

1 Retirement System.

2 (3) "Commissioner" means the firefighters' pension
3 commissioner appointed under Section 21, Texas Local Fire Fighters
4 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes).

5 (4) "Dependent" means an unmarried child, natural or
6 adopted, who:

7 (A) is less than 18 years of age;

8 (B) is less than 19 years of age and a full-time
9 student at an elementary or secondary school; or

10 (C) became disabled before the child's 22nd
11 birthday and remains disabled.

12 (5) "Emergency services" means only those services
13 relating to fire, rescue, and emergency medical services, including
14 support services for those duties, performed by a volunteer or
15 auxiliary employee of a participating department.

16 (6) "Fund" means the Texas emergency services
17 retirement fund.

18 (7) "Local board" means a local board of trustees
19 established under Section 865.012.

20 (8) "Member" means a volunteer or auxiliary employee
21 who participates in the pension system.

22 (9) "Pension system" means the Texas Emergency
23 Services Retirement System.

24 (10) "Qualified service" means service:

25 (A) for a participating department that is
26 recognized as an emergency services department by its governing
27 body and that conducts at least 48 hours of training in a calendar

1 year; and

2 (B) that is performed by a member in good
3 standing in the department who attends at least 20 hours of annual
4 training and at least 25 percent of the department's emergencies in
5 a calendar year or who does not attend because the member is absent
6 because of military duty.

7 (11) "State board" means the state board of trustees
8 established under Section 865.001.

9 (12) "Volunteer" means a person who performs emergency
10 services for civic, charitable, or humanitarian reasons, receives
11 no monetary compensation from a participating department, and is
12 not subject to the compensation requirements provided for employees
13 by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et
14 seq.).

15 Sec. 861.002. PENSION SYSTEM. The pension system is a
16 public entity. The Texas Emergency Services Retirement System is
17 the name by which all its business shall be transacted, all its
18 funds invested, and all its cash, securities, and other property
19 held.

20 Sec. 861.003. POWERS AND PRIVILEGES. The pension system
21 has the powers, privileges, and immunities of a corporation as well
22 as the powers, privileges, and immunities conferred by this
23 subtitle.

24 Sec. 861.004. EXEMPTION FROM EXECUTION. All benefit
25 payments, contributions, money in the pension system fund, and
26 rights accrued or accruing under this subtitle to any person are
27 exempt from garnishment, attachment, state and local taxation,

1 levies, and any other process and are unassignable.

2 Sec. 861.005. NO DIVERSION OF ASSETS. The fund must be
3 maintained for the exclusive benefit of members, retirees, and
4 their beneficiaries. At no time before the termination of the fund
5 and the satisfaction of all liabilities with respect to members,
6 retirees, and their beneficiaries may any part of the principal of
7 or interest from fund assets be used for or diverted to a purpose
8 other than the exclusive benefit of the members, retirees, and
9 their beneficiaries.

10 Sec. 861.006. PLAN QUALIFICATION AND DISTRIBUTIONS.

11 (a) The legislature intends that this subtitle be construed and
12 administered in a manner so that the pension system's benefit plan
13 will be considered a qualified plan under Section 401(a) of the
14 Internal Revenue Code of 1986 (26 U.S.C. Section 401). The state
15 board may adopt rules that modify the plan as necessary to meet
16 those qualification requirements.

17 (b) Notwithstanding any other provision of this subtitle,
18 all distributions under this subtitle must be made in accordance
19 with applicable provisions of the Internal Revenue Code of 1986 and
20 regulations adopted under that code.

21 (c) The state board by rule may authorize an eligible
22 rollover distribution to be made in the form of a direct
23 trustee-to-trustee transfer.

24 Sec. 861.007. FORFEITURE NOT TO INCREASE BENEFITS. A
25 forfeiture that occurs under this subtitle may not be used to
26 increase the benefits that any member would otherwise receive under
27 this subtitle.

