

# TCDRS Act 2025

Texas County & District Retirement System



# **Laws Governing Texas County & District Retirement System**

## **Article XVI, Section 67, Texas Constitution**

### **Title 8, Subtitle A and F, Texas Government Code**

#### **Subtitle A. Provisions Generally Applicable to Public Retirement Systems**

- Chapter 801. State Pension Review Board
- Chapter 802. Administrative Requirements
- Chapter 803. Proportionate Retirement Program
- Chapter 804. Domestic Relations Orders and Spousal Consent
- Chapter 808. Prohibitions on Investment in Companies that Boycott Israel
- Chapter 809. Prohibition on Investment in Financial Companies that Boycott Certain Energy Companies
- Chapter 809A. Prohibition on Investment in Certain Chinese Affiliated Entities
- Chapter 810. Miscellaneous Provisions

#### **Subtitle F. Texas County & District Retirement System**

- Chapter 841. General Provisions
- Chapter 842. Membership
- Chapter 843. Creditable Service
- Chapter 844. Benefits
- Chapter 845. Administration

This publication reflects current state law as amended during the 2025 Regular Session of the 89th Legislature. The bills amending provisions generally applicable to public retirement systems, as well as the TCDRS ACT during this session are: HB 667, HB 3474, and HB 1620. The amendments, additions, deletions, and repeals enacted during this session, included in this version, are generally effective September 1, 2025, except where otherwise noted. The information is intended to be current through its publication date. Great effort has been made to reproduce the provisions in this publication as the provisions are found in the official laws of the State of Texas. However, the main purpose of this publication is to provide a convenient source of reference. The law as published in the official laws of the State of Texas will prevail in all questions of interpretation and application.

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# THE TEXAS CONSTITUTION

## ARTICLE XVI      GENERAL PROVISIONS

### Section 67. STATE AND LOCAL RETIREMENT SYSTEMS

- (a) General Provisions.
  - (1) The legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.
  - (2) A person may not receive benefits from more than one system for the same service, but the legislature may provide by law that a person with service covered by more than one system or program is entitled to a fractional benefit from each system or program based on service rendered under each system or program calculated as to amount upon the benefit formula used in that system or program. Transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas also may be authorized by law.
  - (3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.
  - (4) General laws establishing retirement systems and optional retirement programs for public employees and officers in effect at the time of the adoption of this section remain in effect, subject to the general powers of the legislature established in this subsection.
- (b) State Retirement Systems.
  - (1) The legislature shall establish by law a Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state. Other employees may be included under the system by law.
  - (2) The legislature shall establish by law an Employees Retirement System of Texas to provide benefits for officers and employees of the state and such state-compensated officers and employees of appellate courts and judicial districts as may be included under the system by law.
  - (3) The amount contributed by a person participating in the Employees Retirement System of Texas or the Teacher Retirement System of Texas shall be established by the legislature but may not be less than six percent of

current compensation. The amount contributed by the state may not be less than six percent nor more than 10 percent of the aggregate compensation paid to individuals participating in the system. In an emergency, as determined by the governor, the legislature may appropriate such additional sums as are actuarially determined to be required to fund benefits authorized by law.

(c) Local Retirement Systems.

- (1) The legislature shall provide by law for:
  - (A) the creation by any city or county of a system of benefits for its officers and employees;
  - (B) a statewide system of benefits for the officers and employees of counties or other political subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and
  - (C) a statewide system of benefits for officers and employees of cities in which cities may voluntarily participate.
- (2) Benefits under these systems must be reasonably related to participant tenure and contributions.

(d) Judicial Retirement System.

- (1) Notwithstanding any other provision of this section, the system of retirement, disability, and survivors' benefits heretofore established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is continued in effect. Contributions required and benefits payable are to be as provided by law.
- (2) General administration of the Judicial Retirement System of Texas is by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

(e) Anticipatory Legislation. Legislation enacted in anticipation of this amendment is not void because it is anticipatory.

(f) Retirement Systems Not Belonging to a Statewide System. The board of trustees of a system or program that provides retirement and related disability and death benefits for public officers and employees and that does not participate in a statewide public retirement system shall:

- (1) administer the system or program of benefits;
- (2) hold the assets of the system or program for the exclusive purposes of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the system or program; and
- (3) select legal counsel and an actuary and adopt sound actuarial assumptions to be used by the system or program.

(g) If the legislature provides for a fire fighters' pension commissioner, the term of office for that position is four years.

