

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 522  
By: Armbrister  
State Affairs  
3/23/2005  
Committee Report (Substituted)

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

The Texas Statewide Emergency Services Pension System provides service retirement, disability retirement, and death benefits for volunteer emergency services department personnel, including volunteer firefighters. Currently, there are 176 participating departments serving more than 7,000 members, retirees, and their beneficiaries. The system has experienced significant funding problems as a result of the downturn in the stock market and the failure of the state to pay a portion of the contributions required by statute. The state board of trustees has almost no flexibility to adjust benefits or eligibility for benefits to address the underfunding.

C.S.S.B. 522 restates the law governing the pension system to modernize language, codify the statute in the Government Code, and give the board the authority to make necessary adjustments to make the fund actuarially sound.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the state board of trustees of the Texas Statewide Emergency Services Pension System in SECTION 1 (Sections 861.006, 862.004, 863.004, 864.001, 864.002, 864.004, 864.006, 864.007, 864.013, 864.014, 865.006, 865.014, 865.016, and 865.017, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 8, Government Code, by adding Subtitle H, as follows:

#### SUBTITLE H. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

##### CHAPTER 861. GENERAL PROVISIONS

Sec. 861.001. DEFINITIONS. Defines "actuarially sound pension system," "auxiliary employee," "commissioner," "dependant," "emergency services," "fund," "local board," "member," "pension system," "qualified service," "state board," and "volunteer."

Sec. 861.002. PENSION SYSTEM. Sets forth that the pension system is a public entity. Requires the Texas Emergency Services Retirement System (pension system) to be the name by which all its business is transacted, all its funds invested, and all its cash, securities, and other property held.

Sec. 861.003. POWERS AND PRIVILEGES. Provides that the pension system has the powers, privileges, and immunities of a corporation as well as the powers, privileges, and immunities conferred by this subtitle.

Sec. 861.004. EXEMPTION FROM EXECUTION. Provides that all benefit payments, contributions, money in the pension system fund, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levies, and any other process and are unassignable.

Sec. 861.005. NO DIVERSION OF ASSETS. Requires the fund to be maintained for the exclusive benefit of members, retirees, and their beneficiaries. Prohibits any part of the principal or interest from fund assets from being used for or diverted to a purpose other than the exclusive benefit of the members, retirees, and their beneficiaries,

at any time before the termination of the fund and the satisfaction of all liabilities with respect to members, retirees, and their beneficiaries.

Sec. 861.006. PLAN QUALIFICATION AND DISTRIBUTIONS. Sets forth that the legislature intends that this subtitle be construed and administered in a manner so that the pension system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). Authorizes the state board of trustees (state board) to adopt rules that modify the plan as necessary to meet those qualification requirements. Requires all distributions, notwithstanding any other provision of this subtitle, to be made in accordance with applicable provisions of the Internal Revenue Code of 1986 and regulations adopted under that code. Authorizes the state board, by rule, to authorize an eligible rollover distribution to be made in the form of a direct trustee-to-trustee transfer.

Sec. 861.007. FORFEITURE NOT TO INCREASE BENEFITS. Prohibits a forfeiture that occurs under this subtitle from being used to increase the benefits that any member would otherwise receive under this subtitle.

#### CHAPTER 862. MEMBERSHIP

Sec. 862.001. PARTICIPATION BY DEPARTMENT. Authorizes the governing body of a department that performs emergency services, in the manner provided for taking official action by the body, to elect to participate in the pension system. Requires a governing body to notify the firefighters pension commissioner (commissioner) as soon as practicable of an election made under this subsection. Provides that an election to participate under this subsection, except as provided by this section, is irrevocable. Authorizes the governing body of a department that makes an to participate in the pension system election to terminate participation in the pension system not later than the fifth anniversary of the date of the election to participate, except that a department that begins participation after September 1, 2005, may not terminate that participation.

Sec. 862.002. MEMBERSHIP BY INDIVIDUAL. Provides that, except as otherwise provided by this section, each person who performs service as a volunteer or auxiliary employee of a participating department is a member of the pension system. Provides that a person is not a member of the pension system if the person meets certain qualifications.

