

By: Kuempel

H.B. No. 1822

A BILL TO BE ENTITLED

1 AN ACT

2 relating to participation and credit in, contributions to, and
3 benefits and administration of the Texas Municipal Retirement
4 System.

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

6 SECTION 1. Section 851.001(6), Government Code, is amended
7 to read as follows:

8 (6) "Compensation" means the sum of payments made to
9 an employee for performance of personal services, as certified on a
10 written payroll of an employing department, that does not exceed
11 any rate of compensation fixed by a governing body as the maximum
12 salary on which member contributions to the retirement system may
13 be based and does not exceed the amount established by board rule,
14 which may not exceed the limit [~~\$150,000 for a calendar year,~~
15 ~~indexed in the same manner and for the same periods as~~] provided by
16 Section 401(a)(17) of the Internal Revenue Code of 1986 (26 U.S.C.
17 Section 401), as indexed in the manner provided by that section, and
18 includes amounts by which payment for earnings is reduced by reason
19 of:

20 (A) employer pick-up of employee contributions
21 to the retirement system under Section 855.402(j);

22 (B) deferral of compensation under benefit plans
23 adopted by the employer pursuant to Section 401(k) or 457 of the
24 Internal Revenue Code of 1986 (26 U.S.C. Sections 401, 457);

1 (C) cost of benefits furnished under qualified
2 cafeteria plans adopted by the employer pursuant to Section 125 of
3 the Internal Revenue Code of 1986 (26 U.S.C. Section 125);

4 (D) cost of tax-sheltered annuities acquired for
5 the employee under Section 403(b) of the Internal Revenue Code of
6 1986 (26 U.S.C. Section 403); and

7 (E) deductions for Federal Insurance
8 Contribution Act taxes, federal income taxes, or other obligations
9 of the employee.

10 SECTION 2. Section 851.002, Government Code, is amended to
11 read as follows:

12 Sec. 851.002. PURPOSE OF SUBTITLE. The purpose of this
13 subtitle is to establish a program of benefits for members,
14 retirees, and their beneficiaries and to establish rules for the
15 management and operation of the retirement system. The assets of
16 the retirement system are held in trust for the exclusive benefit of
17 the members, the retirees, and their beneficiaries and may not be
18 diverted. The retirement system may not apply a forfeiture to
19 increase a benefit that any person would otherwise receive under
20 this subtitle.

21 SECTION 3. The heading to Section 852.103, Government Code,
22 is amended to read as follows:

23 Sec. 852.103. WITHDRAWAL OF CONTRIBUTIONS; ROLLOVER
24 DISTRIBUTIONS.

25 SECTION 4. Section 852.103(b), Government Code, is amended
26 to read as follows:

27 (b) The retirement system shall, in accordance with Section

1 401(a)(31) of the Internal Revenue Code of 1986 and its subsequent
2 amendments and related regulations, permit the distributee of an
3 eligible rollover distribution to elect to have the distribution
4 paid directly to an eligible retirement plan specified by the
5 distributee in the form of a direct trustee-to-trustee transfer.
6 The board of trustees may adopt rules to implement this subsection.
7 ~~[If a person to whom a withdrawal would be paid under this section~~
8 ~~elects to have all or a portion of the accumulated contributions~~
9 ~~paid directly to an eligible retirement plan and specifies the~~
10 ~~eligible retirement plan to which the contributions are to be paid,~~
11 ~~on forms approved for that purpose by the board of trustees, the~~
12 ~~retirement system shall make the payment in the form of a direct~~
13 ~~trustee-to-trustee transfer but is under no obligation to determine~~
14 ~~whether or not the other plan in fact is an eligible retirement plan~~
15 ~~for that purpose.]~~

16 SECTION 5. Section 852.104, Government Code, is amended by
17 adding Subsection (e) to read as follows:

18 (e) A member of the retirement system is not absent from
19 service during any leave of absence granted by the employing
20 municipality under the Family and Medical Leave Act of 1993 (29
21 U.S.C. Section 2601 et seq.), and its subsequent amendments, to the
22 extent that the leave does not exceed 12 weeks in duration.

