

MINUTES
LEGISLATIVE COMMITTEE MEETING
FIRE AND POLICE PENSION FUND, SAN ANTONIO
WEDNESDAY- SEPTEMBER 21, 2022
PENSION OFFICE – 11:00 A.M.

**COMMITTEE
MEMBERS**

PRESENT: Chairman Dean Pearson, Active Fire Representative; Jim Smith, Active Police Representative; Larry Reed, Retired Fire Representative.

**COMMITTEE
MEMBERS**

ABSENT: None.

OTHERS

PRESENT: Shawn Griffin, Active Fire Trustee; Warren Schott, Executive Director; Mark Gremmer, Gail Jensen, Rick Matye, Nancy Ybarra, Pension Fund Staff; Frank Burney, Martin & Drought.

At 11:20 a.m., Mr. Pearson called the meeting to order. Roll was called, and a quorum was declared present.

**APPROVAL
OF MINUTES:**

Mr. Reed moved to approve the minutes of the meeting of August 18, 2022. The motion carried unanimously.

**REVIEW &
DISCUSSION**

The Committee noted that it intended to finalize the Legislative Package for Board approval at the September Board Meeting. Representatives from all three Associations and the City of San Antonio were in attendance.

Pension Fund Staff provided the Committee and attendees copies of the proposed language changes that had been approved in the two previous legislative sessions as well as those changes that had been approved by the Committee to date.

The discussion then turned to the three outstanding issues: the 75% death benefit, a possible definition of “killed in the line of duty”, and the slayer provision. Pension Fund Staff provided the Committee and attendees copies of possible options with regard to each of these. (See attached)

With regard to the 75% death benefit provision, two options were considered: Option 1 specifically stated that member deaths from cancer or COVID-19 were not considered to be “killed in the line

of duty” under Section 6.03 of the Pension Law; Option 2 did not. Representatives from the Firefighters Association had previously expressed concern with regard to the exclusionary language in Option 1 and they remained concerned with that language. After discussion, Mr. S. Joe Jones, President of the Firefighters Association, assured the Committee that the Firefighters Association would encourage the beneficiaries of any members who died of cancer or COVID-19 to apply for the 75% death benefit, not the killed in the line of duty death benefit. In light of Mr. Jones’ assurance, the Committee agreed to approve Option 2.

With regard to a possible definition of “killed in the line of duty”, three options were considered: Option 1 defined “killed in the line of duty” as one that “directly resulted from Traumatic Injury sustained while engaging in” specific occupational duties/training, and explicitly stated that deaths resulting from cancer or COVID-19 were not considered “killed in the line of duty”. Option 2 included the same definition as Option 1, but did not explicitly state that deaths resulting from cancer or COVID-19 were not considered to be “killed in the line of duty”. Option 3 did not define “killed in the line of duty”, but it did state that deaths resulting from cancer or COVID-19 were not considered “killed in the line of duty”. Pension Fund Staff noted that there also was a fourth “option” in that Section 6.03 could remain as it is. The Committee and attendees discussed the pros and cons of including a specific definition, as well as the specific parameters of the proposed definition. After discussion, the Committee agreed to approve Option 2.

With regard to the slayer provision, three options were considered: Option 1 included the original language that had been approved by the Board for the two previous Legislative Sessions; Option 2 deleted references to any standard of proof (including preponderance of the evidence) and clarified that children of a beneficiary who was precluded from receiving a death benefit as a result of the slayer provision would still receive the benefit to which they were entitled under the Pension Law; and Option 3 was the same as Option 2 but added “conforming” changes with regard to accomplices to ensure the language in the provision was internally consistent. Mr. Kevin Willis, Firefighters Association, noted that the word “willfully” appeared to have been inadvertently omitted from the conforming language in Option 3, and Pension Fund Staff agreed. After discussion, the Committee agreed to approve Option 3, with the conforming language revised to include “willfully”.

Mr. Pearson reiterated that the Committee’s intent was to finalize the Legislative Package for Board approval at the September Board Meeting, and he asked whether there were any other issues or items of concern with the remainder of the proposed changes. Hearing none, Mr. Reed made a motion to recommend the Board approve the 2023 Package, to include the Committees’ selected options (as detailed above). The motion passed unanimously.

ADJOURNMENT: Mr. Smith moved to adjourn at 11:47 a.m., and the Motion carried.

Approved this _____ day of _____, 2022.

Dean Pearson, Chairman

75% DEATH BENEFIT (6.025)

OPTION 1*

SECTION 6.025. DEATH BENEFIT ANNUITY FOR SPOUSE AND CHILDREN OF MEMBER WHO DIED DUE TO CANCER OR THE 2019 NOVEL CORONAVIRUS DISEASE (COVID-19).

