

AN ACT

relating to membership in, contributions to, benefits from, and administration of the Texas Emergency Services Retirement System.

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

SECTION 1. Chapter 861, Government Code, is amended by adding Sections 861.008 and 861.009 to read as follows:

Sec. 861.008. IMMUNITY FROM LIABILITY. The state board, commissioner, and employees of the 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. An action in state court by or against the pension system shall be brought in Travis County.

SECTION 2. Section 862.002(a), Government Code, is amended to read as follows:

(a) Except as otherwise provided by this section and Section 862.0021, each person who performs service as a volunteer or auxiliary employee of a participating department is a member of the pension system.

SECTION 3. Chapter 862, Government Code, is amended by adding Section 862.0021 to read as follows:

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

1 (b) A probationary period imposed under this section must
2 end not later than six months after the date the person begins
3 service with the participating department.

4 (c) The participating department is not required to pay
5 contributions for the person during the probationary period.

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

10 SECTION 4. Sections 864.004 and 864.005, Government Code,
11 are amended to read as follows:

12 Sec. 864.004. DISABILITY RETIREMENT BENEFITS [~~ANNUITY~~].

13 (a) A member is entitled to disability retirement benefits from the
14 pension system only if a local board determines that the member
15 became disabled during the performance of emergency service duties
16 and is unable to return to work at the member's regular occupation
17 or, if the member is a student, is unable to return to the member's
18 scholastic studies. A disabled member must, at the time of
19 disability, elect between a service [~~or disability~~] retirement
20 annuity or disability retirement benefits, if eligible for both.

21 (b) A disabled member described by Subsection (a) who does
22 not elect to receive a service retirement annuity is entitled to
23 [who is disabled during the performance of emergency service duties
24 is automatically vested 100 percent as of the date of disability if
25 the disability occurs before the member has completed the period
26 provided under Section 864.001 for full service retirement
27 benefits.

1 ~~[(c) A member whose disability results from performing~~
2 ~~emergency service duties is guaranteed a]~~ disability retirement
3 benefits ~~[annuity]~~ of \$300 a month or a greater amount that the
4 state board by rule adopts based on monthly contributions of a
5 participating department for its members.

6 (c) To continue to receive disability retirement benefits
7 in the form of a continuing annuity, computed in the manner
8 described by Subsection (b), a ~~[(d) A]~~ person who is determined by
9 a local board to be temporarily disabled must:

10 (1) apply to the medical board appointed by the state
11 board; ~~[Social Security Administration]~~ and

12 (2) ~~[be certified,]~~ not later than the first ~~[second]~~
13 anniversary of the date the person was determined to be temporarily
14 disabled, be certified by the medical board as permanently disabled
15 for the performance of the duties of the person's regular
16 occupation ~~[by that agency or by any alternative procedure the~~
17 ~~state board provides by rule].~~

18 Sec. 864.005. CERTIFICATION AND CONTINUANCE OF
19 DISABILITY. (a) A local board shall require a member who is
20 receiving temporary disability benefits to file a disability rating
21 report every three months from a physician chosen by the local
22 board. If a report indicates a significant improvement in ~~[change~~
23 ~~of]~~ condition, the local board, after notice and a hearing, may
24 adopt an order to terminate payments ~~[or place the member on~~
25 ~~permanent disability]~~. The local board shall send a copy of each
26 order adopted under this subsection to the commissioner.

27 (b) Temporary disability ~~[Disability]~~ benefits cease if the

1 recipient returns to work at the person's regular occupation,
2 resumes scholastic studies, or performs emergency service duties
3 for any agency, or if the local board adopts an order under
4 Subsection (d).

5 (c) Subject to Subsection (d), temporary disability
6 benefits cease on a date at the expiration of a period, not to
7 exceed one year, determined to be the likely duration of the
8 disability by a physician in a written statement to the pension
9 system.

10 (d) If the local board has reason to believe that a ground
11 for termination of temporary disability benefits exists, the local
12 board may set a date for a hearing on the matter. The local board,
13 after notice and a hearing, may adopt an order terminating
14 temporary disability benefits if the local board determines that a
15 ground for termination exists. The local board may not adopt an
16 order under this subsection on the basis of a physician's
17 previously submitted statement as to the likely duration of the
18 disability if the local board determines, after a hearing, that the
19 disability continues. The local board shall send a copy of each
20 order adopted under this subsection to the commissioner.

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

25 (f) If the commissioner has reason to believe that a ground
26 for termination of a continuing disability retirement annuity
27 exists, the commissioner shall set a date for a hearing on

1 continuation or termination of the annuity. The commissioner,
2 after notice and a hearing, shall adopt an order terminating the
3 continuing disability retirement annuity if the commissioner
4 determines that a ground for termination exists.

5 (g) Except as provided by this subsection, a continuing
6 disability retirement annuity terminates on the fifth anniversary
7 of the date payment of the annuity begins. To continue receiving
8 payments of a continuing disability retirement annuity after the
9 fifth anniversary, the retiree must be recertified by the medical
10 board as being permanently disabled for the performance of [~~becomes~~
11 ~~capable of performing the duties of the person's most recent~~
12 ~~position with a participating department or]~~ the duties of any
13 [~~another~~] occupation for which the person is reasonably suited by
14 education, training, and experience and that could reasonably be
15 expected to provide the person with at least 75 percent of the
16 salary the person was earning at the time the disability occurred.
17 Rejection of a suitable offer of employment as described in this
18 subsection is conclusive evidence for purposes of this subtitle
19 that the person is no longer eligible to receive disability
20 retirement benefits[~~, if the employment would provide the person~~
21 ~~with a salary equal to or greater than the salary the person was~~
22 ~~earning at the time the disability occurred].~~

23 (h) [~~(c)~~] The state board or a local board may require
24 financial information from a person as a condition to the continued
25 receipt of disability retirement benefits, including federal
26 income tax returns and wage earning forms. Failure to timely
27 provide requested information is a ground for terminating benefits.

