

OFFICE OF FIRE FIGHTERS' PENSION COMMISSIONER

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Office at a Glance

Created in 1937, the Office of Fire Fighters' Pension Commissioner performs two basic activities: providing assistance to 122 individual pension systems organized under the Texas Local Fire Fighters' Retirement Act (TLFFRA), and administering a separate statewide system for volunteers, known as the Texas Emergency Services Retirement System (TESRS). Under TLFFRA, the Office monitors and assists locally operating pension systems for both paid and volunteer fire departments in the following ways:

- requires annual reporting from local fire department pension systems and reviews pension benefits;
- decides pension member appeals of benefit decisions by local pension boards;
- provides technical assistance and legal interpretations of statute and other aspects of systems; and
- conducts training for local board trustees through its annual TLFFRA educational conference and peer review workshop.

Since 1977, the Office has administered TESRS, under the policy direction of a separate Governor-appointed Board of Trustees. This system, with its \$62.5 million fund, provides retirement as well as death and disability benefits to volunteer firefighters and emergency services personnel in more than 200 volunteer departments statewide.

Many Office activities are an anachronism from when the Commissioner oversaw the spending of State funds.

Summary

The question of the need for the Office of Fire Fighters' Pension Commissioner is not about the essential role that firefighters play in protecting the public or even the pensions these firefighters have earned for retirement. The question is instead about whether the Office's duties under TLFFRA are an anachronism from the time when the Commissioner's oversight ensured these local firefighter pension systems properly spent state funds and complied with state law. The question is also about whether the Office's other assistance activities, such as specialized technical assistance and educational seminars, reflect a unique benefit for just this subset of local pension systems that is increasingly difficult to justify.

Clearly these TLFFRA systems still find value in having a Commissioner that represents their interests, but the Sunset Commission concluded this special treatment is not an appropriate State role and is no longer needed to ensure that these local systems are managed and operating appropriately. Like all other local pension systems in the state, these TLFFRA systems are subject to Pension Review Board (PRB) oversight and would continue to receive assistance and training from PRB when necessary.

The Commissioner's administrative role under TESRS is distinct from the role under TLFFRA. This system has its own Governor-appointed Board of Trustees responsible for managing the TESRS Fund and benefits, and should operate like other statewide pension systems, with its own administrator and staff. Also, the pension structure for TESRS creates the potential for greater liabilities to the State, justifying the need for more detailed financial information and audits of the system's actuarial data. Finally, TESRS lacks needed contract management and oversight controls. The following material summarizes the Sunset Commission's recommendations on the Office.

Issue 1

While the State Needs a Pension System for Volunteer Emergency Services Personnel, the Office of Fire Fighters' Pension Commissioner Is Not Necessary.

Services provided by volunteer and paid fire departments are essential. However, state assistance for pension systems under TLFFRA is no longer needed. The Office's limited monitoring and assistance functions, such as reviewing benefits and providing technical assistance, are but vestiges of the Commissioner's original responsibilities to provide State funding to local TLFFRA systems and ensure proper use of these funds and compliance with statute. What remains at the Office is a mix of activities that do not require a separate agency to perform.

Further, the TLFFRA statute provides a framework for these systems that offers safeguards for their long-term operation. Also, paid systems have grown self-sustainable while volunteer systems have other options such as transferring to TESRS. Last, PRB will continue to provide these systems with the same monitoring and assistance it offers to all other Texas pension systems.

The State continues to need TESRS, but a separate Governor-appointed Commissioner is not needed to administer that system. Last, TESRS presents a level of risk that justifies the need for continuing Sunset review.

Recommendations

Change in Statute

1.1 Abolish the Commissioner's position and make TESRS subject to Sunset review every 12 years.

This recommendation would abolish the Office, repealing references to the Pension Commissioner in both the TLFFRA and TESRS statutes and replacing the Commissioner's position in administering TESRS with an executive director. The TESRS Board would be authorized to hire this executive director and administrative staff. The recommendation would not repeal TLFFRA or TESRS statute, but only references to the Commissioner, and would also not affect the constitutional provision providing for the Commissioner's four year term, since it applies only *if* the Legislature authorizes a Commissioner. In addition, this recommendation would require the TESRS Board to undergo Sunset review in 12 years to ensure ongoing oversight.

