

GOVERNMENT CODE

TITLE 8. PUBLIC RETIREMENT SYSTEMS

SUBTITLE H. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

CHAPTER 861. GENERAL PROVISIONS

The following section was amended by the 89th Legislature. Pending publication of the current statutes, see S.B. [2065](#), 89th Legislature, Regular Session, for amendments affecting the following section.

Sec. 861.001. DEFINITIONS. In this subtitle:

(1) "Actuarially sound pension system" means a system in which the amount of contributions is sufficient to cover the normal cost and amortize the unfunded accrued actuarial liability in a period that does not exceed 30 years.

(2) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. [3247](#)), Sec. 38(1), eff. September 1, 2019.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1316, Sec. 4.01(2), eff. June 14, 2013.

(4) "Dependent" means an unmarried child, natural or adopted, who:

(A) is less than 18 years of age;

(B) is less than 19 years of age and a full-time student at an elementary or secondary school; or

(C) became permanently disabled before the child's 22nd birthday, as determined by the executive director.

(5) "Emergency services" means only those services relating to fire, rescue, emergency medical services, and emergency response services.

(5-a) "Executive director" means the person appointed executive director under Section [865.0095](#).

(6) "Fund" means the Texas emergency services retirement fund.

(6-a) "Governing body of a department" or "governing body of a participating department" means:

(A) the board of trustees or other governing body of the department; or

(B) if the department does not have a governing

body, the governing body of the political subdivision.

(6-b) "Governing body of a political subdivision" means the governing body of the political subdivision or unit of government of which the department is a part.

(7) "Local board" means a local board of trustees established under Section [865.012](#).

(8) "Member" means a person having membership in the pension system under Section [862.002](#).

(8-a) "Participating department" means a department that elects to participate in the pension system under Section [862.001](#).

(8-b) "Participating department head" means the person designated as a participating department head under Section [865.0115](#).

(9) "Pension system" means the Texas Emergency Services Retirement System.

(10) "Qualified service" means service performed:

(A) for a participating department that conducts at least 48 hours of training in a calendar year; and

(B) by a member in good standing in the department who:

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

(ii) 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; or

(iii) does not attend because the member is absent because of military duty.

(10-a) "Retiree" means a person who receives a service or disability retirement benefit from the pension system.

(11) "State board" means the state board of trustees established under Section [865.001](#).

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

(A) directing traffic at an emergency scene;

(B) dispatching emergency services personnel;
(C) driving an emergency services vehicle;
(D) supplying or maintaining equipment at an emergency scene;
(E) providing essential recordkeeping for a participating department; and
(F) other similar services as determined by a participating department.

(12) "Volunteer" means a person who performs emergency services for civic, charitable, or humanitarian reasons, receives no monetary compensation from a participating department, and is not subject to the compensation requirements provided for employees by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. [522](#)), Sec. 1, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 697 (H.B. [2751](#)), Sec. 1, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. [220](#)), Sec. 1.01, eff. June 14, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. [220](#)), Sec. 4.01(2), eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. [3247](#)), Sec. 1, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. [3247](#)), Sec. 38(1), eff. September 1, 2019.

Sec. 861.002. PENSION SYSTEM. The pension system is a public entity. The Texas Emergency Services Retirement System is the name by which all its business shall be transacted, all its funds invested, and all its cash, securities, and other property held.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. [522](#)), Sec. 1, eff. September 1, 2005.

Sec. 861.003. POWERS AND PRIVILEGES. The pension system has

the powers, privileges, and immunities of a corporation as well as the powers, privileges, and immunities conferred by this subtitle. Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.004. EXEMPTION FROM EXECUTION. All benefit payments, contributions, money in the pension system fund, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levies, and any other process and are unassignable. Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.005. NO DIVERSION OF ASSETS. The fund must be maintained for the exclusive benefit of members, retirees, and their beneficiaries. At no time before the termination of the fund and the satisfaction of all liabilities with respect to members, retirees, and their beneficiaries may any part of the principal or interest from fund assets be used for or diverted to a purpose other than the exclusive benefit of the members, retirees, and their beneficiaries. Added by Acts 2005, 79th Leg., Ch. 803 (S.B. 522), Sec. 1, eff. September 1, 2005.

Sec. 861.006. PLAN QUALIFICATION AND DISTRIBUTIONS. (a) The legislature intends that this subtitle be construed and administered in a manner so that the pension system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). The state board may adopt rules that modify the plan as necessary to meet those qualification requirements.

(b) Notwithstanding any other provision of this subtitle, all distributions under this subtitle must be made in accordance with applicable provisions of the Internal Revenue Code of 1986 and regulations adopted under that code.

(c) The state board by rule may authorize an eligible rollover distribution to be made in the form of a direct

trustee-to-trustee transfer.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. [522](#)), Sec. 1, eff. September 1, 2005.

Sec. 861.007. FORFEITURE NOT TO INCREASE BENEFITS. A forfeiture that occurs under this subtitle may not be used to increase the benefits that any member would otherwise receive under this subtitle.

Added by Acts 2005, 79th Leg., Ch. 803 (S.B. [522](#)), Sec. 1, eff. September 1, 2005.

Sec. 861.008. IMMUNITY FROM LIABILITY. The state board, the executive director, a local board, each participating department head, and employees of the pension system are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty or prerogative in connection with the administration of the pension system.

Added by Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. [2400](#)), Sec. 1, eff. September 1, 2007.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. [220](#)), Sec. 1.02, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. [3247](#)), Sec. 2, eff. September 1, 2019.

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

Added by Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. [2400](#)), Sec. 1, eff. September 1, 2007.