

1-1 By: Truitt (Senate Sponsor - Duncan) H.B. No. 2751
1-2 (In the Senate - Received from the House April 23, 2009;
1-3 May 1, 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 9, Nays 0;
1-6 May 14, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2751 By: Duncan

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

1-10 relating to participation and credit in, benefits from, and the
1-11 administration of the Texas Emergency Services Retirement System.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 861.001, Government Code, is amended by
1-14 amending Subdivision (10) and adding Subdivision (11-a) to read as
1-15 follows:

1-16 (10) "Qualified service" means service:

1-17 (A) for a participating department that is
1-18 recognized as an emergency services department by its governing
1-19 body and that conducts at least 48 hours of training in a calendar
1-20 year; and

1-21 (B) that is performed by a member in good
1-22 standing in the department who:

1-23 (i) attends at least 20 hours of annual
1-24 training and at least 25 percent of the department's emergencies in
1-25 a calendar year;

1-26 (ii) attends at least 20 hours of annual
1-27 training and provides support services for at least 25 percent of
1-28 the department's emergencies in a calendar year; or

1-29 (iii) ~~or who~~ does not attend because the
1-30 member is absent because of military duty.

1-31 (11-a) "Support services" means services that
1-32 directly assist in the delivery of emergency services. The term
1-33 includes directing traffic at an emergency scene, dispatching
1-34 emergency services personnel, driving an emergency services
1-35 vehicle, supplying or maintaining equipment at an emergency scene,
1-36 providing essential recordkeeping for a participating department,
1-37 and other similar services as determined by a department.

1-38 SECTION 2. Section 862.002(b), Government Code, is amended
1-39 to read as follows:

1-40 (b) A person is not a member of the pension system if the
1-41 person:

1-42 (1) is less than 18 years of age;

1-43 (2) is in a probationary period of service before
1-44 becoming a regular member of a participating department for which
1-45 the department is not making contributions for the service;

1-46 (3) does not receive a certification of physical
1-47 fitness or assignment to perform support services ~~duties~~ under
1-48 Section 862.003; or

1-49 (4) is retired under this subtitle, regardless of
1-50 whether the person continues to participate in emergency
1-51 service-related functions for a department from which the person
1-52 retired.

1-53 SECTION 3. Chapter 862, Government Code, is amended by
1-54 adding Section 862.0025 to read as follows:

1-55 Sec. 862.0025. MEMBERSHIP BY SUPPORT STAFF. (a) Except as
1-56 provided by Subsection (b), the governing body of a participating
1-57 department may make an election to include all persons who provide
1-58 support services for the department as members of the pension
1-59 system on the same terms as all other volunteers of the department.
1-60 An election under this section takes effect on the first day of the
1-61 calendar month that begins after the month in which the election is
1-62 made and communicated to the commissioner. Once made, an election
1-63 under this section is irrevocable.

2-1 (b) If a participating department has, before September 1,
2-2 2009, enrolled persons who perform support services for the
2-3 department as members of the pension system, all persons who
2-4 perform those services for the department are members of the
2-5 system.

2-6 (c) After an election under this section, a participating
2-7 department that previously did not enroll its support staff as
2-8 members of the pension system may purchase service credit performed
2-9 before the date of the election under the terms required for prior
2-10 service credit for service before departmental participation.

2-11 SECTION 4. Section 862.003, Government Code, is amended to
2-12 read as follows:

2-13 Sec. 862.003. CERTIFICATION OF PHYSICAL FITNESS. (a) A
2-14 prospective member shall present to the local head of the
2-15 department, for delivery to the local board, a certification of
2-16 physical fitness by a qualified physician. The person becomes a
2-17 member of the pension system if the local board accepts the
2-18 certification or if the local board assigns the person to perform
2-19 support services and enrolls its support staff as members of the
2-20 system [~~duties~~].

2-21 (b) A local board shall assign a person to perform support
2-22 services [~~duties~~] if the person does not present an acceptable
2-23 certification and the person is at least 18 years of age, is not
2-24 retired from the pension system, and is not serving a probationary
2-25 period before becoming a regular member of a participating
2-26 department.

