

1-1 By: Kuempel (Senate Sponsor - Williams) H.B. No. 407
1-2 (In the Senate - Received from the House April 16, 2009;
1-3 April 16, 2009, read first time and referred to Committee on State
1-4 Affairs; May 14, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 14, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 407 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to participation and credit in, contributions to, benefits
1-11 from, and administration of the Texas County and District
1-12 Retirement System.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 841.001, Government Code, is amended by
1-15 amending Subdivisions (1), (6), and (17) and adding Subdivision
1-16 (1-a) to read as follows:

1-17 (1) "Actuarial equivalent" means a benefit that, at
1-18 the time it is begun, has the same present value as the benefit it
1-19 replaces, based on seven percent annual interest and either:

1-20 (A) the mortality table published by the
1-21 Conference of Actuaries in Public Practice and known as the UP-1984
1-22 table with an age setback of five years for retired or disabled
1-23 annuitants and an age setback of 10 years for beneficiaries, with a
1-24 30-percent reserve refund assumption for the standard benefit; or

1-25 (B) a mortality basis adopted under Section
1-26 845.110(c).

1-27 (1-a) "Accrued benefit" means the sum of a member's
1-28 accumulated contributions and service credit calculated as of a
1-29 specified date.

1-30 (6) "Compensation" means the sum of payments that are
1-31 made to an employee for performance of personal services as
1-32 certified by a participating subdivision, including nonmonetary
1-33 compensation, the value of which is determined by the governing
1-34 body of the subdivision, on which contributions by an employee to
1-35 the retirement system are based [~~that do not exceed the amount~~
1-36 ~~established by board rule~~], which may not exceed either the limit
1-37 provided by Section 401(a)(17) of the Internal Revenue Code of 1986
1-38 [~~(26 U.S.C. Section 417)~~], as indexed in the manner provided by that
1-39 section, or a lesser amount established by rule of the board of
1-40 trustees. The term includes amounts by which payment for earnings
1-41 is reduced because of employer pick-up of employee contributions to
1-42 the retirement system under Section 845.403, deferral of
1-43 compensation under benefit plans or tax-sheltered annuity programs
1-44 adopted by the subdivision under Section 401(k), 403(b), or 457 of
1-45 the Internal Revenue Code of 1986, the costs of benefits furnished
1-46 under qualified cafeteria plans adopted by the subdivision under
1-47 Section 125 of the Internal Revenue Code of 1986, and deductions for
1-48 Federal Insurance Contribution Act taxes, federal income taxes, or
1-49 other obligations of the employee [~~and that are made to an employee~~
1-50 ~~of a participating subdivision by the subdivision for service,~~
1-51 ~~including nonmonetary compensation, the value of which is~~
1-52 ~~determined by the governing body of the subdivision]~~. The term does
1-53 not include workers' compensation benefits received by a member
1-54 under Section 504.011, Labor Code.

1-55 (17) "Subdivision" means a political subdivision of
1-56 the state that is not eligible to participate in any other statewide
1-57 retirement system or that is not currently participating in a
1-58 retirement system established by the legislature. The term
1-59 includes the Texas Association of Counties, the retirement system
1-60 [~~Texas County and District Retirement System~~], and a city-county
1-61 hospital jointly managed under Subchapter B, Chapter 265, Health
1-62 and Safety Code. The term does not include a branch, division,
1-63 department, employee classification group, or other separately

identified component of a political subdivision.

SECTION 2. Section 841.006, Government Code, is amended to read as follows:

Sec. 841.006. EXEMPTION FROM EXECUTION. (a) All retirement annuity payments, other benefit payments, and a member's accumulated contributions are unassignable and are exempt from execution, garnishment, attachment, and state and local taxation.

(b) Notwithstanding Subsection (a), the board of trustees by rule may authorize the retirement system, in accordance with a retiree's voluntary election, to:

(1) deduct qualified health insurance premiums from the retirement annuity otherwise distributable to a retiree who is an eligible public safety officer or a retiree who meets any expanded eligibility provision for a similar tax exemption under subsequent federal legislation; and

(2) pay the deducted amount directly to the health plan provider, subject to the requirements of Section 402(l), Internal Revenue Code of 1986, or other applicable federal law, and the rules adopted by the board.

SECTION 3. Subchapter A, Chapter 841, Government Code, is amended by adding Section 841.0091 to read as follows:

Sec. 841.0091. DIVISION OF BENEFITS ON DIVORCE OF MEMBER.