23 SECTION 6. Section 852.110, Government Code, is amended to
24 read as follows:

25 Sec. 852.110. CORRECTION OF ERRORS. (a) The retirement
26 system, under rules adopted by the board of trustees, shall correct
27 an error in ~~[If as a result of a reporting error on the part of a~~

1 ~~participating municipality a person has not received credited~~
2 ~~service or current service credit or has received less than the~~
3 ~~correct amount of current service credit for months in which the~~
4 ~~person performed service as an employee of the municipality, the~~
5 ~~retirement system shall correct the error as authorized by this~~
6 ~~section.~~

7 ~~[(b) A correction may not be made as to]~~ current service
8 performed, or current service credit that should have been
9 received, not more than four years before the date an application
10 for the correction, on a form approved by the board of trustees, is
11 received by the retirement system.

12 (b) The retirement system shall correct an error in prior
13 service credit ~~[(c) Except as provided by Subsection (g), a~~
14 ~~correction described by Subsection (a) may not be made unless the~~
15 ~~retirement system receives, in addition to the application, each of~~
16 ~~the items required under Subsection (d) and one of the following:~~

17 ~~[(1) a written agreement, approved by the~~
18 ~~municipality's governing body, stating that an error has occurred~~
19 ~~and that the municipality has agreed to correct the error,~~

20 ~~[(2) a final judgment by a court of competent~~
21 ~~jurisdiction in a proceeding to which the municipality was a party,~~
22 ~~ordering the municipality to correct the error, or~~

23 ~~[(3) an order in an administrative proceeding to which~~
24 ~~the municipality was a party, directing the subdivision to correct~~
25 ~~the error, and that is no longer subject to appeal.~~

26 ~~[(d) A correction described by Subsection (a) may not be~~
27 ~~made unless the retirement system receives:~~

1 ~~[(1) a supplemental report properly signed on behalf~~
2 ~~of the municipality showing the corrections to credited service or~~
3 ~~current service credit of the person;~~

4 ~~[(2) payment from the person seeking the correction in~~
5 ~~an amount equal to the contribution or additional contribution the~~
6 ~~person would have made to the retirement system if the service had~~
7 ~~been correctly reported to the system; and~~

8 ~~[(3) payment from the municipality in an amount equal~~
9 ~~to the additional contribution that the municipality should have~~
10 ~~paid to the retirement system based on the additional credited~~
11 ~~service or current service credit.~~

12 ~~[(c) A municipality that is the subject of an agreement, a~~
13 ~~judgment, or an order described by Subsection (c) shall file the~~
14 ~~supplemental report and submit the payments described by this~~
15 ~~section not later than the 30th day after the date the municipality~~
16 ~~is notified in writing by the retirement system that those items~~
17 ~~should be sent to the retirement system.~~

18 ~~[(f) If as a result of a reporting error on the part of a~~
19 ~~participating municipality a person has not received prior service~~
20 ~~credit, on written application to the retirement system accompanied~~
21 ~~by evidence of the prior service satisfactory to the retirement~~
22 ~~system, the retirement system shall correct the error] if the~~
23 retirement system receives the person's written application for the
24 correction not later than the fourth anniversary of [~~within four~~
25 ~~years after~~] the later of the date the municipality began
26 participation in, or the person first became a member of, the
27 retirement system.

1 ~~[(g) The correction of an error affecting not more than~~
2 ~~three monthly reports within a period of not more than three~~
3 ~~consecutive months may be made on the basis of the application alone~~
4 ~~if the application, the supplemental report, and the payments~~
5 ~~required by this section are received by the retirement system~~
6 ~~before the first day of the seventh month after the month for which~~
7 ~~the correction is being made.]~~

8 SECTION 7. Section 853.305, Government Code, is amended by
9 adding Subsection (g) to read as follows:

10 (g) An ordinance adopted under this section applies to the
11 granting of restricted prior service credit to a member who is or
12 has been an employee of the authorizing municipality at any time on
13 or after the effective date of the ordinance.

