

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Truitt

H.B. No. 2751

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to participation and credit in, benefits from, and the  
3 administration of the Texas Emergency Services Retirement System.

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

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

8 (10) "Qualified service" means service:

9 (A) for a participating department that is  
10 recognized as an emergency services department by its governing  
11 body and that conducts at least 48 hours of training in a calendar  
12 year; and

13 (B) that is performed by a member in good  
14 standing in the department who:

15 (i) attends at least 20 hours of annual  
16 training and at least 25 percent of the department's emergencies in  
17 a calendar year;

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

21 (iii) [or who] does not attend because the  
22 member is absent because of military duty.

23 (11-a) "Support services" means services that  
24 directly assist in the delivery of emergency services. The term

1 includes directing traffic at an emergency scene, dispatching  
2 emergency services personnel, driving an emergency services  
3 vehicle, supplying or maintaining equipment at an emergency scene,  
4 providing essential recordkeeping for a participating department,  
5 and other similar services as determined by a department.

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

8 (b) A person is not a member of the pension system if the  
9 person:

10 (1) is less than 18 years of age;

11 (2) is in a probationary period of service before  
12 becoming a regular member of a participating department for which  
13 the department is not making contributions for the service;

14 (3) does not receive a certification of physical  
15 fitness or assignment to perform support services [~~duties~~] under  
16 Section 862.003; or

17 (4) is retired under this subtitle, regardless of  
18 whether the person continues to participate in emergency  
19 service-related functions for a department from which the person  
20 retired.

21 SECTION 3. Chapter 862, Government Code, is amended by  
22 adding Section 862.0025 to read as follows:

23 Sec. 862.0025. MEMBERSHIP BY SUPPORT STAFF. (a) Except as  
24 provided by Subsection (b), the governing body of a participating  
25 department may make an election to include all persons who provide  
26 support services for the department as members of the pension  
27 system on the same terms as all other volunteers of the department.

1 An election under this section takes effect on the first day of the  
2 calendar month that begins after the month in which the election is  
3 made and communicated to the commissioner. Once made, an election  
4 under this section is irrevocable.

5 (b) If a participating department has, before September 1,  
6 2009, enrolled persons who perform support services for the  
7 department as members of the pension system, all persons who  
8 perform those services for the department are members of the  
9 system.

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

15 SECTION 4. Section 862.003, Government Code, is amended to  
16 read as follows:

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

25 (b) A local board shall assign a person to perform support  
26 services [~~duties~~] if the person does not present an acceptable  
27 certification and the person is at least 18 years of age, is not

1 retired from the pension system, and is not serving a probationary  
2 period before becoming a regular member of a participating  
3 department.

4 SECTION 5. Chapter 863, Government Code, is amended by  
5 adding Section 863.005 to read as follows:

6 Sec. 863.005. CHARGE FOR CERTAIN PAST DUE CONTRIBUTIONS.

7 The state board by rule may impose an interest charge on  
8 contributions due because of a correction of an error by a local  
9 board related to enrollment or qualified service. The charge must  
10 be based on the pension system's current assumed rate of return.  
11 Charges collected shall be deposited in the fund.

12 SECTION 6. Section 864.007, Government Code, is amended to  
13 read as follows:

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

19 (b) A rule adopted under this section must include the type  
20 of eligible recipient of the benefit, including any service or age  
21 requirement, and the method of calculating the amount of the  
22 benefit. A rule may include any other terms the board considers  
23 appropriate.

24 SECTION 7. Chapter 864, Government Code, is amended by  
25 adding Section 864.015 to read as follows:

26 Sec. 864.015. BENEFICIARY CAUSING DEATH OF MEMBER OR

27 ANNUITANT. (a) A benefit payable on the death of a member or

1 annuitant may not be paid to a person convicted of causing that  
2 death but instead is payable as if the convicted person had  
3 predeceased the decedent.

4 (b) The pension system is not required to change the  
5 recipient of benefits under this section unless it receives actual  
6 notice of the conviction of a beneficiary. The system may delay  
7 payment of a benefit payable on the death of a member or annuitant  
8 pending the results of a criminal investigation and of legal  
9 proceedings relating to the cause of death.