CHAPTER 862. MEMBERSHIP

1
2 Sec. 862.001. PARTICIPATION BY DEPARTMENT. (a) The
3 governing body of a department that performs emergency services
4 may, in the manner provided for taking official action by the body,
5 elect to participate in the pension system. A governing body shall
6 notify the commissioner as soon as practicable of an election made
7 under this subsection. Except as provided by Subsection (b), an
8 election to participate under this subsection is irrevocable.

9 (b) The governing body of a department that makes an
10 election under Subsection (a) may terminate participation in the
11 pension system not later than the fifth anniversary of the date of
12 the election to participate, except that a department that begins
13 participation after September 1, 2005, may not terminate that
14 participation.

15 Sec. 862.002. MEMBERSHIP BY INDIVIDUAL. (a) Except as
16 otherwise provided by this section, each person who performs
17 service as a volunteer or auxiliary employee of a participating
18 department is a member of the pension system.

19 (b) A person is not a member of the pension system if the
20 person:

21 (1) is less than 18 years of age;

22 (2) is in a probationary period of service before
23 becoming a regular member of a participating department for which
24 the department is not making contributions for the service;

25 (3) does not receive a certification of physical
26 fitness or assignment to support duties under Section 862.003; or

27 (4) is retired under this subtitle, regardless of

1 whether the person continues to participate in emergency
2 service-related functions for a department from which the person
3 retired.

4 Sec. 862.003. CERTIFICATION OF PHYSICAL FITNESS. (a) A
5 prospective member shall present to the local board a certification
6 of physical fitness by a qualified physician. The person becomes a
7 member of the pension system if the local board accepts the
8 certification or if the local board assigns the person to support
9 duties.

10 (b) A local board shall assign a person to support duties if
11 the person does not present an acceptable certification and the
12 person is at least 18 years of age, is not retired from the pension
13 system, and is not serving a probationary period before becoming a
14 regular member of a participating department.

15 Sec. 862.004. DEPARTMENTAL ELECTIONS AND MERGERS. The
16 state board may adopt rules for governing body elections under
17 Section 862.001 or for the merger of existing pension plans into the
18 pension system.

19 CHAPTER 863. CREDITABLE SERVICE

20 Sec. 863.001. CREDIT FOR CURRENT SERVICE. A member is
21 entitled to receive credit in the pension system for each month of
22 qualified service for which the system receives the contributions
23 required by this subtitle.

24 Sec. 863.002. CREDIT FOR MILITARY SERVICE. The pension
25 system shall grant credit for qualified service for military duty
26 in accordance with Section 414(u) of the Internal Revenue Code of
27 1986 (26 U.S.C. Section 414(u)) and other applicable federal law.

1 Sec. 863.003. TRANSFER OF SERVICE CREDIT. A member who
2 terminates service, except by retirement, and later resumes service
3 with the same participating department or begins service with
4 another participating department may transfer all previously
5 accrued service credit to the new department.

6 Sec. 863.004. PRIOR SERVICE OF MEMBER BEFORE DEPARTMENTAL
7 PARTICIPATION. The state board by rule may authorize the granting
8 of credit for service with a participating department that was
9 performed before the date the department began participation in the
10 pension system. The costs of granting prior service credit under
11 this section must be determined on a basis that maintains the
12 pension system as actuarially sound.

13 CHAPTER 864. BENEFITS

14 Sec. 864.001. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY.

15 (a) The state board by rule shall determine the period of
16 qualified service and, if appropriate, the age required for a
17 member to receive a service retirement annuity with full benefits
18 after the member terminates service with a participating
19 department. The state board by rule may provide for partial vesting
20 of benefits after a particular period.

21 (b) The state board may change the benefit formula for any
22 person who is not an annuitant of the pension system.