14 SECTION 8. Section 853.502(b), Government Code, is amended
15 to read as follows:

16 (b) A member eligible to establish credit for military
17 service creditable as provided by this section is one who is an
18 employee of a municipality that has adopted an ordinance under this
19 section and who:

20 (1) ~~[who]~~ was an employee of a participating
21 municipality immediately prior to the military ~~[such]~~ service, but
22 terminated employment with the municipality and membership in the
23 retirement system during the period of service, and applied for
24 reemployment with the municipality not later than the 90th day
25 after the date the ~~[within 90 days after such]~~ person was released
26 from active duty or discharged or from hospitalization continuing
27 after discharge for a period of not more than one year, and was

1 reemployed by that municipality; or

2 (2) ~~[who]~~ has at least five ~~[10]~~ years of credited
3 service in the retirement system and has been an employee of one or
4 more participating municipalities for at least five ~~[10]~~ years.

5 SECTION 9. Section 853.504(b), Government Code, is amended
6 to read as follows:

7 (b) An eligible member seeking military service credit
8 under Section 853.502 must file with the retirement system a
9 written application for the ~~[such]~~ credit, together with
10 satisfactory evidence of the member's military service~~[, and must~~
11 ~~deposit with the retirement system, for credit to the member's~~
12 ~~individual account, the sum of \$15 for each month of military~~
13 ~~service for which credit is sought].~~

14 SECTION 10. Section 854.003, Government Code, is amended to
15 read as follows:

16 Sec. 854.003. EFFECTIVE DATE OF RETIREMENT. (a) Except as
17 provided by Subsections (b) and (d) ~~[(e)]~~, the effective date of a
18 member's service retirement is the date the member designates at
19 the time the member applies for retirement under Section 854.101,
20 but the date must be the last day of a calendar month and may not
21 precede the date the member terminates employment with all
22 participating municipalities.

23 (b) If a member dies before retirement and an annuity
24 becomes payable under Section 854.105, the member is considered to
25 have retired on the last day of the month immediately preceding the
26 month in which death occurred, except as provided by Subsection (e)
27 ~~[(h)]~~.

1 (c) Except as provided by Subsections (b) and (d) [(e)], the
2 effective date of a member's disability retirement is the date
3 designated on the application for retirement filed by or for the
4 member as provided by Section 854.301, but the date must be the last
5 day of a calendar month and may not precede the date the member
6 terminates employment with all participating municipalities.

7 (d) Notwithstanding any other provision of this subtitle,
8 each distribution of a benefit under this subtitle must be
9 determined and made in accordance with Section 401(a)(9) of the
10 Internal Revenue Code of 1986, and its subsequent amendments,
11 including the minimum incidental death benefit requirements of
12 Section 401(a)(9)(G) of that code. The board of trustees may adopt
13 rules it determines necessary to comply with the distribution
14 requirements, including rules under which a person is considered to
15 have retired as a result of those requirements. [~~If a person who~~
16 ~~has attained age 70-1/2 terminates or has terminated covered~~
17 ~~employment without applying for retirement or a refund of~~
18 ~~accumulated contributions, the retirement system shall attempt to~~
19 ~~send to that person the written notice described by Subsection (e)~~
20 ~~as soon as is practical after the last to occur of:~~

21 [~~(1) the date the person attains age 70-1/2,~~

22 [~~(2) the date the person terminates all covered~~
23 ~~employment, or~~

24 [~~(3) the date the person first becomes eligible for~~
25 ~~retirement under this chapter.~~

26 [~~(e) The written notice shall advise the person that the~~
27 ~~person is required to retire. If, before the 91st day after the~~

1 ~~date the retirement system sends the notice, the person has not~~
2 ~~filed an application for refund or retirement with the board of~~
3 ~~trustees, the person is considered to have retired on the last day~~
4 ~~of the month following the last to occur of the three dates listed~~
5 ~~in Subsection (d).~~

6 ~~[(f) If a person is considered by the retirement system to~~
7 ~~have retired as a result of Subsection (e), the person also shall be~~
8 ~~considered:~~

9 ~~[(1) to have elected to receive an annuity under~~
10 ~~Section 854.103, if the person did not have a spouse on the date of~~
11 ~~employment termination; or~~

12 ~~[(2) if the person had a spouse on the date of~~
13 ~~employment termination, to have elected to receive an annuity under~~
14 ~~Section 854.104(c)(1) and to have designated the person's spouse as~~
15 ~~the beneficiary under the annuity.~~