(a) On receipt of a qualified domestic relations order incident to a divorce that awards a portion of a member's accrued benefit to a former spouse of the member and that strictly follows the terms and format of the model qualified domestic relations order, as well as any other requirements, adopted by the board of trustees for this purpose, the retirement system shall divide the accrued benefit into two separate benefits that, in combination at the time of division, are actuarially equivalent to the undivided accrued benefit.

(b) Following a division described by Subsection (a), the portion of the accrued benefit awarded the alternate payee is considered the alternate payee's sole and separate property in which the member has no interest. The board of trustees by rule shall define and specify the rights and responsibilities of the alternate payee and the terms and features of the benefit awarded the alternate payee under the order, but in no event may the alternate payee vest in the accrued benefit before the member vests or attain greater rights than are attained by the member or the member's beneficiary.

(c) Notwithstanding Section 804.101, the board of trustees by rule may prescribe terms on which the interest awarded the alternate payee under a qualified domestic relations order described by this section may be transferred at the alternate payee's death.

(d) The board of trustees has sole authority and discretion to:

(1) specify the terms and format that are required for a qualified domestic relations order to be acceptable for purposes of Subsection (a);

(2) require strict compliance for qualification;

(3) specify the dates on which a distribution to an alternate payee may or must begin; and

(4) establish rules for the administration of this section.

(e) This section applies to all domestic relations orders described by this section that the retirement system first determines to be qualified on or after September 1, 2009, and to those domestic relations orders determined to be qualified before September 1, 2009, that the system further determines can be construed to allow a division described by this section without harm or injury to the member's interest awarded under the original qualified order. The actuarial equivalent value of the accrued benefit payable to an alternate payee may not be greater than the actuarial equivalent value of the accrued benefit as if there had been no division and the accrued benefit had been payable to the member in the form of an annuity.

SECTION 4. Section 842.108, Government Code, is amended to

3-1 read as follows:

3-2 Sec. 842.108. WITHDRAWAL OF ACCUMULATED CONTRIBUTIONS.

3-3 (a) ~~[(b)]~~ A member who has separated from employment with a
 3-4 participating subdivision may submit an application to withdraw the
 3-5 member's accumulated contributions attributable to service with
 3-6 that subdivision. A withdrawal cancels the person's ~~[credited~~
 3-7 ~~service and]~~ service credit attributable to service with that
 3-8 subdivision on the date the retirement system makes payment of any
 3-9 portion of the member's accumulated contributions~~[. Credited~~
 3-10 ~~service that has been canceled may not be used to determine~~
 3-11 ~~eligibility for a later retirement unless it is reestablished under~~
 3-12 ~~Section 803.203, 843.003, or 843.0031].~~

3-13 (b) ~~[(c)]~~ Except for a ~~[terminated]~~ membership terminated
 3-14 under prior law or in accordance with Section 842.109(b) [described
 3-15 by Subsection (a)], interest is computed on the balance in the
 3-16 member's individual account in the employees saving fund on January
 3-17 1 of the year of withdrawal through the month before the month in
 3-18 which the withdrawal occurs ~~[for a person described by Subsection~~
 3-19 ~~(b)].~~

3-20 (c) ~~[(d)]~~ If a person eligible to receive a withdrawal or
 3-21 another non-periodic distribution ~~[under this section or Section~~
 3-22 ~~844.401]~~ elects to have all or a portion of the distribution
 3-23 ~~[accumulated contributions]~~ paid directly to an eligible
 3-24 retirement plan and specifies the plan to which the distribution is
 3-25 ~~[contributions are]~~ to be paid on forms approved by the board of
 3-26 trustees, the retirement system shall make the payment in the form
 3-27 of a direct trustee-to-trustee transfer but is under no obligation
 3-28 to determine whether the other plan in fact is an eligible
 3-29 retirement plan for that purpose.

3-30 (d) Notwithstanding Subsection (c), the board of trustees
 3-31 shall adopt rules to administer this section as necessary to
 3-32 maintain the retirement system as a qualified plan under Section
 3-33 401(a) of the Internal Revenue Code of 1986. The rules may include
 3-34 the adoption of definitions and limitations relating to
 3-35 distributions, eligible recipients, and eligible retirement plans.

3-36 SECTION 5. The heading to Section 842.110, Government Code,
 3-37 is amended to read as follows:

3-38 Sec. 842.110. RESUMPTION OF SERVICE AFTER WITHDRAWAL OR
 3-39 RETIREMENT [BY RETIREE].