1 SECTION 5. Section 864.006(a), Government Code, is amended
2 to read as follows:

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

12 SECTION 6. Sections 864.007, 864.008, and 864.011,
13 Government Code, are amended to read as follows:

14 Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. The state
15 board by rule may provide the beneficiary of a deceased member whose
16 death did not result from the performance of emergency service
17 duties a ~~[lump-sum]~~ benefit, which may be a lump-sum amount or an
18 annuity ~~[that is the greater of:~~

19 ~~(1) the amount contributed to the fund on the~~
20 ~~decedent's behalf; or~~

21 ~~(2) the sum that would have been contributed on the~~
22 ~~decedent's behalf from whatever source at the end of the period~~
23 ~~provided under Section 864.001 for full service retirement~~
24 ~~benefits].~~

25 Sec. 864.008. VESTED MEMBER DEATH BENEFIT ANNUITY. (a)
26 The state board by rule may provide that the surviving spouse of a
27 deceased member who dies as an active member of a participating

1 department before retirement but after meeting the minimum age and
2 service requirements for service retirement is entitled to a
3 portion [~~two-thirds~~] of the monthly annuity that the decedent would
4 have received if the decedent had retired on the date of death.

5 (b) The state board by rule may provide that the surviving
6 spouse of a deceased member who dies after terminating service with
7 all participating departments and meeting a service [~~vesting~~]
8 requirement under Section 864.001 but before attaining the age of
9 55 is entitled to a death benefit annuity, in an amount to be
10 determined by rule, beginning on the date that is the later of:

11 (1) the date that the decedent would have attained
12 that age; or

13 (2) the date of application for the annuity [~~, equal to~~
14 ~~two-thirds of the monthly annuity to which the decedent would have~~
15 ~~been entitled on that date]~~.

16 (c) A rule adopted under Subsection (b) may not authorize
17 payment for a period before the date specified by that subsection.

18 Sec. 864.011. FIRST PAYMENT OF RETIREMENT OR DEATH BENEFIT
19 ANNUITY. The cashing or depositing of the first payment of a
20 service retirement annuity, disability retirement annuity, or
21 death benefit annuity by a person entitled to it, or the receipt by
22 a financial institution for credit to that person's account of a
23 transfer of funds by the pension system through electronic means,
24 is considered acceptance of the amount of the annuity and of the
25 amount of service of the person on whose service the annuity is
26 based [~~, if the annuity is based on the payee's service, is~~
27 ~~conclusive evidence for purposes of this subtitle that the payee is~~

1 ~~retired~~].

2 SECTION 7. Chapter 864, Government Code, is amended by
3 adding Section 864.0135 to read as follows:

4 Sec. 864.0135. OPTIONAL ANNUITY INCREASE OR SUPPLEMENTAL
5 PAYMENTS. (a) The state board by rule may authorize a
6 participating department to:

7 (1) make one or more supplemental payments to retirees
8 and other beneficiaries of the pension system; or

9 (2) provide an increase in the amount of annuities
10 paid to retirees and other beneficiaries of the pension system.

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

15 SECTION 8. Sections 864.016(a), (c), and (d), Government
16 Code, are amended to read as follows:

17 (a) A claim for disability retirement benefits or a lump-sum
18 death benefit must be filed with the local board. A claim for
19 service retirement benefits must be filed with the commissioner,
20 who shall forward the claim to the appropriate local board for a
21 hearing. A claim for a death benefit annuity must be filed with the
22 commissioner, who shall make a determination of the merits of the
23 claim and issue a decision to the claimant. On receiving a claim
24 under this section, the local board shall hold a hearing to decide
25 the claim. The local board shall send a written copy of its
26 decision to the claimant and the commissioner. If a local board
27 does not determine a claim for service retirement benefits and file

1 its determination with the commissioner before the 16th day after
2 the date the local board receives the claim, the commissioner may
3 determine the merits of the claim.

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

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

15 SECTION 9. Section 865.010(c), Government Code, is amended
16 to read as follows:

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

21 SECTION 10. Section 864.015, Government Code, is repealed.

22 SECTION 11. (a) The change in law made by this Act to
23 Sections 864.004 and 864.005, Government Code, does not apply to a
24 person who, on the effective date of this Act, is receiving
25 permanent disability retirement benefits under those sections as
26 they existed immediately before amendment by this Act, and the
27 prior law is continued in effect for this purpose.

1 (b) A person who, on the effective date of this Act, is
2 receiving temporary disability benefits under Section 864.004,
3 Government Code, as that section existed immediately before
4 amendment by this Act, is entitled to receive temporary disability
5 benefits in accordance with a certification made before the
6 effective date of this Act. To continue to receive disability
7 retirement benefits after September 1, 2008, the person must be
8 certified, before September 1, 2008, as permanently disabled as
9 provided by Section 864.005, Government Code, as amended by this
10 Act, and is subject to the recertification requirement of that
11 section.

12 SECTION 12. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 2400 was passed by the House on April 23, 2007, by the following vote: Yeas 140, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2400 was passed by the Senate on May 15, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor