement pension under this section. A member's benefit election application under a provision of this section, once approved, is irrevocable.

(a-1) If a Group B pensioner returns to active service as a police officer or fire fighter with the city, the person's Group B retirement pension ceases until that person again leaves active service with the city.

(a-2) If a Group B pensioner resumes employment with the city in a capacity other than as a police officer or fire fighter, the pensioner's Group B retirement pension continues during the period of employment except the pensioner may not accrue additional credit for pension service during this period. Additional credit for pension service does not accrue during any period

in which a Group B pensioner becomes employed by the city unless the additional credit is attributable to active service as a police officer or fire fighter with the city.

(b) A Group B member who began active service before March 1, 2011, and who has attained at least 50 years of age, or who began active service on or after March 1, 2011, and has attained at least 58 years of age, and who otherwise meets the requirements of Subsection (a) of this section may elect to receive a Group B retirement pension that shall be calculated as follows:

(1) for a member who began active service before March 1, 2011, the member's retirement pension shall be the sum of:

(A) the number of years of pension service before September 1, 2017, prorated for fractional years, times three percent of the average computation pay determined over the 36 consecutive months of pension service in which the Group B member received the highest computation pay; plus

(B) the number of years of pension service on or after September 1, 2017, prorated for fractional years, times the applicable percentage prescribed by Subsection (b-1) of this section of the average computation pay determined over the 60 consecutive months of pension service in which the Group B member received the highest computation pay; or

(2) for a member who began active service on or after March 1, 2011, the member's retirement pension shall be the number of years of pension service, prorated for fractional years, times 2.5 percent of the average computation pay determined over the 60 consecutive months of pension service in which the member received the highest computation pay.

(b-1) For purposes of Subsection (b)(1)(B) of this section, the applicable percentage is based on the age of the Group B member when the member's retirement pension begins as set forth below:

Age of Member When Retirement Pension Begins	Percent
58 and older	2.5%
57	2.4%
56	2.3%
55	2.2%
54	2.1%
53 and younger	2.0%

(b-2) Days during which the member earned no pension service due to a termination of active service or otherwise must be disregarded in determining the 36 or 60 consecutive months of highest computation pay under Subsection (b)(1) or (2) of this section, as appropriate. The pension benefit calculated under Subsection (b) of this section may not exceed the greater of:

(1) 90 percent of the member's average computation pay determined under the applicable subsection; or

(2) the vested and accrued benefit of a member as determined on August 31, 2017.

(c) Except as provided by Subsection (c-2) of this section, a Group B member who has either attained at least 45 years of age on September 1, 2017, or who attains at least 53 years of age after September 1, 2017, and who otherwise meets the requirements of Subsection (a) of this section may elect to receive an actuarially reduced Group B retirement pension calculated in accordance with Subsection (c-1) of this section:

(1) not earlier than the member's 45th or 53rd birthday, as applicable; and

(2) not later than the member's 50th or 58th birthday, as applicable.

(c-1) Except as provided by Subsection (c-2) of this section and subject to Section 6.021 of this article, a Group B member who applies for an actuarially reduced Group B retirement pension under Subsection (c) of this section shall receive a pension calculated under Subsection (b) of this section, reduced by two-thirds of one percent per month, for each whole calendar month the benefit is payable before the month in which the member attains:

(1) for members who attained at least 45 years of age on September 1, 2017, 50 years of age; or

(2) for members not described by Subdivision (1) of this subsection who attain at least 53 years of age after September 1, 2017, 58 years of age.

(c-2) Subject to Subsection (d-3) of this section and for purposes of Subsection (c-1) of this section, if a Group B member's pension benefit calculated under Subsection (b) of this section is equal to 90 percent of the member's average computation pay, the member is entitled to a Group B retirement pension under Subsection (c) of this section at 45 or 53 years of age, as applicable, that is not actuarially reduced as provided under Subsection (c-1) of this section.

(d) Except as provided by Subsection (d-2) of this section, a Group B member who has accrued 20 or more years of pension service and has been on active service at any time on or after January 1, 1999, may elect to apply for a Group B retirement pension beginning at any time after the Group B member leaves active service, regardless of age. A Group B member may elect a Group B retirement pension under this subsection as follows:

(1) if the member accrued 20 or more years of pension service on or before September 1, 2017, the member may elect a pension under this subsection that is computed in the same manner as the Group B retirement pension under Subsection (b)(1) of this section except that the percentage set forth below must be used instead of the three percent multiplier prescribed by Subsection (b)(1)(A) of this section:

Age of Member When Retirement Pension Begins	Percent
48 and 49	2.75%
47	2.5%

46	2.25%
45 and younger	2%; and

(2) except as provided by Subsection (d-2) of this section and subject to Section 6.021 of this article, if the member accrued 20 or more years of pension service after September 1, 2017, the member may elect a pension under this subsection computed in the same manner as the Group B retirement pension under Subsection (b)(2) of this section except that the percentage set forth below must be used instead of the 2.5 percent multiplier prescribed by Subsection (b)(2) of this section:

Age of Member When Retirement Pension Begins	Percent
57	2.4%
56	2.3%
55	2.2%
54	2.1%
53 and younger	2.0%

(d-1) A member who elects a pension under Subsection (d) of this section is not entitled to:

- (1) minimum benefits under either Section 6.10A or 6.11 of this article; or
- (2) benefits under Subsection (g) of this section.

(d-2) Subject to Subsection (d-3) of this section and for purposes of Subsection (d) of this section, if a Group B member's pension benefit calculated under Subsection (b) of this section is equal to 90 percent of the member's average computation pay, the member is entitled to a Group B retirement pension under Subsection (d) of this section that is not reduced as provided under Subsection (d)(1) or (2) of this section.

(d-3) For purposes of Subsections (c-2) and (d-2) of this section, a Group B member's pension benefit calculated under Subsection (b) of this section shall be calculated without application of any reduction under Subsection (b-1) of this section.

(e) A Group B member or former Group B member with 34 or more years of pension service as of April 30, 1990, is entitled to receive the greater of a Group B retirement pension calculated under the terms of Plan B as in effect on that date or a Group B retirement pension calculated pursuant to Subsection (b) of this section.

(f) Deleted by [Acts 2017, 85th Leg., ch. 318](#) (H.B. 3158), § 1.28.

(g) In no event may any Group B member who was at any time a Group A member or a contributing member of the old plan or Plan A, and who satisfied the applicable age and length-of-service requirements of the applicable plan at the time the person

left active service, receive a retirement pension in an amount less than the amount the person would be entitled to receive as a Group A member.

(h) Notwithstanding any other provision of this section, a Group B member who was not a Group B member on or after January 1, 1993, shall receive a retirement pension calculated under the applicable provisions of Plan B as that plan existed on the date the member terminated active service.

(i) Entitlement to a Group B retirement pension under Subsection (b), (c), (d), or (e) of this section is subject to the following conditions:

(1) a written application must be filed with the executive director;

(2) the grant of the Group B retirement pension by the board must be made at a meeting of the board held during the month the retirement pension is to become effective, or as soon after as administratively possible; and

(3) the Group B member may no longer be on active service.

Authority to adopt alternative multipliers for computation of certain Group B Benefits

Sec. 6.021. (a) For purposes of Section 6.02(c-1) or (d)(2) of this article, the board by rule may adopt alternative multipliers, including an alternative table prescribing actuarially appropriate multipliers. In adopting rules under this subsection, the board shall designate the date on which the alternative multiplier shall take effect.

(b) Copies of any alternative multipliers adopted under this section must be maintained at the principal office of the pension system and published on the pension system's publicly available Internet website.

Authority to reduce retirement age

Sec. 6.022. Notwithstanding any other law, the board may reduce the age at which a Group B member is eligible to begin receiving a retirement pension, including an actuarially reduced retirement pension, under Section 6.02 of this article if the board determines that the reduction will not cause the amortization period of the unfunded actuarial accrued liability of the pension system to exceed 25 years, after taking into account the impact of the reduction. A board action under this section may not take effect until the State Pension Review Board reviews the board's determination described by this section.

Disability benefits

Sec. 6.03 (a) If a member who is on active service, other than a member participating in DROP, becomes disabled to the extent that the member cannot perform the member's duties with the member's department, the member may apply for a disability pension, subject to any uniform and nondiscriminatory disability application procedure and recall and review procedure adopted by the board and in effect from time to time.

(b) No disability pension may be paid until a member has been prevented, by a disability, from performing the member's duties with the member's department for a period of at least 90 consecutive calendar days, and no disability benefits may be paid for

any portion of the 90-day period. The board may waive the waiting period on request by the member, if the request is supported by credible evidence acceptable to the board that the disability is wholly and immediately incapacitating. The board may request from the city such information, including any employment application and any related physical test and medical examination records, as may be desirable in evaluating the disability application.

(c) No disability pension may be paid for any disability if the disability was a result of the member's commission of a felony, except that this restriction may be waived by the board if it believes that facts exist that would mitigate the denial of the member's application for a disability pension.

(d) No disability pension may be paid to a member for any disability if the disability was a result of an intentionally self-inflicted injury or a chronic illness resulting from an addiction by the member through a protracted course of indulgence in alcohol, narcotics, or other substance abuse that was not coerced.

(e) No disability pension may be paid until the health director has either examined the member or reviewed reports of the member's physical or mental condition submitted to the health director by competent outside medical practitioners.

(f) No disability pension may be paid if the chief of the member's department is able to provide the member with duties that are within the member's physical or mental capabilities, even though the duties are different from the duties the member performed before the disability.

(g) Written application for a disability pension must be filed with the executive director not later than the 180th day after the date the member leaves active service. The application must be accompanied by a recommendation from the health director. This recommendation shall contain a statement indicating whether the member became disabled while the member was on duty or off duty and whether the disability was service-connected or was not service-connected.

(h) The recommendation from the health director shall also contain a statement indicating the date the member became disabled or indicating that the disability prevented the member from performing the member's duties for a period of not less than 90 days.

(i) An application for disability retirement will be considered at the meeting of the board held during the month the disability pension is to become effective or as soon after the effective date of the disability pension as possible. No disability pension may be paid, however, until the board has approved the application.

(j) If a person who became a Group B member pursuant to Section 5.01(a)(2)(E) of this article withdraws the person's contributions pursuant to Section 4.04 of this article and leaves active service with vested rights in the old plan, Plan A, or the combined pension plan in existence before January 1, 1993, the Group B member must, on return to active service, earn five years of pension service after the date of return to receive a Group B disability pension. If the Group B member is disabled before earning five years of pension service following a return to active service, the person may receive only a Group A disability pension.

(k) For purposes of Sections 6.04 and 6.05 of this article and this section:

(1) longevity pay and incentive pay are the amounts in effect on the date the benefits are to begin, without subsequent adjustment; and

(2) except as provided by Section 6.05(b-1) of this article, base pay is the amount in effect on the date benefits are to begin, without subsequent adjustment.

(l) Notwithstanding any other law, Subchapter B, Chapter 607, Government Code, applies to all members without regard to the employing department or job assignment.

Disability benefits for certain persons in uniformed services

Sec. 6.035. (a) In this section, “uniformed services” has the meaning assigned by the federal Uniformed Services Employment and Reemployment Rights Act of 1994 ([38 U.S.C. Section 4301 et seq.](#)).

(b) This section applies to a person who was released from the uniformed services after December 17, 2001, under conditions that would have made the person eligible for benefits under Section 414(u) of the code if the person could have returned to active service.

(c) If a person subject to this section was unable to return to active service by reason of disability incurred while on a leave of absence due to service in the uniformed services, that person is entitled to a regular disability pension in accordance with Section 6.03 of this article, calculated in accordance with Section 6.04 of this article.

(d) Notwithstanding Section 6.03(g) of this article, a written application for a disability pension must be filed not later than the 180th day after the date of the person's release from the uniformed services.

(e) A person subject to this section is entitled to receive pension service for the period of service with the uniformed services only to the extent that contributions are made for that period in accordance with this article.

