

GOVERNMENT CODE

TITLE 8. PUBLIC RETIREMENT SYSTEMS

SUBTITLE H. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

CHAPTER 864. BENEFITS

Sec. 864.001. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY.

(a) The state board by rule shall determine the period of qualified service and, if appropriate, the age required for a member to receive a service retirement annuity with full benefits after the member terminates service with a participating department. The state board by rule may provide for partial vesting of benefits after a particular period.

(b) The state board may change the benefit formula for any person who is not a retiree of the pension system.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 11, eff. September 1, 2019.

Sec. 864.002. SERVICE RETIREMENT ANNUITY. (a) A service retirement annuity is payable in monthly installments based on:

(1) the average monthly contribution during the member's term of qualified service with all participating departments under this subtitle, not including a contribution to reduce the unfunded accrued actuarial liability of the pension system; and

(2) a formula adopted by the state board by rule that allows the pension system, assuming maximum state contributions are provided under Section 865.015, to be maintained as actuarially sound.

(b) The state board by rule may provide, for each year of qualified service in excess of the period provided under Section 864.001 for full benefits, an additional amount that is a percentage of the person's monthly pension, compounded annually. A person may receive a proportional credit for months of qualified service that make up less than a year.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 12, eff. September 1, 2019.

Sec. 864.004. TEMPORARY DISABILITY RETIREMENT BENEFITS.

(a) A member is entitled to disability retirement benefits from the pension system only if a local board determines that the member became disabled during the performance of emergency services or support services and is unable to return to work at the member's regular occupation or, if the member is a student, is unable to return to the member's scholastic studies. A disabled member must, at the time of disability, elect between a service retirement annuity or disability retirement benefits, if eligible for both.

(b) Subject to Subsection (c), a member described by Subsection (a) who does not elect to receive a service retirement annuity is entitled to a temporary disability retirement benefit of:

(1) \$300 per month; or

(2) a greater amount that the state board by rule adopts based on the monthly contributions made for the members by the governing body of the political subdivision.

(c) Except as provided by Section 864.005, a temporary disability retirement benefit under Subsection (b) must cease on the expiration of a period, not to exceed one year, determined to be the likely duration of the disability by a physician in a written statement to the local board. The local board shall select the physician making a determination under this subsection.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 4, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 13, eff. September 1, 2019.

Sec. 864.005. CERTIFICATION AND CONTINUANCE OF DISABILITY.

(a) A local board may require a member who is receiving a temporary disability retirement benefit to file a disability rating report every three months from a physician chosen by the local board. If a report indicates a significant improvement in condition, the local board, after notice and a hearing, may adopt an order to terminate temporary disability retirement benefit payments. The local board shall send a copy of each order adopted under this subsection to the executive director.

(b) Temporary disability benefits cease if:

(1) the recipient returns to work at the person's regular occupation, resumes scholastic studies, or performs emergency services or support services for any participating department or other entity; or

(2) the local board adopts an order under Subsection (d).

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 38(3), eff. September 1, 2019.

(d) If the local board has reason to believe that a ground for termination of temporary disability retirement benefits exists, the local board may set a date for a hearing on the matter. The local board, after notice and a hearing, may adopt an order terminating temporary disability retirement benefits if the local board determines that a ground for termination exists. The local board may not adopt an order under this subsection on the basis of a physician's previously submitted statement as to the likely duration of the disability if the local board determines, after a hearing, that the disability continues. The local board shall send a copy of each order adopted under this subsection to the executive director.

(e) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 38(3), eff. September 1, 2019.

(f) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 38(3), eff. September 1, 2019.

(g) Repealed by Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 38(3), eff. September 1, 2019.

(h) A local board may require financial information from a

person as a condition to the continued receipt of temporary disability retirement benefits, including federal income tax returns and wage earning forms. Failure to timely provide requested information is a ground for terminating benefits.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 4, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. 220), Sec. 1.05, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 14, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 38(3), eff. September 1, 2019.

Sec. 864.0051. CONTINUING DISABILITY RETIREMENT BENEFITS.