23 Sec. 864.002. SERVICE RETIREMENT ANNUITY. (a) A service
24 retirement annuity is payable in monthly installments based on:

25 (1) the governing body's average monthly contribution
26 during the member's term of qualified service under this subtitle,
27 not including a contribution to reduce the unfunded accrued

1 actuarial liability of the pension system; and

2 (2) a formula adopted by the state board by rule that
3 allows the pension system, assuming maximum state contributions are
4 provided under Section 865.015, to be maintained as actuarially
5 sound.

6 (b) The state board by rule may provide, for each year of
7 qualified service in excess of the period provided under Section
8 864.001 for full benefits, an additional amount that is a
9 percentage of the person's monthly pension, compounded annually. A
10 person may receive a proportional credit for months of qualified
11 service that make up less than a year.

12 Sec. 864.003. SERVICE RETIREMENT BENEFITS FROM MORE THAN
13 ONE DEPARTMENT. A member who performs qualified service for more
14 than one participating department may become eligible to receive a
15 service retirement annuity for service from each department but, if
16 the person dies while a member, the member's beneficiary must
17 choose between an on-duty and off-duty death benefit, if
18 applicable.

19 Sec. 864.004. DISABILITY RETIREMENT ANNUITY. (a) A member
20 must, at the time of disability, elect between a service or
21 disability retirement annuity, if eligible for both.

22 (b) A member who is disabled during the performance of
23 emergency service duties is automatically vested 100 percent as of
24 the date of disability if the disability occurs before the member
25 has completed the period provided under Section 864.001 for full
26 service retirement benefits.

27 (c) A member whose disability results from performing

1 emergency service duties is guaranteed a disability retirement
2 annuity of \$300 a month or a greater amount that the state board by
3 rule adopts based on monthly contributions of a participating
4 department for its members.

5 (d) A person who is determined to be temporarily disabled
6 must apply to the Social Security Administration and be certified,
7 not later than the second anniversary of the date the person was
8 determined to be temporarily disabled, as permanently disabled by
9 that agency or by any alternative procedure the state board
10 provides by rule.

11 Sec. 864.005. CERTIFICATION AND CONTINUANCE OF DISABILITY.

12 (a) A local board shall require a member who is receiving
13 temporary disability benefits to file a disability rating report
14 every three months from a physician chosen by the local board. If a
15 report indicates a significant change of condition, the local
16 board, after notice and a hearing, may adopt an order to terminate
17 payments or place the member on permanent disability. The local
18 board shall send a copy of each order adopted under this subsection
19 to the commissioner.

20 (b) Disability benefits cease if the recipient becomes
21 capable of performing the duties of the person's most recent
22 position with a participating department or the duties of another
23 occupation for which the person is reasonably suited by education,
24 training, and experience. Rejection of a suitable offer of
25 employment is conclusive evidence for purposes of this subtitle
26 that the person is no longer eligible to receive disability
27 retirement benefits, if the employment would provide the person

1 with a salary equal to or greater than the salary the person was
2 earning at the time the disability occurred.

3 (c) The state board or a local board may require financial
4 information from a person as a condition to the continued receipt of
5 disability retirement benefits, including federal income tax
6 returns and wage earning forms. Failure to provide requested
7 information is a ground for terminating benefits.

8 Sec. 864.006. MEMBER SERVICE DEATH BENEFITS. (a) The
9 surviving spouse and dependents of a member who dies as a result of
10 performing emergency service duties are entitled to receive in
11 equal shares a death benefit annuity equal to two-thirds of the
12 service retirement annuity that the decedent would have been
13 entitled to receive if the decedent had been able to retire, vested
14 at 100 percent, on the date of the decedent's death. As long as both
15 the spouse and one or more dependents survive, an additional
16 one-third of that annuity is payable to the dependents in equal
17 shares.

18 (b) The beneficiary of a member who dies as a result of
19 performing emergency service duties is entitled to a lump-sum
20 benefit of \$5,000 or a greater amount that the state board provides
21 by rule.