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

16 (d) For the purposes of this section, a person has been  
17 convicted of causing the death of a member or annuitant if the  
18 person:

19 (1) pleads guilty or nolo contendere to, or is found  
20 guilty by a court of, an offense at the trial of which it is  
21 established that the person's intentional, knowing, or reckless act  
22 or omission resulted in the death of a person who was a member or  
23 annuitant, regardless of whether sentence is imposed or probated;  
24 and

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

27 SECTION 8. Chapter 865, Government Code, is amended by

1 adding Section 865.020 to read as follows:

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

4 (b) To be eligible to serve as a member of the medical board,  
5 a physician must be licensed to practice medicine in the state and  
6 be of good standing in the medical profession. A physician who is  
7 eligible to participate in the pension system may not be a member of  
8 the medical board.

9 (c) The medical board shall:

10 (1) investigate essential statements and certificates  
11 made by or on behalf of a member of the pension system in connection  
12 with an application for disability retirement or, as requested by  
13 the commissioner, with an application for an on-duty death benefit;  
14 and

15 (2) report in writing to the commissioner its  
16 conclusions and recommendations on all matters referred to it.

17 (d) The medical board is not subject to subpoena regarding  
18 findings it makes in assisting the commissioner under this section,  
19 and its members may not be held liable for any opinions,  
20 conclusions, or recommendations made under this section.

21 SECTION 9. Section 864.008, Government Code, is repealed.

22 SECTION 10. This Act takes effect September 1, 2009.

**ADOPTED**

MAY 27 2009

*Atty Gen*  
Secretary of the Senate

By: Duncan

H.B. No. 2751

Substitute the following for \_\_\_B. No. \_\_\_\_\_:

By: [Signature]

C.S. \_\_\_B. No. \_\_\_\_\_

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(11-a) "Support services" means services that  
directly assist in the delivery of emergency services. The term

1 includes directing traffic at an emergency scene, dispatching  
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16 (d) For the purposes of this section, a person has been  
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21 established that the person's intentional, knowing, or reckless act  
22 or omission resulted in the death of a person who was a member or  
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15 (2) report in writing to the commissioner its  
16 conclusions and recommendations on all matters referred to it.

17 (d) The medical board is not subject to subpoena regarding  
18 findings it makes in assisting the commissioner under this section,  
19 and its members may not be held liable for any opinions,  
20 conclusions, or recommendations made under this section.

21 SECTION 9. Sections 864.008 and 865.001(c), Government  
22 Code, are repealed.

23 SECTION 10. This Act takes effect September 1, 2009.

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 27, 2009**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE:** **HB2751** by Truitt (Relating to participation and credit in, benefits from, and the administration of the Texas Emergency Services Retirement System.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend portions of the Texas Government Code governing the Texas Emergency Services Retirement System (TESRS), relating to participation and credit in, benefits from, and the administration of TESRS. The bill would allow participating departments in TESRS to include their support staff as members of TESRS, would allow the TESRS board of trustees by board rule to impose an interest charge on contributions that are late due to the correction of an error, would give the TESRS board of trustees the responsibility and flexibility to define nonservice death benefits by board rule, would give the TESRS board of trustees the authority not to pay a death benefit to a person convicted of causing that death, would authorize the TESRS board of trustees to designate a medical board to investigate applications for on-duty disability and on-duty death benefits, and would repeal the authority for TESRS board of trustees board rules for certain death benefit annuity provisions as a part of the changes that would authorize the TESRS board of trustees to define nonservice death benefits. The bill would repeal provisions involving the governor's involvement in appointing trustees to the state board of TESRS. The bill would take effect September 1, 2009.

The actuary for the Fire Fighters' Pension Commissioner reports that this bill would have either no economic effect or no material economic effect on the TESRS fund. Any additional cost from additional support staff members of participating departments would be funded by the contributions made on their behalf by their department. Any additional cost, if any, from death benefits defined by future board rules would be funded by the contributions made by all the participating departments.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 325 Fire Fighters' Pension Commissioner

**LBB Staff:** JOB, SZ, KJG, JRO, MS, DEH

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 12, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2751** by Truitt (Relating to participation and credit in, benefits from, and the administration of the Texas Emergency Services Retirement System.), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 325 Fire Fighters' Pension Commissioner

**LBB Staff:** JOB, KJG, JRO, MS, DEH

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 8, 2009**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2751** by Truitt (Relating to participation and credit in, benefits from, and the administration of the Texas Emergency Services Retirement System.), **As Engrossed**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend portions of the Texas Government Code governing the Texas Emergency Services Retirement System (TESRS), relating to participation and credit in, benefits from, and the administration of TESRS. The bill would allow participating departments in TESRS to include their support staff as members of TESRS, would allow the TESRS board of trustees by board rule to impose an interest charge on contributions that are late due to the correction of an error, would give the TESRS board of trustees the responsibility and flexibility to define nonservice death benefits by board rule, would give the TESRS board of trustees the authority not to pay a death benefit to a person convicted of causing that death, would authorize the TESRS board of trustees to designate a medical board to investigate applications for on-duty disability and on-duty death benefits, and would repeal the authority for TESRS board of trustees board rules for certain death benefit annuity provisions as a part of the changes that would authorize the TESRS board of trustees to define nonservice death benefits. The bill would take effect September 1, 2009.

