

OBILL ANALYSIS

Senate Research Center
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H.B. 2400
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Emergency Services Retirement System (pension system) is a voluntary, statewide retirement system that administers, through the office of the firefighters' pension commissioner, service retirement, disability retirement, and death benefits for volunteers and auxiliary personnel of emergency services departments, including volunteer fire departments and emergency medical services personnel. Currently, there are 181 emergency services departments that have chosen to participate in the pension system, serving more than 7,000 members, retirees, and their beneficiaries.

H.B. 2400 continues the process, begun by the 79th Legislature and continued during the interim by the state board of trustees, of modernizing and improving the operations of the Texas Emergency Services Retirement System and the state and local boards of trustees for the purpose of making clear and uniform the procedures for the delivery of the benefits promised by the pension system.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the state board of trustees established under Section 865.001 is modified in SECTION 4 (Section 864.004, Government Code) and SECTION 6 (Section 864.007, Government Code) of this bill.

Rulemaking authority is expressly granted to the state board of trustees established under Section 865.001 in SECTION 6 (Section 864.008, Government Code) and SECTION 7 (Section 864.0135, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 861, Government Code, by adding Sections 861.008 and 861.009, as follows:

Sec. 861.008. IMMUNITY FROM LIABILITY. Provides that the state board of trustees (state board), firefighters' pension commissioner (commissioner), and employees of the Texas Emergency Services Retirement System (pension system) are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty or prerogative in connection with the administration of the pension system.

Sec. 861.009. VENUE. Requires an action in state court by or against the pension system to be brought in Travis County.

SECTION 2. Amends Section 862.002(a), Government Code, to provide that each person who performs service as a volunteer or auxiliary employee of a participating department is a member of the pension system, except as otherwise provided by this section (Membership by Individual) and Section 862.0021.

SECTION 3. Amends Chapter 862, Government Code, by adding Section 862.0021, as follows:

Sec. 862.0021. PROBATIONARY PERIOD BEFORE MEMBERSHIP. (a) Authorizes a participating department to impose a probationary period for a volunteer or auxiliary employee.

(b) Requires a probationary period imposed under this section to end not later than six months after the date the person begins service with the participating department.

(c) Provides that the participating department is not required to pay contributions for the person during the probationary period.

(d) Provides that a person's membership in the pension system begins on the date that the department begins payment of contributions for that person, without regard to whether the person's service is subject to a probationary period for other purposes.

SECTION 4. Amends Sections 864.004 and 864.005, Government Code, as follows:

Sec. 864.004. New heading: **DISABILITY RETIREMENT BENEFITS.** (a) Entitles a member to disability retirement benefits from the pension system only if a local board of trustees (local board) determines that the member became disabled during the performance of emergency service duties and is unable to return to work at the member's regular occupation or, if the member is a student, is unable to return to the member's scholastic studies. Requires a disabled member, rather than any member, to, at the time of disability, elect between a service retirement annuity or disability retirement benefits, if eligible for both, rather than between a service or disability retirement annuity, if eligible for both.

(b) Redesignated from existing Subsection (c). Entitles a disabled member described by Subsection (a) who does not elect to receive a service retirement annuity to disability retirement benefits, rather than guaranteeing a member whose disability results from performing emergency service duties to disability retirement annuity, of \$300 a month or a greater amount that the state board by rule adopts based on monthly contributions of a participating department for its members. Deletes existing text providing that a member who is disabled during the performance of emergency service duties is automatically vested 100 percent as of the date of disability if the disability occurs before the member has completed the period provided under Section 864.001 for full service retirement benefits.

(c) Requires a person who is determined by a local board to be temporarily disabled, in order to continue to receive disability retirement benefits in the form of a continuing annuity, computed in the manner described by Subsection (b), to apply to the medical board appointed by the state board and, not later than the first anniversary of the date the person was determined to be temporarily disabled, to be certified by the medical board as permanently disabled for the performance of the duties of the person's regular occupation. Deletes existing text requiring a person who is determined to be temporarily disabled to apply to the Social Security Administration and be certified, not later than the second anniversary of the date the person was determined to be temporarily disabled, as permanently disabled by that agency or by any alternative procedure the state board provides by rule.

Sec. 864.005. **CERTIFICATION AND CONTINUANCE OF DISABILITY.** (a) Authorizes the local board, after notice and a hearing, to adopt an order to terminate payments if a disability rating report indicates a significant improvement in, rather than change of, condition. Deletes existing text authorizing the local board, after notice and a hearing, to place the member on permanent disability if a disability rating report indicates a significant change of condition.

(b) Provides certain circumstances under which temporary disability benefits cease.

(c) Provides that, subject to Subsection (d), temporary disability benefits cease on a date at the expiration of a period, not to exceed one year, determined to be the

likely duration of the disability by a physician in a written statement to the pension system.

(d) Authorizes the local board to set a date for hearing on a matter in which the local board has reason to believe that a ground for termination of temporary disability benefits exists. Authorizes the local board, after notice and a hearing, to adopt an order terminating temporary benefits if the local board determines that a ground for termination exists. Prohibits the local board from adopting an order under this subsection on the basis of a physician's previously submitted statement as to the likely duration of the disability if the local board determines, after a hearing, that the disability continues. Requires the local board to send a copy of each order adopted under this subsection to the commissioner.

(e) Provides that payments of a continuing disability retirement annuity to a retiree certified by the medical board as permanently disabled under Section 864.004(c) cease if the retiree returns to work at the retiree's regular employment or performs emergency service duties.