Sec. 862.003. CERTIFICATION OF PHYSICAL FITNESS. Requires a prospective member to present to the local board a certification of physical fitness by a qualified physician. Provides that the person becomes a member of the pension system if the local board accepts the certification or if the local board assigns the person to support duties. Requires the local board to assign a person to support duties if the person does not present an acceptable certification and the person is at least 18 years of age, is not retired from the pension system, and is not serving a probationary period before becoming a regular member of a participating department.

Sec. 862.004. DEPARTMENTAL ELECTIONS AND MERGERS. Authorizes the state board to adopt rules for governing body elections under Section 862.001 or for the merger of existing pension plans into the pension system.

#### CHAPTER 863. CREDITABLE SERVICE

Sec. 863.001. CREDIT FOR CURRENT SERVICE. Provides that a member is entitled to receive credit in the pension system for each month of qualified service for which the system receives the contributions required by this subtitle.

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

Sec. 863.003. TRANSFER OF SERVICE CREDIT. Authorizes a member who terminates service, except by retirement, and later resumes service with the same participating department or begins service with another participating department to transfer all previously accrued service credit to the new department.

Sec. 863.004. PRIOR SERVICE OF MEMBER BEFORE DEPARTMENTAL PARTICIPATION. Authorizes the state board, by rule, to authorize the granting of credit for service with a participating department that was performed before the date the department began participation in the pension system. Requires the costs of computing prior service credit to be determined on a basis that maintains the system as actuarially sound.

#### CHAPTER 864. BENEFITS

Sec. 864.001. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY. Requires the state board by rule to determine the period of qualified service and, if appropriate, the age required for a member to receive a service retirement annuity with full benefits after the member terminates service with a participating department. Authorizes the state board by rule to provide for partial vesting of benefits after a particular period. Provides that vested retirement benefits are not forfeitable.

Sec. 864.002. SERVICE RETIREMENT ANNUITY. (a) Provides that a service retirement annuity is payable in monthly installments based on the governing body's average monthly contribution during the member's term of qualified service under this subtitle, not including a contribution to reduce the unfunded accrued actuarial liability of the pension system, and a formula adopted by the state board, by rule, that allows the pension system, assuming the maximum state contributions are provided under Section 865.015, to be maintained as actuarially sound.

(b) Authorizes the state board by rule to provide, for each year of qualified service in excess of the period provided under Section 864.001 for full benefits, an additional amount that is a percentage of the person's monthly pension, compounded annually. Authorizes a person to receive a proportional credit for months of qualified service that makes up less than a year.

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

Sec. 864.004. DISABILITY RETIREMENT ANNUITY. (a) Requires a member, at the time of disability, to elect between a service or a retirement disability annuity, if eligible for both.

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

(c) Provides that a member whose disability results from performing emergency service duties is guaranteed a disability retirement annuity of \$300 a month or a greater amount that the state board by rule adopts based on monthly contributions of a participating department for its members.

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

Sec. 864.005. CERTIFICATION AND CONTINUANCE OF DISABILITY. (a) Requires the local board to require a member who is receiving temporary disability benefits to file a disability rating report every three months from a physician chosen by the local board. Authorizes the local board, if a report indicates a significant change of condition, after notice and a hearing, to adopt an order to terminate payments or place the member on permanent disability. Requires the local board to send a copy of each order adopted under this subsection to the commissioner.

(b) Provides that disability benefits cease if the recipient becomes capable of performing the duties of the person's most recent position with a participating department or the duties of another occupation for which the person is reasonably suited by education, training, and experience. Provides that rejection of a suitable offer of employment is conclusive evidence for purposes of this subtitle that the person is no longer eligible to receive disability retirement benefits, if the employment would provide the person with a salary equal to or greater than the salary the person was earning at the time the disability occurred.

(c) Authorizes the state board or a local board to require financial information from a person as a condition to the continued receipt of disability retirement benefits, including federal income tax returns and wage earning forms. Provides that failure to provide requested information is a ground for terminating benefits.