Calculation of regular disability benefits

Sec. 6.04. (a) Subject to Subsection (g) of this section, if a Group A member's application for a Group A disability pension has been approved by the board pursuant to Section 6.03 of this article, including any procedures adopted under that section, the Group A member may elect to receive a Group A disability pension calculated:

(1) in the same manner as the benefit under Sections 6.01(b) and (c) of this article; or

(2) under Subsection (c) of this section.

(b) An election under Subsection (a) of this section, once approved by the board, is irrevocable.

(c) Subject to Subsection (g) of this section, a Group A member who elects to have benefits determined under this subsection is entitled to a monthly disability pension calculated as follows:

(1) at a rate of three percent of base pay for each year, prorated for fractional years, of pension service, with a maximum of 32 years of pension service being credited, or 96 percent of base pay, except that if the Group A member had 34 or more years of pension service as of April 30, 1990, the member is entitled to receive the greater of a disability pension calculated under the terms of the combined pension plan in effect on that date or as calculated under this subdivision; plus

(2) one-half of the longevity pay the Group A member was receiving at the time the member left active service; plus

(3) subject to Subsection (d) of this section, 1/24th of the annualized amount of city service incentive pay the Group A member received at the time the member left active service.

(c-1) The disability pension calculated under Subsection (c) of this section may not exceed the greater of:

(1) 90 percent of the member's average base pay determined under the applicable subsection; or

(2) the vested and accrued disability pension of the member as determined on August 31, 2017.

(d) Payments of the amounts described by Subsection (c)(3) of this section are contingent on the city's continuing payment of city service incentive pay to Group A members on active service.

(e) If a Group B member's application for a Group B disability pension has been approved by the board under Section 6.03 of this article, including any procedures adopted under that section, the Group B member may elect to receive a Group B disability pension calculated in the manner described by Subsection (f) or (f-1) of this section, subject to Subsection (g) of this section.

(f) Subject to Subsections (f-1), (f-3), and (g) of this section, the disability pension of a Group B member shall be calculated as follows:

(1) for a member who began active service before March 1, 2011, the member's disability pension shall be the sum of:

(A) the member's number of years of pension service earned before September 1, 2017, prorated for fractional years, times three percent of the average computation pay determined over the 36 consecutive months of pension service in which the member received the highest computation pay; plus

(B) the number of years of pension service, including pension service credit imputed under Section 6.05(c) of this article, earned on or after September 1, 2017, prorated for fractional years, times 2.5 percent of the average computation pay determined over the 60 consecutive months of pension service in which the member received the highest computation pay; or

(2) for a member who began active service on or after March 1, 2011, the member's disability pension shall be the number of years of pension service, including pension service credit imputed under Section 6.05(c) of this article, prorated for fractional years, times 2.5 percent of the average computation pay determined over the 60 consecutive months of pension service in which the member received the highest computation pay.

(f-1) Notwithstanding Subsection (f) of this section, for a Group B member who had 34 or more years of pension service as of April 30, 1990, the member is entitled to receive the greater of a disability pension calculated under the terms of Plan B in effect on April 30, 1990, or calculated under Subsection (f) of this section.

(f-2) For purposes of Subsections (f) and (f-1) of this section:

(1) any partial year of pension service for a Group B member's first 20 years of pension service is counted as a full year of pension service, if the member was considered by the member's department to have worked a normal full-time schedule at the time of the disability;

(2) if the member has less than 36 or 60 consecutive months of pension service, as applicable, the member's average computation pay will be computed based on the member's entire pension service; and

(3) days during which the member earned no pension service due to a termination of active service or otherwise must be disregarded in determining the 36 or 60 consecutive months of highest computation pay.

(f-3) The disability pension calculated under Subsection (f) or (f-1) of this section may not exceed the greater of:

(1) 90 percent of the member's average computation pay determined under the applicable subsection; or

(2) the vested and accrued disability pension of the member as determined on August 31, 2017.

(g) The disability pension calculated in accordance with this section, including both a Group A benefit described by Subsection (a) of this section and a Group B benefit described by Subsection (f) of this section, shall be reduced dollar-for-dollar by any monthly disability compensation benefit received under Section 6.05 of this article. If the monthly disability compensation benefit provided to a member under Section 6.05 of this article equals or exceeds any benefit the member is entitled to under this section or Section 6.01(b) or (c) of this article, the member may not receive the benefit under this section.

Compensation benefits for service-connected disability

Sec. 6.05. (a) If a member leaves active service at any time due to disability and the board determines that the member with the disability became unable to perform the member's duties with the member's department due to an injury or sickness incurred in the performance of the member's duties, the member is entitled to periodic disability compensation benefits in accordance with this section.

(b) Subject to Subsection (b-1), a Group A member whose disability, as determined by the board, was caused by an injury or sickness incurred in the performance of the member's duty shall receive a monthly benefit equal to 60 percent of the member's base pay. For purposes of this subsection, "base pay" is the amount in effect on the date compensation benefits under this section are to begin, without subsequent adjustment.

(b-1) Instead of receiving a periodic disability compensation benefit under Subsection (b) of this section, a Group A member who is entitled to periodic disability compensation benefits under this section may elect, before the benefits begin, to receive those benefits as a monthly benefit equal to 50 percent of the member's base pay adjusted from time to time to reflect changes in base pay that occur after the member began receiving a monthly compensation benefit under this section.

(c) A Group B member whose disability, as determined by the board, was caused by an injury or sickness incurred in the performance of the member's duty shall receive a monthly benefit equal to the disability pension under Sections 6.04(f), (f-1), (f-2), and (f-3) of this article except that if the member:

(1) does not have 20 years of pension service, the member is considered to have 20 years of pension service for the purposes of calculating the disability pension under that section; and

(2) has less than 36 or 60 consecutive months, as applicable, of employment with the department, the member's average computation pay will be computed based on all the member's computation pay, and days during which the member earned no pension service due to a termination of active service or otherwise must be disregarded in determining either the 36 or 60 consecutive months of highest computation pay.

(d) Redesignated as Vernon's Ann.Civ.St. art. 6243a-1, Sec. 6.055.

(e) For purposes of Subsection (d) of this section, the phrase "earned income" means income earned by a Group B pensioner in the form of wages, salaries, commissions, fees, tips, unemployment benefits, and other amounts received by virtue of employment or self-employment but paid before any deduction for taxes or insurance. In addition, earned income also includes those amounts contributed on a before-tax basis to any retirement plan or employee health and welfare benefit plan.

Reduction in disability or compensation benefits for certain persons

Sec. 6.055. (a) In this section, "earned income" means income earned by a Group B pensioner in the form of wages, salaries, commissions, fees, tips, unemployment benefits, and other amounts received by virtue of employment or self-employment but paid before any deduction for taxes or insurance. In addition, earned income also includes those amounts contributed on a before-tax basis to any retirement plan or employee health and welfare benefit plan.

(b) The board shall require any Group B pensioner who became a member of Plan B or the combined pension plan on or after May 1, 1990, and who is receiving a Group B disability pension under Section 6.04 of this article or a periodic disability compensation under Section 6.05 of this article to provide the board annually, on or before July 1 of each year, with a true and complete copy of those portions of the person's federal and, if applicable, state tax return, including appropriate schedules, for the previous calendar year that indicate the person's occupations, if any, and earned income for the previous calendar year. If the pensioner did not file a tax return for the previous calendar year, the board may require other documentation reflecting the pensioner's occupation or earned income that the board determines appropriate.

(c) The pension system may waive the July 1 date under Subsection (b) of this section in lieu of one later in the same calendar year if the Group B pensioner provides the board with a true and complete copy of a grant of an extension of time for the filing of the person's tax return from the appropriate governmental agency or a true and complete copy of an extension request that results in any automatic extension.

(d) If, after evaluating the information received under Subsection (b) of this section, the board finds the Group B pensioner is or has been receiving earned income from one or more employments, including self-employment, during the preceding year, the board shall reduce future disability retirement payments to the Group B pensioner in accordance with the following formula: \$1 for each \$1 that the sum of "a" + "b" is greater than "c," where "a" is the earned income of the Group B pensioner attributable to the previous calendar year from the person's employments, "b" is the total amount of Group B disability retirement payments received by the Group B pensioner the previous calendar year, and "c" is the annualized amount of the average computation pay the Group B pensioner received as of the date the person left active service.

(e) For purposes of the computation under Subsection (d) of this section, the average computation pay shall be deemed increased at a rate of 2.75 percent, without compounding during the year, as of each January 1 that the Group B pensioner receives a Group B disability retirement payment.

General rules governing death benefits

Sec. 6.06. (a) Any award of a death benefit is subject to the conditions required by this section.

(b) A written application for benefits must be filed with the executive director.

(c) The application will be considered at the meeting of the board held during the month death benefits are to become effective, or as soon as possible after the date the benefits become effective. No benefits may be paid, however, until the board has approved the application.

(d) The board may require the applicant to provide proof of eligibility, such as marriage licenses, birth certificates, adoption papers, or sworn statements. The board may withhold any death benefit until the eligibility of the applicant has been confirmed.

(e) If surviving children of a primary party are not qualified survivors entitled to death benefits, the spouse of the primary party who is a qualified survivor is entitled only to receive a share of the death benefits in the amount calculated under Section 6.07(a) or Section 6.08(b)(1), (c)(1), (d)(1), or (e)(1) of this article, whichever is applicable, and is not entitled to what otherwise would be the surviving children's share.

(e-1) If a primary party had no surviving spouse, any surviving child who is a qualified survivor shall receive only the amount calculated under Section 6.07(a) or Section 6.08(b)(2), (c)(2), (d)(2), or (e)(2) of this article, whichever is applicable, and is not entitled to what otherwise would be the surviving spouse's share.

(e-2) If a primary party does not have a spouse or children who are qualified survivors, any dependent parent of the primary party who is a qualified survivor shall receive only the amount calculated under Section 6.07(c) or Section 6.08(b)(3), (d)(3), or

(e)(3) of this article, whichever is applicable, and is not entitled to what otherwise would be the surviving spouse's or surviving children's share.

(f) The total monthly death benefits received by the qualified survivors of a primary party under this article, including the primary party's spouse, children, or dependent parents, may not exceed the pension to which the deceased primary party was entitled per month.

(g) If there is no surviving spouse or legal guardian for the surviving children of a primary party who are qualified survivors and if the board determines that the surviving children lack the discretion to handle money, or in other appropriate circumstances, notwithstanding any other provision of this section, the board may request a court of competent jurisdiction to appoint a suitable person to receive and administer the surviving children's money or in those circumstances described in Subsection (n) of this section, appoint a new trustee to administer the surviving children's trust.

(h) With the exception of a trust described in Subsection (n) of this section, no death benefits awarded to surviving children may be used for any purpose other than to benefit the surviving children.

(i) Repealed by [Acts 2017, 85th Leg., ch. 318 \(H.B. 3158\)](#), § 1.52(4).

(j) With the exception of those circumstances described in Subsection (n) of this section, death benefits payable to surviving children shall be delivered to the legal guardian of the estate of the surviving children if one has been appointed and the pension system has been provided proof of the appointment. If no legal guardian has been appointed, death benefits shall be delivered to one of the following persons, provided there is evidence that the person is a suitable person to receive and administer the benefits:

(1) the surviving spouse with whom the child resides; or

(2) the adult head of the household with whom the child resides, if the child does not reside with the surviving spouse.

(j-1) In accordance with Subsection (h) of this section, the recipient of a surviving child's death benefits under Subsection (j) of this section must use the death benefits to benefit the child. The board may withhold payment of benefits to anyone, if presented with evidence that the death benefits are not being used to benefit the surviving child.

(k) Dependent parents of a primary party who are entitled to receive death benefits provided by this article may only receive the benefits for the remainder of the dependent parents' lives.