# TEXAS GOVERNMENT CODE

## TITLE 8. PUBLIC RETIREMENT SYSTEMS SUBTITLES A & F

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# **TEXAS GOVERNMENT CODE**

## **TITLE 8. PUBLIC RETIREMENT SYSTEMS**

### **SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS**

#### **CHAPTER 801. STATE PENSION REVIEW BOARD**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

###### **Sec. 801.001. Definitions.**

In this chapter:

- (1) “Board” means the State Pension Review Board.
- (1-a) “Governing body of a public retirement system” has the meaning assigned by Section 802.001.
- (2) “Public retirement system” means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, and includes the optional retirement program governed by Chapter 830, but does not include:
  - (A) a program, other than the optional retirement program, for which benefits are administered by a life insurance company;
  - (B) a program providing only workers’ compensation benefits;
  - (C) a program administered by the federal government;
  - (D) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986 (26 U.S.C. Section 409);
  - (E) a plan described by Section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401);
  - (F) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403); or
  - (G) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).
- (3) “System administrator” means a person designated by the governing body of a public retirement system to supervise the day-to-day affairs of the public retirement system.
- (4) “Trustee” means a member of the governing body of a public retirement system.

## **SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

### **Sec. 801.101. Pension Review Board.**

The State Pension Review Board is an agency of the state.

### **Sec. 801.102. Composition of Board.**

- (a) The board is composed of seven members.
- (b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

### **Sec. 801.1021. Conflict Provisions.**

- (a) In this section, “Texas trade association” means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.
- (b) A person is not eligible for appointment as a member of the board if the person or the person’s spouse:
  - (1) is employed by or participates in the management of a business entity or other organization receiving funds from the board;
  - (2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the board; or
  - (3) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.
- (c) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305 because of the person’s activities for compensation on behalf of a profession related to the operation of the board.
- (d) A person may not be a member of the board and may not be a board employee employed in a “bona fide executive, administrative, or professional capacity,” as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:
  - (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of pensions; or
  - (2) the person’s spouse is an officer, manager, or paid consultant of a Texas trade association in the field of pensions.

### **Sec. 801.103. Members Appointed by Governor.**

- (a) The governor shall appoint, with the advice and consent of the senate, seven members to the board.

(b) The governor shall appoint to the board:

- (1) three persons who have experience in the fields of securities investment, pension administration, or pension law but who are not members or retirees of a public retirement system;
- (2) one person who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.);
- (3) one person who has experience in the field of governmental finance;
- (4) one person who is a contributing member of a public retirement system; and
- (5) one person who is receiving retirement benefits from a public retirement system.

## Sec. 801.106. Terms of Office.

Members of the board hold office for staggered terms of six years, with the terms of two or three members, as appropriate, expiring on January 31 of each odd-numbered year.

**Sec. 801.1061. Removal.**

- (a) It is a ground for removal from the board that a member:
  - (1) does not have at the time of taking office the qualifications required by Section 801.103;
  - (2) does not maintain during service on the board the qualifications required by Section 801.103;
  - (3) is ineligible for membership under Section 801.1021;
  - (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
  - (5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.
- (b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.
- (c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

**Sec. 801.1062. Training Program.**

- (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.
- (b) The training program must provide the person with information regarding:
  - (1) this chapter;
  - (2) the programs operated by the board;
  - (3) the role and functions of the board;
  - (4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;
  - (5) the current budget for the board;
  - (6) the results of the most recent formal audit of the board;
  - (7) the requirements of:
    - (A) the open meetings law, Chapter 551;
    - (B) the public information law, Chapter 552;
    - (C) the administrative procedure law, Chapter 2001; and
    - (D) other laws relating to public officials, including conflict of interest laws; and
  - (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.
- (c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

**Sec. 801.107. Sunset Provision.**

The State Pension Review Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2029.

**Sec. 801.108. Compensation; Expenses.**

A member of the board is entitled to reimbursement by the state for actual and necessary expenses incurred in performing the functions of the board. A member of the board who also is a member of the legislature is ineligible to receive compensation for service performed as a board member.

**Sec. 801.109. Meetings.**

The board shall meet at least three times each year and may meet at other times at the call of the presiding officer or as provided by board rule.

**Sec. 801.110. Presiding Officers.**

The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor.

**Sec. 801.111. Executive Director; Employees.**

- (a) The board shall employ an executive director to be the executive head of the board and perform its administrative duties.
- (b) The executive director may employ staff members necessary for administering the functions of the board.
- (c) The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.
- (d) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.
- (e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 614, Sec. 4(13), eff. June 19, 2009.