(a) To receive disability retirement benefits in the form of a continuing annuity provided beyond the time prescribed under Section 864.005, a person who has been determined by a local board to be temporarily disabled must:

(1) not later than the first anniversary of the date the person was determined to be temporarily disabled, apply to the state board in the manner and form prescribed by the state board; and

(2) be certified by the medical board designated by the state board under Section 865.020 as permanently disabled for the performance of the duties of any occupation:

(A) for which the person is reasonably suited by education, training, and experience; and

(B) that could reasonably be expected to provide the person with at least 75 percent of the salary the person was earning at the time the disability occurred.

(b) The amount of a continuing disability retirement annuity under this section is determined in the same manner as for a temporary disability retirement benefit under Section 864.004(b).

(c) Except as otherwise provided by this section, a

continuing disability retirement annuity terminates on the fifth anniversary of the date that payment of the continuing disability retirement annuity begins following the certification of the continuation of the disability under Subsection (a).

(d) To continue receiving payments of a continuing disability retirement annuity after the fifth anniversary, the retiree must be recertified as permanently disabled by the medical board every five years using the same standard prescribed by Subsection (a)(2).

(e) Payments of a continuing disability retirement annuity to a retiree certified by the medical board as permanently disabled under Subsection (a) or (d) shall cease if the retiree:

(1) returns to work at any occupation that provides the person with at least 75 percent of the salary the person was earning at the time the disability occurred;

(2) performs emergency services or support services for any participating department; or

(3) rejects a suitable offer of employment, as determined by the local board.

(f) If the state board has reason to believe that a ground for termination of a continuing disability retirement annuity exists, the state board shall set a date for a hearing on the continuation or termination of the annuity. If the state board determines that a ground for termination exists, the state board, after notice and a hearing, shall adopt an order terminating the continuing disability retirement annuity.

(g) The state board may require financial information, including federal income tax returns and wage earning forms, from a retiree as a condition of the continued receipt of continuing disability retirement benefits. Failure to timely provide requested information is a ground for terminating benefits.

Added by Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. [3247](#)), Sec. 15, eff. September 1, 2019.

Sec. 864.006. MEMBER SERVICE DEATH BENEFITS. (a) The surviving spouse and dependents of a member who dies as a result of performing emergency services or support services are entitled to

receive in equal shares a death benefit annuity equal to the service retirement annuity that the decedent would have been entitled to receive if the decedent had been able to retire, vested at 100 percent, on the date of the decedent's death.

(b) The beneficiary of a member who dies as a result of performing emergency services or support services is entitled to a lump-sum benefit of \$5,000 or a greater amount that the state board provides by rule.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 5, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 16, eff. September 1, 2019.

Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. (a) The state board by rule may provide one or more beneficiaries of a deceased member whose death did not result from the performance of emergency services or support services a benefit, which may be a lump-sum amount or an annuity.

(b) A rule adopted under this section must 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. A rule may include any other terms the state board considers appropriate.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 6, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 697 (H.B. 2751), Sec. 6, eff. September 1, 2009.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 17, eff. September 1, 2019.

Sec. 864.009. RETIREE DEATH BENEFIT ANNUITY. The surviving

spouse of a person who dies after retirement is entitled to two-thirds of the monthly annuity the decedent was receiving at the time of death.

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

Sec. 864.010. BENEFITS FOR MEMBERS AND RETIREES OF DEPARTMENT THAT WITHDRAWS FROM PARTICIPATION OR CEASES TO EXIST.

(a) The executive director shall continue to administer benefits of the pension system for members and retirees who performed emergency services or support services for a formerly participating department that has withdrawn from participation in the pension system or has ceased to exist.

(b) The governing body of a political subdivision shall perform the duties required of a local board for the members and retirees who served for the formerly participating department. The state board may by rule:

(1) provide a procedure under which the governing body of a department may delegate its duties under this subsection to the executive director; or

(2) appoint the executive director to perform the duties of a governing body of a political subdivision if the governing body fails to perform or delegate its duties under this subsection within a prescribed period of time.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. 220), Sec. 1.06, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 18, eff. September 1, 2019.

Sec. 864.011. FIRST PAYMENT OF RETIREMENT OR DEATH BENEFIT ANNUITY. The cashing or depositing of the first payment of a service retirement annuity, disability retirement annuity, or death benefit annuity by a person entitled to it, or the receipt by a financial institution for credit to that person's account of a

transfer of funds by the pension system through electronic means, is considered acceptance of the amount of the annuity and of the amount of qualified service of the person on whose service the annuity is based.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 6, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 19, eff. September 1, 2019.