(a) The death benefit annuity of a surviving spouse and any dependent child of a member of the fund who died as a result of cancer or COVID-19 is governed by this section. A member of the fund who died as a result of cancer or COVID-19 is not considered to be killed in the line of duty under Section 6.03 of this Act.

(b) On an application for survivor's benefits by a surviving spouse or dependent child, the fund shall pay the normal benefits payable under Section 6.02 of this Act. When a benefit is payable under this section, the death benefit annuity shall be recomputed, applying Subsection (c) of this section, and any deficiency payment shall be paid to the eligible beneficiaries.

(c) Notwithstanding the formulas for computing the total amounts of annuities otherwise provided by this Act, if a member died from cancer or COVID-19, the member's surviving spouse and dependent children are entitled to receive from the fund an aggregate death benefit annuity, computed and payable from the date of the member's death, in an amount equal to:

(1) 75 percent of the member's average total salary, if the member served as a fire fighter or police officer three or more years before the date of the member's death;

(2) 75 percent of the member's average monthly total salary as of the date of the member's death multiplied by 12, if the member has served at least two months and less than three years before the date of the member's death; or

(3) 75 percent of the member's average daily total salary as of the date of the member's death multiplied by 360, if the member has served less than two months before the date of the member's death.

(d) The provisions of this Act relating to qualification and disqualification for and apportionment of benefits apply to a death benefit annuity computed under this section. A death benefit annuity computed under this section is divided in the manner described by Section 6.02 of this Act and is subject to the same cost-of-living adjustments that apply to annuities for service retirement.

(e) The surviving spouse and any dependent child of a member who died as a result of cancer or COVID-19 after September 1, 2005, but before August 31, 2023, who (i) was awarded a death benefit under Section 6.02, and (ii) would otherwise be qualified to receive a death benefit annuity under this section, are eligible to receive an annuity under this section. The annuity awarded by the Board under this subsection shall increase the amount of the annuity previously awarded under Section 6.02 to equal the amount it would have been if the annuity had been awarded under this Section 6.025, taking into account the cost of living adjustment increases provided for in Section 5.09 of this Act. The increased amount provided under this subsection shall be provided prospectively beginning September 1, 2023, and the surviving spouse or dependent child are not entitled to receive any increases in benefits relating to any period before September 1, 2023.

* Agreed-upon language with revision to (e)(i) to remove requirement that had applied under 6.03, and clarification with respect to KLOD.

75% DEATH BENEFIT (6.025)

OPTION 2*

SECTION 6.025. DEATH BENEFIT ANNUITY FOR SPOUSE AND CHILDREN OF MEMBER WHO DIED DUE TO CANCER OR THE 2019 NOVEL CORONAVIRUS DISEASE (COVID-19)

(a) The death benefit annuity of a surviving spouse and any dependent child of a member of who died as a result of cancer or COVID-19 is governed by this section.

(b) On an application for survivor's benefits by a surviving spouse or dependent child, the fund shall pay the normal benefits payable under Section 6.02 of this Act. When a benefit is payable under this section, the death benefit annuity shall be recomputed, applying Subsection (c) of this section, and any deficiency shall be paid to the eligible beneficiaries.

(c) Notwithstanding the formulas for computing the total amounts of annuities otherwise provided in this Act, if a member died from cancer or COVID-19, the member's surviving spouse and dependent child entitled to receive from the fund an aggregate death benefit annuity, computed and payable from the date of the member's death, in an amount equal to:

(1) 75 percent of the member's average total salary, if the member served as a fire fighter officer three or more years before the date of the member's death;

(2) 75 percent of the member's average monthly total salary as of the date of the member's death multiplied by 12, if the member has served at least two months and less than three years before the date of the member's death; or

(3) 75 percent of the member's average daily total salary as of the date of the member's death multiplied by 360, if the member has served less than two months before the date of the member's death.

(d) The provisions of this Act relating to qualification and disqualification for and apportionment of benefits apply to a death benefit annuity computed under this section. A death benefit annuity computed under this section is divided in the manner described by Section 6.02 of this Act and is subject to the same cost-of-living adjustments that apply to annuities for service retirement.

(e) The surviving spouse and any dependent child of a member who died as a result of cancer or COVID-19 after September 1, 2005, but before August 31, 2023, who (i) was awarded a death benefit annuity under Section 6.02, and (ii) would otherwise be qualified to receive a death benefit annuity under this section, are entitled to receive an annuity under this section. The annuity awarded by the Board under this subsection shall be the amount of the annuity previously awarded under Section 6.02 to equal the amount it would have been awarded under this Section 6.025, taking into account the cost of living adjustment provided for in Section 5.09 of this Act. The increased amount provided under this subsection shall be prospectively beginning September 1, 2023, and the surviving spouse or dependent child are not entitled to any increases in benefits relating to any period before September 1, 2023.