**Sec. 801.1111. Equal Employment Opportunity.**

- (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.
- (b) The policy statement must include:
  - (1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and
  - (2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.
- (c) A policy statement must:
  - (1) be updated annually;
  - (2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and
  - (3) be filed with the governor's office.
- (d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c). The report may be made separately or as a part of other biennial reports made to the legislature.

**Sec. 801.112. Finances and Equipment.**

- (a) The executive director may set staff salaries, within the limits of appropriated funds and subject to the approval of the board.

- (b) The board may request and use staff assistance, equipment, and office space from the Employees Retirement System of Texas.
- (c) The legislature may appropriate funds from the general revenue fund to the board for the payment of staff salaries and operating expenses of the board.

**Sec. 801.113. Fund.**

- (a) The State Pension Review Board fund is created in the state treasury. Money in the fund may be appropriated only to assist in paying staff salaries, operating and actuarial expenses of the board, and for such activities as defined by Subsection (e) of this section.
- (b) In this section:
  - (1) “Active member” means a person who is on the payroll of an employing entity included in the coverage of a public retirement system and who receives credit in the retirement system for service performed in the position for which the person is paid.
  - (2) “Annuitant” means a person who receives periodic payments from a public retirement system that are based on service that was credited in the retirement system to a person who was an active member.
- (c) The governing board of any public retirement system may vote to make an annual contribution to the State Pension Review Board not to exceed 50 cents for each active member and annuitant of the retirement system as of September 1 of the year for which the contribution is made. The contribution is payable in a lump sum.
- (d) Each public retirement system shall certify to the board and to the comptroller of public accounts the amount of the annual contribution to be made under Subsection (c) of this section. The comptroller by rule may prescribe the form and content of certifications. The comptroller shall deposit remittances received under this subsection in the State Pension Review Board fund.
- (e) The board is authorized to conduct training sessions, schools, or other educational activities for trustees and administrators of public retirement systems. The board may also furnish other appropriate services such as actuarial studies or other requirements of systems and may establish appropriate fees for these activities and services. The fees may be based on whether or not the trustees, administrators, or systems contribute to the State Pension Review Board fund under Subsection (c) of this section. The net proceeds of these fees shall be deposited in the fund.
- (f) Under the provisions of Sections 403.094 and 403.095, the dedication of the State Pension Review Board fund is reenacted, and the fund is established as a special account within the state treasury dedicated for the purposes defined by Subsections (a) and (e).

**Sec. 801.114. Qualifications and Standards of Conduct.**

The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

**SUBCHAPTER C. POWERS AND DUTIES OF BOARD**

**Sec. 801.201. Rulemaking.**

- (a) The board shall adopt rules for the conduct of its business.
- (b) For the purpose of performing its duties under Section 801.202(1) or (2), the board by rule may require clarification of information provided by a public retirement system in a report that is required by law and is required to be filed with the board. A rule adopted under this subsection may not be enforced against a public retirement system if compliance with the rule would cause the system to incur a major expense.
- (c) The board by rule shall:
  - (1) adopt a brief standard form that will assist the board in efficiently determining the actuarial soundness and current financial condition of a public retirement system; and
  - (2) require that a retirement system submitting information required for the review or study described under Section 801.202(1) or (2) include the form with the submission.

**Sec. 801.2012. Negotiated Rulemaking and Alternative Dispute Resolution Procedures.**

- (a) The board shall develop and implement a policy to encourage the use of:
  - (1) negotiated rulemaking procedures under Chapter 2008 for the adoption of board rules; and
  - (2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the board's jurisdiction.
- (b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.
- (c) The board shall:
  - (1) coordinate the implementation of the policy adopted under Subsection (a);
  - (2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and
  - (3) collect data concerning the effectiveness of those procedures.

## **Sec. 801.202. General Duties.**

The board shall:

- (1) conduct a continuing review of public retirement systems, compiling and comparing information about benefits, creditable service, financing, and administration of systems;
- (2) conduct intensive studies of potential or existing problems that threaten the actuarial soundness of or inhibit an equitable distribution of benefits in one or more public retirement systems;
- (3) provide information and technical assistance on pension planning to public retirement systems on request; and
- (4) recommend policies, practices, and legislation to public retirement systems and appropriate governmental entities.