16 ~~[(g) If a person who has less than 10 years of creditable~~
17 ~~service and who has attained age 70-1/2 has terminated covered~~
18 ~~employment without applying for a refund of accumulated~~
19 ~~contributions and is not eligible to retire without additional~~
20 ~~service or age, the retirement system shall attempt to send that~~
21 ~~person written notice in accordance with this subsection as soon as~~
22 ~~is practical after the person has been absent from covered~~
23 ~~employment for five consecutive years. The written notice shall~~
24 ~~advise the person that the person is required to receive a refund of~~
25 ~~accumulated contributions in order to avoid a tax penalty according~~
26 ~~to the Internal Revenue Code of 1986 (Title 26, United States Code).~~
27 ~~If, before the 91st day after the date the retirement system sends~~

1 ~~the notice, the person has not filed an application for refund with~~
2 ~~the board of trustees, the person is considered to have filed an~~
3 ~~application for refund and to have elected to have withholding~~
4 ~~taxes withheld on that refund.]~~

5 (e) [~~(h)~~] If the person who is eligible to receive an
6 annuity under Subsection (b) is the member's surviving spouse, the
7 person may elect, by notifying the retirement system not later than
8 the 180th day after the date of the member's death, to leave the
9 member's accumulated contributions on deposit with the retirement
10 system until the date the member would have been eligible for
11 service retirement. If a surviving spouse makes an election under
12 this subsection, the deceased member is considered to have retired
13 on the last day of the month in which the member would have attained
14 an age for service retirement eligibility. An election under this
15 subsection is revocable before the payment of the first annuity
16 payment by filing a written application approved by the board of
17 trustees to receive the member's accumulated contributions.

18 SECTION 11. Section 854.006(d), Government Code, is amended
19 to read as follows:

20 (d) If a qualified domestic relations order, as that term is
21 defined by Section 804.001, so provides, the benefit payable to a
22 retiree who is receiving payments of an annuity for the retiree's
23 life with payments to continue after the retiree's death until the
24 death of another person under Section 854.104(c)(1), (2), or (5)
25 [~~Option 1, 2, or 5A, as defined by Section 123.3, Title 34, Texas~~
26 ~~Administrative Code,~~] may be divided by the retirement system into
27 two annuities if:

1 (1) the person who was designated to receive the
2 continued payment after the retiree's death is the same person as
3 the alternate payee;

4 (2) the domestic relations order specifies that one of
5 the two annuities is payable over the remaining life of the retiree,
6 with no payments to be made under that annuity after the death of
7 the retiree;

8 (3) the domestic relations order specifies that the
9 annuity payable to the alternate payee is payable over the
10 remaining life of that person, with no payments to be made under
11 that annuity after the death of the alternate payee named in the
12 order; and

13 (4) the domestic relations order specifies that the
14 portion of the benefit payable to the alternate payee is stated as a
15 fixed percentage of the present benefit payable to the retiree,
16 which percentage may not exceed 50 percent of a benefit provided
17 under Section 854.104(c)(2) [an Option 2 benefit] and may not
18 exceed 75 percent of a benefit provided under Section 854.104(c)(5)
19 [66-2/3 percent of an Option 5A benefit].

20 SECTION 12. Section 854.101, Government Code, is amended to
21 read as follows:

22 Sec. 854.101. APPLICATION FOR SERVICE RETIREMENT. A member
23 may apply for service retirement by filing a retirement application
24 with the board of trustees not later than the date specified by the
25 member for retirement or [less than 30 days nor], if the member has
26 not previously selected an optional service retirement annuity
27 under Section 854.105, not earlier than the 90th day before that

1 date ~~[more than 90 days before the date the member wishes to~~
2 ~~retire]~~.

3 SECTION 13. Section 854.301(b), Government Code, is amended
4 to read as follows:

5 (b) An application for a disability retirement annuity may
6 not be filed later than the date specified by the member for
7 retirement or earlier than the 90th day before that date ~~[made less~~
8 ~~than 30 nor more than 90 days before the date the member wishes to~~
9 ~~retire]~~.

10 SECTION 14. Section 854.408(a), Government Code, is amended
11 to read as follows:

12 (a) The standard occupational disability retirement annuity
13 payable under this subchapter is the sum of the member's prior
14 service annuity and current service annuity. A prior service
15 annuity is subject to reduction under Section 855.308(f). A
16 standard occupational disability retirement annuity:

17 (1) is payable throughout the life of the retiree~~[~~
18 ~~but if the retiree dies before 60 monthly payments have been made,~~
19 ~~the remainder of the 60 monthly payments is payable to the retiree's~~
20 ~~designated beneficiary]; and~~

21 (2) is reducible as to any month or series of months as
22 provided by this section.