(l) The pension system may require all qualified survivors receiving death benefits to file a sworn statement with the executive director concerning the qualified survivor's eligibility to continue to receive death benefits at least once every two years, or at any other time the executive director considers a sworn statement to be appropriate to evidence the continued eligibility of the qualified survivor. The board may withhold death benefits from any person who fails or refuses to file a statement when requested to do so.

(m) When the last qualified survivor of any primary party becomes ineligible to continue to receive death benefits, an amount equal to the excess, if any, of the total amount of all contributions made to the fund by the primary party while a member over the sum of all benefits paid to the primary party and all of the primary party's qualified survivors shall be paid in a lump sum to the last person to receive benefits as a qualified survivor or, if none exists, to the member's designee. The total amount to be paid in benefits to the primary party and all qualified survivors shall never be less than the total amount of contributions the primary party made to the fund while a member.

(n) Notwithstanding any other provision of this section:

(1) death benefits awarded to an unmarried child who is a qualified survivor who is determined by the board to be disabled under the terms of Subsection (o-2) of this section may be paid to the trustee of a management trust, supplemental needs or special needs trust, or comparable trust established for the benefit of the child, if the trust meets the requirements set forth in a procedure adopted from time to time by the board; and

(2) as soon as practicable after the pension system has knowledge of an event listed in this subdivision, the pension system shall terminate payment of death benefits to a trust described by Subdivision (1) of this subsection effective on the earlier occurrence of the following events:

(A) the date as of which the child is determined by the board to no longer be disabled under the terms of this section;

(B) the date on which the child is lawfully married;

(C) the date on which the child is deceased;

(D) the date on which the pension system becomes aware that the assets of the trust are deemed to be the resources of the child under applicable federal or state laws or regulations; or

(E) if the trustee of the child's trust fails to provide a court of competent jurisdiction with an annual accounting of the child's trust, the date occurring six months after the date of the close of the trust's fiscal year.

(o) When a child who, as a qualified survivor, is entitled to receive death benefits under this article reaches the age of 19, the child may no longer participate in the division of the benefits, but the same undiminished child's share as determined by this section shall be paid to any remaining children who are qualified survivors who remain eligible to continue to receive death benefits.

(o-1) If benefits are no longer payable to the trust described in Subsection (n)(1) of this section in accordance with Subsection (n)(2) of this section, the benefits are divisible and payable to any remaining children who are qualified survivors who remain eligible to receive death benefits.

(o-2) If an unmarried child, after cessation of entitlement to death benefits because of attainment of age 19, becomes disabled before age 23, the child is entitled to participate in the division of death benefits under this article. Notwithstanding the preceding, all death benefits granted under this subsection are conditioned on the board finding that:

(1) the child is so physically or mentally disabled, either congenitally or through injury suffered or disease contracted, as to be unable to be self-supporting or to secure and hold gainful employment or pursue an occupation;

(2) the child is not married;

(3) the disability was not the result of an occupational injury for which the child received compensation equal to or greater than that provided under this article;

(4) the disability was not the result of an intentional self-inflicted injury or a chronic illness itself resulting from an addiction of the child through a protracted course of indulgence in alcohol, narcotics, or other substance abuse that was not coerced; and

(5) the disability did not occur as a result of the child's participation in the commission of a felony.

(p) If a child with a disability received or is receiving workers' compensation resulting from an occupational injury equal to an amount less than the death benefit to be provided under this section, the difference shall be paid out of the assets of the fund in the form otherwise payable as monthly benefits. For purposes of Subsections (o), (o-1), and (o-2) of this section, if a lump sum is awarded for an injury, the fund's actuary may compute a corresponding monthly equivalent. A finding relating to a child's disability is subject to periodic review and modification by the board.

(q) On the death or marriage of a child granted death benefits under this article, the death benefits shall cease being paid to that child; however, the same undiminished child's share as determined by this section shall be uniformly distributed among any remaining unmarried children who are:

(1) under 19 years of age; or

(2) disabled as described by Subsection (o-2) of this section and entitled to death benefits as qualified survivors.

(r) A spouse of a primary party who married the primary party after the date the primary party terminated active service is not a qualified survivor and is entitled only to those death benefits, if applicable, provided under Section 6.063 of this article.

(s) Repealed by [Acts 2017, 85th Leg., ch. 318 \(H.B. 3158\)](#), § 1.52(4).

(t) A surviving spouse who first remarried on or after April 21, 1988, is eligible to receive death benefits for the remainder of the spouse's life provided the surviving spouse is a qualified survivor. This subsection may not be applied retroactively.

(u) The eligibility of a surviving spouse who first remarried before April 21, 1988, is governed by Section 6.061 of this article.

(v) The qualified survivors of a member who dies while performing qualified military service are entitled to any additional benefits, other than benefits relating to the qualified military service, that qualified survivors would have received if the member had returned from qualified military service the day before death, resumed employment, and then died.

Prospective reinstatement of certain death benefits

Sec. 6.061. (a) Subject to Subsection (c) of this section, the surviving spouse of a primary party who was a member of the old plan, Plan A, or Plan B whose death benefits, also referred to as “survivor benefits” or “widow benefits,” terminated because of a remarriage of the surviving spouse that occurred before April 21, 1988, is entitled to receive death benefits, on a prospective basis only, as of the first day of the month following the month in which the executive director receives the application.

(b) The board shall make reasonable efforts to notify all known living surviving spouses who may be entitled to a reinstatement of benefits under this section.

(c) A surviving spouse's properly completed, board-approved application for reinstatement of death benefits under this section must be received by the executive director not later than the 180th day after the date the board completes, as determined by the board, the reasonable efforts required by Subsection (b) of this section.

(d) A surviving spouse's application for reinstatement of death benefits under this section constitutes the spouse's waiver of any claims against the pension system, the board, the executive director, or any other employee of the board or the pension system arising out of any claim for death benefits.

(e) This section may not be applied retroactively. A surviving spouse may not receive death benefits attributable to periods before the executive director's receipt of a properly completed and board-approved application, and any benefit provided to a surviving spouse described in this section must be calculated as if the benefits had not terminated on the surviving spouse's remarriage notwithstanding the fact the reinstatement of benefits is not retroactive.

Lump-sum payment on death of certain members

Sec. 6.062. (a) If an unmarried member dies while on active service and before beginning participation in DROP, the last person to receive benefits as the member's qualified survivor or, if the member does not have a qualified survivor living, the member's designee, shall be paid a lump-sum payment determined in accordance with this section if, at the time of the member's death, the member:

(1) had no qualified survivors; or

(2) only had qualified survivors who are children who become ineligible to receive death benefits before the benefits were paid for at least 120 consecutive months.

(b) The amount of the lump-sum payment under this section is the greater of:

(1) the payment that could have been provided under Section 6.06(m) of this article; or

(2) an amount equal to the actuarial equivalent of the remainder of the monthly benefits that would have been paid for the period from the last monthly benefit payment to the end of the 120 months, starting with the date of the first monthly benefit payment, if any.

(c) If no death benefit payments have been made with respect to the member, the amount of a monthly death benefit payment shall be considered to be the monthly death benefit that would have been paid if the member had died leaving only one dependent parent who was a qualified survivor.

(d) If a qualified survivor or designee is entitled to payment under both this section and Section 6.06(m) of this article, payments shall be made only under this section.

(e) The payment required under this section shall be made as soon as practicable after the later of the date:

(1) of the death of the member; or

(2) the last qualified survivor becomes ineligible to receive monthly death benefit payments.

Authority to elect certain actuarially reduced benefits

Sec. 6.063. (a) The board shall adopt policies under which a member who is leaving active service or a pensioner may elect to accept actuarially reduced benefits to provide the following optional benefits:

(1) a 100 percent joint and survivor annuity with the member's or pensioner's spouse;

(2) a 50 percent joint and survivor annuity with a spouse who is not a qualified survivor because the marriage to the pensioner occurred after the pensioner terminated active service, provided the election is made not later than one year after the date of the marriage; or

(3) a death benefit for a child who is not a qualified survivor because the child was born or adopted after the member left active service, but only if the child:

(A) is a dependent of the pensioner, within the meaning of Section 152(a)(1) of the code; and

(B) has not attained 18 years of age at the time of the election.

(b) An election under this section may not be revoked by the member or pensioner after it is filed with the pension system.

(c) Notwithstanding any other provision of this article, an election under this section shall result in benefits being paid as prescribed by this section instead of as prescribed by Section 6.01, 6.02, 6.04, 6.05, 6.07, or 6.08 of this article, as applicable.

(d) A pensioner who desires to make an election under Subsection (a)(1) of this section after having made an election under Subsection (a)(2) of this section shall incur a second actuarial reduction in benefits to pay for the increased survivor annuity.

(e) Except as provided by Subsection (f) of this section, a person is not entitled to the payment of benefits under this section with respect to a pensioner who makes an election after termination of active service and dies within one year after making the election, except the amount by which the pensioner's benefits were reduced are paid to the person who is entitled to receive payments under Section 6.064 of this article.

(f) Subsection (e) of this section does not apply to a person who makes an election under Subsection (a)(1) of this section to receive a 100 percent joint and survivor annuity with a spouse who is a qualified survivor at the time:

(1) the board grants a retirement pension; or

(2) a retirement pension would have been granted but for the fact that the person elected to participate in DROP after retirement.

(g) The actuarially reduced benefits being paid to the pensioner under this section will not be increased if the spouse dies before the pensioner, or if the child attains 19 years of age before the pensioner dies.

(h) The joint and survivor annuity or the pensioner's pension and child's death benefit payable under this section is the actuarial equivalent of the pension and death benefits, if any, that would have been payable, at the time of the election, if the election had not been made. On the death of the pensioner:

(1) the surviving spouse of a pensioner who made an election under Subsection (a)(1) of this section receives a pension that is equal to the reduced pension being received by the pensioner at the time of death; and

(2) a surviving spouse who is not a qualified survivor of a pensioner who made an election under Subsection (a)(2) of this section receives a pension that is 50 percent of the reduced pension being received by the pensioner at the time of death.

(i) A pensioner and surviving spouse receiving a death benefit payable under this section are eligible for adjustments under Sections 6.12 and 6.13 of this article, if the pensioner or surviving spouse, as applicable, is otherwise entitled to those adjustments, except that in each case the adjustment shall be calculated so that the total pension or death benefit paid is reduced by the same percentage the pensioner's pension is otherwise reduced under this section.

(j) A pensioner and surviving spouse receiving a death benefit payable under this section are not entitled to the minimum benefits provided under Section 6.10A, 6.10B, or 6.11 of this article.

(k) A surviving spouse receiving a death benefit payable under this section is not entitled to the special death benefit provided under Section 6.09 of this article.

(l) During a period in which there are two or more qualified survivors of a member who has made a joint and survivor annuity election under this section, the spousal benefit will be divided among the eligible survivors under Section 6.07 or 6.08 of this article, as applicable.

(m) A child's death benefit elected under Subsection (a)(3) of this section is treated the same way as a death benefit to a child who is a qualified survivor, except that it is based on the actuarially reduced pension.

Designees

Sec. 6.064. (a) A member, pensioner, or qualified survivor may at any time designate, in writing, one or more persons as a designee to receive any lump-sum payment due from the pension system on the death of the member, pensioner, or qualified survivor, as applicable.

(b) A designation under this section of a person other than the spouse of the member, pensioner, or qualified survivor, as appropriate, must be made with the written consent of the spouse, if the individual has a spouse.

(c) A designation made under this section:

(1) may be revoked or changed at any time; and

(2) is void if the person designated dies or goes out of existence before the payment is made.

(d) If a member, pensioner, or qualified survivor designates a spouse to receive a payment and the parties are later divorced, the designation is void at the time of the divorce unless ratified in writing at the time of the divorce or after that time.

(e) A designation by a member under this section is void at the time the member becomes a pensioner unless ratified in writing at the time the member becomes a pensioner or after that time.