22 Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. The state
23 board by rule may provide the beneficiary of a deceased member whose
24 death did not result from the performance of emergency service
25 duties a lump-sum benefit that is the greater of:

26 (1) the amount contributed to the fund on the
27 decedent's behalf; or

1 (2) the sum that would have been contributed on the
2 decendent's behalf from whatever source at the end of the period
3 provided under Section 864.001 for full service retirement
4 benefits.

5 Sec. 864.008. VESTED MEMBER DEATH BENEFIT ANNUITY. (a) The
6 surviving spouse of a deceased member who dies before retirement
7 but after meeting the minimum age and service requirements for
8 service retirement is entitled to two-thirds of the monthly annuity
9 that the decedent would have received if the decedent had retired on
10 the date of death.

11 (b) The surviving spouse of a deceased member who dies after
12 terminating service with all participating departments and meeting
13 a vesting requirement under Section 864.001 but before attaining
14 the age of 55 is entitled to a death benefit annuity, beginning on
15 the date that the decedent would have attained that age, equal to
16 two-thirds of the monthly annuity to which the decedent would have
17 been entitled on that date.

18 Sec. 864.009. RETIREE DEATH BENEFIT ANNUITY. The surviving
19 spouse of a person who dies after retirement is entitled to
20 two-thirds of the monthly annuity the decedent was receiving at the
21 time of death.

22 Sec. 864.010. BENEFITS FOR MEMBERS AND RETIREES OF
23 DEPARTMENT THAT WITHDRAWS FROM PARTICIPATION OR CEASES TO EXIST.

24 (a) The commissioner shall continue to administer benefits of the
25 pension system for members and retirees who perform service for a
26 formerly participating department that has withdrawn from
27 participation in the pension system or has ceased to exist.

1 (b) The governing body of a political subdivision in which a
2 department described by Subsection (a) is or was located shall
3 perform the duties required of a local board for the members and
4 retirees who served for the formerly participating department.

5 Sec. 864.011. FIRST PAYMENT OF RETIREMENT OR DEATH BENEFIT
6 ANNUITY. The cashing or depositing of the first payment of a
7 service, disability, or death benefit annuity by a person entitled
8 to it is considered acceptance of the amount of the annuity and, if
9 the annuity is based on the payee's service, is conclusive evidence
10 for purposes of this subtitle that the payee is retired.

11 Sec. 864.012. CERTAIN BENEFICIARIES. (a) If a member
12 names more than one beneficiary for a lump-sum death benefit, the
13 pension system shall divide the benefit equally among the named
14 beneficiaries or, if the member has designated a proportional
15 division, each beneficiary is entitled to the proportion
16 designated.

17 (b) Except as provided by Subsection (a), lump-sum death
18 benefits are subject to the laws of descent and distribution if the
19 decedent has not provided for testamentary disposition.

20 Sec. 864.013. COST-OF-LIVING INCREASE. The state board by
21 rule may provide a cost-of-living increase for any benefit provided
22 by the pension system. If benefits are increased, the state board
23 shall require an increase in governing body contributions if
24 necessary to maintain an actuarially sound pension system.

25 Sec. 864.014. STATE BOARD AUTHORITY FOR LUMP-SUM PAYMENTS.
26 In lieu of any annuity otherwise payable under this subtitle, the
27 state board by rule may provide for a lump-sum payment if the board

1 determines that a lump-sum payment is cost-efficient or is
2 necessary for the pension system to remain actuarially sound.

3 Sec. 864.015. CURRENT PLAN DESIGN. Notwithstanding any
4 other provision of this chapter, the state board by rule may
5 maintain the benefit structure in effect on August 31, 2005,
6 regardless of whether the pension system is actuarially sound.

7 Sec. 864.016. CLAIM AND APPEAL PROCEDURE. (a) A claim for
8 benefits must be filed with the local board. On receiving a claim,
9 the local board shall hold a hearing to decide the claim. The local
10 board shall send a written copy of its decision to the claimant and
11 the commissioner.