2-27 SECTION 5. Chapter 863, Government Code, is amended by
2-28 adding Section 863.005 to read as follows:

2-29 Sec. 863.005. CHARGE FOR CERTAIN PAST DUE CONTRIBUTIONS.
2-30 The state board by rule may impose an interest charge on
2-31 contributions due because of a correction of an error by a local
2-32 board related to enrollment or qualified service. The charge must
2-33 be based on the pension system's current assumed rate of return.
2-34 Charges collected shall be deposited in the fund.

2-35 SECTION 6. Section 864.007, Government Code, is amended to
2-36 read as follows:

2-37 Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. (a) The
2-38 state board by rule may provide one or more beneficiaries [~~the~~
2-39 ~~beneficiary~~] of a deceased member whose death did not result from
2-40 the performance of emergency service duties a benefit, which may be
2-41 a lump-sum amount or an annuity.

2-42 (b) A rule adopted under this section must include the type
2-43 of eligible recipient of the benefit, including any service or age
2-44 requirement, and the method of calculating the amount of the
2-45 benefit. A rule may include any other terms the board considers
2-46 appropriate.

2-47 SECTION 7. Chapter 864, Government Code, is amended by
2-48 adding Section 864.015 to read as follows:

2-49 Sec. 864.015. BENEFICIARY CAUSING DEATH OF MEMBER OR
2-50 ANNUITANT. (a) A benefit payable on the death of a member or
2-51 annuitant may not be paid to a person convicted of causing that
2-52 death but instead is payable as if the convicted person had
2-53 predeceased the decedent.

2-54 (b) The pension system is not required to change the
2-55 recipient of benefits under this section unless it receives actual
2-56 notice of the conviction of a beneficiary. The system may delay
2-57 payment of a benefit payable on the death of a member or annuitant
2-58 pending the results of a criminal investigation and of legal
2-59 proceedings relating to the cause of death.

2-60 (c) The pension system is not liable for any benefit paid to
2-61 a convicted person before the date the system receives actual
2-62 notice of the conviction, and any payment made before that date is a
2-63 complete discharge of the system's obligation with regard to that
2-64 benefit payment. The convicted person holds all payments received
2-65 in constructive trust for the rightful recipient.

2-66 (d) For the purposes of this section, a person has been
2-67 convicted of causing the death of a member or annuitant if the
2-68 person:

2-69 (1) pleads guilty or nolo contendere to, or is found

3-1 guilty by a court of, an offense at the trial of which it is
3-2 established that the person's intentional, knowing, or reckless act
3-3 or omission resulted in the death of a person who was a member or
3-4 annuitant, regardless of whether sentence is imposed or probated;
3-5 and

3-6 (2) has no appeal of the conviction pending and the
3-7 time provided for appeal has expired.

3-8 SECTION 8. Chapter 865, Government Code, is amended by
3-9 adding Section 865.020 to read as follows:

3-10 Sec. 865.020. MEDICAL BOARD. (a) The state board shall
3-11 designate a medical board composed of three physicians.

3-12 (b) To be eligible to serve as a member of the medical board,
3-13 a physician must be licensed to practice medicine in the state and
3-14 be of good standing in the medical profession. A physician who is
3-15 eligible to participate in the pension system may not be a member of
3-16 the medical board.

3-17 (c) The medical board shall:

3-18 (1) investigate essential statements and certificates
3-19 made by or on behalf of a member of the pension system in connection
3-20 with an application for disability retirement or, as requested by
3-21 the commissioner, with an application for an on-duty death benefit;
3-22 and

3-23 (2) report in writing to the commissioner its
3-24 conclusions and recommendations on all matters referred to it.

3-25 (d) The medical board is not subject to subpoena regarding
3-26 findings it makes in assisting the commissioner under this section,
3-27 and its members may not be held liable for any opinions,
3-28 conclusions, or recommendations made under this section.

3-29 SECTION 9. Sections 864.008 and 865.001(c), Government
3-30 Code, are repealed.

3-31 SECTION 10. This Act takes effect September 1, 2009.

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