1.2 Eliminate the Office's authority to collect reports from TLFFRA pension systems.

The eliminated reports would include those on pension finances, investment policy, changes to the system plan design document, audited financial statements, and actuarial valuations. PRB would continue to receive reports, monitor their financial and actuarial condition, and provide guidance when requested, as currently authorized in statute.

1.3 Eliminate the Commissioner's authority to hear TLFFRA and TESRS appeals on benefit decisions.

TLFFRA systems would refer appeals directly to the State Office of Administrative Hearings (SOAH), with an administrative law judge making the final decision. Appeals for TESRS members would be heard at SOAH, with final decisions made by the statewide TESRS Board, as is the practice with Texas' other statewide pension systems. Also, like other statewide pension systems, a provision would be added to statute authorizing TESRS members to appeal TESRS Board decisions to district court.

SOAH funding for TLFFRA and TESRS appeals is currently tied to the Office, and would cease if the Office is abolished. Thus, the Sunset Commission requests that SOAH continue to receive General Revenue appropriations to cover the cost of TLFFRA and TESRS hearings, as it does currently, so that neither the pension systems nor firefighters would incur additional costs.

1.4 Eliminate the Office's authority to conduct seminars or workshops.

Under this change, TLFFRA systems would be able to take over full administration of these seminars. Trustees and staff of TLFFRA pensions could also continue to receive training through the certification classes and conferences provided by other organizations such as the Texas Association of Public Employee Retirement Systems and PRB.

Management Action

1.5 Direct the Office to cease issuing legal interpretations.

TLFFRA boards of trustees are able to seek legal advice from their retained attorneys.

Issue 2

The Texas Emergency Services Retirement System Lacks Transparency and Oversight Needed to Minimize the State's Financial Risk.

The Texas Emergency Services Retirement System provides pension benefits for volunteer firefighters and emergency services personnel paid for by the local governments sponsoring these entities. However, the system relies on the State to fund most administrative costs and to cover investment losses, posing the risk of significant ongoing State financial obligations.

Since 2002, the State has paid \$12.8 million in TESRS Fund contributions and administrative costs mostly to cover investment losses. The unique structure of TESRS warrants greater oversight, verification, and reporting on the Fund to ensure the Legislature has accurate and timely information needed to make funding decisions.

Recommendations

Change in Statute

2.1 Require the TESRS Board to provide the Legislature with a range of options for meeting the State's contribution requirement should the Fund experience significant losses or increased liabilities.

Under this recommendation, the TESRS Board would provide the Legislature information on different pension contribution and benefit structures if the Fund experiences a significant decrease in assets, or increase in unfunded liabilities that make the Fund unsound even with maximum State contributions. The Board would also report actuarial options to the Legislature anytime it decides to change benefits or contributions on its own initiative, and for significant changes to the actuarial valuation. Information provided to the Legislature should include analysis of how different changes to contributions and benefits could affect the Fund's financial liabilities, the State's potential contribution, and need for continuing appropriations to pay administrative costs. This recommendation would not change current statutory requirements for State contributions to the plan.

2.2 Require the TESRS actuarial valuation to include detailed information on the impact of assuming both a full State contribution and no State contribution.

Under this recommendation, the actuarial valuation would clearly show the fiscal implications of assuming no State contributions and full State contributions to the Fund, including funding for administrative costs. This information should show the fiscal implications of both scenarios, including the number of years needed to amortize the unfunded liabilities. This recommendation would not change the Board's authority to assume maximum State contributions when determining the benefit formula.

2.3 Require the Board to regularly conduct actuarial audits and experience studies to ensure accurate pension assumptions and valuations.

This recommendation would specify that the Board must conduct an audit of its actuarial valuation, similar to that conducted in 2007, and an experience study, at least every five years.

Issue 3

The Office Lacks a Consistent Approach to Contract Management and Oversight.