(f) If a member, pensioner, or qualified survivor does not have a valid designee on file with the pension system at the time of death, the designee is:

(1) the spouse;

(2) the qualified survivors, if any, if there is no spouse;

(3) the estate of the person, if there is no spouse or qualified survivors; or

(4) the heirs of the person, if there is no spouse, qualified survivors, or estate.

Group A death benefits

Sec. 6.07. (a)(1) If a Group A member dies before leaving active service and before the Group A member had 20 years of pension service, the Group A member's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit equal to a Group A retirement pension computed under the terms of Section 6.01 of this article as if the Group A member had completed 20 years of pension service.

(2) If a Group A member dies before service retirement and after the Group A member has 20 years of pension service, the Group A member's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit calculated under Section 6.01 of this article as if the Group A member had left active service on the date of the Group A member's death.

(3) If a Group A pensioner dies during service retirement, the Group A pensioner's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit in an amount equal to the Group A retirement pension being received by the Group A pensioner on the date of the pensioner's death.

(4) If a Group A pensioner dies after November 25, 1996, while receiving periodic disability compensation under Section 6.05 of this article or a disability pension under Section 6.04 of this article, and before the Group A pensioner has 20 years of pension service, the Group A pensioner's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit calculated under Section 6.04 or 6.05 of this article, as applicable, in the same manner as the Group A pensioner's periodic disability compensation or disability pension, but as if the Group A pensioner had completed 20 years of pension service.

(5) If a Group A pensioner who has 20 or more years of pension service dies during disability retirement, the Group A pensioner's spouse and children who are qualified survivors shall, in the aggregate, receive a Group A death benefit in an amount equal to the Group A disability pension being received by the Group A pensioner on the date of the pensioner's death.

(b) Group A death benefits under Subsection (a) of this section shall:

(1) be divided one-half to the spouse and one-half to the children who are qualified survivors; and

(2) subject to the terms of Sections 6.06(n), (o), (o-1), and (o-2) of this article, be distributed in an equal and uniform manner to the children described by Subdivision (1) of this subsection.

(c) If a Group A member or pensioner dies leaving no spouse or children who are qualified survivors, the dependent parents who are qualified survivors shall receive a Group A death benefit equal to the death benefit otherwise payable under Subsection (a) of this section. The death benefit payable to the dependent parents under this subsection shall be divided equally between the parents regardless of whether the parents are married or living at the same residence. If there is only one dependent parent, that parent is entitled to one-half of the death benefit described in this subsection.

Group B death benefits

Sec. 6.08. (a) If a Group B member dies while on active service, a Group B member who left active service and is vested under Section 5.06 of this article dies, or a Group B pensioner dies while receiving service or disability retirement or while receiving periodic disability compensation under Section 6.05 of this article, the person's qualified survivors, or the person described in Section 6.06(g) or (j) of this article as the recipient of the children's benefits, may make application for Group B death benefits. If the deceased Group B member was previously eligible to elect whether to receive either a Group A or Group B retirement pension, the option to elect whether Group A or Group B death benefits are received shall be exercised by one of the following:

- (1) a qualified survivor who is the spouse of the deceased Group B member described by this subsection;
- (2) the person described in Section 6.06(g) or (j) of this article as the recipient of benefits on behalf of the deceased member's children who are qualified survivors, if no spouse is a qualified survivor; or
- (3) the qualified survivors who are dependent parents of the deceased member, if there is neither a spouse nor children who are qualified survivors.

(a-1) A qualified survivor who receives Group A death benefits under Subsection (a) of this section is entitled to a ratable portion of a reimbursement from the fund in the same amount and manner determined under Section 5.03(d) of this article. A qualified survivor or guardian desiring a refund of excess contributions must make application for the refund with the executive director within three years after the date the qualified survivor or guardian makes application for Group A death benefits. The option contained in this subsection is not available to qualified survivors of a Group B member who had, at the time of death, already applied for a retirement pension and selected a Group A retirement pension as provided by Section 5.03(c) or (c-1) of this article, but the qualified survivors are entitled to receive a Group A death benefit.

(b) Subject to Subsection (b-2) of this section, death benefits shall be computed as follows for the qualified survivors of Group B members who die while on active service:

(1) the death benefit of a qualified survivor who is the spouse of a member who began active service:

(A) before March 1, 2011, shall be the sum of:

(i) the number of years of pension service earned before September 1, 2017, prorated for fractional years, times, except as provided by Subsection (b-4) of this section, 1.5 percent of the average computation pay determined over the 36 consecutive months of pension service in which the Group B member received the highest computation pay; plus

(ii) the number of years of pension service, including pension service credit imputed under Section 6.05(c) of this article, after September 1, 2017, prorated for fractional years, times, except as provided by Subsection (b-4) of this section, 1.25 percent of the average computation pay determined over the 60 consecutive months of pension service in which the Group B member received the highest computation pay; or

(B) on or after March 1, 2011, shall be the number of years of pension service, including pension service imputed under Section 6.05(c) of this article, prorated for fractional years, times, except as provided by Subsection (b-4) of this section, 1.25 percent of the average computation pay determined over the 60 consecutive months of pension service in which the Group B member received the highest computation pay;

(2) the death benefit of qualified survivors who are a member's children shall be computed in the same manner as a spouse's benefit is computed under Subdivision (1)(A) or (B) of this subsection, as applicable, and shall be divided equally among all of the children who are qualified survivors; and

(3) the death benefit of each qualified survivor who is a member's dependent parent shall be computed in the same manner as a spouse's Group B benefit is computed under Subdivision (1)(A) or (B) of this subsection, as applicable.

(b-1) Pension service for purposes of the calculation under Subsection (b) of this section may not be less than 20 years. Any partial year of pension service for the first 20 years of pension service is counted as a full year of pension service, if the member was considered by the member's department to have worked a normal full-time schedule at the time of the member's death.

(b-2) The death benefit calculated under Subsection (b) of this section may not exceed the greater of:

(1) except as provided by Subsection (b-4) of this section, 45 percent of the member's average computation pay determined over the 36 or 60 consecutive months, as applicable, in which the Group B member received the highest computation pay; or

(2) the vested and accrued death benefit as determined on August 31, 2017.

(b-3) For purposes of Subsections (b) through (b-2) of this section:

(1) if the Group B member had less than 36 or 60 consecutive months, as applicable, of pension service, the average computation pay will be computed based on the person's entire pension service; and

(2) days during which the member earned no pension service due to a termination of active service or otherwise must be disregarded in determining the 36 or 60 consecutive months of highest computation pay.

(b-4) If a member dies in the line of duty, as determined by the board under Subsection (b-5) of this section, the percentage rate applied to the member's average computation pay under:

(1) Subsection (b)(1)(A)(i) of this section is 3 percent instead of 1.5 percent at such time as there are qualified survivors who are either the member's children or surviving spouse, but not both;

(2) Subsection (b)(1)(A)(ii) of this section is 2.5 percent instead of 1.25 percent at such time as there are qualified survivors who are either the member's children or surviving spouse, but not both;

(3) Subsection (b)(1)(B) of this section is 2.5 percent instead of 1.25 percent at such time as there are qualified survivors who are either the member's children or surviving spouse, but not both; and

(4) Subsection (b-2)(1) is 90 percent instead of 45 percent.

(b-5) A member is considered to have died in the line of duty if the member's death is caused by the performance of the member's duties for the member's department. The board shall determine whether a member died in the line of duty. In making a determination under this subsection, the board may consider as guidance the determination of the same or similar issue made by another governmental entity.

(c) Group B death benefits shall be computed as follows for the qualified survivors of any Group B member who died after leaving active service and who had vested rights under Section 5.06 of this article but who had not received retirement benefits at the time of death:

(1) the death benefit of a qualified survivor who is the member's spouse is equal to 50 percent of any retirement pension the member would have been entitled to as of the date the member left active service;

(2) the death benefits of qualified survivors who are the member's children are calculated in the same manner as the spouse's benefit is computed under Subdivision (1) of this subsection, to be divided equally between the children; and

(3) the death benefit of each qualified survivor who is the member's dependent parent is equal to 50 percent of any retirement pension the member would have been entitled to as of the date the member left active service.

(d) Group B death benefits shall be computed as follows for the qualified survivors of any Group B pensioner who dies while receiving service retirement :

(1) the death benefit of a qualified survivor who is the pensioner's spouse is equal to 50 percent of any retirement pension the Group B pensioner was receiving at the time of death;

(2) the death benefits of qualified survivors who are the pensioner's children are calculated in the same manner as the spouse's benefit is computed under Subdivision (1) of this subsection, to be divided equally between the children; and

(3) the death benefit of each qualified survivor who is the pensioner's dependent parent is equal to 50 percent of any retirement pension the Group B pensioner was receiving at the time of death.

(e) Group B death benefits shall be computed as follows for the qualified survivors of any Group B pensioner who dies while receiving disability retirement or while receiving periodic disability compensation under Section 6.05 of this article:

(1) the death benefit of a qualified survivor who is the pensioner's spouse is equal to 50 percent of any Group B periodic disability compensation or disability pension the Group B pensioner would have been entitled to as of the date the Group B pensioner left active service because of disability, or a Group B death benefit equal to 50 percent of any periodic disability compensation or disability pension the Group B pensioner was receiving at the time of death;

(2) the death benefits of qualified survivors who are the pensioner's children are calculated in the same manner as the spouse's benefit is computed under Subdivision (1) of this subsection, to be divided equally between the children; and

(3) the death benefit of each qualified survivor who is the pensioner's dependent parent is equal to 50 percent of any periodic disability compensation or disability pension the Group B pensioner would have been entitled to as of the date the Group B pensioner left active service because of disability, or a Group B death benefit equal to 50 percent of any periodic disability compensation or disability pension the Group B pensioner was receiving at the time of death.

Qualified surviving spouse special death benefit

Sec. 6.09. (a) A person who is the spouse of a Group A primary party, who is a qualified survivor, and who is entitled to death benefits under Sections 6.06, 6.061, 6.062, 6.063, and 6.07 of this article is also entitled to a special death benefit under this section if:

(1) the Group A primary party:

(A) had at least 20 years of pension service, left active service after October 1, 1985, and was at least 55 years of age on the earlier of the date the primary party:

(i) left active service; or

(ii) began participation in DROP; or

(B) had at least 20 years of pension service, left active service on or after May 31, 2000, and on the earlier of the date the primary party left active service or began participation in DROP, had a total of at least 78 credits, with each year of pension service, prorated for fractional years, equal to one credit and with each year of age, prorated for fractional years, equal to one credit; or

(2) the spouse has attained 55 years of age and there are no children who are qualified survivors eligible for death benefits.

(b) Until the requirements of Subsection (a) of this section are satisfied, a qualified survivor who is the spouse of a Group A primary party shall receive a Group A death benefit in accordance with Section 6.07 of this article.

(c) The special Group A death benefit under Subsection (a) of this section is calculated based on the following formula:

$$(P \times P \times A) + (P \times C) + D, \text{ where}$$

A = base pay at the time the Group A primary party began participation in DROP, begins service retirement, dies, or becomes disabled, plus longevity pay, plus one-twelfth of last-received city service incentive pay;

B = Group A primary party's benefit calculated at the time the Group A primary party began participation in DROP, begins service retirement, dies, or becomes disabled;

P = B/A (expressed as a percentage or a decimal);

C = the number of adjustments made to a Group A primary party's retirement pension, disability pension, or periodic disability compensation, multiplied by the amount of the adjustments; and

D = the number of adjustments made under this article to the Group A death benefit of a spouse who is a qualified survivor under Section 6.07 of this article, multiplied by the amount of the adjustments.

