

1-1 By: Keffer (Senate Sponsor - Averitt) H.B. No. 2400
1-2 (In the Senate - Received from the House April 24, 2007;
1-3 April 26, 2007, read first time and referred to Committee on State
1-4 Affairs; May 4, 2007, reported favorably by the following vote:
1-5 Yeas 8, Nays 0; May 4, 2007, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to membership in, contributions to, benefits from, and
1-9 administration of the Texas Emergency Services Retirement System.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 861, Government Code, is amended by
1-12 adding Sections 861.008 and 861.009 to read as follows:

1-13 Sec. 861.008. IMMUNITY FROM LIABILITY. The state board,
1-14 commissioner, and employees of the pension system are not liable
1-15 for any action taken or omission made or suffered by them in good
1-16 faith in the performance of any duty or prerogative in connection
1-17 with the administration of the pension system.

1-18 Sec. 861.009. VENUE. An action in state court by or against
1-19 the pension system shall be brought in Travis County.

1-20 SECTION 2. Section 862.002(a), Government Code, is amended
1-21 to read as follows:

1-22 (a) Except as otherwise provided by this section and Section
1-23 862.0021, each person who performs service as a volunteer or
1-24 auxiliary employee of a participating department is a member of the
1-25 pension system.

1-26 SECTION 3. Chapter 862, Government Code, is amended by
1-27 adding Section 862.0021 to read as follows:

1-28 Sec. 862.0021. PROBATIONARY PERIOD BEFORE MEMBERSHIP. (a)
1-29 A participating department may impose a probationary period for a
1-30 volunteer or auxiliary employee.

1-31 (b) A probationary period imposed under this section must
1-32 end not later than six months after the date the person begins
1-33 service with the participating department.

1-34 (c) The participating department is not required to pay
1-35 contributions for the person during the probationary period.

1-36 (d) A person's membership in the pension system begins on
1-37 the date that the department begins payment of contributions for
1-38 that person, without regard to whether the person's service is
1-39 subject to a probationary period for other purposes.

1-40 SECTION 4. Sections 864.004 and 864.005, Government Code,
1-41 are amended to read as follows:

1-42 Sec. 864.004. DISABILITY RETIREMENT BENEFITS [ANNUITY].

1-43 (a) A member is entitled to disability retirement benefits from the
1-44 pension system only if a local board determines that the member
1-45 became disabled during the performance of emergency service duties
1-46 and is unable to return to work at the member's regular occupation
1-47 or, if the member is a student, is unable to return to the member's
1-48 scholastic studies. A disabled member must, at the time of
1-49 disability, elect between a service [or disability] retirement
1-50 annuity or disability retirement benefits, if eligible for both.

1-51 (b) A disabled member described by Subsection (a) who does
1-52 not elect to receive a service retirement annuity is entitled to
1-53 [who is disabled during the performance of emergency service duties
1-54 is automatically vested 100 percent as of the date of disability if
1-55 the disability occurs before the member has completed the period
1-56 provided under Section 864.001 for full service retirement
1-57 benefits.

1-58 [(c) A member whose disability results from performing
1-59 emergency service duties is guaranteed a] disability retirement
1-60 benefits [annuity] of \$300 a month or a greater amount that the
1-61 state board by rule adopts based on monthly contributions of a
1-62 participating department for its members.

1-63 (c) To continue to receive disability retirement benefits
1-64 in the form of a continuing annuity, computed in the manner

2-1 described by Subsection (b), a ~~(d)~~ A person who is determined by
 2-2 a local board to be temporarily disabled must:

2-3 (1) apply to the medical board appointed by the state
 2-4 board; ~~[Social Security Administration]~~ and

2-5 (2) ~~[be certified,]~~ not later than the first ~~[second]~~
 2-6 anniversary of the date the person was determined to be temporarily
 2-7 disabled, be certified by the medical board as permanently disabled
 2-8 for the performance of the duties of the person's regular
 2-9 occupation ~~[by that agency or by any alternative procedure the~~
 2-10 state board provides by rule].

2-11 Sec. 864.005. CERTIFICATION AND CONTINUANCE OF
 2-12 DISABILITY. (a) A local board shall require a member who is
 2-13 receiving temporary disability benefits to file a disability rating
 2-14 report every three months from a physician chosen by the local
 2-15 board. If a report indicates a significant improvement in ~~[change~~
 2-16 ~~of]~~ condition, the local board, after notice and a hearing, may
 2-17 adopt an order to terminate payments ~~[or place the member on~~
 2-18 ~~permanent disability]~~. The local board shall send a copy of each
 2-19 order adopted under this subsection to the commissioner.

2-20 (b) Temporary disability ~~[Disability]~~ benefits cease if the
 2-21 recipient returns to work at the person's regular occupation,
 2-22 resumes scholastic studies, or performs emergency service duties
 2-23 for any agency, or if the local board adopts an order under
 2-24 Subsection (d).

