

By: Eiland

H.B. No. 2566

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Emergency Services Retirement System;
providing an administrative penalty.

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

SECTION 1. Title 8, Government Code, is amended by adding
Subtitle H to read as follows:

SUBTITLE H. TEXAS EMERGENCY SERVICES

RETIREMENT SYSTEM

CHAPTER 861. GENERAL PROVISIONS

Sec. 861.001. DEFINITIONS. In this subtitle:

(1) "Actuarially sound pension system" means a system in which the amount of contributions is sufficient to cover the normal cost and amortize the unfunded accrued actuarial liability in a period that does not exceed 30 years.

(2) "Auxiliary employee" means a person who receives compensation at a rate that does not exceed the federal minimum wage by more than \$2 an hour, as established under the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), for performing emergency services and is certified by a political subdivision of this state as being regularly engaged in the performance of duties for a participating department in an appointive office or position that normally requires services from the person for fewer than 1,000 hours a year, but excludes a person who is eligible to receive credit for the same service in either the

1 Texas County and District Retirement System or the Texas Municipal
2 Retirement System.

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

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

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

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

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

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

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

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

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

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

25 (10) "Qualified service" means service:

26 (A) for a participating department that is
27 recognized as an emergency services department by its governing

1 body and that conducts at least 48 hours of training in a calendar
2 year; and

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

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

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

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

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

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

1 exempt from garnishment, attachment, state and local taxation,
2 levies, and any other process and are unassignable.

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

11 Sec. 861.006. PLAN QUALIFICATION AND DISTRIBUTIONS. (a)
12 The legislature intends that this subtitle be construed and
13 administered in a manner so that the pension system's benefit plan
14 will be considered a qualified plan under Section 401(a) of the
15 Internal Revenue Code of 1986 (26 U.S.C. Section 401). The state
16 board may adopt rules that modify the plan as necessary to meet
17 those qualification requirements.

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

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

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

1 this subtitle.

2 CHAPTER 862. MEMBERSHIP

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

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

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

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

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

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

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

1 (4) is retired under this subtitle, regardless of
2 whether the person continues to participate in emergency
3 service-related functions for a department from which the person
4 retired.

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

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

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

20 CHAPTER 863. CREDITABLE SERVICE

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

25 Sec. 863.002. CREDIT FOR MILITARY SERVICE. The pension
26 system shall grant credit for qualified service for military duty
27 in accordance with Section 414(u) of the Internal Revenue Code of

1 1986 (26 U.S.C. Section 414(u)) and other applicable federal law.

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

7 Sec. 863.004. PRIOR SERVICE OF MEMBER BEFORE DEPARTMENTAL
8 PARTICIPATION. The state board by rule may authorize the granting
9 of credit for service with a participating department that was
10 performed before the date the department began participation in the
11 pension system.

12 CHAPTER 864. BENEFITS

13 Sec. 864.001. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY.

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

20 (b) Vested retirement benefits are not forfeitable.

21 Sec. 864.002. SERVICE RETIREMENT ANNUITY. (a) A service
22 retirement annuity is payable in monthly installments equal to the
23 governing body's average monthly contribution during the member's
24 term of qualified service under this subtitle, not including a
25 contribution to reduce the unfunded accrued actuarial liability of
26 the pension system, multiplied by a percentage for each year of
27 qualified service. The state board by rule shall determine the

1 percentage to be an amount that allows the pension system, assuming
2 maximum state contributions are provided under Section 865.015, to
3 be maintained as actuarially sound.

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

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

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

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

25 (c) A member whose disability results from performing
26 emergency service duties is guaranteed a disability retirement
27 annuity of \$300 a month or a greater amount that the state board by

1 rule adopts based on monthly contributions of a participating
2 department for its members.

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

9 Sec. 864.005. CERTIFICATION AND CONTINUANCE OF DISABILITY.

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

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

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

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

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

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

24 (1) the amount contributed to the fund on the
25 decedent's behalf; or

26 (2) the sum that would have been contributed on the
27 decedent's behalf from whatever source at the end of the period

1 provided under Section 864.001 for full service retirement
2 benefits.

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

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

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

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

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

26 (b) The governing body of a political subdivision in which a
27 department described by Subsection (a) is or was located shall

1 perform the duties required of a local board for the members and
2 retirees who served for the formerly participating department.

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

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

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

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

23 Sec. 864.014. CLAIM AND APPEAL PROCEDURE. (a) A claim for
24 benefits must be filed with the local board. On receiving a claim,
25 the local board shall hold a hearing to decide the claim. The local
26 board shall send a written copy of its decision to the claimant and
27 the commissioner.

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

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

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

13 (e) After a hearing under Subsection (d), the commissioner
14 shall decide each appeal from a local board decision, issue a
15 written opinion, and notify the local board and the claimant if the
16 commissioner overrules the local board's decision.

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

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

22 CHAPTER 865. ADMINISTRATION

23 Sec. 865.001. COMPOSITION OF STATE BOARD. (a) The state
24 board of the pension system is composed of nine members appointed by
25 the governor from a list of not fewer than three or more than five
26 nominees for each vacancy submitted by the State Firemen's and Fire
27 Marshals' Association of Texas.

1 (b) Six trustees must be active members of the pension
2 system, one of whom must represent emergency medical services
3 personnel. Three trustees must be persons who have experience in
4 the fields of finance, securities investment, or pension
5 administration.

6 (c) Trustees hold office for staggered terms of six years,
7 with the terms of three trustees expiring on September 1 of each
8 odd-numbered year.

9 (d) Appointments to the state board shall be made without
10 regard to the race, color, disability, sex, religion, age, or
11 national origin of the appointee.