(d) A person who is the spouse of a Group B primary party, who is a qualified survivor, and who is entitled to any death benefits under Sections 6.06, 6.061, 6.062, 6.063, and 6.08 of this article is also entitled to a special benefit under this section if:

(1) the Group B primary party :

(A) had at least 20 years of pension service, left active service after October 1, 1985, and was at least 55 years of age at the earlier of the date the primary party left active service or began participation in DROP; or

(B) on or after May 31, 2000, left active service or began participation in DROP, whichever was earlier, having a total of at least 78 credits, with each year of pension service, prorated for fractional years, equal to one credit and with each year of age, determined at the time the Group B primary party left active service or began participation in DROP, prorated for fractional years, equal to one credit; or

(2) the spouse has attained 55 years of age, and there are no children of the primary party who are qualified survivors.

(d-1) Until the requirements of Subsection (d) of this section are satisfied, a spouse who is a qualified survivor may only receive a Group B death benefit in accordance with Sections 6.06, 6.061, 6.062, 6.063, and 6.08 of this article.

(e) The special Group B death benefit under Subsection (d) of this section is calculated based on the following formula:

$$(P \times P \times A) + (P \times C) + D, \text{ where}$$

A = average monthly computation pay at the time the Group B primary party begins service retirement, dies, becomes disabled, or begins participation in DROP;

B = the Group B primary party's benefit calculated at the time the Group B primary party begins participation in DROP, begins to receive service retirement, dies, or becomes disabled;

P = B/A (expressed as a percentage or a decimal);

C = the number of post-retirement adjustments made to a Group B primary party's retirement pension, disability pension, or periodic disability compensation multiplied by the amount of the adjustments; and

D = the number of adjustments made to the Group B death benefit of a qualified survivor who is the primary party's spouse under Section 6.08 of this article multiplied by the amount of the adjustments.

**Minimum benefits to certain Group A primary parties who were Group A,
old plan, or combined pension plan members and their qualified survivors**

Sec. 6.10A. (a) Except as provided by Section 6.063 of this article or Subsections (b) and (h) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group A benefits provided by this section shall be paid to any Group A primary party who elects to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article, or to the primary party's qualified survivors, except that a Group A primary party who elects to receive an actuarially reduced retirement pension before 50 years of age and the primary party's qualified survivors are not entitled to the minimum benefits specified under this section. An alternate payee is not entitled to the Group A minimum benefits specified in this section.

(b) A Group A primary party who elects to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article and who left active service with 20 or more years of pension service is entitled to receive a minimum Group A retirement pension of \$2,200 a month.

(c) In the absence of children who are qualified survivors, a spouse who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article will receive a minimum monthly Group A death benefit of \$1,200.

(d) A spouse who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article will receive, if there are children who are qualified survivors, a minimum Group A death benefit of \$1,100 a month.

(e) In the absence of a spouse who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(b), (c), or (e) of this article, the old plan, or former Section 14(a) of this article, the primary party's children who are qualified survivors, as a group, will receive a minimum Group A death benefit of \$1,100 a month, to be divided equally among them.

(f) If there is neither a spouse nor a child who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 14(a) of this article, each dependent parent who is a qualified survivor will receive a minimum Group A death benefit of \$1,100 a month. If only one of them is surviving, that dependent parent will receive a minimum Group A death benefit equal to \$1,100 a month.

(g) Notwithstanding the minimum monthly benefit described in other subsections of this section, a Group A primary party who receives periodic disability compensation under Section 6.05(b) of this article or a Group A disability pension under Section 6.04(a) of this article, the old plan, or former Section 17(a) of this article, shall receive a minimum Group A disability pension equal to \$2,200 a month.

(h) If a Group A pensioner who received a monthly benefit under Section 6.05(b-1) of this article or a disability pension under Section 6.04(a) of this article, calculated in the same manner as a Group A retirement pension under Sections 6.01(b) and (c) of this article, the old plan, or former Section 17(a) of this article before the completion of 20 years of pension service dies, the qualified survivors will receive a minimum Group A death benefit as provided under Subsection (c), (d), (e), or (f) of this section, as applicable, whichever is greatest.

Minimum benefits to certain Group A primary parties who were Group A, Plan A, or combined plan members and their qualified survivors

Sec. 6.10B. (a) Except as provided by Section 6.063 of this article and Subsection (b) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group A benefits provided by this section shall be paid to any Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article or to the primary party's qualified survivors, except that a Group A primary party who elects to receive an actuarially reduced Group A retirement pension before 55 years of age and the primary party's qualified survivors are not entitled to the minimum benefits specified in this section. An alternate payee is not entitled to the Group A minimum benefits specified in this section.

(b) A Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article and who left active service with 20 or more years of pension service is entitled to receive a minimum retirement pension equal to the greater of \$2,200 a month or \$1,000 a month adjusted, if applicable, in the manner described by Section 6.12 of this article.

(c) In the absence of children who are qualified survivors, a spouse who is a qualified survivor of a Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article will receive a minimum monthly death benefit equal to the greater of \$1,200 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article.

(d) A spouse who is a qualified survivor of a Group A primary party who elects to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article will receive, if there are children who are qualified survivors, a minimum Group A death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article. The children who are qualified survivors, as a group, will receive a minimum death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article, to be divided equally among them.

(e) In the absence of a spouse who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or former Section 14(b) of this article, the primary party's children who are qualified survivors, as a group, will receive a minimum Group A death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article, to be divided equally among them.

(f) If there is neither a spouse nor child who is a qualified survivor of a Group A primary party who elected to receive a Group A retirement pension under Section 6.01(e) of this article, Plan A, or the former Section 14(b) of this article, each dependent parent who is a qualified survivor will receive a minimum Group A death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article. If only one of them is surviving, that dependent parent will receive a minimum Group A death benefit equal to the greater of \$1,100 a month or \$500 a month adjusted, if applicable, in the manner described by Section 6.12 of this article.

(g) Notwithstanding the minimum monthly benefit as described in other subsections of this section, a Group A primary party who leaves active service on a non-service-connected disability under Section 6.04(a) of this article, Plan A, or former Section 17(b)(2) of this article with less than 20 years of pension service shall receive a minimum monthly Group A disability pension equal to the greater of \$110 multiplied by the number of years of the primary party's pension service or \$50 multiplied by the number of years of the primary party's pension service, the product adjusted, if applicable, in the manner described by Section 6.12 of this article.

(h) Repealed by [Acts 2017, 85th Leg., ch. 318](#) (H.B. 3158), § 1.52(5).

(i) If a Group A pensioner who received a non-service-connected disability pension under Section 6.04(a) of this article, Plan A, or former Section 17(b)(2) of this article before the completion of 20 years of pension service dies, the qualified survivors will each receive the amount specified in Section 6.07 of this article or the minimum Group A death benefit as provided under Subsection (c), (d), (e), or (f) of this section, as applicable, whichever is greatest.

Minimum benefits to Group B primary parties and their qualified survivors

Sec. 6.11. (a) Except as provided by Section 6.063 of this article or Subsections (b), (c), and (h) of this section and notwithstanding any benefit computation and determination to the contrary contained in this article, the minimum Group B benefits provided by this section shall be paid to any Group B primary party or the primary party's qualified survivors, except further that a Group B primary party who elects to receive an actuarially reduced retirement pension, including a request for a benefit under Sections 6.02(c) and (d) of this article, and the primary party's qualified survivors or alternate payee, are not entitled to the Group B minimum benefits specified by this section.

(b) If a Group B primary party leaves active service with 20 or more years of pension service, the Group B primary party is entitled to receive a Group B minimum retirement pension equal to the greater of \$2,200 a month or \$925 a month, which sum may (A) increase at the rate of \$5 a month for each year of pension service beyond 20 years, but the increase may not exceed \$75 and (B) be adjusted, if applicable, in the manner described by Section 6.12 of this article.

(c) If a Group B primary party leaves active service with less than 20 years of pension service, the primary party is entitled to receive a minimum monthly Group B retirement pension equal to the greater of:

(1) \$2,200 a month divided by 20 and multiplied by the Group B primary party's number of years of pension service; or

(2) \$925 a month divided by 20 and multiplied by the Group B primary party's number of years of pension service, which amount is then adjusted, if applicable, in the manner described by Section 6.12 of this article.

(d) In the absence of children who are qualified survivors, a spouse who is a qualified survivor of a Group B primary party will receive a minimum Group B death benefit equal to the greater of:

(1) \$1,200 a month; or

(2) \$600 a month adjusted, if applicable, in the manner described by Section 6.12 of this article.

(e) A spouse who is a qualified survivor of a Group B primary party, if there are children who are qualified survivors, will receive a minimum Group B death benefit of \$1,100 a month.

(f) The children who are qualified survivors of a Group B primary party, as a group, will receive a minimum Group B death benefit equal to the greater of \$1,100 a month or \$600 a month adjusted, if applicable, in the manner described by Section 6.12 of this article, to be divided equally between them.

(g) If there is neither a spouse nor a child who is a qualified survivor, each dependent parent who is a qualified survivor of the deceased Group B primary party will receive a minimum death benefit of \$1,100 a month.

(h) Notwithstanding the minimum monthly retirement pension otherwise described by this section, a Group B primary party who left active service on a non-service-connected disability with less than 20 years of pension service will receive a minimum monthly disability pension equal to the greater of \$110 multiplied by the number of years of the primary party's pension service or \$46.25 multiplied by the number of years of the primary party's pension service, the product adjusted in the manner, if applicable, described by Section 6.12 of this article. If a Group B primary party who was receiving a non-service-connected disability pension before the completion of 20 years pension service dies, the qualified survivors will receive the amount specified in Section 6.08 of this article, or the minimum monthly death benefits granted to qualified survivors as provided by Subsections (d), (e), (f), and (g) of this section, as applicable, whichever is greater.

Adjustments to retirement and disability pension benefits

Sec. 6.12. (a) This section applies to the following benefits provided under this article:

(1) a retirement pension calculated under Section 6.01(e) or 6.02 of this article;

(2) a disability pension calculated under Section 6.04 of this article, other than under Section 6.04(a) of this article;

(3) periodic disability compensation benefit under Section 6.05 of this article, other than Section 6.05(b-1) of this article; or

(4) a death benefit calculated under:

(A) Section 6.07 of this article, if calculated in the manner of a retirement pension under Section 6.01(e) of this article or in the manner of a disability compensation benefit under Section 6.05(b) of this article; or

(B) Section 6.08 of this article currently in pay status, or pending board approval on the last day of September.

(b) Except as provided by Subsection (d) of this section, annually on the first day of October, the pension system may increase the base pension of a benefit described by Subsection (a) of this section by a percentage equal to the average annual rate of actual investment return of the pension system for the five-year period ending on the December 31 preceding the effective date of the adjustment less five percent.

(c) An adjustment under this section may not be less than zero percent or exceed four percent of the applicable base pension benefit.

(d) The pension system may only make an adjustment to benefits under this section if the ratio of the amount of the pension system's market value of assets divided by the amount of the pension system's actuarial accrued liabilities, after giving effect to the adjustment, is not less than .70.

(e) For purposes of Subsection (d) of this section, the amount of the pension system's market value of assets and the amount of the pension system's actuarial accrued liabilities shall be based on and determined as of the date of the most recently completed actuarial valuation.

(f) The following persons may not receive an adjustment under this section:

(1) a member on active service, including a DROP participant;

(2) a pensioner until the first October 1 occurring after both the pensioner's retirement and the earlier of:

(A) the date the pensioner reaches 62 years of age; or

(B) the third anniversary of the date the pensioner retired; or

(3) a qualified survivor until the first October 1 occurring after the earlier of:

(A) the date the qualified survivor reaches 62 years of age;

(B) the third anniversary of the date the primary party retired; or

(C) the third anniversary of the date of the member's or pensioner's death.

(g) A retirement or disability pension or periodic disability compensation paid to any Group B pensioner may not be less than the Group B pensioner's base pension.

(h) The death benefit of the qualified survivors who are the spouse, dependent parent, or child of a Group B pensioner, as a group, may not be less than 50 percent of the pensioner's base pension.