3-40 SECTION 6. Sections 842.110(a) and (b), Government Code,
 3-41 are amended to read as follows:

3-42 (a) Except as provided by Subsection (b), a person who has
 3-43 withdrawn the person's accumulated contributions or who has retired
 3-44 from a participating subdivision with a service retirement annuity
 3-45 based on a bona fide termination of employment and with a break in
 3-46 service of not less than one calendar month resumes membership in
 3-47 the retirement system without repayment of the amount distributed
 3-48 or cancellation [suspension] of the person's annuity if the person
 3-49 becomes an employee of any participating subdivision.

3-50 (b) A person who resumes employment with the same
 3-51 subdivision from which the person was previously employed and does
 3-52 not meet the requirements of Subsection (a) is considered not to
 3-53 have been eligible for a withdrawal and not to have retired with
 3-54 respect to that subdivision. The person's membership will be
 3-55 restored, the person's service retirement annuity will be canceled
 3-56 [discontinued, the person's membership will be restored], and the
 3-57 person must return any amounts distributed and payments
 3-58 received. Appropriate adjustments will be made for any amounts not
 3-59 returned.

3-60 SECTION 7. Section 843.001, Government Code, is amended to
 3-61 read as follows:

3-62 Sec. 843.001. TYPES OF CREDITABLE SERVICE. The types of
 3-63 service creditable as credited service in the retirement system are
 3-64 prior service, current service, and optional service. A member may
 3-65 not be credited in this system with more than one month of credited
 3-66 service for a specific calendar month, regardless of the number of
 3-67 employers of the member, the positions held, or the types of
 3-68 service.

3-69 SECTION 8. The heading to Section 843.0031, Government

Code, is amended to read as follows:

Sec. 843.0031. ~~[REESTABLISHMENT OF CREDITED SERVICE,]~~
OPTION TO PAY LUMP-SUM AMOUNT.

SECTION 9. Section 843.0031(b), Government Code, is amended to read as follows:

(b) A member who has withdrawn accumulated contributions from the retirement system and who subsequently resumes employment with a subdivision may at any time before retirement pay to the system a lump sum in any amount that does not exceed the actuarial present value of the additional benefits that would have been attributable to the withdrawn contributions. Any amount paid under this subsection and interest accrued on the amount may not be considered in the computation of service credit ~~[credits]~~.

SECTION 10. Section 843.004, Government Code, is amended to read as follows:

Sec. 843.004. COMPOSITION OF SERVICE CREDIT. Service credit consists of allocated prior service credit, current service credit, and multiple matching credit as authorized by a participating subdivision ~~[and accumulated interest under this subtitle]~~.

SECTION 11. Section 843.201, Government Code, is amended to read as follows:

Sec. 843.201. SERVICE CREDIT FOR CERTAIN PUBLIC EMPLOYMENT. ~~[(a)]~~ In accordance with rules adopted by the board of trustees, the governing body of a participating subdivision by order may authorize the establishment of credited service and prior service credit in the retirement system for service performed in a public hospital, utility, or other public facility or governmental function during a time the facility was operated or function was performed by a unit of government other than the subdivision and before the date that the public hospital, utility, or other public facility or governmental function was taken over by the subdivision ~~[÷~~

~~[(1) the effective date of the subdivision's participation in the retirement system, if the facility was acquired or the governmental function was taken over by the subdivision before that date, or~~

~~[(2) the date of acquisition of the facility or the date the governmental function was taken over, if the facility was acquired or the governmental function was taken over after the effective date of the subdivision's participation in the retirement system].~~

~~[(b) A member eligible to establish credited service and prior service credit under this section after an order under Subsection (a) is one who was employed by a public facility or by an entity performing the governmental function.]~~

~~[(1) on the effective date of subdivision participation, for service under Subsection (a)(1), or~~

~~[(2) on the date of acquisition of the facility or the date the governmental function was taken over, for service under Subsection (a)(2).]~~

~~[(c) The allocated prior service credit percentage allowable under this section may be limited by the order of the governing body to zero or to any percentage that is a multiple of five percent.]~~

SECTION 12. Section 843.401, Government Code, is amended to read as follows:

Sec. 843.401. CURRENT SERVICE GENERALLY. Current service is service performed by an employee of a participating subdivision while a member of the retirement system and credited as provided under this subtitle and in accordance with rules adopted by the board of trustees [section]. ~~[The retirement system shall credit a member with one month of current service for each month for which the required contributions are made, reported, and certified by the employing subdivision.]~~

SECTION 13. Sections 843.502(a), (b), and (c), Government Code, are amended to read as follows:

(a) In this section:

(1) "Qualified ~~[, "qualified]~~ military service" means

service in the uniformed services, as that term is defined in the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), that meets the requirements of that Act as it now exists or is amended as to the character of service performed.

(2) "USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.).