## **Sec. 801.203. Reports to Legislature and Governor.**

- (a) The board shall present to the legislature and the governor, in November of each even-numbered year, a public report explaining the work and findings of the board during the preceding two-year period and including drafts or recommendations of any legislation relating to public retirement systems that the board finds advisable.
- (b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(67), eff. June 17, 2011.

## **Sec. 801.204. Inspection of Records.**

In performing its functions, the board may inspect the books, records, or accounts of a public retirement system during business hours of the system.

## **Sec. 801.205. Subpoena.**

- (a) The board, if reasonably necessary in the course of performing a board function, may subpoena witnesses or books, records or other documents. The presiding officer of the board shall issue, in the name of the board, only such subpoenas as a majority of the board may direct.
- (b) A peace officer shall serve a subpoena issued by the board. If the person to whom a subpoena is directed fails to comply, the board may bring suit to enforce the subpoena in a district court of the county in which the witness resides or in the county in which the books, records, or other documents are located. If the district court determines that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt.
- (c) The attorney general shall represent the board in a suit to enforce a subpoena.

## **Sec. 801.206. Public Access and Testimony.**

- (a) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's programs.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

**Sec. 801.207. Complaints.**

(a) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

**Sec. 801.208. Education and Training.**

As authorized by Section 801.113(e), the board may develop and conduct training sessions and other educational activities for trustees and administrators of public retirement systems. In exercising the board's authority under this section, the board may:

- (1) conduct live training seminars on an Internet website at intervals the board considers necessary to keep trustees and administrators reasonably informed;
- (2) maintain archives of previous seminars reasonably accessible to trustees and administrators on the Internet website; and
- (3) use technologies and innovations the board considers appropriate to educate the greatest practicable number of trustees and administrators.

**Sec. 801.209. Public Retirement System Reports and Information.**

(a) For each public retirement system, the board shall post on the board's Internet website, or on a publicly available website that is linked to the board's website, the most recent data from reports received under Sections 802.101, 802.103, 802.104, 802.105, 802.108, 802.109, 802.2015, and 802.2016.

(b) On the 60th day after the date a report or information required by this chapter or Chapter 802 is due to the board, the board shall post on the board's website a list of public retirement systems that have not submitted the required reports or information.

- (c) For each public retirement system included on the list posted under Subsection (b), the board shall notify:
  - (1) the governor and the Legislative Budget Board regarding the lack of a timely submission by the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, the Texas Emergency Services Retirement System, or the Judicial Retirement System of Texas Plan Two; or
  - (2) the governing body of the political subdivision of which members of the public retirement system are employees regarding the lack of a timely submission by a public retirement system other than a system listed in Subdivision (1).

**Sec. 801.210. Model Ethical Standards and Conflict-of-Interest Policies.**

- (a) The board shall develop and make reasonably accessible on the board's Internet website model ethical standards and model conflict-of-interest policies, including disclosure requirements, for voluntary use by a public retirement system.
- (b) A public retirement system is not required to adopt a standard or policy based on the model developed under this section.

**Sec. 801.211. Public Retirement System Educational Training Program.**

- (a) The board shall develop and administer an educational training program for trustees and system administrators.
- (b) The curriculum of the educational training program must include minimum training requirements for trustees and system administrators. The board shall develop a system to track compliance with the minimum training requirements by trustees and system administrators and shall report the level of compliance in the biennial report required by Section 801.203.
- (c) The curriculum of the educational training program under this section may include optional training classes for trustees, system administrators, and other employees of public retirement systems.
- (d) To the extent practicable, the board shall make training classes reasonably accessible to trustees and system administrators of public retirement systems on an Internet website maintained for that purpose.
- (e) The board may adopt rules and appropriate fees to administer and provide educational training programs under this section. The fees set by the board must be reasonable to pay the actual costs incurred by the board to conduct the training classes. The fees must be paid from a source considered appropriate by the governing body of the public retirement system. A public retirement system may provide its own educational training to its trustees and system administrators if the board determines that the system's training meets or exceeds the minimum training requirements established by the board. A trustee or system administrator who participates in that approved educational training fulfills the minimum training requirements established by the board.