12 (b) A person aggrieved by a decision of a local board
13 relating to eligibility for or the amount of benefits under this
14 subtitle may appeal the decision to the commissioner.

15 (c) An appeal under this section is begun by delivering a
16 notice of appeal to the presiding officer or secretary of the local
17 board that made the decision. The notice must be delivered not
18 later than the 20th day after the date of the decision and contain a
19 brief description of the reasons for the appeal. The aggrieved
20 person must file a copy of the notice with the commissioner.

21 (d) An appeal under this section is held in Austin and is a
22 contested case under Chapter 2001, conducted as a de novo hearing by
23 the State Office of Administrative Hearings.

24 (e) After a hearing under Subsection (d), the commissioner
25 shall decide each appeal from a local board decision, issue a
26 written opinion, and notify the local board and the claimant if the
27 commissioner overrules the local board's decision.

1 (f) A person aggrieved by a decision of the commissioner
2 under this section may appeal the decision to the state board. The
3 state board shall decide each appeal based on the hearing record.

4 (g) A decision of the state board may not be appealed to a
5 court or be subject to any other legal process.

6 CHAPTER 865. ADMINISTRATION

7 Sec. 865.001. COMPOSITION OF STATE BOARD. (a) The state
8 board of the pension system is composed of nine members appointed by
9 the governor for staggered terms of six years, with the terms of
10 three trustees expiring on September 1 of each odd-numbered year.

11 (b) Six trustees must be active members of the pension
12 system, one of whom must represent emergency medical services
13 personnel.

14 (c) In appointing the six trustees under Subsection (b), the
15 governor shall select from a list of three to five nominees
16 submitted by the State Firemen's and Fire Marshals' Association of
17 Texas for each vacancy. The governor may reject a list submitted
18 under this subsection and request a new list containing different
19 nominees.

20 (d) Three trustees must be persons who have experience in
21 the fields of finance, securities investment, or pension
22 administration.

23 (e) Appointments to the state board shall be made without
24 regard to the race, color, disability, sex, religion, age, or
25 national origin of the appointee.

26 Sec. 865.002. INELIGIBILITY OF CERTAIN EMPLOYEES FOR STATE
27 BOARD. (a) A person is not eligible for appointment to the state

1 board if the person or the person's spouse is employed by or
2 participates in the management of a business entity or other
3 organization regulated by or receiving funds from the state board
4 or the fund.

5 (b) A person may not serve as a trustee of the state board or
6 act as the general counsel to the state board if the person is
7 required to register as a lobbyist under Chapter 305 because of the
8 person's activities for compensation on behalf of a business or an
9 association related to the operation of the state board.

10 Sec. 865.003. COMPENSATION; EXPENSES. Trustees of the
11 state board serve without compensation but may be reimbursed for
12 actual and necessary expenses incurred in performing state board
13 functions.

14 Sec. 865.004. VOTING. (a) Each trustee of the state board
15 is entitled to one vote. Except as provided by Subsection (b), at
16 any meeting of the state board, a vote by a majority of the trustees
17 present is necessary for a decision by the trustees.

18 (b) The concurrence of a majority of the members of the
19 state board is required for a vote regarding:

20 (1) eligibility for service retirement described by
21 Section 864.001;

22 (2) the computation of a service retirement annuity
23 described by Section 864.002;

24 (3) a cost-of-living increase described by Section
25 864.013; or

26 (4) a lump-sum payment adopted under Section 864.014.