(b) All members of the retirement system are entitled to be credited with service for qualified military service that is subject to USERRA ~~[the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.)]~~. Notwithstanding any provision of this subtitle to the contrary, contributions, benefits, credited service, and service credit for qualified military service will be provided in accordance with USERRA and Section 414(u) of the Internal Revenue Code of 1986. The board of trustees may adopt rules for the administration of this section, including rules that modify the terms of this subtitle for the purpose of compliance with the provisions of USERRA ~~[that Act]~~.

(c) An eligible member may establish ~~[The governing body of a participating subdivision also may, on the terms provided by Section 844.704, authorize the establishment of]~~ credited service in the retirement system for qualified active duty military service not creditable under Subsection (b) ~~[as provided by this subsection]~~. Qualified military service includes military service before becoming an employee of the subdivision. A member eligible to establish credited service under this subsection is one who is vested, based on credited service only in this system and without regard to service that may be established under this subsection, in a service retirement annuity that may begin at the age of 60 ~~[has credited service in the retirement system for at least the minimum period required to receive a service retirement annuity at the age of 60 from the subdivision from which credit under this subsection is sought]~~. An eligible member may establish not more than five years of credited service under this subsection by filing an application with the retirement system.

SECTION 14. Section 843.504, Government Code, is amended to read as follows:

Sec. 843.504. NO DOUBLE CREDITING OF SERVICE. Except as provided by Chapter 803, only one month of credited service may ~~[not]~~ be established in the retirement system ~~[under this subchapter]~~ for any calendar month for all ~~[of]~~ service that is creditable ~~[credited]~~ under ~~[another section of]~~ this subtitle ~~[or by another retirement system or program established or governed by state law]~~.

SECTION 15. Subchapter F, Chapter 843, Government Code, is amended by adding Section 843.505 to read as follows:

Sec. 843.505. CREDITED SERVICE PREVIOUSLY ELIGIBLE FOR RECOGNITION UNDER PROPORTIONATE RETIREMENT PROGRAM. The board of trustees by rule may authorize the retirement system, on application by a member and for the sole purpose of determining eligibility for retirement from this system, to recognize service performed under another system participating under Chapter 803 that would have been recognized by this system under that chapter if the service had not been canceled by a withdrawal of contributions.

SECTION 16. Section 844.003, Government Code, is amended by amending Subsections (c) and (e) and adding Subsection (f) to read as follows:

(c) The effective date of a member's disability retirement is the date the member designates at the time the member applies for retirement under Section 844.301, but the date must be the last day of a calendar month and may not precede the later of the date the member became disabled or the date the member terminated ~~[terminates]~~ employment with all participating subdivisions.

(e) Notwithstanding Subsections (a), (b), (b-1), ~~[and]~~ (c), and (f), the effective retirement date of a member may not precede the first anniversary of the effective date of participation of the subdivision.

(f) The board of trustees by rule may authorize a retiring member to designate an effective service or disability retirement date that is not more than six months before the date the retirement system receives the retirement application. A rule adopted under this section may not suspend another requirement provided by this section for retirement.

SECTION 17. Sections 844.006(d) and (f), Government Code, are amended to read as follows:

(d) ~~The [If a qualified domestic relations order, as that term is defined by Section 804.001, so provides, the] benefit payable to a retiree who is receiving payments of a standard or optional retirement annuity [computed on the joint lives of the retiree and the person designated as beneficiary by the retiree] may be divided by the retirement system into two annuities in accordance with the terms of a model qualified domestic relations order adopted by the board of trustees by rule [if:~~

~~[(1) the person who was designated as beneficiary by the retiree is the same person as the alternate payee;~~

~~[(2) the order specifies that one of the two annuities is payable over the remaining life of the retiree, with no payments to be made under that annuity after the death of the retiree; and~~

~~[(3) the order specifies that the annuity payable to the alternate payee is payable over the remaining life of that person, with no payments to be made under that annuity after the death of the alternate payee named in the order].~~

(f) The board of trustees has sole authority and discretion to specify the terms and format that are required for a domestic relations order to be acceptable for purposes of this section, to require strict compliance for qualification, and to define the terms and features of the benefit awarded an alternate payee under the order. The board ~~[retirement system]~~ by rule may establish requirements for forms, documentation, and procedures necessary or desirable for the administration of this section.