2-25 (c) Subject to Subsection (d), temporary disability
 2-26 benefits cease on a date at the expiration of a period, not to
 2-27 exceed one year, determined to be the likely duration of the
 2-28 disability by a physician in a written statement to the pension
 2-29 system.

2-30 (d) If the local board has reason to believe that a ground
 2-31 for termination of temporary disability benefits exists, the local
 2-32 board may set a date for a hearing on the matter. The local board,
 2-33 after notice and a hearing, may adopt an order terminating
 2-34 temporary disability benefits if the local board determines that a
 2-35 ground for termination exists. The local board may not adopt an
 2-36 order under this subsection on the basis of a physician's
 2-37 previously submitted statement as to the likely duration of the
 2-38 disability if the local board determines, after a hearing, that the
 2-39 disability continues. The local board shall send a copy of each
 2-40 order adopted under this subsection to the commissioner.

2-41 (e) Payments of a continuing disability retirement annuity
 2-42 to a retiree certified by the medical board as permanently disabled
 2-43 under Section 864.004(c) cease if the retiree returns to work at the
 2-44 retiree's regular employment or performs emergency service duties.

2-45 (f) If the commissioner has reason to believe that a ground
 2-46 for termination of a continuing disability retirement annuity
 2-47 exists, the commissioner shall set a date for a hearing on
 2-48 continuation or termination of the annuity. The commissioner,
 2-49 after notice and a hearing, shall adopt an order terminating the
 2-50 continuing disability retirement annuity if the commissioner
 2-51 determines that a ground for termination exists.

2-52 (g) Except as provided by this subsection, a continuing
 2-53 disability retirement annuity terminates on the fifth anniversary
 2-54 of the date payment of the annuity begins. To continue receiving
 2-55 payments of a continuing disability retirement annuity after the
 2-56 fifth anniversary, the retiree must be recertified by the medical
 2-57 board as being permanently disabled for the performance of ~~[becomes~~
 2-58 ~~capable of performing the duties of the person's most recent~~
 2-59 ~~position with a participating department or]~~ the duties of any
 2-60 ~~[another]~~ occupation for which the person is reasonably suited by
 2-61 education, training, and experience and that could reasonably be
 2-62 expected to provide the person with at least 75 percent of the
 2-63 salary the person was earning at the time the disability occurred.
 2-64 Rejection of a suitable offer of employment as described in this
 2-65 subsection is conclusive evidence for purposes of this subtitle
 2-66 that the person is no longer eligible to receive disability
 2-67 retirement benefits~~[, if the employment would provide the person~~
 2-68 ~~with a salary equal to or greater than the salary the person was~~
 2-69 ~~earning at the time the disability occurred].~~

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

3-6 SECTION 5. Section 864.006(a), Government Code, is amended
 3-7 to read as follows:

3-8 (a) The surviving spouse and dependents of a member who dies
 3-9 as a result of performing emergency service duties are entitled to
 3-10 receive in equal shares a death benefit annuity equal to
 3-11 [~~two-thirds of~~] the service retirement annuity that the decedent
 3-12 would have been entitled to receive if the decedent had been able to
 3-13 retire, vested at 100 percent, on the date of the decedent's death.
 3-14 [~~As long as both the spouse and one or more dependents survive, an~~
 3-15 ~~additional one-third of that annuity is payable to the dependents~~
 3-16 ~~in equal shares.]~~

3-17 SECTION 6. Sections 864.007, 864.008, and 864.011,
 3-18 Government Code, are amended to read as follows:

3-19 Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. The state
 3-20 board by rule may provide the beneficiary of a deceased member whose
 3-21 death did not result from the performance of emergency service
 3-22 duties a [~~lump-sum~~] benefit, which may be a lump-sum amount or an
 3-23 annuity [that is the greater of:

3-24 ~~(1) the amount contributed to the fund on the~~
 3-25 ~~decedent's behalf; or~~

3-26 ~~(2) the sum that would have been contributed on the~~
 3-27 ~~decedent's behalf from whatever source at the end of the period~~
 3-28 ~~provided under Section 864.001 for full service retirement~~
 3-29 ~~benefits].~~

3-30 Sec. 864.008. VESTED MEMBER DEATH BENEFIT ANNUITY. (a)
 3-31 The state board by rule may provide that the surviving spouse of a
 3-32 deceased member who dies as an active member of a participating
 3-33 department before retirement but after meeting the minimum age and
 3-34 service requirements for service retirement is entitled to a
 3-35 portion [two-thirds] of the monthly annuity that the decedent would
 3-36 have received if the decedent had retired on the date of death.

