

**RESOLUTION NO. 20090312-019**

**WHEREAS**, the Austin Firefighters Relief and Retirement Fund (Fund) is a defined benefit plan the creation of which was authorized by the Texas Legislature in 1937; and

**WHEREAS**, the Fund provides retirement, disability, death, and survivor benefits to approximately 1,400 active and retired participants and their eligible beneficiaries; and

**WHEREAS**, the Fund is administered by a five member board of trustees, and by statute, the City of Austin maintains a presence on this board with the Mayor serving as Chair of the Fund; and

**WHEREAS**, the statute that governs the Fund is contained in Article 6243e.1, Vernon's Texas Civil Statutes; and

**WHEREAS**, from time to time, it is necessary to update and to make technical corrections and adjustments to Article 6243e.1, through the passage of legislation; and

**WHEREAS**, legislators representing the City of Austin are currently considering filing such legislation for the 81<sup>st</sup> Legislative Session; and

**WHEREAS**, the Austin City Council's support of this type of clean-up legislation communicates to Austin's representatives and senators at the Texas Capitol that there is sufficient support to make necessary adjustments for proper administration, **NOW, THEREFORE**,

**BE IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

That the *Legislative Program* is hereby amended to support legislation that would make technical corrections and adjustments to Article 6243e.1, Vernon's Texas Civil Statutes, that is substantially similar to Exhibit A attached to this resolution.

**ADOPTED:** March 12, 2009

**ATTEST:**

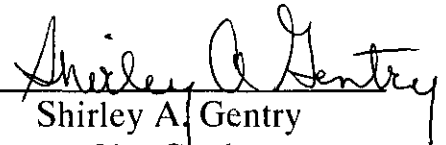
  
Shirley A. Gentry  
City Clerk

Exhibit A

By: \_\_\_\_\_

\_\_\_\_.B. No. \_\_\_\_\_

A BILL TO BE ENTITLED

AN ACT

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

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

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

(13) "Spouse" means an individual to whom a member is legally married under Subtitle A, Title 1, Family Code, or a comparable law of another jurisdiction.

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

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

SECTION 3. Article 2, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's

Texas Civil Statutes), is amended by adding Section 2.13 to read as follows:

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

(1) the information is disclosed to:

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

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

(C) a governmental official or employee after the administrator of the fund determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

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

(2) the information is disclosed pursuant to a subpoena and the administrator of the fund determines that the individual

will have a reasonable opportunity to contest the subpoena.

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

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

SECTION 4. Section 5.04, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

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

- (1) is first approved by the board's actuary;
- (2) is approved by the board of trustees;
- (3) applies ~~[only]~~ to one or any combination of the

following groups:

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

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

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

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

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

SECTION 5. Section 7.02, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

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

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

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

(b) For purposes of Subsection (a)(1) of this section, with respect to an informal marriage established in this state, a surviving spouse is considered married to a retiree as of the date

a declaration of informal marriage was recorded in accordance with Subchapter E, Chapter 2, Family Code.

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

(a) Subject to this section and except [Except] as provided by Section 5.05 of this Act, a person receiving a retirement or survivor's benefit under this Act in the month immediately preceding the date an adjustment is to take effect is entitled to an annual cost-of-living adjustment of that person's benefit calculated in accordance with this section.

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

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

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

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

(a-2) The collective adjustment amount described by Subsection (a-1) of this section:

(1) is an amount equal to the percentage ~~[based on any]~~ increase in the Consumer Price Index for All Urban Consumers as determined by the United States Department of Labor for the applicable determination period immediately preceding the date the cost-of-living adjustment is to take effect, multiplied by the total amount of benefits payable to persons who are eligible to receive an adjustment under this section; and

(2) if applicable, is reduced by an amount that the board's actuary determines is necessary to maintain the financial stability of the fund.

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

(1) 12 months; or

(2) a period determined by the board of trustees ~~[since the last increase in benefits under this section].~~

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

(b) A cost-of-living ~~[If an]~~ adjustment ~~[under Subsection (a)]~~ of this section would exceed one percent of a person's benefit, the portion of the adjustment that exceeds one percent of the benefit] may not be made under this section unless:



(1) the board's actuary has advised the board of trustees that the adjustment would not impair the financial stability of the fund; and

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

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

SECTION 7. Section 11.01, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 11.01. INVESTMENTS. The board of trustees in its sole discretion may invest, reinvest, or change the assets of the fund. The board of trustees shall invest the funds in whatever instruments or investments the board considers prudent. In making investments for the fund, the board of trustees shall discharge its duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use in the

conduct of an enterprise of a similar character and with similar aims ~~[PERMITTED INVESTMENTS. When the board of trustees determines that there is in the fund a surplus exceeding the reasonable, safe amount necessary to take care of the current demands on the fund, the surplus, or so much of it as the board of trustees considers prudent, may be invested in:~~

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

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

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

~~[(A) have a defined termination date;~~

~~[(B) are secured by obligations described by this section or by cash; and~~

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

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

~~[(5) common stocks, preferred stocks, and convertible~~

~~preferred stocks of companies incorporated in the United States and foreign stocks that are designated in United States dollars and that are registered with the Securities and Exchange Commission and listed on a United States exchange or by the National Association of Securities Dealers Automated Quotations;~~

~~[(6) foreign equity and fixed income investments;~~

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

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

SECTION 8. Section 11.03, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), is amended to read as follows:

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

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

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

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

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

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

SECTION 9. Sections 9.04(c) and (d), Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), are repealed.

SECTION 10. As soon as practicable after the effective date of this Act, the board of trustees of the firefighters relief and retirement fund shall adopt the written investment policy required by Section 11.03, Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), as amended by this Act.

SECTION 11. This Act takes effect September 1, 2009.