SECTION 18. Section 844.008, Government Code, is amended to read as follows:

Sec. 844.008. LIMITATION ON PAYMENT OF BENEFITS.
(a) Notwithstanding any other provision of this subtitle, the benefit payable to a retiree of the retirement system may not exceed the maximum benefit permitted under Section 415(b) of the Internal Revenue Code of 1986 ~~[(26 U.S.C. Section 415(b))]~~ as adjusted in accordance with Section 415(d) of that code. Any adjustments are applicable to the postretirement benefits of retirees as well as to the benefits of retiring members. For the purpose of determining whether the benefit of a retiring member or retiree exceeds the limitations provided in this section, all defined benefit plans of the employer and of entities required to be aggregated with the employer for purposes of Section 415 of the Internal Revenue Code of 1986 are to be treated as one defined benefit plan ~~[and all defined contribution plans of the employer and of entities required to be aggregated with the employer]~~ for purposes of Section 415 of that code ~~[are to be treated as one defined contribution plan]~~. The limitation year for determining maximum benefits is the calendar year.

(b) An employer may not provide employee retirement ~~[or deferred]~~ benefits under a defined benefit plan other than the retirement system to the extent that the provision of the benefits, when considered together with the benefits provided under the retirement system, would result in the failure of the retirement system to meet any of the limitation requirements of Section 415 of the Internal Revenue Code of 1986 ~~[(26 U.S.C. Section 415)]~~, and the benefits of the other plan will automatically be reduced, eliminated, or adjusted to the extent necessary to prevent the failure.

SECTION 19. Section 844.101, Government Code, is amended to read as follows:

Sec. 844.101. APPLICATION FOR SERVICE RETIREMENT ANNUITY. To receive a retirement annuity for service, an eligible member must apply by filing a valid application with the retirement system ~~[on or before the member's effective retirement date]~~

designated on the application].

SECTION 20. Section 844.301(a), Government Code, is amended to read as follows:

(a) A member may apply for disability retirement by filing a valid application for retirement with the retirement system ~~on or before the member's effective retirement date designated on the application~~.

SECTION 21. Section 844.404, Government Code, is amended to read as follows:

Sec. 844.404. PERSON CAUSING DEATH OF MEMBER OR ANNUITANT.

(a) A benefit, including any optional group term life benefit, payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable to a person who would be entitled under this subtitle to the benefit had the convicted person predeceased the decedent. If no person would be entitled to the benefit, the benefit is payable to the decedent's estate.

(b) The retirement system is not required to change the recipient of benefits under this section ~~[pay a benefit under Subsection (a)]~~ unless it receives actual notice of the conviction of a beneficiary ~~[the person who would have been entitled to the benefits]~~. However, the retirement system may 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.

(c) The retirement system is not liable for any benefit paid to a convicted person before the date the system receives actual notice of the conviction, and any payment made before that date is a complete discharge of the system's obligation with regard to that benefit payment. The convicted person holds all payments received in constructive trust for the rightful recipient.

(d) If an annuity is in pay status, the ~~[(c) The]~~ retirement system shall pay in a lump sum the actuarial equivalent of ~~[convert]~~ the remainder of any annuity or payments that would otherwise have been payable to ~~[throughout the life of]~~ the convicted person to the person entitled to the benefit under Subsection (a) or to the decedent's estate ~~[an actuarially equivalent annuity payable to the decedent's estate in 60 monthly annuity payments]~~. The time of the actuarial equivalence is the earlier of the time the retirement system receives the notice of the conviction under Subsection (b) or the time the retirement system begins the delay in payment of a benefit under Subsection (b).

(e) ~~[(d)]~~ For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

(1) has pleaded guilty or nolo contendere to or has been found guilty by a court of competent jurisdiction 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 a person who was a member or annuitant, regardless of whether sentence is imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

SECTION 22. Subchapter G, Chapter 844, Government Code, is amended by adding Section 844.601 to read as follows:

Sec. 844.601. PLAN FUNDING BY NON-ADOPTING COUNTY. (a) This section applies only to a county that began participation in the retirement system before January 1, 1992, and has not adopted the provisions of Subchapter H.

(b) Except as provided by Subsections (c) and (d), the county shall contribute to its account in the subdivision accumulation fund at the same rate of current service compensation as the employee contribution rate for the county.

(c) If in any year the retirement system's actuary determines that the contributions of the county to the subdivision accumulation fund under Subsection (b) will not finance the county's obligations to the fund within the closed or open amortization period recommended by the actuary and adopted by the board of trustees for all subdivisions, the governing body of the

county shall adopt an order to reduce the amortization period to the maximum period established by the board. The actuary shall determine appropriate remedies for review and adoption by the county. An order adopted under this subsection must first be approved by the board of trustees and must require:

(1) a reduction in the employee contribution rate to a rate not less than four percent of current service compensation;

(2) additional employer contributions under a supplemental contribution rate as provided by Subsection (e);

(3) a reduction in the percentage for determining multiple matching credits in five percent increments for contributions made after the effective date of the reduction; or

(4) any combination of these actions.