Sec. 864.006. MEMBER SERVICE DEATH BENEFITS. Provides that the surviving spouse and dependents of a member who dies as a result of performing emergency service duties are entitled to receive in equal shares a death benefit annuity equal to two-thirds of the service retirement annuity that the decedent would have been entitled to receive if the decedent had been able to retire, vested at 100 percent, on the date of the decedent's death. Provides that as long as both the spouse and one or more dependants survive, an additional one-third of that annuity is payable to the dependants in equal shares. Provides that the beneficiary of a member who dies as a result of performing emergency service duties is entitled to a lump-sum benefit of \$5,000 or a greater amount that the state board provides by rule.

Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. Authorizes the state board by rule to provide the beneficiary of a deceased member whose death did not result from the performance of emergency service duties a lump-sum benefit that is the greater of certain amounts.

Sec. 864.008. VESTED MEMBER DEATH BENEFIT. Provides that the surviving spouse of a deceased member who dies before retirement but after meeting the minimum age and service requirements is entitled to two-thirds of the monthly annuity to which the decedent would have been entitled on that date. Provides that the surviving spouse of a deceased member who dies after terminating service with all participating departments and meeting a vesting requirement under Section 864.001 but before attaining the age of 55 is entitled to a death benefit annuity, beginning on the date that the decedent would have attained that age, equal to two-thirds of the monthly annuity to which the decedent would have been entitled on that date.

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

Sec. 864.010. BENEFITS FOR MEMBERS AND RETIREES OF DEPARTMENT THAT WITHDRAWS FROM PARTICIPATION OR CEASES TO EXIST. Requires the commissioner to continue to administer benefits of the pension system for members and retirees who perform service for a formerly participating department that has withdrawn from participation in the pension system or has ceased to exist. Requires the governing body of a political subdivision in which a department described by Subsection (a) is or was located to perform the duties required of a local board for the members and retirees who served for the formerly participating department.

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

Sec. 864.012. CERTAIN BENEFICIARIES. Requires the pension system, if a member names more than one beneficiary for a lump-sum death benefit, to divide the benefit equally among the named beneficiaries or, if the member has designated a proportional division, to the proportion designated. Provides that except as provided by Subsection (a), the lump-sum death benefits are subject to the laws of descent and distribution if the decedent has not provided for testamentary disposition.

Sec. 864.013. COST-OF-LIVING INCREASE. Authorizes the state board by rule to provide a cost-of-living increase for any benefit provided by the pension system. Requires the state board, if the benefits are increased, to require an increase in governing body contributions if necessary to maintain an actuarially sound pension system.

Sec. 864.014. STATE BOARD AUTHORITY FOR LUMP-SUM PAYMENTS. Authorizes the state board, by rule, to provide for a lump-sum payment, in lieu of any annuity otherwise payable under this subtitle, if the board determines that a lump-sum payment is cost-efficient or is necessary for the pension system to remain actuarially sound.

Sec. 864.015. CLAIM AND APPEAL PROCEDURE. (a) Requires that a claim benefit be filed with the local board. Requires the local board, upon receiving a claim, to hold a hearing to decide the claim. Requires the local board to send a written copy of its decision to the claimant and the commissioner.

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

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

(d) Sets forth that an appeal under this is held in Austin and is a contested case under Chapter 2001, conducted as a de novo hearing by the State Office of Administrative Hearings.

(e) Requires the commissioner, after a hearing under Subsection (d), to decide each appeal from a local board decision, issue a written opinion, and notify the local board and the claimant if the commissioner overrules the local board's decision.

(f) Authorizes a person aggrieved by a decision of the commissioner to appeal the decision to the state board. Requires the state board to decide each appeal based on the hearing record.

(g) Prohibits a decision of the state board from being appealed to any other court or subject to any other legal process.

## CHAPTER 865. ADMINISTRATION

Sec. 865.001. COMPOSITION OF STATE BOARD. Sets forth the composition and terms of the state board of the pension system. Requires that appointments to the state board be made without regard to race, color, disability, sex, religion, age, or national origin of the appointee.