23 SECTION 15. Section 854.410(c), Government Code, is amended
24 to read as follows:

25 (c) An eligible person may select an optional annuity under
26 Section 854.104(c) ~~[that provides that:~~

27 ~~[(1) after the retiree's death, the reduced annuity is~~

1 ~~payable throughout the life of a person designated by the retiree,~~

2 ~~[(2) after the retiree's death, one-half of the~~
3 ~~reduced annuity is payable throughout the life of a person~~
4 ~~designated by the retiree,~~

5 ~~[(3) if the retiree dies before 120 monthly annuity~~
6 ~~payments have been made, the remainder of the 120 payments is~~
7 ~~payable to the retiree's beneficiary or, if one does not exist, to~~
8 ~~the retiree's estate,~~

9 ~~[(4) if the retiree dies before 180 monthly annuity~~
10 ~~payments have been made, the remainder of the 180 payments is~~
11 ~~payable to the retiree's beneficiary or, if one does not exist, to~~
12 ~~the retiree's estate,~~

13 ~~[(5) after the retiree's death, two-thirds of the~~
14 ~~reduced annuity is payable throughout the life of a person~~
15 ~~designated by the retiree, or~~

16 ~~[(6) the annuity is payable only during the retiree's~~
17 ~~lifetime].~~

18 SECTION 16. Section 854.604, Government Code, is amended to
19 read as follows:

20 Sec. 854.604. RETIREE SUPPLEMENTAL DEATH BENEFIT. If a
21 retiree dies whose most recent employment as a member of the
22 retirement system was with a municipality that has elected to
23 provide, and continues to provide, postretirement supplemental
24 death benefits, a lump-sum supplemental death benefit is payable
25 from the fund in the amount of \$7,500 [~~\$5,000~~].

26 SECTION 17. Section 855.301(a), Government Code, is amended
27 to read as follows:

1 (a) The board of trustees shall invest and reinvest the
2 assets of the retirement system without distinction as to their
3 source in accordance with Section 67, Article XVI, Texas
4 Constitution. For purposes of the investment authority of the
5 board of trustees under Section 67, Article XVI, Texas
6 Constitution, "security" means any investment instrument within
7 the meaning of the term as defined by Section 4, The Securities Act
8 (Article 581-4, Vernon's Texas Civil Statutes), 15 U.S.C. Section
9 77b(a)(1), or 15 U.S.C. Section 78c(a)(10) [÷

10 [~~(1) interest-bearing bonds or other evidences of~~
11 ~~indebtedness of this state, a county, school district, city, or~~
12 ~~other municipal corporation of this state, the United States, or an~~
13 ~~authority or agency of the United States;~~

14 [~~(2) securities on which the United States or any~~
15 ~~authority or agency of the United States guarantees the payment of~~
16 ~~principal and interest;~~

17 [~~(3) corporate bonds or debentures that are issued by~~
18 ~~a company;~~

19 [~~(A) incorporated in the United States and that~~
20 ~~are rated "A" or better by one or more nationally recognized rating~~
21 ~~agencies approved by the board; or~~

22 [~~(B) in whose stock the retirement system may~~
23 ~~invest as provided by Subdivision (4);~~

24 [~~(4) common or preferred stocks of a company~~
25 ~~incorporated in the United States that has paid cash dividends on~~
26 ~~its stock for 10 consecutive years immediately before the date of~~
27 ~~purchase and, unless the stocks are bank or insurance stocks, that~~

1 ~~is listed on an exchange registered with the Securities and~~
2 ~~Exchange Commission or its successor,~~

3 ~~[(5) obligations issued, assumed, or guaranteed by the~~
4 ~~Inter-American Development Bank, the International Bank for~~
5 ~~Reconstruction and Development (the World Bank), the African~~
6 ~~Development Bank, the Asian Development Bank, and the International~~
7 ~~Finance Corporation, or~~