Sec. 864.012. CERTAIN BENEFICIARIES. (a) If a member names more than one beneficiary for a lump-sum death benefit, the pension system shall divide the benefit equally among the named beneficiaries or, if the member has designated a proportional division, each beneficiary is entitled to the proportion designated.

(b) Except as provided by Subsection (a), lump-sum death benefits are subject to the laws of descent and distribution if the decedent has not provided for testamentary disposition.

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

Sec. 864.013. COST-OF-LIVING INCREASE. The state board by rule may provide a cost-of-living increase for any benefit provided by the pension system. If benefits are increased, the state board shall require an increase in monthly contributions if necessary to maintain an actuarially sound pension system.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 20, eff. September 1, 2019.

Sec. 864.0135. OPTIONAL ANNUITY INCREASE OR SUPPLEMENTAL PAYMENTS. (a) The state board by rule may authorize the governing



body of a participating department to:

(1) make one or more supplemental payments to its retirees and beneficiaries of the pension system; or

(2) provide an increase in the amount of annuities paid to retirees and beneficiaries of the pension system.

(b) The governing body of a participating department that elects an option under a rule adopted under this section shall fund all increased benefits that are provided to its retirees and beneficiaries of the pension system under the option.

Added by Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 7, eff. September 1, 2007.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 21, eff. September 1, 2019.

Sec. 864.014. STATE BOARD AUTHORITY FOR LUMP-SUM PAYMENTS. In lieu of any annuity otherwise payable under this subtitle, the state board by rule may provide for a lump-sum payment if the board determines that a lump-sum payment is cost-efficient or is necessary for the pension system to remain actuarially sound.

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

Sec. 864.015. BENEFICIARY CAUSING DEATH OF MEMBER OR RETIREE. (a) A benefit payable on the death of a member or retiree may not be paid to a person convicted of causing that death but instead is payable as if the convicted person had predeceased the decedent.

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

(c) The pension 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) For the purposes of this section, a person has been convicted of causing the death of a member or retiree if the person:

(1) 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 a person who was a member or retiree, 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.

Added by Acts 2009, 81st Leg., R.S., Ch. 697 (H.B. [2751](#)), Sec. 7, eff. September 1, 2009.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. [3247](#)), Sec. 22, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. [3247](#)), Sec. 23, eff. September 1, 2019.

Sec. 864.016. CLAIM AND APPEAL PROCEDURE. (a) An application for disability retirement benefits or a death benefit must be filed with the local board. On receiving an application under this subsection, the local board shall hold a hearing to decide the merits of the application and whether to approve or deny the application. The local board shall send a written copy of its decision to the claimant, the applicant, and the executive director.

(a-1) A claim for a service retirement annuity must be filed with the executive director.

(b) A person aggrieved by a decision of a local board or of the executive director relating to eligibility for or the amount of benefits under this subtitle may appeal the decision to the state board.

(c) An appeal of a local board or executive director decision under this section is begun by delivering a notice of appeal to the presiding officer or secretary of the local board that

made the decision or to the executive director, as applicable. The notice must be delivered not later than the 20th day after the date of the decision and contain a brief description of the reasons for the appeal. The aggrieved person must file a copy of the notice with the state board.

(d) An appeal of a local board or executive director decision under this section is held in Austin and is a contested case under Chapter 2001, conducted as a de novo hearing by the State Office of Administrative Hearings.

(e) After a hearing under Subsection (d), the state board shall decide each appeal from a local board or executive director decision, issue a written opinion, and notify the local board or executive director, as applicable, and the claimant if the state board overrules the decision.

(f) A final decision of the state board under this section is subject to judicial review under Chapter 2001. The standard of review is by substantial evidence. Venue of the appeal is only in a district court in Travis County.

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

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 321 (H.B. 2400), Sec. 8, eff. September 1, 2007.

Acts 2013, 83rd Leg., R.S., Ch. 1316 (S.B. 220), Sec. 1.07, eff. June 14, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1165 (H.B. 3247), Sec. 24, eff. September 1, 2019.