(d) An order adopted under Subsection (c) takes effect on the first day of the calendar year that begins after the date the retirement system's actuary makes a determination described by Subsection (c).

(e) A supplemental contribution rate under this section is the rate of contribution by the county to its account in the subdivision accumulation fund, in addition to the contributions required under Subsection (b), that the retirement system's actuary determines and certifies is required to amortize the obligations of the county to the subdivision accumulation fund within the established amortization period.

(f) A county that has not adopted the provisions of Subchapter H may not adopt additional options and may not increase service credits or benefits otherwise allowable under this subtitle except for an increase in the rate of employee contributions or an increase in the percentage of multiple matching credits to a rate or percentage that does not exceed the rate or percentage in effect on January 1, 2010.

SECTION 23. Section 844.701, Government Code, is amended to read as follows:

Sec. 844.701. APPLICABILITY. Except for a county described by Section 844.601, this [(a) This] subchapter applies to each subdivision that participates [begins participation] in the retirement system [after December 31, 1991].

[(b) The governing body of any subdivision participating before January 1, 1992, by order or resolution may adopt the plan provisions of this subchapter to be effective on January 1 of the year following the year in which the order or resolution is received by the system.

[(c) Other provisions of this subtitle apply to the plan provisions of this subchapter except as modified by this subchapter.]

SECTION 24. Section 844.704, Government Code, is amended to read as follows:

Sec. 844.704. BENEFITS. (a) The [On the adoption of the plan provisions of this subchapter, the] governing body of a [the] subdivision shall select a percentage for determining multiple matching credits [under Section 843.402. The governing body shall select a percentage] of zero or any percentage that is a multiple of five percent and that does not exceed 150 percent[, or it may select the multiple matching percentage that the subdivision has in effect on the date of its adoption of the plan provisions of this subchapter]. The governing body may later increase the percentage used in determining multiple matching credits under Section 843.402 to any percentage that is a multiple of five percent and that does not exceed 150 percent, to take effect on the next January 1 after the date the increase is adopted[, except that the sum of the percentage for current service credits under Section 843.402 and the percentage for multiple matching credits may not exceed 250 percent]. In its order or resolution, the governing body may provide that the increased percentage will be used in determining multiple matching credits [under Section 843.402] only for employee contributions made after the effective date of the increase or that the increased percentage will be used both prospectively and retroactively in determining the multiple matching credits for all employee contributions not otherwise matched at a higher

percentage. The governing body may thereafter reduce the percentage used in determining multiple matching credits ~~[under Section 843.402]~~ for contributions made after the effective date of the reduction to zero or any percentage that is a multiple of five percent, to take effect on the next January 1 after the date of the reduction.

(b) ~~The [On the adoption of the plan provisions of this subchapter, the]~~ governing body shall select a percentage for determining allocated prior service credits of zero or any percentage ~~[under Section 843.105. The governing body shall select a percentage]~~ that is a multiple of five percent. ~~[For a subdivision that began participation before January 1, 1992, the percentage cannot be less than the percentage in effect immediately before the adoption of the plan.]~~ The governing body may increase the percentage used in determining allocated prior service credits ~~[under Section 843.105]~~, to take effect on the next January 1 after the date of the increase. The percentage may not exceed one-half of the percentage that results from adding 200 percent to the lowest percentage for determining multiple matching credit currently applicable to any employee contribution with respect to the subdivision.

(c) The subdivision shall provide current service credits in accordance with Section 843.402.

(d) With the approval of the board of trustees, the [The] governing body of a subdivision may adopt any benefit increase or additional benefit, option, right, or feature as authorized under this subtitle [or authorize.

~~[(1) an increase in retirement annuities under Section 844.209,~~

~~[(2) an increase in retirement annuities under Section 844.208,~~

~~[(3) the reestablishment of service credit previously forfeited under Section 843.003,~~

~~[(4) the establishment of credited service for military service under Section 843.502(c),~~

~~[(5) an optional service retirement eligibility provision described by Section 844.1021, or~~

~~[(6) the partial lump-sum distribution on service retirement under Section 844.009].~~

(e) The governing body may not adopt an increase or addition to the subdivision's plan [the benefits of this section] if the adoption would result in the combined rates of the subdivision's normal contributions and prior service contributions for the first calendar year following the adoption exceeding the maximum rate prescribed by Section 844.703(c), unless a waiver under that section is in effect.