Sec. 865.002. INELIGIBILITY OF CERTAIN EMPLOYEES FOR STATE BOARD. Sets forth circumstances under which a person is ineligible for appointment to the state board.

Sec. 865.003. COMPENSATION; EXPENSES. Provides that trustees of the state board serve without compensation but are authorized to be reimbursed for actual and necessary expenses incurred in performing state board functions.

Sec. 865.004. VOTING. Provides that each trustee of the state board is entitled to one vote. Provides that at any meeting of the state board, a vote by a majority of the trustees present is necessary for a decision by the trustees, except that a vote regarding eligibility for service retirement described by Section 864.001, the computation of a service retirement annuity described by Section 864.002, a cost-of-living increase described by Section 864.013, or a lump-sum payment adopted under Section 864.014 requires the concurrence of a majority of the members of the state board.

Sec. 865.005. GROUNDS FOR REMOVAL OF TRUSTEES. Sets forth grounds for removal of a trustee from the state board. Provides that the validity of an action of the state board is not affected by the fact that it is taken when a ground for removal of a trustee exists. Requires the commissioner, if the commissioner has knowledge that a potential ground for removal exists, to notify the presiding officer of the state board of the ground. Requires the presiding officer to then notify the governor that a potential ground for removal exists.

Sec. 865.006. GENERAL DUTIES OF STATE BOARD. Requires the state board to employ a certified public accountant, an actuary, and an investment consultant for the fund and authorizes the state board to acquire computer, custodial, or investment management services for the fund. Authorizes certain costs and expenses to be paid from income earned by investment of the fund. Prohibits any portion of the corpus or income of the fund from being used for purposes other than the benefit of certain persons. Requires the board to adopt certain rules.

Sec. 865.007. ADMINISTERING SYSTEM ASSETS. Requires the state board to administer all of the pension system's assets. Provides that the state board is the trustee of the pension system's assets. Authorizes the state board to acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which the pension system's assets may be invested. Authorizes the state board or the commissioner to accept on behalf of the pension system gifts of money or other property from any public or private source.

Sec. 865.008. INVESTMENT OF ASSETS. Requires the state board, if a surplus exists in the fund over the amount necessary to pay benefits due for a reasonable period of time, to invest the surplus. Requires the assets of the pension system to be invested and reinvested in accordance with Section 67, Article XVI, Texas Constitution. Requires a determination of whether the state board has exercised prudence with respect to an investment decision be made, taking into consideration the investment of all assets of the trust over which the state board has management and control rather than considering the prudence of a single investment.

Sec. 865.009. TRUST FUND. Provides that the Texas emergency services retirement fund is a trust fund established with the comptroller.

Sec. 865.010. COMMISSIONER'S DUTIES. Requires the commissioner to oversee the distribution of all benefits. Requires the commissioner to collect the revenues for the fund from the governing bodies of participating departments. Authorizes the commissioner to request and administer, in an emergency, state funds in addition to those required by this subtitle and appropriated by the legislature. Provides that the commissioner is responsible for recovering any fraudulently acquired benefits. Requires the commissioner, if it appears that fraud has occurred, to notify the appropriate local board and the claimant and hold a hearing. Requires the commissioner, if after the

hearing the commissioner determines that benefits have been or are being fraudulently acquired, to seek action in a court.

Sec. 865.011. RECORDS AND REPORTS. Authorizes the commissioner, at any reasonable time, to examine the records and accounts of local boards. Requires the commissioner to require in a timely manner periodic reports from the local boards and to prepare necessary forms for use by the local boards. Requires the commissioner to prepare an annual report on the activity and status of the fund and submit the report to certain elected officials.