Supplement to certain recipients 55 years of age or older

Sec. 6.13. (a) Except as provided by Subsection (b) of this section, if a pensioner had at least 20 years of pension service under any plan adopted pursuant to [Article 6243a](#) or this article, or if a pensioner is receiving the periodic disability compensation benefit under Section 6.05 of this article, the pensioner, the pensioner's spouse who is a qualified survivor eligible to receive benefits under this article, or the pensioner's children who are qualified survivors, as a group, under Section 6.06 of this article are entitled to receive, when the pensioner or spouse who is a qualified survivor attains 55 years of age, provided the pensioner or spouse attains 55 years of age before September 1, 2017, a monthly supplement equal to the greater of \$50 or three percent of their total monthly benefit and for months beginning on and after January 1, 1991, a monthly supplement equal to the greater of \$75 or three percent of their total monthly benefit. For purposes only of calculating this supplement, the phrase "their total monthly benefit" means the amount payable to a pensioner or qualified survivors under the terms of the plans described by this section under which the pensioner or qualified survivor elected to receive benefits but does not include the supplement authorized by this section or any adjustments under Section 6.12 of this article made after September 1, 2017.

(b) A person described by Subsection (a) of this section who, on September 1, 2017, is not receiving or has not received a supplemental benefit under this section is not entitled to receive a supplemental benefit under this section.

Deferred retirement option plan

Sec. 6.14. (a) A member who remains on active service after becoming eligible to receive a retirement pension under either Section 6.01 or 6.02 of this article may become a participant in the deferred retirement option plan in accordance with Subsections (b) and (c) of this section, and defer the beginning of the person's retirement pension. Once an election to participate in the DROP has been made, the election continues in effect at least as long as the member remains in active service. On leaving active service, the member may:

(1) apply for a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02(b), (c), (d), or (e) of this article, whichever is applicable, together with any DROP benefit provided under this section; or

(2) continue to participate in DROP except the member is ineligible for disability benefits described by Subsection (g-1) of this section.

(b) The election to participate in the DROP shall be made in accordance with procedures set forth in any uniform and nondiscriminatory election form adopted by the board and in effect from time to time. To determine the proper amount to be credited to a member's DROP account, the election shall indicate whether the member desires to receive a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02(b), (c), (d), or (e) of this article, whichever is applicable. The election may be made at any time on or after the date the member becomes eligible for a retirement pension as provided by this subsection. The election becomes effective on the first day of the first month on or after the date on which the member makes the election, except that an election that would otherwise have been effective on October 1, 1993, and every October 1 after

that date, is considered, for purposes of this section and Section 6.12 of this article, to be effective on September 30 of the year in which it would otherwise have been effective. On and after the effective date of the election, the member will no longer be eligible for any refund of contributions. The election by one or more members to participate in the DROP has no effect on the amount of city contributions to the fund under Section 4.02 of this article.

(c) Each month after a member has made an election to participate in the DROP and indicated a desire to receive a retirement pension under Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02(b), (c), (d), or (e) of this article, whichever is applicable, and through the month before the month in which the member leaves active service, an amount equal to the retirement pension the member would have received under the applicable subsection for that month if the member had left active service and been granted a retirement pension by the board on the effective date of DROP participation shall be credited to a separate DROP account maintained within the fund for the benefit of the member. Amounts held in the DROP account of a member shall be credited at the end of each calendar month. Notwithstanding this section, effective January 1, 2018, a member on active service who has 10 years or more of participation in DROP shall no longer have the amount of the member's retirement pension credited to the member's DROP account while the member is on active service.

(d) A member may not receive a distribution from the member's DROP account while the member is on active service.

(e) Except as provided by Subsections (e-1) and (l) of this section, the balance in the DROP account of a member who terminated from active service on or before September 1, 2017, or who terminates from active service shall be distributed to the member in the form of an annuity, payable either monthly or annually at the election of the member, by annuitizing the amount credited to the DROP account over the life expectancy of the member as of the date of the annuitization using mortality tables recommended by the pension system's qualified actuary. The annuity shall be distributed beginning as promptly as administratively feasible after the later of, as applicable:

(1) the date the member retires and is granted a retirement pension; or

(2) September 1, 2017.

(e-1) The board may adopt a shorter period for annuitizing DROP account balances under Subsection (e) of this section if the pension system's qualified actuary determines that the shorter period will not cause the pension system's amortization period to exceed 25 years.

(e-2) The annuitization of a DROP account under Subsection (e) of this section must reflect the accrual of interest on the amount in the DROP account as of September 1, 2017, over the annuitization period applied to the account under this section. The interest rate applied under this subsection must be a rate as reasonably equivalent as practicable to the interest rate on a note issued by the United States Department of the Treasury or other federal treasury note with a duration that is reasonably comparable to the annuitization period applied to the account, as determined by the board. The portion of an annuity attributable to amounts credited to a member's DROP account on or after September 1, 2017, may not reflect the accrual of this interest on annuitization.

(e-3) The board may by rule allow any person receiving an annuity from the annuitization of a DROP account under this section to:

(1) assign the distribution from the person's annuitized DROP account to a third party provided the pension system receives a favorable private letter ruling from the Internal Revenue Service ruling that such an assignment will not negatively impact the pension system's qualified plan status; and

(2) subject to Subsection (e-4) of this section, in the event of a financial hardship that was not reasonably foreseeable obtain a lump-sum distribution from the person's DROP account resulting in a corresponding reduction in the total number or in the amount of annuity payments.

(e-4) The board shall adopt rules necessary to implement Subsection (e-3)(2) of this section, including rules regarding what constitutes a financial hardship for purposes of that subdivision. In adopting the rules, the board shall provide flexibility to persons receiving an annuity from the annuitization of a DROP account.

(f) The board may adopt rules and policies relating to the administration of Subsections (e), (e-1), and (e-2) of this section if the rules and policies are:

(1) consistent with the qualification of the plan under Section 401 of the code; and

(2) in the best interest of the pension system.

(f-1) The DROP account of a member who begins participating in DROP on or after September 1, 2017, does not accrue interest.

(g) The provisions of Sections 6.06, 6.061, 6.062, 6.063, 6.07, and 6.08 of this article pertaining to death benefits of a qualified survivor do not apply to amounts held in a member's or pensioner's DROP account. Instead, a member or pensioner who participates in DROP may designate a beneficiary to receive the annuity payments under this section over the remaining annuitization period in the event of the member's or pensioner's death subject to any rights provided under Subsection (e-3) of this section and in the manner allowed by Section 401(a)(9) of the code and any policy adopted by the board. A member or pensioner who is or becomes married is considered to have designated the member's or pensioner's spouse as the member's or pensioner's beneficiary, notwithstanding any prior beneficiary designation, unless the member or pensioner has made a different designation in accordance with a policy adopted by the board. If a member or pensioner does not have a spouse or the spouse predeceases the member or pensioner, the member's or pensioner's, as applicable, DROP account will be distributed to the member's or pensioner's, as applicable, designee. Notwithstanding anything in this section to the contrary, if a member or pensioner has previously designated the member's or pensioner's spouse as the beneficiary or co-beneficiary of the DROP account and the member or pensioner and spouse are subsequently divorced, the divorce automatically results in the invalidation of the designation of the spouse as a beneficiary and, if there is no additional beneficiary designated, the member's or pensioner's DROP account shall be distributed as provided by Subsection (e) of this section. If there are beneficiaries who survive the deceased member or pensioner, the surviving beneficiaries share equally in that portion that would have otherwise been payable to the former spouse.

(g-1) A member who becomes a DROP participant is ineligible for any disability benefits described by Section 6.03, 6.04, or 6.05 of this article, but is entitled to a retirement pension in accordance with Sections 6.01(b) and (c), Section 6.01(e), or Section 6.02 of this article, whichever is applicable, on termination from active service, and is also entitled to receive annuity payments in accordance with Subsection (e) of this section.

(h) The base pay or computation pay, whichever is applicable, in effect as of the effective date of a member's participation in DROP shall be used in calculating the member's retirement pension under Section 6.01 or 6.02 of this article. A member who elects to participate in DROP does not accrue additional pension service for purposes of computing a retirement pension for any period after the effective date of the election.

(i) Repealed by [Acts 2017, 85th Leg., ch. 318](#) (H.B. 3158), § 1.52(6).

(j) Except as provided by Subsection (l) of this section, if a pensioner who has been a DROP participant returns to active service, the person must become a participant in DROP under the terms and conditions in effect at the time of return to active service.

(k) Repealed by [Acts 2017, 85th Leg., ch. 318](#) (H.B. 3158), § 1.52(6).

(l) Notwithstanding any other provision of this section and except as provided by Subsection (o) of this section, a member who has entered DROP before June 1, 2017, may revoke the DROP election at any time on or after September 1, 2017, and before the earlier of:

(1) February 28, 2018; or

(2) the member's termination of active service.

(m) If a member revokes participation in DROP under Subsection (l) of this section:

(1) the member's DROP account balance is eliminated; and

(2) the member shall receive pension service credited for all or a portion of the period of the revoked DROP participation on payment of the required contributions for the period of the revoked DROP participation in accordance with a uniform and nondiscriminatory procedure adopted by the board that results in the payment of the amount of member contributions that would have been made if the member had never participated in DROP.

(n) A member who revokes the member's DROP election under Subsection (l) of this section is entitled to only a monthly pension computed on the basis of the member's pension service, including pension service purchased under Subsection (m) of this section:

(1) that is based on the member's average computation pay at the time of leaving active service, if the member is a Group B member; or

(2) as provided by Section 6.01(b) of this article, if the member is a Group A member.

(o) A member may not revoke DROP participation under Subsection (l) of this section if any money has been transferred out of the member's DROP account.

Deferred annuitization of certain drop accounts

Sec. 6.141. (a) This section applies only to a pensioner who:

(1) before attaining 50 years of age:

(A) left active service; and

(B) was granted a service retirement pension under Section 6.01 or 6.02 of this article;

(2) since the pensioner's retirement has continued to receive substantially equal periodic payments, as determined under Section 72(t) of the code; and

(3) on September 1, 2017:

(A) is a DROP participant; and

(B) has not attained 59- ½ years of age.

(b) Notwithstanding Section 6.14 of this article and solely to avoid the possibility of an early distribution tax penalty under Section 72(t)(4) of the code:

(1) a pensioner subject to this section may until the pensioner attains 59- ½ years of age:

(A) subject to Subsection (c) of this section, continue to participate in DROP;

(B) have the same amount of the pensioner's service retirement pension credited to the pensioner's DROP account as has been credited since the pensioner's service retirement pension was initially granted; and

(C) defer annuitization of the pensioner's DROP account under Section 6.14(e) of this article; and

(2) once a pensioner subject to this section attains 59- ½ years of age:

(A) the pensioner may not have any portion of the pensioner's service retirement pension credited to the pensioner's DROP account; and

(B) as soon as administratively feasible, the balance in the pensioner's DROP account shall be annuitized and distributed to the pensioner in accordance with Section 6.14(e) of this article.

(c) The DROP account of a pensioner who continues participation in DROP under Subsection (b)(1)(A) of this section does not accrue interest on and after September 1, 2017.

Prohibition on certain distributions

Sec. 6.142. Expired.

Medical examination

Sec. 6.15. (a) The board may require the following pensioners receiving a disability pension or a periodic disability compensation benefit to appear and undergo a medical examination by the health director or, if the health director approves, by any licensed medical practitioner, to determine if the pensioner's disability continues or has been removed to the extent that the pensioner is able to resume duties with the department:

(1) any Group A pensioner who has served less than 20 years;

(2) any Group A pensioner who elected a Group A disability pension under Section 6.04 of this article, periodic disability compensation under Section 6.05 of this article, or a non-service-connected disability pension under Plan A or former Section 17(b)(2) of this article, and who had more than 20 years of pension service, but is less than 55 years of age; and

(3) any Group B pensioner who was granted a Group B disability pension under Section 6.04 of this article or periodic disability compensation under Section 6.05 of this article or a disability pension under the terms of Plan B and is less than 50 years of age.

