

BILL ANALYSIS

H.B. 2751

By: Truitt

Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Emergency Services Retirement System is a statewide retirement system that provides, through the office of the firefighters' pension commissioner, service retirement, disability retirement, and death benefits for volunteers and auxiliary personnel performing support services for volunteer fire departments and emergency services departments that have chosen to participate in the system and fund the benefits that are paid to their personnel. Currently, there are 197 departments participating in the system, representing more than 7,000 members and annuitants.

In 2005, the system began the process of modernizing its operations and design with the codification of its law in the Government Code. The system's state board of trustees was charged with adjusting benefits and local contributions as necessary to make the system actuarially sound. The state board through its rules, and the legislature through legislation, specifically H.B. 2400, 80th Legislature, Regular Session, 2007, have continued the process of streamlining the system and ensuring delivery of benefits.

H.B. 2751 authorizes a department to include, via an election, persons who provide support services; defines "support services"; provides a method of qualifying potential members; makes conforming changes to include "support services" in the statute; mandates a physical fitness certification be provided; authorizes the state board to adopt a rule imposing an interest charge for past-due contributions and a rule to provide a benefit to the survivor of an active member who dies off duty; prohibits payments when the beneficiary causes the death of the member; and requires the designation of a medical board, providing standards for appointment and duties of its members.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the state board of the Texas Emergency Services Retirement System in SECTIONS 5 and 6 of this bill.

ANALYSIS

H.B. 2751 amends the Government Code to authorize the governing body of an emergency services department participating in the Texas Emergency Services Retirement System to make an election to include all persons who provide support services for the department as members of the pension system on the same terms as all other volunteers of the department. The bill defines "support services" as services that directly assist in the delivery of emergency services, including directing traffic at an emergency scene, dispatching emergency services personnel, driving an emergency services vehicle, supplying or maintaining equipment at an emergency scene, providing essential recordkeeping for a participating department, and other similar services as determined by a department. The bill makes such an election effective on the first day of the calendar month that begins after the month in which the election is made and communicated to the firefighters' pension commissioner, and the bill makes that election irrevocable. The bill establishes that if a participating department has, before September 1, 2009, enrolled persons

who perform support services for the department as members of the pension system, all persons who perform those services for the department are members of the system. The bill authorizes a participating department that previously did not enroll its support staff as members of the pension system to purchase, after an election, service credit performed before the date of the election under the terms required for prior service credit for service before the department's participation.

H.B. 2751 requires a prospective member to present a certification of physical fitness by a qualified physician to the local head of a participating department for delivery to the local board, rather than directly to the local board.

H.B. 2751 authorizes the state board of the retirement system by rule to impose an interest charge on contributions due because of a correction of an error by a local board related to enrollment or qualified service. The bill requires the charge to be based on the pension system's current assumed rate of return and requires charges collected to be deposited in the Texas emergency services retirement fund. The bill authorizes the state board by rule to provide a death benefit to one or more beneficiaries, rather than the beneficiary, of a deceased member whose death did not result from the performance of emergency service duties. The bill requires a rule providing one or more beneficiaries with a death benefit to include the type of eligible recipient of the benefit, including any service or age requirement, and the method of calculating the amount of the benefit. The bill authorizes the inclusion in such a rule of any other terms the board considers appropriate.

H.B. 2751 prohibits a benefit payable on the death of a member or annuitant from being paid to a person convicted of causing that death but instead is payable as if the convicted predeceased the decedent. The bill establishes that the pension system is not required to change the recipient of benefits unless it receives actual notice of the conviction of a beneficiary. The bill authorizes the system to delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death. The bill grants the pension system immunity from liability for any benefit paid to a convicted person before the date the system receives actual notice of the conviction and provides that payment made before that date is a complete discharge of the system's obligation with regard to that benefit payment. The bill establishes that the convicted person holds all payments received in constructive trust for the rightful recipient. The bill establishes that a person has been convicted of causing the death of a member or annuitant if the person pleads guilty or nolo contendere to, or is found guilty by a court of, an offense at the trial of which it is established that the person's intentional, knowing, or reckless act or omission resulted in the death of the member or annuitant, regardless of whether sentence is imposed or probated, and if the person has no appeal of the conviction pending and the time provided for appeal has expired.

H.B. 2751 requires the state board to designate a medical board composed of three physicians. The bill requires a physician to be licensed to practice medicine in Texas and be of good standing in the medical profession to be eligible to serve as a member of the medical board. The bill prohibits a physician who is eligible to participate in the pension system from being a member of the medical board. The bill requires the medical board to investigate essential statements and certificates made by or on behalf of a member of the pension system in connection with an application for disability retirement or, as requested by the firefighters' pension commissioner, with an application for on-duty death benefit and to report in writing to the commissioner its conclusions and recommendations on all matters referred to it. The bill establishes that the medical board is not subject to subpoena regarding findings it makes in assisting the commissioner and grants members immunity from liability for any opinions, conclusions, or recommendations made by the medical board.

H.B. 2751 amends the definition of "qualified service" to include service performed for a participating emergency services department performed by a department member in good standing who attends at least 20 hours of annual training and provides support services for at

least 25 percent of the department's emergencies in a calendar year.

H.B. 2751 repeals Section 864.008, Government Code, a provision entitling the surviving spouse of a member who dies before retirement but after meeting the minimum retirement age and service requirements to a proportional monthly annuity.

EFFECTIVE DATE

September 1, 2009.