(f) Requires the commissioner, if he or she has reason to believe that a ground for termination of a continuing disability retirement annuity exists, to set a date for a hearing on continuation or termination of the annuity. Requires the commissioner, after notice and a hearing, to adopt an order terminating the continuing disability retirement annuity if the commissioner determines that a ground for termination exists.

(g) Provides that a continuing disability retirement annuity terminates on the fifth anniversary of the date payment of the annuity begins except as provided by this subsection. Requires the retiree, in order to continue receiving payments of a continuing disability retirement annuity after the fifth anniversary, to be recertified by the medical board as being permanently disabled for the performance of the duties of any occupation for which the person is reasonably suited by education, training, and experience and that could reasonably be expected to provide the person with at least 75 percent of the salary the person was earning at the time the disability occurred. Provides that rejection of a suitable offer of employment as described in this subsection is conclusive evidence for purposes of this subtitle (Texas Emergency Services Retirement System) that the person is no longer eligible to receive disability retirement benefits.

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

(h) Redesignated from existing Subsection (c). Provides that failure to timely provide requested information is a ground for terminating benefits.

SECTION 5. Amends Section 864.006(a), Government Code, as follows:

(a) Entitles the surviving spouse and dependents of a member who dies as a result of performing emergency service duties to receive in equal shares a death benefit annuity equal to the service retirement annuity, rather than two-thirds of the service retirement annuity, that the decedent would have been entitled to receive if the decedent had been able to retire, vested at 100 percent, on the date of the decedent's death. Deletes existing text providing that an additional one-third of that annuity is payable to the dependents in equal shares as long as both the spouse and one or more dependents survive.

SECTION 6. Amends Sections 864.007, 864.008, and 864.011, Government Code, as follows:

Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. Authorizes the state board by rule to provide the beneficiary of a deceased member whose death did not result from the performance of emergency service duties a benefit, which may be a lump-sum amount or an annuity, rather than a lump-sum benefit that is the greater of two particular amounts.

Sec. 864.008. VESTED MEMBER DEATH BENEFIT ANNUITY. (a) Authorizes the state board by rule to provide that the surviving spouse of a deceased member who dies as an active member of a participating department before retirement but after meeting the minimum age and service requirements for service retirement is entitled to a portion, rather than two-thirds, of the monthly annuity that the decedent would have received if the decedent had retired on the date of death.

(b) Authorizes the state board by rule to provide that the surviving spouse of a deceased member who dies after terminating service with all participating departments and meeting a service, rather than vesting, requirement under Section 864.001 but before attaining the age of 55 is entitled to a death benefit annuity, in an amount to be determined by rule, beginning on the date that is the later of the date that the decedent would have attained that age or the date of application for the annuity.

(c) Prohibits a rule adopted under Subsection (b) from authorizing payment for a period before the date specified by that subsection.

Sec. 864.011. FIRST PAYMENT OF RETIREMENT OR DEATH BENEFIT ANNUITY. Provides that the cashing or depositing of the first payment of a service retirement annuity, disability retirement annuity, or death benefit annuity by a person entitled to it, or the receipt by a financial institution for credit to that person's account of a transfer of funds by the pension system through electronic means, is considered acceptance of the amount of the annuity and of the amount of service of the person on whose service the annuity is based, rather than providing that the cashing or depositing of the first payment of a service, disability, or death benefit annuity by a person entitled to it is considered acceptance of the amount of the annuity and, if the annuity is based on the payee's service, is conclusive evidence for purposes of this subtitle that the payee is retired.

SECTION 7. Amends Chapter 864, Government Code, by adding Section 864.0135, as follows:

Sec. 864.0135. OPTIONAL ANNUITY INCREASE OR SUPPLEMENTAL PAYMENTS. (a) Authorizes the state board by rule to authorize a participating department to make one or more supplemental payments to retirees and other beneficiaries of the pension system or to provide an increase in the amount of annuities paid to retirees and other beneficiaries of the pension system.

(b) Requires a participating department that elects an option under a rule adopted under this section to fund all increased benefits that are provided to retirees and other beneficiaries of the department under the option.

SECTION 8. Amends Sections 864.016(a), (c), and (d), Government Code, as follows:

(a) Requires a claim for disability retirement benefits or a lump-sum death benefit, rather than for benefits, to be filed with the local board. Requires a claim for service retirement benefits to be filed with the commissioner, who is required to forward the claim to the appropriate local board for a hearing. Requires a claim for a death benefit annuity to be filed with the commissioner, who is required to make a determination of the merits of the claim and issue a decision to the claimant. Requires the local board, on receiving a claim under this section, to hold a hearing to decide the claim. Authorizes the commissioner to determine the merits of the claim if a local board does not determine a claim for service

retirement benefits and file its determination with the commissioner before the 16th day after the date the local board receives the claim.

(c) and (d) Makes conforming changes.

SECTION 9. Amends Section 865.010(c), Government Code, to delete the existing condition for there to be an emergency in order for the commissioner to be authorized to request and administer state funds appropriated by the legislature in addition to those required by this subtitle.

SECTION 10. Repealer: Section 864.015 (Current Plan Design), Government Code.

SECTION 11. (a) Makes application of Sections 864.004 and 865.005, Government Code, as amended by this Act, prospective.

(b) Entitles a person who, on the effective date of this Act, is receiving temporary disability benefits under Section 864.004, Government Code, as that section existed immediately before amendment by this Act, to receive temporary disability benefits in accordance with a certification made before the effective date of this Act. Requires the person, in order to continue to receive disability retirement benefits after September 1, 2008, to be certified, before September 1, 2008, as permanently disabled as provided by Section 864.005, Government Code, as amended by this Act, and is subject to the recertification requirement of that section.

SECTION 12. Effective date: September 1, 2007.