(b) Any medical examination under this section is subject to the following conditions:

(1) Except as otherwise provided by this section, the board has complete discretion to require a pensioner to appear and undergo a medical examination as well as the time that may pass between examinations. When it becomes clear to the board from reliable medical evidence that the disability is unequivocally permanent and is not expected to diminish, the board may waive subsequent examinations.

(2) A pensioner may not be required to undergo a medical examination more often than once in a six-month period, except that the board may order the pensioner to undergo an examination at any time if the board has reason to believe the pensioner's disability has been removed and that the pensioner may be able to resume duties with the pensioner's former department or if the pensioner requests to be allowed to return to duty.

(3) If a pensioner fails to undergo an examination after being notified by the board that the examination is required, the board may discontinue disability benefits until the pensioner has undergone the examination and the results of the examination have been sent to the board.

(4) If the pensioner is examined by an approved outside medical practitioner other than the health director, the reasonable and customary cost of the examination, if any, is payable from the assets of the fund.

(c) After a pensioner has undergone a medical examination, the health director shall provide the board with a report of the pensioner's present medical condition together with the doctor's opinion as to whether the pensioner continues to be disabled or whether the pensioner is no longer disabled to the extent that the pensioner could resume duties with the pensioner's former department. The report and opinion may be divulged only to persons who have a legitimate need for them.

(d) If, in the opinion of the health director, the pensioner continues to be disabled, the board must continue payment of benefits. If, in the opinion of the health director, the pensioner is no longer disabled, or is not so disabled that the pensioner could not perform some duties for the pensioner's former department, the board shall notify the department to determine if a position is available. If a position is available, the board shall notify the pensioner to return to duty. Disability benefits shall continue to be paid, however, until the pensioner returns to active service. However, if the pensioner refuses to return to duty or is refused employment by either department for reasons other than disability, the board shall order disability payments stopped. If a position is not available, the board must continue payments of the pensioner's disability pension.

(e) Pursuant to its authority under Section 6.06(o-2) of this article to review and modify any funding relating to the disability of a child who is a qualified survivor, the board may require the qualified survivor with a disability receiving death benefits to appear and undergo medical examination by the health director or, if the health director approves, by any licensed medical practitioner, to determine if the disability continues or if the disability has been removed.

Waiver of benefits

Sec. 6.16. (a) A primary party, qualified survivor, or beneficiary of a member's DROP account may, on a form prescribed by the board and filed with the executive director, waive all or a portion of the benefits to which the person is or may be entitled. The waiver may state whether it is revocable or irrevocable, and is irrevocable unless the waiver clearly states it is revocable.

(b) The waiver described by Subsection (a) of this section applies only to benefits that become payable on or after the date the waiver is filed.

(b-1) Benefits waived by a revocable waiver are forfeited and the person making the waiver has no right, title, claim, or interest in the benefits.

(c) If two or more persons are or may be entitled to benefits under this article, the waiver described by Subsection (a) of this section must be executed by each person to become effective. The living parent or parents or legal guardian or guardians of a child must sign the waiver described by Subsection (a) of this section on behalf of the child.

Denial of benefits: death caused by survivor

Sec. 6.17. A qualified survivor or beneficiary of a member's DROP account is not eligible for, or entitled to, benefits if the person is the principal or an accomplice in wilfully bringing about the death of a primary party or another qualified survivor or beneficiary of a member's DROP account whose death would otherwise have resulted in a benefit or benefit increase to the

person. The determination of the board that a person wilfully brought about the death must be made during a meeting of the board from a preponderance of the evidence presented and is not controlled by any other finding in any other forum, whether considered under the same or another degree of proof.

Investigation

Sec. 6.18. (a) The board shall consider all applications for retirement and disability pensions, all applications for death benefits, and all elections to participate in DROP. The board shall give notice to persons applying for benefits, advising them of their right to appear before the board and offer such sworn evidence as they may desire. Any person claiming retirement, disability, or DROP benefits may appear before the board and offer testimony that is relevant to a contested application for a retirement pension, a disability pension, death benefits, or DROP benefits. The chairman of the board may issue process for witnesses, administer oaths to witnesses, and examine any witness as to any matter affecting benefits under any plan within the pension system. Process for witnesses shall be served by any method of serving process permitted by the state law in any civil judicial proceeding. A witness who fails or refuses to attend and testify may be compelled to attend and testify, as in any judicial proceeding. The board may seek assistance from any court of competent jurisdiction to further compel or sanction a witness who fails or refuses to attend and testify.

(b) Any person who is aggrieved by a determination of the board regarding a retirement pension, a disability pension, death benefits, or DROP benefits may appeal the board determination to a state district court in the city where the pension system is located by giving written notice of appeal. The notice shall contain a statement of the grounds and reasons why the party feels aggrieved. The notice shall be served personally on the executive director within 20 days after the date of the board's determination. After service of the notice, the party appealing shall file with the state district court a copy of the notice of intention to appeal, together with an affidavit of the party making service showing how, when, and on whom the notice was served.

(c) Within 30 days after the date of service of the notice of appeal on the board, the executive director shall make up and file with the state district court a transcript of all nonprivileged papers and proceedings in the case before the board. When the copy of the notice of appeal and the transcript has been filed with the court, the appeal is perfected, and the court shall docket the appeal, assign the appeal a number, fix a date for hearing the appeal, and notify both the appellant and the board of the date fixed for the hearing.

(d) At any time before the rendering of its decision on appeal, the court may require further or additional proof or information, either documentary or under oath. On rendition of a decision on appeal, the court shall give to each party to the appeal a copy of the decision of the case. The decision of the court is appealable in the same manner as are civil cases generally.

(e) As provided by Section 4.01 of this article, the board shall approve all money used for investigations. The board may request the investigative services of either the police or fire departments in connection with any matter arising under this section.

Certificate of member pension benefit eligibility

Sec. 6.19. When a member has earned five years of pension service, the member shall be issued an incontestable five-year certificate indicating that the member is entitled to pension benefits subject to the effect of any withdrawals as permitted under [Article 6243a](#) or this article. The certificate shall state that the calculation of the retirement pension to which the member is entitled, or any disability benefits to which the member may become entitled, shall be determined solely under the actual terms of the combined pension plan as in effect at the time the member leaves active service. The certificate shall further state that in

the case of the member's death, the member's qualified survivors, if any, may become entitled to death benefits as determined solely under the actual terms of the combined pension plan as in effect at the time of the member's death. The certificate shall bear a seal and be signed by the executive director and chairman of the board.

Erroneous payments or overpayments

Sec. 6.20. (a) If the pension system pays money to any person not entitled to the payment, whether by reason of an error of the pension system as to entitlement to or the amount of a benefit or otherwise, or an act or error of some other person, including the recipient of the payment, the recipient of the payment holds the funds to which the recipient was not entitled in constructive trust for the pension system and those funds are subject to demand by the pension system at any time.

(b) The recipient of an erroneous payment from the pension system shall repay to the pension system all funds associated with the erroneous payment.

(c) Subject to Subsection (e) of this section, the board may by rule adopt a procedure to enable the pension system to offset the future benefit or other payments of a recipient described by this section. In addition, the board may take any additional action, including the bringing of a lawsuit, the board considers necessary to recover an erroneous payment the pension system is entitled to under this section.

(d) If the pension system determines that a person is entitled to additional benefits as a result of an error made by the pension system, the pension system shall promptly pay the additional benefits owed.

(e) The board's correction procedures must comply with the Internal Revenue Service's Employee Plans Compliance Resolution System and [Revenue Procedure 2016-51](#), including subsequent guidance.

PART 6A. EQUITABLE ADJUSTMENTS

Equitable adjustments to benefits

Sec. 6A.01. (a) Subject to this section and notwithstanding any other provision of this article, the board by at least a two-thirds vote of all trustees may consider and adopt rules requiring the equitable return of funds paid to or credited to the benefit of a member or pensioner under this article before September 1, 2017, to the extent the funds exceeded reasonable amounts that should be paid or credited given the circumstances of the pension system at the time the payment or credit was made, including the return of excessive interest credited to a member's DROP account and excessive adjustments made under Section 6.12 of this article.

(b) For purposes of Subsection (a) of this section, "reasonable amounts" includes the amounts that would have been paid or credited:

(1) if the interest rate applied in determining a benefit, including the interest rate applied to a DROP account, equaled the actual, audited rate of return of the plan at the time the interest was credited to the account; or

(2) if the percentage increase applied under Section 6.12 of this article equaled the percentage increase, if any, in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) most recently published by the Bureau of Labor Statistics of the United States Department of Labor and used by the United States Social Security Administration to provide a cost-of-living adjustment for social security benefit payments payable beginning in January of the next year.

Adjudication of certain challenges

Sec. 6A.02. (a) The Texas Supreme Court has exclusive and original jurisdiction over a challenge to the constitutionality under the Texas Constitution of Section 6A.01 of this article. An action under this section is authorized to the full extent permitted by [Section 3, Article V, Texas Constitution](#). The Texas Supreme Court may issue any injunctive, declaratory, or equitable relief the court deems appropriate or necessary to effectuate the court's mandamus jurisdiction in connection with a challenge under this section.

(b) Any action brought under this section must be filed not later than the 90th day after the date the board adopts a rule under Section 6A.01 of this article.

(c) If an action brought under this section is timely filed, the board may not enforce or otherwise administer any rules adopted pursuant to Section 6A.01 of this article during the pendency of the action.

PART 7. AMENDMENT OF PENSION SYSTEM [REPEALED]

Amendment

Sec. 7.01. Repealed by [Acts 2017, 85th Leg., ch. 318](#) (H.B. 3158), § 1.52(7).

PART 8. TREATMENT UNDER FEDERAL AND STATE LAW

Qualification under federal tax law

Sec. 8.01. (a) The plans within the pension system and the assets of the fund are intended to qualify as a governmental plan under Sections 401 and 414(d) of the code, be exempt from federal income taxes under Section 501(a) of the code, and conform at all times to applicable requirements of law, regulations, and orders of duly constituted federal governmental authorities. Accordingly, if any provision of this article is subject to more than one construction, one of which will permit the qualification of a plan that is within the pension system, that construction that will permit the plan to qualify and conform will prevail.

(b) The plans within the pension system as well as the assets of the fund shall be maintained for the exclusive benefit of members and their beneficiaries. At no time before the termination of all the plans within the pension system and the satisfaction of all liabilities with respect to members and their beneficiaries under all plans shall any part of the principal or interest from the assets of the fund be used for or diverted to purposes other than the exclusive benefit of the members and beneficiaries.

(c) Notwithstanding any other provisions of this article, the annual benefit provided with respect to any member in any limitation year may not exceed the amount permitted by Section 415(b) of the code for the limitation year, and the sum of the member contributions and all other annual additions for any limitation year may not exceed the amount permitted under Section 415(c) of the code for the limitation year. If the aggregated annual benefit or aggregated annual additions under any qualified plans created under this article and any other defined benefit plan or plans maintained by the city would otherwise exceed the limitations of

Section 415 of the code, the required reductions in benefits or contributions shall first be made to the extent possible from the other plan or plans. The limitations referenced in this subsection shall be adjusted annually in accordance with Section 415(d) of the code and any adjustment to benefits applies to the benefits of active and terminated members and applies without regard to whether a terminated member is a pensioner.

(c-1) Notwithstanding anything contained in this section to the contrary, the limitations, adjustments, and other requirements prescribed by this section shall at all times be computed in the manner most favorable to the affected members, to the extent permitted by guidelines issued by the Internal Revenue Service. If any provision of Section 415 of the code is repealed or is not enforced by the Internal Revenue Service, that provision may not reduce the benefits of any member after the effective date of the repeal of the provision or during the period in which the provision is not enforced.