12 Sec. 865.002. INELIGIBILITY OF CERTAIN EMPLOYEES FOR STATE
13 BOARD. (a) A person is not eligible for appointment to the state
14 board if the person or the person's spouse is employed by or
15 participates in the management of a business entity or other
16 organization regulated by or receiving funds from the state board
17 or the fund.

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

23 Sec. 865.003. COMPENSATION; EXPENSES. Trustees of the
24 state board serve without compensation but may be reimbursed for
25 actual and necessary expenses incurred in performing state board
26 functions.

27 Sec. 865.004. VOTING. Each trustee of the state board is

1 entitled to one vote. At any meeting of the state board, a vote by a
2 majority of the trustees present is necessary for a decision by the
3 trustees.

4 Sec. 865.005. GROUNDS FOR REMOVAL OF TRUSTEES. (a) It is a
5 ground for removal from the state board that a trustee:

6 (1) does not have at the time of appointment the
7 qualifications required by Section 865.001(b);

8 (2) does not maintain during service on the state
9 board the qualifications required by Section 865.001(b);

10 (3) violates a prohibition established by Section
11 865.002;

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

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

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

22 (c) If the commissioner has knowledge that a potential
23 ground for removal exists, the commissioner shall notify the
24 presiding officer of the state board of the ground. The presiding
25 officer shall then notify the governor that a potential ground for
26 removal exists.

27 Sec. 865.006. GENERAL DUTIES OF STATE BOARD. (a) The state

1 board shall employ a certified public accountant, an actuary, and
2 an investment consultant for the fund and may acquire computer,
3 custodial, or investment management services for the fund. The
4 costs of accounting, actuarial, investment consulting, computer,
5 custodial, or investment management services and other
6 administrative expenses may be paid from income earned by
7 investment of the fund. No portion of the corpus or income of the
8 fund may be used for purposes other than the benefit of members,
9 retired emergency services personnel, and their beneficiaries.

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

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

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

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

26 Sec. 865.008. INVESTMENT OF ASSETS. (a) If a surplus
27 exists in the fund over the amount necessary to pay benefits due for

1 a reasonable period of time, the state board shall invest the
2 surplus.

3 (b) The assets of the pension system shall be invested and
4 reinvested in accordance with Section 67, Article XVI, Texas
5 Constitution. A determination of whether the state board has
6 exercised prudence with respect to an investment decision must be
7 made, taking into consideration the investment of all assets of the
8 trust over which the state board has management and control rather
9 than considering the prudence of a single investment.

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

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

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

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

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

26 Sec. 865.011. RECORDS AND REPORTS. (a) The commissioner
27 may at any reasonable time examine the records and accounts of local

1 boards.

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

5 (c) The commissioner shall prepare an annual report on the
6 activity and status of the fund and submit the report to the
7 governor, the lieutenant governor, and the speaker of the house of
8 representatives.

9 Sec. 865.012. LOCAL BOARD. (a) A local board is composed
10 of:

11 (1) one trustee selected by the governing body of the
12 political subdivision of which a participating department is a
13 part;

14 (2) three trustees who are active members representing
15 a participating department chosen by a majority of the emergency
16 services personnel in the department who are eligible to
17 participate in the pension system; and

18 (3) two trustees who are representatives of the
19 political subdivision who are chosen by the other members of the
20 local board.

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

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

3 (d) A vacancy on a local board is filled for the remainder of
4 the unexpired term by the procedure by which the position was
5 originally filled.

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

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

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

14 Sec. 865.013. MONITORING OF CONTRIBUTION SUBMISSION. A
15 local board shall monitor the timely submission of required
16 contributions to the commissioner.

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

27 (b) The state board by rule shall determine the minimum

1 contribution for each member of a participating department for each
2 month of qualified service at a rate the state board determines
3 necessary, after consultation with the actuary, to make the pension
4 system actuarially sound.

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

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

19 (e) The attorney general may file suit to collect unpaid
20 accrued interest. Interest recovered shall be deposited in the
21 fund.

22 Sec. 865.015. STATE CONTRIBUTIONS. The state shall
23 contribute the amount necessary to make the pension system
24 actuarially sound each year, except that the state's contribution
25 may not exceed one-third of the total of all contributions by
26 governing bodies in a particular year. If the state contributes
27 one-third of the total contributions of the governing bodies in one

1 year, the pension system is presumed to be actuarially sound.

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

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

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

9 (2) the history of previous violations;

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

11 (4) efforts to correct the violation; and

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

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

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

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

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

1 Sec. 865.017. INTERRUPTION OF PAYMENTS. (a) The pension
2 system shall withhold payment of a monthly retirement annuity if a
3 participating department attempts to provide information to the
4 commissioner relating to continued eligibility to receive the
5 payments and the recipient fails to cooperate or provide the
6 requested information. The state board may adopt rules to enforce
7 this subsection.

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

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

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

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

25 (1) the information is disclosed to:

26 (A) the individual or the individual's attorney,
27 guardian, executor, administrator, conservator, or other person

1 who the commissioner determines is acting in the interest of the
2 individual or the individual's estate;

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

7 (C) a governmental official or employee after the
8 commissioner determines that disclosure of the information
9 requested is reasonably necessary to the performance of the duties
10 of the official or employee; or

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

13 (2) the information is disclosed under a subpoena and
14 the commissioner determines that the individual will have a
15 reasonable opportunity to contest the subpoena.

16 (b) This section does not prevent the disclosure of the
17 status or identity of an individual as a member, former member,
18 retiree, deceased member or retiree, or beneficiary of the pension
19 system.

20 (c) The commissioner may designate other employees of the
21 pension system to make the necessary determinations under
22 Subsection (a).

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

26 SECTION 2. The Texas Statewide Emergency Services
27 Retirement Act (Article 6243e.3, Vernon's Texas Civil Statutes) is

1 repealed.

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