* Agreed-upon language with revision to (e)(i) to remove requirement that had applied under 6.03.

KLOD DEATH BENEFIT (6.03) OPTION 1*

SECTION 6.03. DEATH BENEFIT ANNUITY FOR SPOUSE AND CHILDREN OF MEMBER KILLED IN THE LINE OF DUTY.

(a) The death benefit annuity of a surviving spouse and any dependent child of a member of the fund who is killed in the line of duty is governed by this section.

(1) A member of the fund is considered to have been killed in the line of duty if the member's death directly resulted from Traumatic Injury sustained while engaging in law enforcement activity, fire suppression, rescue, hazardous material response, emergency medical services, disaster relief or other emergency response activity, or simulated training thereof. A Traumatic Injury means severe physical injury of sudden onset and of a life-ending or life-threatening nature. A member of the fund who died as a result of cancer or COVID-19 is not considered to be killed in the line of duty under this section.

~~(b) The board shall consider the finding of a municipality to which this Act applies that a member was killed in the line of duty as a guideline for its determination in applying this section.~~—On an application for survivor's benefits by a surviving spouse or dependent child, the fund shall pay the normal benefits payable under Section 6.02 of this Act. When a benefit is payable under this section, the death benefit annuity shall be recomputed, applying Subsection (c) of this section, and any deficiency payment shall be paid to the eligible beneficiaries.

(c) Notwithstanding the formulas for computing the total amounts of annuities otherwise provided by this Act, if a member is killed in the line of duty, the member's surviving spouse and dependent children are entitled to a death benefit annuity equal to:

(1) the total salary ~~of~~ the member received during the 12-month period before the date of the member's death, if the member served 12 months or more before the date of the member's death;

(2) the average monthly total salary the member received before the date of the member's death multiplied by 12, if the member served at least two months and less than 12 months before the date of the member's death; or

(3) the average daily total salary the member received before the date of the member's death multiplied by 360, if the member served less than two months before the date of the member's death ~~at the time of death.~~

(d) The provisions of this Act ~~Rules provided by this section~~ relating to qualification and disqualification for and apportionment of benefits apply to a death benefit annuity computed under this ~~subsection~~ section. A death benefit annuity computed under this ~~subsection~~ section is divided in the manner described by Section 6.02 of this Act and is subject to the same cost-of-living adjustments that apply to ~~pensions~~ annuities for service retirement.

* HB 3188 changes (marked but not highlighted) with added definition of KLOD and clarification that cancer/covid not included.

KLOD DEATH BENEFIT (6.03)

OPTION 2*

SECTION 6.03. DEATH BENEFIT ANNUITY FOR SPOUSE AND CHILDREN OF MEMBER KILLED IN THE LINE OF DUTY.

(a) The death benefit annuity of a surviving spouse and any dependent child of a member of the fund who is killed in the line of duty is governed by this section.

(1) A member of the fund is considered to have been killed in the line of duty if the member's death directly resulted from Traumatic Injury sustained while engaging in law enforcement activity, fire suppression, rescue, hazardous material response, emergency medical services, disaster relief or other emergency response activity, or simulated training thereof. A Traumatic Injury means severe physical injury of sudden onset and of a life-ending or life-threatening nature.

~~(b) The board shall consider the finding of a municipality to which this Act applies that a member was killed in the line of duty as a guideline for its determination in applying this section.~~ On an application for survivor's benefits by a surviving spouse or dependent child, the fund shall pay the normal benefits payable under Section 6.02 of this Act. When a benefit is payable under this section, the death benefit annuity shall be recomputed, applying Subsection (c) of this section, and any deficiency payment shall be paid to the eligible beneficiaries.

(c) Notwithstanding the formulas for computing the total amounts of annuities otherwise provided by this Act, if a member is killed in the line of duty, the member's surviving spouse and dependent children are entitled to a death benefit annuity equal to:

(1) the total salary of the member received during the 12-month period before the date of the member's death, if the member served 12 months or more before the date of the member's death;

(2) the average monthly total salary the member received before the date of the member's death multiplied by 12, if the member served at least two months and less than 12 months before the date of the member's death; or

(3) the average daily total salary the member received before the date of the member's death multiplied by 360, if the member served less than two months before the date of the member's death at the time of death.

(d) ~~The provisions of this Act Rules provided by this section~~ relating to qualification and disqualification for and apportionment of benefits apply to a death benefit annuity computed under this ~~subsection~~ section. A death benefit annuity computed under this ~~subsection~~ section is divided in the manner described by Section 6.02 of this Act and is subject to the same cost-of-living adjustments that apply to ~~pensions~~ annuities for service retirement.