(f) Other than an order or resolution of initial participation in the retirement system and except as otherwise authorized by the board of trustees, an [An] order or resolution under this section must be filed with the retirement system not later than December 15 of the year preceding the year in which it will take effect and may not take effect until the order or resolution is approved by the board of trustees as meeting the requirements of this section. An [After approval by the board, an] order or resolution adopted after participation begins may take effect only on January 1 of a year[, except that an order or resolution for a subdivision that begins participation after January 1, 1992, may take effect on the date the subdivision begins participation].

SECTION 25. Section 845.107, Government Code, is amended to read as follows:

Sec. 845.107. AUDITS AND REVIEWS [AUDIT]. (a) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or of the United States or initiated or commissioned by the board of trustees. The term includes a financial audit, compliance audit, economy and efficiency audit, effectiveness audit, performance audit, risk audit, and investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) internal or external communications relating to the audit that are made or received in the course of the audit; and

(B) drafts of an audit report or portions of those drafts.

(b) Annually, or more often, the board of trustees shall have the accounts of the retirement system audited by a certified public accountant.

(c) In addition to the financial audit required by Subsection (b), the board of trustees may initiate or commission an audit or investigation of activities, functions, or operations of the retirement system as the board determines appropriate.

(d) Audit working papers prepared, maintained, or assembled by the retirement system or an agent of the system are not a record of the board of trustees for purposes of Section 845.112, and are confidential and excepted from the disclosure requirements of Chapter 552.

(e) Unless made confidential under other law, an audit report, when accepted by the board of trustees in its final form, is a record of the board and public information.

SECTION 26. Section 845.110, Government Code, is amended by adding Subsection (c) to read as follows:

(c) On recommendation of the retirement system's actuary, the board of trustees by rule may adopt a mortality basis to be used in determining actuarial equivalents. A mortality basis adopted under this subsection may not be applied in a manner that would reduce a participant's monthly benefit that has accrued before the later of the date the mortality basis is adopted or the date the mortality basis is implemented.

SECTION 27. Section 845.114(a), Government Code, is amended to read as follows:

(a) In this chapter ~~[section]~~, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system.

SECTION 28. Section 845.1151, Government Code, is amended to read as follows:

Sec. 845.1151. ELECTRONIC INFORMATION. ~~[(a) In this section, "participant" has the meaning assigned by Section 845.114(a).~~

~~[(b)]~~ The retirement system may provide confidential information electronically to a participant and to a subdivision and receive information electronically from those persons, including by use of an electronic signature or certification in a form acceptable to the retirement system. An unintentional disclosure to, or unauthorized access by, a third party related to the transmission or receipt of information under this section is not a violation by the retirement system of any law, including a rule relating to the protection of confidential information.

SECTION 29. Section 845.305(b), Government Code, is amended to read as follows:

(b) All assets of the pension trust of the retirement system shall be credited according to the purpose for which they are held to one of the following funds:

- (1) employees saving fund;
- (2) subdivision accumulation fund;
- (3) current service annuity reserve fund;
- (4) income ~~[interest]~~ fund;
- (5) endowment fund; or
- (6) expense fund.

SECTION 30. The heading to Section 845.309, Government Code, is amended to read as follows:

Sec. 845.309. INCOME ~~[INTEREST]~~ FUND.

SECTION 31. Section 845.309(a), Government Code, is amended to read as follows:

(a) The income ~~[interest]~~ fund shall account for the determination and allocation of net investment income or loss.

SECTION 32. Section 845.315(a), Government Code, is amended to read as follows:

(a) As of December 31 of each year, the board of trustees shall make the following allocations that in the aggregate equal the net investment income or loss for the year:

(1) to the current service annuity reserve fund, interest as allowed under this subtitle on the mean amount in the current service annuity reserve fund during that year;

(2) to the optional group term life ~~[supplemental death benefits]~~ fund, interest as allowed under this subtitle on the mean amount in the optional group term life ~~[supplemental death benefits]~~ fund during that year;

(3) to the general reserves account of the endowment fund, a positive or negative amount determined by the board;

(4) to the employees saving fund, current interest as allowed under this subtitle on the member account balances on January 1 of that year of all persons who are members on December 31 of that year;

(5) to the accounts of subdivisions, other than subdivisions otherwise described by this section, ~~[an amount derived by applying a]~~ positive or negative amounts [rate,] as determined under rules adopted by the board prescribing the allocation methodology for the accounts ~~[, to the January 1 balances of that year];~~ and

(6) to the accounts of subdivisions to which Section 842.052 or 842.053 applies, positive or negative amounts as determined by the board.

SECTION 33. Sections 845.402(b) and (c), Government Code, are amended to read as follows:

(b) After timely notice to the board of trustees, the ~~[The]~~ governing body of a participating subdivision may increase the rate of its member contributions effective with ~~[on]~~ the first pay period beginning in the following ~~[day of any]~~ calendar year.

