

By: Armbrister

S.B. No. 522

A BILL TO BE ENTITLED

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

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 Texas County and District Retirement System or the Texas Municipal

1 Retirement System.

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

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

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

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

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

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

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

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

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

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

24 (10) "Qualified service" means service:

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

1 year; and

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

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

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

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

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

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

1 levies, and any other process and are unassignable.

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

10 Sec. 861.006. PLAN QUALIFICATION AND DISTRIBUTIONS.

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

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

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

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

1                   CHAPTER 862. MEMBERSHIP

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

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

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

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

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

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

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

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

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

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

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

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

19 CHAPTER 863. CREDITABLE SERVICE

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

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

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

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

13                               CHAPTER 864. BENEFITS

14       Sec. 864.001. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY.  
15 (a) The state board by rule shall determine the period of  
16 qualified service and, if appropriate, the age required for a  
17 member to receive a service retirement annuity with full benefits  
18 after the member terminates service with a participating  
19 department. The state board by rule may provide for partial vesting  
20 of benefits after a particular period.

21               (b) Vested retirement benefits are not forfeitable.

22       Sec. 864.002. SERVICE RETIREMENT ANNUITY. (a) A service  
23 retirement annuity is payable in monthly installments based on the  
24 governing body's average monthly contribution during the member's  
25 term of qualified service under this subtitle, not including a  
26 contribution to reduce the unfunded accrued actuarial liability of  
27 the pension system, and a formula adopted by the state board by rule

1 that allows the pension system, assuming maximum state  
2 contributions are provided under Section 865.015, to be maintained  
3 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 services 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 services 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  
11 temporary disability benefits to file a disability rating report  
12 every three months from a physician chosen by the local board. If a  
13 report indicates a significant change of condition, the local  
14 board, after notice and a hearing, may adopt an order to terminate  
15 payments or place the member on permanent disability. The local  
16 board shall send a copy of each order adopted under this subsection  
17 to the 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 services 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 services 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 services  
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.

4 (a) The surviving spouse of a deceased member who dies before  
5 retirement but after meeting the minimum age and service  
6 requirements for service retirement is entitled to two-thirds of  
7 the monthly annuity that the decedent would have received if the  
8 decedent had retired on 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  
10 names more than one beneficiary for a lump-sum death benefit, the  
11 pension 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. STATE BOARD AUTHORITY FOR LUMP-SUM PAYMENTS.  
24 In lieu of any annuity otherwise payable under this subtitle, the  
25 state board by rule may provide for a lump-sum payment if the board  
26 determines that a lump-sum payment is cost-efficient or is  
27 necessary for the pension system to remain actuarially sound.

1       Sec. 864.015. CLAIM AND APPEAL PROCEDURE. (a) A claim for  
2 benefits must be filed with the local board. On receiving a claim,  
3 the local board shall hold a hearing to decide the claim. The local  
4 board shall send a written copy of its decision to the claimant and  
5 the commissioner.

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

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

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

18       (e) After a hearing under Subsection (d), the commissioner  
19 shall decide each appeal from a local board decision, issue a  
20 written opinion, and notify the local board and the claimant if the  
21 commissioner overrules the local board's decision.

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

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

1                   CHAPTER 865. ADMINISTRATION

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

7           (b) Six trustees must be active members of the pension  
8 system, one of whom must represent emergency medical services  
9 personnel. Three trustees must be persons who have experience in  
10 the fields of finance, securities investment, or pension  
11 administration.

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

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

18           Sec. 865.002. INELIGIBILITY OF CERTAIN EMPLOYEES FOR STATE  
19 BOARD. (a) A person is not eligible for appointment to the state  
20 board if the person or the person's spouse is employed by or  
21 participates in the management of a business entity or other  
22 organization regulated by or receiving funds from the state board  
23 or the fund.

24           (b) A person may not serve as a trustee of the state board or  
25 act as the general counsel to the state board if the person is  
26 required to register as a lobbyist under Chapter 305 because of the  
27 person's activities for compensation on behalf of a business or an

1 association related to the operation of the state board.

