

By: Armbrister

S.B. No. 522

Substitute the following for S.B. No. 522:

By: Griggs

C.S.S.B. No. 522

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 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. (a)  
11 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 service-related functions for a department from which the person  
3 retired.

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

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

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

19 CHAPTER 863. CREDITABLE SERVICE

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

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

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

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

13                               CHAPTER 864. BENEFITS

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

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

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

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

1 actuarial liability of the pension system; and

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

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

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

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

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

27 (c) A member whose disability results from performing



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

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

11 Sec. 864.005. CERTIFICATION AND CONTINUANCE OF DISABILITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6                   CHAPTER 865. ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 originally filled.

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

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

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

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

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

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

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

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

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

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

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

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

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

3           (2) the history of previous violations;

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

5           (4) efforts to correct the violation; and

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

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

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

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

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

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

1 this subsection.

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

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

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

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

19 (1) the information is disclosed to:

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

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

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

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

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

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

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

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

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

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