Sec. 865.012. LOCAL BOARD. Sets forth the composition and terms of trustees of local boards. Requires a local board to hold not fewer than four meetings a year under Chapter 551. Provides that a vacancy on a local board is filled for the remainder of the unexpired term by the procedure by which the position was originally filled. Requires the local board to elect a presiding officer from the trustees at its first meeting. Provides that at any meeting of a local board, a vote by a majority of the trustees present is necessary for a decision by the trustees. Prohibits a trustee of a local board from receiving compensation for service as a trustee but authorizes reimbursement by the governing body of a participating department for actual and necessary expenses incurred in performing local board functions.

Sec. 865.013. MONITORING OF CONTRIBUTION SUBMISSION. Requires a local board to monitor the timely submission of required contributions to the commissioner.

Sec. 865.014. LOCAL CONTRIBUTIONS. (a) Requires each governing body of a political subdivision of which a participating department is a part to contribute for each member for each month of service beginning on the date that the member enters the pension system at a rate determined in accordance with Subsection (b) and authorizes the governing body to make additional contributions as determined by the political subdivision. Requires the governing bodies of political subdivisions, if the participating department is located in more than one political subdivision, to contribute equally for each member for each month of service.

(b) Requires the state board by rule to determine the minimum contribution for each member of a participating department for each month of qualified service at a rate the state board determines necessary, after consultation with the actuary, to make the pension system actuarially sound.

(c) Requires contributions required as provided by this section to be paid at the times and in the manner that the state board prescribes by rule. Requires contributions required by this section to be submitted by electronic funds transfer unless the commissioner grants an exception based on the difficulty of a participating department's use of that payment method. Provides that contributions that are not paid within the time required by the state board accrue interest at the most recent assumed actuarial rate of return on investments of the fund.

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

(e) Authorizes the attorney general to file suit to collect unpaid accrued interest. Requires interest recovered to be deposited in the fund.

Sec. 865.015. STATE CONTRIBUTIONS. Requires the state to contribute the amount necessary to make the pension system actuarially sound each year, except that the state's contribution may not exceed one-third of the total of all contributions by governing bodies in a particular year. Provides that if the state contributes one-third of the total

contributions of the governing bodies in one year, the pension system is presumed to be actuarially sound.

Sec. 865.016. ADMINISTRATIVE PENALTY. (a) Authorizes the state board to impose an administrative penalty on a local board that fails to file a required report in a timely manner.

(b) Prohibits the amount of the penalty from exceeding \$5,000. Requires the amount to be based on certain criteria.

(c) Authorizes the state board to adopt rules for determining the amount of the penalty.

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

(e) Authorizes the attorney general to file suit to collect the penalty. Requires penalties recovered to be deposited in the fund.

(f) Sets forth that a proceeding to impose the penalty is considered to be a contested case under Chapter 2001.

Sec. 865.017. INTERRUPTION OF PAYMENTS. Requires the pension system to withhold payment of a monthly retirement annuity if a participating department attempts to provide information to the commissioner relating to continued eligibility to receive the payments and the recipient fails to cooperate or provide the requested information. Authorizes the state board to adopt rules to enforce this subsection. Prohibits the pension system from beginning service or disability retirement annuity or death benefit payments based on the service of a person whose local board is not current in its filing of a required periodic report.

Sec. 865.018. CERTIFICATION OF FUND. Defines "qualified actuary." Requires the commissioner and the state board to certify the actuarial and financial soundness of the fund every two years with the assistance of a qualified actuary.

Sec. 865.019. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS, ANNUITANTS, AND BENEFICIARIES. (a) Provides that the information contained in records that are in the custody of the pension system concerning an individual member, annuitant, or beneficiary is confidential under Section 552.101 and prohibits the information from being disclosed in a form identifiable with a specific individual unless the information is disclosed to certain persons.

(b) Provides that this section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the pension system.

(c) Authorizes the commissioner to designate other employees of the pension system to make the necessary determinations under Subsection (a).

(d) Authorizes a determination and disclosure under Subsection (a) to be made without notice to the individual member, annuitant, or beneficiary.

SECTION 2. Repealer: Article 6243e.3 (Texas Statewide Emergency Services Retirement Act), V.T.C.S.

SECTION 3. Effective date: September 1, 2005.