(c-2) Any benefit reductions that are required to be made under this section shall be applied to reduce the monthly benefit that would otherwise have been payable to the member, unless the value of the member's DROP account accrued under Section 6.14 of this article exceeds the amount that may be paid under this section. If the value of the DROP account exceeds the value of the payments that may be made under this section, the member shall receive a lump-sum payment from the account of the maximum amount that may be paid under this section and the payment shall permanently reduce the benefits the member would otherwise have been entitled to receive under the combined pension plan.

(d) A member's retirement pension may not begin later than April 1 of the year after the later of the year in which the member leaves active service or the year in which the member attains age 70- ½ and must at all times comply with the requirements of Section 401(a)(9) of the code.

(e) Any person who receives any distribution from any plan within the pension system that is an eligible rollover distribution as defined by Section 402(f)(2)(A) of the code is entitled to have that distribution transferred directly to another eligible retirement plan as defined by Section 402(c)(8)(B) of the code of the person's choice on providing direction regarding that transfer to the executive director in accordance with procedures established by the executive director.

(e-1) If an eligible rollover distribution described by Subsection (e) of this section is to a designated beneficiary who is not the spouse or former spouse of the member, the transfer may only be to an individual retirement account or an individual retirement annuity.

(f) For the 2017 calendar year, the annual compensation taken into account for any purpose under the combined pension plan may not exceed \$400,000 for an eligible participant or \$270,000 for an ineligible participant. For a Group A member the term "annual compensation" means the aggregate of the member's base pay. For a Group B member the term "annual compensation" means the aggregate of the member's computation pay for any given plan year. These dollar limits shall be adjusted from time to time in accordance with guidelines provided by the secretary of the treasury. For purposes of this subsection, an:

(1) "eligible participant" means any person who first became a member of the pension system before January 1, 1996; and

(2) "ineligible participant" means any member who is not an eligible participant.

(g) For purposes of Subsection (h) of this section, "normal retirement age" means the earlier of:

- (1) the attainment of 50 years of age on or before September 1, 2017, and completion of at least five years of pension service;
- (2) the attainment of 58 years of age after September 1, 2017, and completion of at least five years of pension service; or
- (3) completion of 20 years of pension service.

(h) The retirement benefit earned by a member is nonforfeitable:

- (1) on attainment of normal retirement age, if not already nonforfeitable; or
 - (2) to the extent the benefit is funded, if not already nonforfeitable, on the termination or partial termination of the combined pension plan or the complete discontinuance of city contributions to the fund.
- (i) In accordance with Section 401(a)(8) of the code, forfeitures arising under the combined pension plan may not be used to increase the benefits any member would otherwise receive under the terms of the plan. Forfeitures may be used first to reduce administrative expenses, then to reduce required city contributions.
- (j) Subject to procedures adopted by the board, the pension system shall accept an eligible rollover distribution from another eligible retirement plan as defined by Section 402(f)(2)(B) of the code as payment of all or a portion of any payment a member is permitted to make to the pension system for past pension service credit. The pension system shall separately account for any after-tax contributions transferred from any plan under this subsection.

Excess benefit plan for police officers and fire fighters

Sec. 8.02. The board may by rule establish and administer a separate qualified governmental excess benefit arrangement and associated trust for the arrangement in accordance with Section 415(m) of the code.

Exemption of benefits from judicial process or alienation

Sec. 8.03. (a) A portion of the fund or benefit or amount awarded to any primary party, qualified survivor, beneficiary of a member's DROP account, excess benefit participant, or survivor of an excess benefit participant under this article may not be held, seized, taken, subjected to, or detained or levied on by virtue of any execution, attachment, garnishment, injunction, or other writ, order, or decree, or any process or proceedings issued from or by any court for the payment or satisfaction, in whole or in part, of any debt, damage, claim, demands, or judgment against any person entitled to benefits from any plan within the pension system or from the excess benefit plan. The fund and the excess benefit plan or any claim against the fund or the excess benefit plan may not be directly or indirectly assigned or transferred, and any attempt to transfer or assign the fund or the excess benefit plan or a claim against the fund or the excess benefit plan is void.

(b) A benefit under any plan created or existing pursuant to this article or [Article 6243a](#) is subject to division pursuant to the terms of a qualified domestic relations order. The executive director shall determine the qualifications of a domestic relations order according to a uniform, consistent procedure approved by the board. The total benefit payable to a primary party or to an alternate payee under a qualified domestic relations order may not actuarially exceed the benefits to which a primary party

would be entitled in the absence of the qualified domestic relations order. In calculating the alternate payee's benefits under a qualified domestic relations order, the interest rate is the rate used by the pension system's actuary in the actuarial evaluation for that year, except that the minimum interest rate for this purpose is the minimum required by Section 414 of the code.

(c) This section does not preclude:

- (1) the payment of death benefits to a trust for certain children of a primary party pursuant to Section 6.06(n) of this article;
- (2) the withholding of federal taxes from pension benefits;
- (3) the recovery by the board of overpayments of benefits previously made to any person;
- (4) the direct deposit of benefit payments to an account in a bank, savings and loan association, credit union, or other financial institution, provided the arrangement is not an alienation;
- (5) under any policy adopted by the board and uniformly applied to voluntary arrangements entered into by a primary party or qualified survivor, any voluntary and revocable arrangement entered into by a pensioner or a qualified survivor that permits the withholding and direct payment of health care or life insurance premiums or similar payments from the monthly benefit payments; or
- (6) an assignment of the distribution from an annuitized DROP account to a third party under Section 6.14(e-3)(1) of this article.

(d) For purposes of Subsection (c) of this section, an attachment, garnishment, levy, execution, or other legal process is not considered a voluntary arrangement.

Credits

Added by Acts 1989, 71st Leg., ch. 553, § 1, eff. June 14, 1989. Amended by Acts 1993, 73rd Leg., ch. 872, § 1, eff. Aug. 30, 1993; Acts 2001, 77th Leg., ch. 669, § 164, eff. Sept. 1, 2001; Acts 2011, 82nd Leg., ch. 1163 (H.B. 2702), § 190, eff. Sept. 1, 2011; Acts 2017, 85th Leg., ch. 318 (H.B. 3158), art. 1, §§ 1.01 to 1.50, 1.52, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 318 (H.B. 3158), art. 2, § 2.01, eff. May 31, 2017; Acts 2021, 87th Leg., ch. 901 (H.B. 3375), § 1, eff. Sept. 1, 2021; Acts 2023, 88th Leg., ch. 619 (H.B. 4034), §§ 2, 3, eff. Sept. 1, 2023.

[Notes of Decisions \(11\)](#)

Vernon's Ann. Texas Civ. St. Art. 6243a-1, TX CIV ST Art. 6243a-1

Current through the end of the 2023 Regular, Second and Third Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

Tab B

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 8. Public Retirement Systems (Refs & Annos)
Subtitle A. Provisions Generally Applicable to Public Retirement Systems
Chapter 802. Administrative Requirements (Refs & Annos)
Subchapter C. Administration of Assets (Refs & Annos)

V.T.C.A., Government Code § 802.2015

§ 802.2015. Funding Soundness Restoration Plan

Effective: September 1, 2021

Currentness

(a) In this section:

(1) “Funded ratio” has the meaning assigned by [Section 802.2011](#).

(2) “Governmental entity” has the meaning assigned by [Section 802.1012](#).

(b) This section applies to a public retirement system and its associated governmental entity other than a public retirement system and its associated governmental entity subject to [Section 802.2016](#).

(c) A public retirement system shall notify the associated governmental entity in writing if the system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 30 years. The governing body of the public retirement system and the governing body of the associated governmental entity shall jointly formulate a funding soundness restoration plan under Subsection (e) if the system's actuarial valuation shows that the system's expected funding period:

(1) has exceeded 30 years for three consecutive annual actuarial valuations, or two consecutive annual actuarial valuations in the case of a system that conducts the valuations every two or three years; or

(2) effective September 1, 2025:

(A) exceeds 40 years; or

(B) exceeds 30 years and the funded ratio of the system is less than 65 percent.

(d) Except as provided by Subsection (d-1), the governing body of a public retirement system and the governing body of the associated governmental entity that have an existing funding soundness restoration plan under Subsection (e) shall formulate a

revised funding soundness restoration plan under Subsection (e-1) if the system becomes subject to Subsection (c) before the 10th anniversary of the date prescribed by Subsection (e)(2)(A) or (B), as applicable .

(d-1) The governing body of a public retirement system and the governing body of the associated governmental entity are not subject to Subsection (d) if:

(1) the system's actuarial valuation shows that the system's expected funding period exceeds 30 years but is less than or equal to 40 years; and

(2) the system is:

(A) adhering to an existing funding soundness restoration plan that was formulated before September 1, 2025; or

(B) implementing a contribution rate structure that uses or will ultimately use an actuarially determined contribution structure and the system's actuarial valuation shows that the system is expected to achieve full funding.

(e) A funding soundness restoration plan formulated under this section must:

(1) be developed by the public retirement system and the associated governmental entity in accordance with the system's governing statute;

(2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 30 years not later than the later of:

(A) the second anniversary of the valuation date stated in the actuarial valuation that required formulation of the plan under this subsection; or

(B) September 1, 2025;

(3) be based on actions agreed to be taken by the system and entity that were approved by the respective governing bodies of both the system and the entity before the plan was adopted; and

(4) be adopted at open meetings of the respective governing bodies of the system and the entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.

(e-1) A revised funding soundness restoration plan formulated under this section must:

(1) be developed by the public retirement system and the associated governmental entity in accordance with the system's governing statute;

(2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 25 years not later than the second anniversary of the valuation date stated in the actuarial valuation that required formulation of a revised plan under this subsection;

(3) be based on actions, including automatic risk-sharing mechanisms, an actuarially determined contribution structure, and other adjustable benefit or contribution mechanisms, agreed to be taken by the system and entity that were approved by the respective governing bodies of both the system and the entity before the plan was adopted; and

(4) be adopted at open meetings by the respective governing bodies of the system and the entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.

(e-2) Not later than the 90th day after the date on which the plan is adopted by both the governing body of the system and the governing body of the associated governmental entity, a system may submit to the board an actuarial valuation required under [Section 802.101\(a\)](#) or other law that shows the combined impact of all changes to a funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1). If a system does not provide an actuarial valuation to the board in accordance with this subsection, the board may request that the system provide a separate analysis of the combined impact of all changes to a funding soundness restoration plan adopted under this section not later than the 90th day after the date the board makes the request. An actuarial valuation or separate analysis conducted under this subsection must include:

(1) an actuarial projection of the public retirement system's expected future assets and liabilities between the valuation date described by Subsection (e)(2)(A) or (e-1)(2), as applicable, and the date at which the plan is expected to achieve full funding; and

(2) a description of all assumptions and methods used to perform the analysis which must comply with actuarial standards of practice.

(e-3) The associated governmental entity may pay all or part of the costs of the separate analysis required under Subsection (e-2). The public retirement system shall pay any costs for the analysis not paid by the associated governmental entity.

(e-4) A funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1), may not include actions that are subject to future approval by the governing bodies of either the public retirement system or the associated governmental entity.

(f) A public retirement system and the associated governmental entity required to formulate a funding soundness restoration plan under this section, including a revised funding soundness restoration plan, shall provide a report to the board on progress made by the system and entity in formulating the plan, including a draft of any plan and a description of any changes under consideration for inclusion in a plan, not later than the first anniversary of the date of the actuarial valuation that required

formulation of the plan under Subsection (e) or (e-1) and each subsequent six-month period until the plan is submitted to the board under this section.

(g) Each public retirement system that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan is adopted by both the governing body of the system and the governing body of the associated governmental entity or the date the change is agreed to.

(h) The board may adopt rules necessary to implement this section.

Credits

Added by Acts 2015, 84th Leg., ch. 940 (H.B. 3310), § 5, eff. June 18, 2015. Amended by Acts 2021, 87th Leg., ch. 1033 (H.B. 3898), § 4, eff. Sept. 1, 2021.

V. T. C. A., Government Code § 802.2015, TX GOVT § 802.2015

Current through the end of the 2023 Regular, Second and Third Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.