* HB 3188 changes (marked but not highlighted) with added definition of KLOD, no clarification regarding cancer/covid.

KLOD DEATH BENEFIT (6.03)

OPTION 3*

SECTION 6.03. DEATH BENEFIT ANNUITY FOR SPOUSE AND CHILDREN OF MEMBER KILLED IN THE LINE OF DUTY.

(a) The death benefit annuity of a surviving spouse and any dependent child of a member of the fund who is killed in the line of duty is governed by this section. A member of the fund who died as a result of cancer or COVID-19 is not considered to be killed in the line of duty under this section.

(b) ~~The board shall consider the finding of a municipality to which this Act applies that a member was killed in the line of duty as a guideline for its determination in applying this section.~~ On an application for survivor's benefits by a surviving spouse or dependent child, the fund shall pay the normal benefits payable under Section 6.02 of this Act. When a benefit is payable under this section, the death benefit annuity shall be recomputed, applying Subsection (c) of this section, and any deficiency payment shall be paid to the eligible beneficiaries.

(c) Notwithstanding the formulas for computing the total amounts of annuities otherwise provided by this Act, if a member is killed in the line of duty, the member's surviving spouse and dependent children are entitled to a death benefit annuity equal to:

(1) the total salary of the member received during the 12-month period before the date of the member's death, if the member served 12 months or more before the date of the member's death;

(2) the average monthly total salary the member received before the date of the member's death multiplied by 12, if the member served at least two months and less than 12 months before the date of the member's death; or

(3) the average daily total salary the member received before the date of the member's death multiplied by 360, if the member served less than two months before the date of the member's death at the time of death.

(d) The provisions of this Act ~~Rules provided by this section~~ relating to qualification and disqualification for and apportionment of benefits apply to a death benefit annuity computed under this ~~subsection~~ section. A death benefit annuity computed under this ~~subsection~~ section is divided in the manner described by Section 6.02 of this Act and is subject to the same cost-of-living adjustments that apply to ~~pensions~~ annuities for service retirement.

* HB 3188 changes (marked but not highlighted) with clarification that KLOD does not include cancer/COVID.

SLAYER PROVISION (6.15)

OPTION 1¹

SECTION 6.15. DENIAL OF BENEFITS: DEATH CAUSED BY SURVIVOR.

If a person is the principal or an accomplice in willfully bringing about the death of a member or beneficiary whose death would otherwise result in a benefit or benefit increase to the person, the person is not eligible for, or entitled to, that benefit or benefit increase. The determination of the board that a person willfully brought about the death must be made during a meeting of the board from a preponderance of the evidence presented. A determination by the board under this section is not controlled by any other finding in any other forum, regardless of whether the other forum considered the same or another standard of proof.

OPTION 2²

SECTION 6.15. DENIAL OF BENEFITS: DEATH CAUSED BY SURVIVOR.

(a) If a person is the principal or an accomplice in willfully bringing about the death of a member or beneficiary whose death would otherwise result in a benefit or benefit increase to the person, the person is not eligible for, or entitled to, that benefit or benefit increase. The determination of the board that a person willfully brought about the death must be made during a meeting of the board ~~from a preponderance of the evidence presented~~. A determination by the board under this section is not controlled by any other finding in any other forum, ~~regardless of whether the other forum considered the same or another standard of proof~~.

(b) A person who is determined to be ineligible or not entitled to a benefit or benefit increase under subsection (a) will be considered as having pre-deceased the member or beneficiary for purposes of Sections 6.02 and 6.03 of this Act.

OPTION 3³

SECTION 6.15. DENIAL OF BENEFITS: DEATH CAUSED OR ABETTED BY SURVIVOR.

(a) If a person is the principal or an accomplice in willfully bringing about the death of a member or beneficiary whose death would otherwise result in a benefit or benefit increase to the person, the person is not eligible for, or entitled to, that benefit or benefit increase. The determination of the board that a person willfully brought about the death, or was an accomplice in bringing about the death, must be made during a meeting of the board ~~from a preponderance of the evidence presented~~. A determination by the board under this section is not controlled by any other finding in any other forum, ~~regardless of whether the other forum considered the same or another standard of proof~~.

(b) A person who is determined to be ineligible or not entitled to a benefit or benefit increase under subsection (a) will be considered as having pre-deceased the member or beneficiary for purposes of Sections 6.02 and 6.03 of this Act.

¹ HB 3188 Language

² Removes preponderance of evidence and reference to other forum; ensures dependent child still receives benefit.

³ Same as Option 2 but conforming change in title and second sentence (accomplice language).