In reviewing the Office, the Sunset Commission applied key contracting best practices. The Office, like many small agencies, does not have needed management and oversight controls in place to guide contracting, which it uses infrequently yet supports critical functions for administering its pension system. Applying a few basic contracting practices would ensure that the TESRS Board receives needed support regardless of the Office's future.

Recommendations

Change in Statute

3.1 Require the TESRS Board to adopt a clear policy on contract management and oversight.

This policy would include procedures for planning for contracting needs and developing solicitation documents; reviewing, evaluating, and awarding contract proposals; managing and approving contract changes; identifying performance issues and resolving contract disputes; monitoring contract expenditures; closing out contracts; and maintaining centralized information on all contracts.

In implementing this recommendation, the agency would designate one person as the central point of contact between the agency and contractors. In developing this policy and associated procedures, the agency would consult with the Comptroller's Office for guidance on best practices.

Management Action

3.2 Direct TESRS to participate in contract management and oversight training.

The TESRS Board should designate one staff person to attend contract management and oversight classes such as those offered by the Comptroller's Office. TESRS should also take advantage of contracting seminars offered by the Comptroller's Office.

3.3 Direct the Board to adopt a rule containing the Comptroller's HUB rules.

This rule should include the requirement that contracts over \$100,000 have a HUB subcontracting plan, where appropriate.

Issue 4

The Texas Emergency Services Retirement System Statute Does Not Reflect Standard Elements of Sunset Reviews.

The Sunset Commission has developed Across-the-Board Recommendations (ATBs) containing "good government" standards that it applies to all state agencies under review. The Office's significant role in administering TESRS, and the State's financial stake in that system, make a review of TESRS' conformance with ATBs appropriate. In addition, the Texas Sunset Act requires the Commission to consider if statutory reporting requirements, imposed by law on agencies under review, should be continued or abolished.

Recommendations

Change in Statute

4.1 Update and apply standard Across-the-Board Recommendations to TESRS statute.

- **Conflict of Interest.** This recommendation would prohibit a person from serving as a TESRS Board member or high-level TESRS employee if the person or person's spouse is an officer, employee, or paid consultant of a professional trade association for firefighters or public retirement systems. Any current Board members falling under this description would be allowed to serve out their term.

- **Board member training.** This recommendation would require Board members to receive training and clearly establish the type of information to be included. The training would need to provide Board members with information regarding the legislation that created the Board; its programs, functions, rules, and budget; the results of its most recent formal audit; the requirements of laws relating to open meetings, public information, administrative procedure, and conflicts of interest; and any applicable ethics policies.
- **Separation of duties.** Under this recommendation, the Board must adopt policies clearly defining its role of setting policy separate from staff responsibilities.
- **Public testimony.** This provision would add specific statutory language to ensure the opportunity for public input to the Board on issues under its jurisdiction.
- **Complaint information.** This recommendation would require the Board to maintain a system for acting on complaints and make information available regarding its complaint procedures. The Board must also maintain documentation on all complaints and periodically notify complaint parties of the status of complaints.

4.2 Continue the TESRS reports.

This recommendation would continue the two reports currently required of TESRS because they provide information useful to both TESRS and the public.

Fiscal Implication Summary

These issues would have a positive fiscal impact to the State, as summarized below.

Issue 1 — Eliminating the Office would have a positive fiscal impact to the State, resulting in the reduction of 3.5 employees associated with TLFFRA functions and annual savings of about \$173,000 to the General Revenue Fund, as shown in the chart below. TESRS administrative costs would continue to require approximately \$500,000 per year in general revenue appropriations.

Issue 2 — Requiring the TESRS Board to regularly conduct actuarial audits and experience studies would cost a fund the size of TESRS approximately \$25,000 for the audit and \$50,000 for the experience study once every five years, paid from the pension fund.

Office of Fire Fighters’ Pension Commissioner

Fiscal Year	Savings to the General Revenue Fund	Changes in FTEs From FY 2013
2014	\$173,000	-3.5
2015	\$173,000	-3.5
2016	\$173,000	-3.5
2017	\$173,000	-3.5
2018	\$173,000	-3.5