27 Sec. 865.005. GROUNDS FOR REMOVAL OF TRUSTEES. (a) It is a

1 ground for removal from the state board that a trustee:

2 (1) does not have at the time of appointment the
3 qualifications required by Section 865.001;

4 (2) does not maintain during service on the state
5 board the qualifications required by Section 865.001;

6 (3) violates a prohibition established by Section
7 865.002;

8 (4) cannot discharge the person's duties for a
9 substantial part of the term for which the person is appointed
10 because of illness or disability; or

11 (5) is absent from more than half of the regularly
12 scheduled state board meetings that the trustee is eligible to
13 attend during a calendar year unless the absence is excused by a
14 majority vote of the state board.

15 (b) The validity of an action of the state board is not
16 affected by the fact that it is taken when a ground for removal of a
17 trustee exists.

18 (c) If the commissioner has knowledge that a potential
19 ground for removal exists, the commissioner shall notify the
20 presiding officer of the state board of the ground. The presiding
21 officer shall then notify the governor that a potential ground for
22 removal exists.

23 Sec. 865.006. GENERAL DUTIES OF STATE BOARD. (a) The
24 state board shall employ a certified public accountant, an actuary,
25 and an investment consultant for the fund and may acquire computer,
26 custodial, or investment management services for the fund. The
27 costs of accounting, actuarial, investment consulting, computer,

1 custodial, or investment management services and other
2 administrative expenses may be paid from income earned by
3 investment of the fund. No portion of the corpus or income of the
4 fund may be used for purposes other than the benefit of members,
5 retired emergency services personnel, and their beneficiaries.

6 (b) The state board shall adopt rules necessary for the
7 administration of the fund. The state board shall adopt rules to
8 provide a proration of the requirements for qualified service for a
9 member who performs service for only a portion of a calendar year
10 and may provide by rule for the manner in which member attendance or
11 training hours are to be computed.

12 Sec. 865.007. ADMINISTERING SYSTEM ASSETS. (a) The state
13 board shall administer all assets of the pension system. The state
14 board is the trustee of the pension system's assets.

15 (b) The state board may acquire, hold, manage, purchase,
16 sell, assign, trade, transfer, and dispose of any security,
17 evidence of debt, or other investment in which the pension system's
18 assets may be invested.

19 (c) The state board or the commissioner may accept on behalf
20 of the pension system gifts of money or other property from any
21 public or private source.

22 Sec. 865.008. INVESTMENT OF ASSETS. (a) If a surplus
23 exists in the fund over the amount necessary to pay benefits due for
24 a reasonable period of time, the state board shall invest the
25 surplus.

26 (b) The assets of the pension system shall be invested and
27 reinvested in accordance with Section 67, Article XVI, Texas

1 Constitution. A determination of whether the state board has
2 exercised prudence with respect to an investment decision must be
3 made, taking into consideration the investment of all assets of the
4 trust over which the state board has management and control rather
5 than considering the prudence of a single investment.

6 Sec. 865.009. TRUST FUND. The Texas emergency services
7 retirement fund is a trust fund established with the comptroller.

8 Sec. 865.010. COMMISSIONER'S DUTIES. (a) The
9 commissioner shall oversee the distribution of all benefits.

10 (b) The commissioner shall collect the revenues for the fund
11 from the governing bodies of participating departments.

12 (c) The commissioner may request and administer, in an
13 emergency, state funds in addition to those required by this
14 subtitle and appropriated by the legislature.

15 (d) The commissioner is responsible for recovering any
16 fraudulently acquired benefits. If it appears that fraud has
17 occurred, the commissioner shall notify the appropriate local board
18 and the claimant and hold a hearing. If after the hearing the
19 commissioner determines that benefits have been or are being
20 fraudulently acquired, the commissioner shall seek action in a
21 court.

22 Sec. 865.011. RECORDS AND REPORTS. (a) The commissioner
23 may at any reasonable time examine the records and accounts of local
24 boards.

25 (b) The commissioner shall require in a timely manner
26 periodic reports from the local boards and shall prepare necessary
27 forms for use by local boards.

1 (c) The commissioner shall prepare an annual report on the
2 activity and status of the fund and submit the report to the
3 governor, the lieutenant governor, and the speaker of the house of
4 representatives.