3-37 (b) The state board by rule may provide that the surviving
 3-38 spouse of a deceased member who dies after terminating service with
 3-39 all participating departments and meeting a service [vesting]
 3-40 requirement under Section 864.001 but before attaining the age of
 3-41 55 is entitled to a death benefit annuity, in an amount to be
 3-42 determined by rule, beginning on the date that is the later of:

3-43 (1) the date that the decedent would have attained
 3-44 that age; or

3-45 (2) the date of application for the annuity [equal to
 3-46 two-thirds of the monthly annuity to which the decedent would have
 3-47 been entitled on that date].

3-48 (c) A rule adopted under Subsection (b) may not authorize
 3-49 payment for a period before the date specified by that subsection.

3-50 Sec. 864.011. FIRST PAYMENT OF RETIREMENT OR DEATH BENEFIT
 3-51 ANNUITY. The cashing or depositing of the first payment of a
 3-52 service retirement annuity, disability retirement annuity, or
 3-53 death benefit annuity by a person entitled to it, or the receipt by
 3-54 a financial institution for credit to that person's account of a
 3-55 transfer of funds by the pension system through electronic means,
 3-56 is considered acceptance of the amount of the annuity and of the
 3-57 amount of service of the person on whose service the annuity is
 3-58 based [if the annuity is based on the payee's service, is
 3-59 conclusive evidence for purposes of this subtitle that the payee is
 3-60 retired].

3-61 SECTION 7. Chapter 864, Government Code, is amended by
 3-62 adding Section 864.0135 to read as follows:

3-63 Sec. 864.0135. OPTIONAL ANNUITY INCREASE OR SUPPLEMENTAL
 3-64 PAYMENTS. (a) The state board by rule may authorize a
 3-65 participating department to:

3-66 (1) make one or more supplemental payments to retirees
 3-67 and other beneficiaries of the pension system; or

3-68 (2) provide an increase in the amount of annuities
 3-69 paid to retirees and other beneficiaries of the pension system.

4-1 (b) A participating department that elects an option under a
4-2 rule adopted under this section shall fund all increased benefits
4-3 that are provided to retirees and other beneficiaries of the
4-4 department under the option.

4-5 SECTION 8. Sections 864.016(a), (c), and (d), Government
4-6 Code, are amended to read as follows:

4-7 (a) A claim for disability retirement benefits or a lump-sum
4-8 death benefit must be filed with the local board. A claim for
4-9 service retirement benefits must be filed with the commissioner,
4-10 who shall forward the claim to the appropriate local board for a
4-11 hearing. A claim for a death benefit annuity must be filed with the
4-12 commissioner, who shall make a determination of the merits of the
4-13 claim and issue a decision to the claimant. On receiving a claim
4-14 under this section, the local board shall hold a hearing to decide
4-15 the claim. The local board shall send a written copy of its
4-16 decision to the claimant and the commissioner. If a local board
4-17 does not determine a claim for service retirement benefits and file
4-18 its determination with the commissioner before the 16th day after
4-19 the date the local board receives the claim, the commissioner may
4-20 determine the merits of the claim.

4-21 (c) An appeal of a local board decision under this section
4-22 is begun by delivering a notice of appeal to the presiding officer
4-23 or secretary of the local board that made the decision. The notice
4-24 must be delivered not later than the 20th day after the date of the
4-25 decision and contain a brief description of the reasons for the
4-26 appeal. The aggrieved person must file a copy of the notice with
4-27 the commissioner.

4-28 (d) An appeal of a local board decision under this section
4-29 is held in Austin and is a contested case under Chapter 2001,
4-30 conducted as a de novo hearing by the State Office of Administrative
4-31 Hearings.

4-32 SECTION 9. Section 865.010(c), Government Code, is amended
4-33 to read as follows:

4-34 (c) The commissioner may request and administer [~~in an~~
4-35 ~~emergency,~~] state funds appropriated by the legislature in addition
4-36 to those required by this subtitle [~~and appropriated by the~~
4-37 ~~legislature~~].

4-38 SECTION 10. Section 864.015, Government Code, is repealed.

4-39 SECTION 11. (a) The change in law made by this Act to
4-40 Sections 864.004 and 864.005, Government Code, does not apply to a
4-41 person who, on the effective date of this Act, is receiving
4-42 permanent disability retirement benefits under those sections as
4-43 they existed immediately before amendment by this Act, and the
4-44 prior law is continued in effect for this purpose.

4-45 (b) A person who, on the effective date of this Act, is
4-46 receiving temporary disability benefits under Section 864.004,
4-47 Government Code, as that section existed immediately before
4-48 amendment by this Act, is entitled to receive temporary disability
4-49 benefits in accordance with a certification made before the
4-50 effective date of this Act. To continue to receive disability
4-51 retirement benefits after September 1, 2008, the person must be
4-52 certified, before September 1, 2008, as permanently disabled as
4-53 provided by Section 864.005, Government Code, as amended by this
4-54 Act, and is subject to the recertification requirement of that
4-55 section.

4-56 SECTION 12. This Act takes effect September 1, 2007.

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