2 Sec. 865.003. COMPENSATION; EXPENSES. Trustees of the  
3 state board serve without compensation but may be reimbursed for  
4 actual and necessary expenses incurred in performing state board  
5 functions.

6 Sec. 865.004. VOTING. Each trustee of the state board is  
7 entitled to one vote. At any meeting of the state board, a vote by a  
8 majority of the trustees present is necessary for a decision by the  
9 trustees except that a vote regarding eligibility for service  
10 retirement described by Section 864.001, the computation of a  
11 service retirement annuity described by Section 864.002, a  
12 cost-of-living increase described by Section 864.013, or a lump-sum  
13 payment adopted under Section 864.014 requires the concurrence of a  
14 majority of the members of the state board.

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

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

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

21 (3) violates a prohibition established by Section  
22 865.002;

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

26 (5) is absent from more than half of the regularly  
27 scheduled state board meetings that the trustee is eligible to

1 attend during a calendar year unless the absence is excused by a  
2 majority vote of the state board.

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

6 (c) If the commissioner has knowledge that a potential  
7 ground for removal exists, the commissioner shall notify the  
8 presiding officer of the state board of the ground. The presiding  
9 officer shall then notify the governor that a potential ground for  
10 removal exists.

11 Sec. 865.006. GENERAL DUTIES OF STATE BOARD. (a) The  
12 state board shall employ a certified public accountant, an actuary,  
13 and an investment consultant for the fund and may acquire computer,  
14 custodial, or investment management services for the fund. The  
15 costs of accounting, actuarial, investment consulting, computer,  
16 custodial, or investment management services and other  
17 administrative expenses may be paid from income earned by  
18 investment of the fund. No portion of the corpus or income of the  
19 fund may be used for purposes other than the benefit of  
20 members, retired emergency services personnel, and their  
21 beneficiaries.

22 (b) The state board shall adopt rules necessary for the  
23 administration of the fund. The state board shall adopt rules to  
24 provide a proration of the requirements for qualified service for a  
25 member who performs service for only a portion of a calendar year  
26 and may provide by rule for the manner in which member attendance or  
27 training hours are to be computed.



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

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

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

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

15       (b) The assets of the pension system shall be invested and  
16 reinvested in accordance with Section 67, Article XVI, Texas  
17 Constitution. A determination of whether the state board has  
18 exercised prudence with respect to an investment decision must be  
19 made, taking into consideration the investment of all assets of the  
20 trust over which the state board has management and control rather  
21 than considering the prudence of a single investment.

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

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

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

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

4       (d) The commissioner is responsible for recovering any  
5 fraudulently acquired benefits. If it appears that fraud has  
6 occurred, the commissioner shall notify the appropriate local board  
7 and the claimant and hold a hearing. If after the hearing the  
8 commissioner determines that benefits have been or are being  
9 fraudulently acquired, the commissioner shall seek action in a  
10 court.

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

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

17       (c) The commissioner shall prepare an annual report on the  
18 activity and status of the fund and submit the report to the  
19 governor, the lieutenant governor, and the speaker of the house of  
20 representatives.

21       Sec. 865.012. LOCAL BOARD. (a) A local board is composed  
22 of:

23               (1) one trustee selected by the governing body of the  
24 political subdivision of which a participating department is a  
25 part;

26               (2) three trustees who are active members representing  
27 a participating department chosen by a majority of the emergency

1 services personnel in the department who are eligible to  
2 participate in the pension system; and

3 (3) two trustees who are representatives of the  
4 political subdivision who are chosen by the other members of the  
5 local board.

6 (b) Trustees of a local board serve staggered two-year  
7 terms. At the first meeting of a local board, the trustees shall  
8 draw lots to determine the length of the term to be served, with the  
9 terms of two trustees to be two years and the terms of two trustees  
10 to be one year. The first appointments of trustees appointed by  
11 other members of the local board are to be one trustee for a  
12 two-year term and one trustee for a one-year term.