(c) After timely notice to the board of trustees, the ~~[The]~~ governing body of a participating subdivision may reduce the rate of its member contributions effective with ~~[on]~~ the first pay period beginning in the following ~~[day of any]~~ calendar year ~~[if, at least 90 days before the date of the reduction, the subdivision has given written notice of the reduction to the board of trustees and if the actuary determines that the reduction would not impair the ability of the subdivision to fund all obligations against its account in the subdivision accumulation fund before the 20th anniversary of the subdivision's most recent actuarial valuation date].~~

SECTION 34. Subchapter E, Chapter 845, Government Code, is amended by adding Section 845.405 to read as follows:

Sec. 845.405. ALTERNATIVE PERIODS FOR ADMINISTRATIVE COMPLIANCE. (a) Notwithstanding any other provision of this subtitle, the board of trustees may authorize a subdivision to remit to the retirement system contributions, deposits, and other payments on the basis of a period that is less than a month, including a weekly, biweekly, or other semimonthly period. A subdivision authorized to remit amounts more frequently than monthly shall make reports and filings and perform other actions accordingly, and the retirement system shall credit payments accordingly.

(b) The board of trustees may make an authorization under Subsection (a) by rule applicable to all subdivisions similarly situated or by order applicable to designated subdivisions. A rule adopted under this subsection is amendable or revocable in the manner provided for adoption, amendment, or repeal of rules generally. An order adopted under this subsection is revocable wholly or partly by subsequent board order.

(c) If the board of trustees adopts a rule or order under Subsection (b), the board shall also adopt rules, applicable to a subdivision electing or designated to take actions described by this section more frequently than monthly, to alter the periods required for submission of payments and reports, including the period when a late penalty begins to accrue or is deducted from a

subdivision's account in the subdivision accumulation fund, in a manner consistent with the periods provided by this subtitle.

(d) A participant may not receive less credited service, service credit, or benefits due to an authorization under this section than the participant would have received on a monthly basis.

SECTION 35. Section 845.407(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsections (c), (d), and (e), a participating subdivision that fails to provide the information required by Section 845.403 or to pay all contributions required by this subchapter to be made and remitted to the retirement system not later than the 15th day of the month in which they become due shall pay a penalty under this section. The penalty for a past-due monthly remission is equal to interest on the past-due amounts for each day past due at a nominal interest rate of 12 percent, plus a \$500 administrative fee. If the penalty is not paid within three months after the date notice of the penalty has been sent to the subdivision, the retirement system shall deduct the penalty from the subdivision's account in the subdivision accumulation fund. The interest portion of the penalty shall be deposited by the retirement system in the distributable income account of the income ~~[interest]~~ fund. The administrative fee portion of the penalty shall be deposited by the retirement system in the expense fund.

SECTION 36. Sections 845.503(a) and (b), Government Code, are amended to read as follows:

(a) The retirement system may reduce future payments of benefits based on the account of a member, a retiree, or other former member to recoup an amount overpaid or otherwise paid in error to or on the behalf of a participant ~~[the member, former member, retiree, annuitant, or beneficiary]~~. If no future payments are due, the retirement system may recover the overpayment in any manner that is permitted for the collection of any other debt.

(b) The retirement system may not recover from a participant ~~[member, former member, retiree, annuitant, or beneficiary]~~ any overpayment made more than three years before the date the overpayment is discovered. This subsection does not apply to an overpayment a reasonable person should know the person is not entitled to receive.

SECTION 37. Section 844.601(b), Government Code, as added by this Act, applies only to employer contributions to the Texas County and District Retirement System that become due on or after January 1, 2010. A county subject to Section 844.601(b), Government Code, is obligated to make employer contributions to the Texas County and District Retirement System before January 1, 2010, at the rate in effect on August 31, 2009.

SECTION 38. The following laws are repealed:

- (1) Section 843.0031(a), Government Code;
- (2) Sections 843.502(d) and (e), Government Code;
- (3) Sections 844.605, 844.606, 844.607, 844.608, and 844.609, Government Code;
- (4) Section 845.115(f), Government Code; and
- (5) Section 95, Chapter 873 (H.B. 1587), Acts of the 80th Legislature, Regular Session, 2007.

SECTION 39. (a) Except as provided by Subsection (b) of this section, this Act takes effect January 1, 2010.

(b) Sections 841.0091 and 844.601, Government Code, as added by this Act, Section 845.315, Government Code, as amended by this Act, and Section 37 of this Act take effect September 1, 2009.

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