8 ~~[(6) bonds issued, assumed, or guaranteed by the State~~
9 ~~of Israel].~~

10 SECTION 18. Section 855.303, Government Code, is amended to
11 read as follows:

12 Sec. 855.303. PRUDENCE REGARDING INVESTMENTS ~~[DUTY OF~~
13 ~~CARE]~~. A determination of whether the board of trustees has
14 exercised prudence in an investment decision must be made by
15 considering the investment of all of the assets of the trust over
16 which the board has management and control, rather than by
17 considering the prudence of a single investment. In making
18 investments for the retirement system, the board of trustees shall
19 exercise the judgment and care, under the circumstances, that
20 persons of prudence, discretion, and intelligence exercise in the
21 management of their own affairs, considering the probable income
22 from the securities and probable safety of their capital.

23 SECTION 19. Section 855.306(a), Government Code, is amended
24 to read as follows:

25 (a) The retirement system shall deposit in a member's
26 individual account in the employees saving fund:

27 (1) the amount of contributions to the retirement

1 system deducted from the member's compensation;

2 (2) interest allowed on money in the account in
3 accordance with this subtitle; and

4 (3) the portion of a deposit required by Section
5 853.003 to reinstate credited service previously canceled that
6 represents the amount withdrawn[~~, and~~

7 [~~(4) an amount deposited by the member in accordance
8 with Section 853.502 to establish credited service for military
9 service].~~

10 SECTION 20. Section 855.604, Government Code, is amended to
11 read as follows:

12 Sec. 855.604. MERGER. A pension system for municipal
13 employees may merge into the retirement system only on conditions
14 that the board of trustees in its sole discretion determines in an
15 individual case are consistent with the fiduciary responsibilities
16 of the board [~~under terms adopted by the board of trustees and the~~
17 ~~trustees of the other system after the other system has approved the~~
18 ~~merger by a majority vote].~~

19 SECTION 21. Section 855.608, Government Code, is amended by
20 amending Subsections (a), (c), and (d) and adding Subsection (e) to
21 read as follows:

22 (a) A separate fund for the payment of benefits under
23 Section 415(m), Internal Revenue Code of 1986, and its subsequent
24 amendments, is created outside the retirement system trust fund
25 solely for the purpose of providing benefits to participants equal
26 to the amount by which the participant's annual benefit otherwise
27 payable under this subtitle exceeds the limitation on benefits

1 imposed by Section 415, Internal Revenue Code of 1986, and its
2 subsequent amendments.

3 (c) Money for the payment of benefits to a participant under
4 this section shall be paid [~~transferred~~] to the separate fund
5 created by this section from the contributions that otherwise would
6 be deposited in the municipality accumulation fund account of the
7 municipality that employed the member. If the benefit is payable as
8 a result of service with more than one participating municipality,
9 there shall be paid [~~transferred~~] from the contributions that
10 otherwise would be deposited in the municipality accumulation fund
11 account of each affected [~~such~~] municipality the amount chargeable
12 to that municipality for the member. When feasible, the [~~The~~]
13 monthly amount to pay benefits under this section shall be paid not
14 later than the 15th day [~~transferred at least 15 days~~] before the
15 date of a monthly payment to a person receiving annuity benefits
16 under this section.

17 (d) The full benefits arrangement shall be administered as
18 an unfunded [~~a~~] governmental excess benefit arrangement. Benefits
19 under this section are unassignable and are exempt from execution,
20 garnishment, attachment, and state and local taxation to the same
21 extent as provided by Section 851.006. Contributions to this
22 arrangement are not held in trust and may not be commingled with
23 other retirement system assets. The board of trustees may adopt
24 rules for the efficient administration of this section and to
25 maintain compliance with Section 415(m), Internal Revenue Code of
26 1986, and its subsequent amendments.

27 (e) The retirement system may transfer amounts among

1 accounts and funds to balance the accounts and funds affected by the
2 arrangement required by this section.

3 SECTION 22. Section 854.604, Government Code, as amended by
4 this Act, applies only to deaths that occur on or after the
5 effective date of this Act. Section 854.604, Government Code, as it
6 existed immediately before the effective date of this Act, applies
7 to deaths that occurred before that date, and the former law is
8 continued in effect for that purpose.

9 SECTION 23. Section 855.302, Government Code, is repealed.

10 SECTION 24. This Act takes effect January 1, 2004.