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

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

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

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

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

26 Sec. 865.013. MONITORING OF CONTRIBUTION SUBMISSION. A  
27 local board shall monitor the timely submission of required

1 contributions to the commissioner.

2 Sec. 865.014. LOCAL CONTRIBUTIONS. (a) Each governing  
3 body of a political subdivision of which a participating department  
4 is a part shall contribute for each member for each month of service  
5 beginning on the date that the member enters the pension system at a  
6 rate determined in accordance with Subsection (b) and may make  
7 additional contributions as determined by the political  
8 subdivision. If the participating department is located in more  
9 than one political subdivision, the governing bodies of the  
10 political subdivisions shall contribute equally for each member for  
11 each month of service.

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

17 (c) Contributions required as provided by this section  
18 shall be paid at the times and in the manner that the state board  
19 prescribes by rule. Contributions required by this section shall  
20 be submitted by electronic funds transfer unless the commissioner  
21 grants an exception based on the difficulty of a participating  
22 department's use of that payment method. Contributions that are  
23 not paid within the time required by the state board accrue interest  
24 at the most recent assumed actuarial rate of return on investments  
25 of the fund.

26 (d) The state board may by rule require a monthly  
27 contribution from political subdivisions that do not participate in

1 the pension system but whose employees or former employees are  
2 members or retirees of the pension system in an amount necessary to  
3 pay the expenses of administering benefits for those persons.

4 (e) The attorney general may file suit to collect unpaid  
5 accrued interest. Interest recovered shall be deposited in the  
6 fund.

7 Sec. 865.015. STATE CONTRIBUTIONS. The state shall  
8 contribute the amount necessary to make the pension system  
9 actuarially sound each year, except that the state's contribution  
10 may not exceed one-third of the total of all contributions by  
11 governing bodies in a particular year. If the state contributes  
12 one-third of the total contributions of the governing bodies in one  
13 year, the pension system is presumed to be actuarially sound.

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

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

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

21 (2) the history of previous violations;

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

23 (4) efforts to correct the violation; and

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

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

27 (d) The enforcement of the penalty may be stayed during the

1 time the order is under judicial review if the local board pays the  
2 penalty to the clerk of the court or files a supersedeas bond with  
3 the court in the amount of the penalty. A local board that cannot  
4 afford to pay the penalty or file the bond may stay the enforcement  
5 by filing an affidavit in the manner required by the Texas Rules of  
6 Civil Procedure for a party who cannot afford to file security for  
7 costs, subject to the right of the state board to contest the  
8 affidavit as provided by those rules.

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

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

13 Sec. 865.017. INTERRUPTION OF PAYMENTS. (a) The pension  
14 system shall withhold payment of a monthly retirement annuity if a  
15 participating department attempts to provide information to the  
16 commissioner relating to continued eligibility to receive the  
17 payments and the recipient fails to cooperate or provide the  
18 requested information. The state board may adopt rules to enforce  
19 this subsection.

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

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

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

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

10           (1) the information is disclosed to:

11                   (A) the individual or the individual's attorney,  
12 guardian, executor, administrator, conservator, or other person  
13 who the commissioner determines is acting in the interest of the  
14 individual or the individual's estate;

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

19                   (C) a governmental official or employee after the  
20 commissioner determines that disclosure of the information  
21 requested is reasonably necessary to the performance of the duties  
22 of the official or employee; or

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

25           (2) the information is disclosed under a subpoena and  
26 the commissioner determines that the individual will have a  
27 reasonable opportunity to contest the subpoena.

1       (b) This section does not prevent the disclosure of the  
2 status or identity of an individual as a member, former member,  
3 retiree, deceased member or retiree, or beneficiary of the pension  
4 system.

5       (c) The commissioner may designate other employees of the  
6 pension system to make the necessary determinations under  
7 Subsection (a).

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

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

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