5 Sec. 865.012. LOCAL BOARD. (a) A local board is composed
6 of:

7 (1) one trustee selected by the governing body of the
8 political subdivision of which a participating department is a
9 part;

10 (2) three trustees who are active members representing
11 a participating department chosen by a majority of the emergency
12 services personnel in the department who are eligible to
13 participate in the pension system; and

14 (3) two trustees who are representatives of the
15 political subdivision who are chosen by the other members of the
16 local board.

17 (b) Trustees of a local board serve staggered two-year
18 terms. At the first meeting of a local board, the trustees shall
19 draw lots to determine the length of the term to be served, with the
20 terms of two trustees to be two years and the terms of two trustees
21 to be one year. The first appointments of trustees appointed by
22 other members of the local board are to be one trustee for a
23 two-year term and one trustee for a one-year term.

24 (c) A local board shall hold not fewer than four meetings a
25 year under Chapter 551.

26 (d) A vacancy on a local board is filled for the remainder of
27 the unexpired term by the procedure by which the position was

1 originally filled.

2 (e) A local board shall elect a presiding officer from the
3 trustees at its first meeting.

4 (f) At any meeting of a local board, a vote by a majority of
5 the trustees present is necessary for a decision by the trustees.

6 (g) A trustee of a local board may not receive compensation
7 for service as a trustee but may be reimbursed by the governing body
8 of a participating department for actual and necessary expenses
9 incurred in performing local board functions.

10 Sec. 865.013. MONITORING OF CONTRIBUTION SUBMISSION. A
11 local board shall monitor the timely submission of required
12 contributions to the commissioner.

13 Sec. 865.014. LOCAL CONTRIBUTIONS. (a) Each governing
14 body of a political subdivision of which a participating department
15 is a part shall contribute for each member for each month of service
16 beginning on the date that the member enters the pension system at a
17 rate determined in accordance with Subsection (b) and may make
18 additional contributions as determined by the political
19 subdivision. If the participating department is located in more
20 than one political subdivision, the governing bodies of the
21 political subdivisions shall contribute equally for each member for
22 each month of service.

23 (b) The state board by rule shall determine the minimum, and
24 may determine a maximum, contribution for each member of a
25 participating department for each month of qualified service at a
26 rate the state board determines necessary, after consultation with
27 the actuary, to make the pension system actuarially sound.

1 (c) Contributions required as provided by this section
2 shall be paid at the times and in the manner that the state board
3 prescribes by rule. Contributions required by this section shall
4 be submitted by electronic funds transfer unless the commissioner
5 grants an exception based on the difficulty of a participating
6 department's use of that payment method. Contributions that are
7 not paid within the time required by the state board accrue interest
8 at the most recent assumed actuarial rate of return on investments
9 of the fund.

10 (d) The state board may by rule require a monthly
11 contribution from political subdivisions that do not participate in
12 the pension system but whose employees or former employees are
13 members or retirees of the pension system in an amount necessary to
14 pay the expenses of administering benefits for those persons.

15 (e) The attorney general may file suit to collect unpaid
16 accrued interest. Interest recovered shall be deposited in the
17 fund.

18 Sec. 865.015. STATE CONTRIBUTIONS. The state shall
19 contribute the amount necessary to make the pension system
20 actuarially sound each year, except that the state's contribution
21 may not exceed one-third of the total of all contributions by
22 governing bodies in a particular year.

23 Sec. 865.016. ADMINISTRATIVE PENALTY. (a) The state board
24 may impose an administrative penalty on a local board that fails to
25 file a required report in a timely manner.

26 (b) The amount of the penalty may not exceed \$5,000. The
27 amount shall be based on:

1 (1) the seriousness of the violation, including the
2 nature, circumstances, extent, and gravity of the violation;

3 (2) the history of previous violations;

4 (3) the amount necessary to deter a future violation;

5 (4) efforts to correct the violation; and

6 (5) any other matter that justice may require.