The actuary for the Fire Fighters' Pension Commissioner reports that this bill would have either no economic effect or no material economic effect on the TESRS fund. Any additional cost from additional support staff members of participating departments would be funded by the contributions made on their behalf by their department. Any additional cost, if any, from death benefits defined by future board rules would be funded by the contributions made by all the participating departments.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 325 Fire Fighters' Pension Commissioner

**LBB Staff:** JOB, KJG, JRO, MS, DEH

**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 24, 2009**

**TO:** Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2751** by Truitt (Relating to participation and credit in, benefits from, and the administration of the Texas Emergency Services Retirement System.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend portions of the Texas Government Code governing the Texas Emergency Services Retirement System (TESRS), relating to participation and credit in, benefits from, and the administration of TESRS. The bill would allow participating departments in TESRS to include their support staff as members of TESRS, would allow the TESRS board of trustees by board rule to impose an interest charge on contributions that are late due to the correction of an error, would give the TESRS board of trustees the responsibility and flexibility to define nonservice death benefits by board rule, would give the TESRS board of trustees the authority not to pay a death benefit to a person convicted of causing that death, would authorize the TESRS board of trustees to designate a medical board to investigate applications for on-duty disability and on-duty death benefits, and would repeal the authority for TESRS board of trustees board rules for certain death benefit annuity provisions as a part of the changes that would authorize the TESRS board of trustees to define nonservice death benefits. The bill would take effect September 1, 2009.

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**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 325 Fire Fighters' Pension Commissioner

**LBB Staff:** JOB, JRO, MS, DEH



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**ACTUARIAL IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**March 24, 2009**

**TO:** Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2751** by Truitt (Relating to participation and credit in, benefits from, and the administration of the Texas Emergency Services Retirement System.), **As Introduced**

House Bill 2751, if enacted, will not have a significant actuarial effect because the changes it proposes do not materially affect the funding or obligations of any public retirement system. A summary of the changes proposed by the bill is as follows:

- Allows participating departments to include their support staff as members of the System on the same terms as other volunteers who are members of the System. The change would be permissive for participating departments that have not previously enrolled their support staff as members. For those participating departments, there would be no actuarial effect of these sections of H.B. 2751 until elected by the participating departments. While such an election would increase the required contributions for the electing department, such an election is expected to have no material effect on the actuarial condition of the System. For participating departments that have already been enrolling their support staff as members, the bill would validate and clarify that practice. For those participating departments, there would be no increase in required contributions and no actuarial effect.
- Allow the System board of trustees by board rule to impose an interest charge on contributions that are late due to the correction of an error. This change would have a positive but immaterial effect on the actuarial condition of the System.
- Gives the System board of trustees the responsibility and flexibility to define non-service death benefits by board rule. Also, certain death benefits would be removed by the bill, but could easily be re-implemented by this board rule. There would be no actuarial effect from these changes until board rules are adopted.
- Gives the System board of trustees the authority not to pay a death benefit to a person convicted of causing that death. Instead the benefit would be payable as if the convicted person had predeceased the decedent. There might be some cases in which this change would result in no change in benefits but only a change in who receives it. In other cases, there would be a positive but immaterial effect on the actuarial condition of the System.
- Authorizes the System board of trustees to designate a medical board to investigate applications for on-duty disability and on-duty death benefits. This administrative change would have no effect on the actuarial condition of the System.

The bill, if enacted, will not have a significant actuarial effect because the changes it proposes do not materially affect the funding or obligations of any public retirement system.

**SOURCES:**

Actuarial Analysis by Mark R. Fenlaw and Robert M. May, Actuary, Rudd and Wisdom Inc., March 23, 2009  
Actuarial Review by Mr. Martin McCaulay, Deputy Executive Director/Actuary, Pension Review Board, March 23, 2009

**Source Agencies:** 338 Pension Review Board

**LBB Staff:** JOB, WM