7 (c) The state board may adopt rules for determining the
8 amount of a penalty.

9 (d) The enforcement of the penalty may be stayed during the
10 time the order is under judicial review if the person pays the
11 penalty to the clerk of the court or files a supersedeas bond with
12 the court in the amount of the penalty. A person who cannot afford
13 to pay the penalty or file the bond may stay the enforcement by
14 filing an affidavit in the manner required by the Texas Rules of
15 Civil Procedure for a party who cannot afford to file security for
16 costs, subject to the right of the state board to contest the
17 affidavit as provided by those rules.

18 (e) The attorney general may file suit to collect the
19 penalty. Penalties recovered will be deposited in the fund.

20 (f) A proceeding to impose the penalty is considered to be a
21 contested case under Chapter 2001.

22 Sec. 865.017. INTERRUPTION OF PAYMENTS. (a) The pension
23 system shall withhold payment of a monthly retirement annuity if a
24 participating department attempts to provide information to the
25 commissioner relating to continued eligibility to receive the
26 payments and the recipient fails to cooperate or provide the
27 requested information. The state board may adopt rules to enforce

1 this subsection.

2 (b) The pension system may not begin service or disability
3 retirement annuity or death benefit payments based on the service
4 of a person whose local board is not current in its filing of a
5 required periodic report.

6 Sec. 865.018. CERTIFICATION OF FUND. (a) In this section,
7 "qualified actuary" means a fellow of the Society of Actuaries or a
8 member of the American Academy of Actuaries who has at least five
9 years of experience with public retirement systems.

10 (b) The commissioner and the state board shall certify the
11 actuarial and financial soundness of the fund every two years with
12 the assistance of a qualified actuary.

13 Sec. 865.019. CONFIDENTIALITY OF INFORMATION ABOUT
14 MEMBERS, ANNUITANTS, AND BENEFICIARIES. (a) Information
15 contained in records that are in the custody of the pension system
16 concerning an individual member, annuitant, or beneficiary is
17 confidential under Section 552.101 and may not be disclosed in a
18 form identifiable with a specific individual unless:

19 (1) the information is disclosed to:

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

24 (B) a spouse or former spouse of the individual
25 after the commissioner determines that the information is relevant
26 to the spouse's or former spouse's interest in member accounts,
27 benefits, or other amounts payable by the pension system;

1 (C) a governmental official or employee after the
2 commissioner determines that disclosure of the information
3 requested is reasonably necessary to the performance of the duties
4 of the official or employee; or

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

7 (2) the information is disclosed under a subpoena and
8 the commissioner determines that the individual will have a
9 reasonable opportunity to contest the subpoena.

10 (b) This section does not prevent the disclosure of the
11 status or identity of an individual as a member, former member,
12 retiree, deceased member or retiree, or beneficiary of the pension
13 system.

14 (c) The commissioner may designate other employees of the
15 pension system to make the necessary determinations under
16 Subsection (a).

17 (d) A determination and disclosure under Subsection (a) may
18 be made without notice to the individual member, annuitant, or
19 beneficiary.

20 SECTION 2. The Texas Statewide Emergency Services
21 Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes) is
22 repealed.

23 SECTION 3. This Act takes effect September 1, 2005.

David Dewhurst

President of the Senate

Jim Caddell

Speaker of the House

I hereby certify that S.B. No. 522 passed the Senate on April 7, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 27, 2005, by the following vote: Yeas 29, Nays 0.

Steve Saw
Secretary of the Senate

I hereby certify that S.B. No. 522 passed the House, with amendment, on May 18, 2005, by a non-record vote.

Robert Honey
Chief Clerk of the House

Approved:

17 JUNE '05

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
2:10 PM O'CLOCK

Roger Williams
Secretary of State