## **CHAPTER 802. ADMINISTRATIVE REQUIREMENTS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 802.001. Definitions.**

In this chapter:

- (1) “Board” means the State Pension Review Board.
- (1-a) “Defined contribution plan” means a plan provided by the governing body of a public retirement system that provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant’s account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants that may be allocated to the participant’s account.
- (2) “Governing body of a public retirement system” means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.
- (3) “Public retirement system” means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, other than:
  - (A) a program providing only workers’ compensation benefits;
  - (B) a program administered by the federal government;
  - (C) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986 (26 U.S.C. Sections 408, 409);
  - (D) a plan described by Section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401);
  - (E) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403);
  - (F) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457); or
  - (G)(i) in Sections 802.104 and 802.105 of this chapter, a program for which benefits are administered by a life insurance company; and
    - (ii) in the rest of this chapter, a program for which the only funding agency is a life insurance company.
- (4) “System administrator” means a person designated by the governing body of a public retirement system to supervise the day-to-day affairs of the public retirement system.

## Sec. 802.002. Exemptions.

- (a) Except as provided by Subsection (b), the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and the Judicial Retirement System of Texas Plan Two are exempt from Sections 802.101(a), 802.101(b), 802.101(d), 802.102, 802.103(a), 802.103(b), 802.2015, 802.2016, 802.202, 802.203, 802.204, 802.205, 802.206, and 802.207. The Judicial Retirement System of Texas Plan One is exempt from all of Subchapters B and C except Sections 802.104 and 802.105. The optional retirement program governed by Chapter 830 is exempt from all of Subchapters B and C except Section 802.106.
- (b) If a public retirement system or program that is exempt under Subsection (a) is required by law to make an actuarial valuation of the assets of the system or program and publish actuarial information about the system or program, the actuary making the valuation and the governing body publishing the information must include the information required by Section 802.101(b).
- (c) Notwithstanding any other law, a defined contribution plan is exempt from Sections 802.101, 802.1012, 802.1014, 802.103, 802.104, and 802.202(d). This subsection may not be construed to exempt any plan from Section 802.105 or 802.106(h).
- (d) Notwithstanding any other law, a retirement system that is organized under the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes) for a fire department consisting exclusively of volunteers as defined by that Act is exempt from Sections 802.101, 802.1012, 802.1014, 802.102, 802.103, 802.104, and 802.202(d). This subsection may not be construed to exempt any plan from Section 802.105 or 802.106(h).

**Sec. 802.003. Writ of Mandamus.**

- (a) Except as provided by Subsection (b), if the governing body of a public retirement system fails or refuses to comply with a requirement of this chapter that applies to it, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the applicable requirement.
- (b) If the governing body of the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, or the Texas County and District Retirement System fails or refuses to comply with a requirement of this chapter that applies to it, any resident of the state may file a pleading in a district court in Travis County to compel the governing body to comply with the applicable requirement.
- (c) If the prevailing party in an action under this section is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.
- (d) The State Pension Review Board may file an appropriate pleading, in the manner provided by this section for filing by an individual, for the purpose of enforcing a requirement of Subchapter B or C, other than a requirement of Section 802.101(a), 802.101(d), 802.102, 802.103(a), or 802.104.

## **SUBCHAPTER B. STUDIES AND REPORTS**

## Sec. 802.101. Actuarial Valuation.

- (a) The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate of anticipated experience under the program. The valuation must include a recommended contribution rate needed for the system to achieve and maintain an amortization period that does not exceed 30 years.
- (b) On the basis of the valuation, the actuary shall make recommendations to the governing body of the public retirement system to ensure the actuarial soundness of the system. The actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.
- (c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.
- (d) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

## Sec. 802.1012. Audits of Actuarial Valuations, Studies, and Reports.

- (a) In this section, “governmental entity” means a unit of government that is the employer of active members of a public retirement system.
- (b) Except as provided by Subsection (k), this section applies only to a public retirement system with total assets the book value of which, as of the last day of the preceding fiscal year, is at least \$100 million.
- (c) Every five years, the actuarial valuations, studies, and reports of a public retirement system most recently prepared for the retirement system as required by Section 802.101 or other law under this title or under Title 109, Revised Statutes, must be audited by an independent actuary who:
  - (1) is engaged for the purpose of the audit by the governmental entity; and
  - (2) has the credentials required for an actuary under Section 802.101(d).
- (d) Before beginning an audit under this section, the governmental entity and the independent actuary must agree in writing to maintain the confidentiality of any nonpublic information provided by the public retirement system for the audit.
- (e) Before beginning an audit under this section, the independent actuary must meet with the manager of the pension fund for the public retirement system to discuss the appropriate assumptions to use in conducting the audit.

- (f) Not later than the 30th day after completing the audit under Subsection (c), the independent actuary shall submit to the public retirement system for purposes of discussion and clarification a preliminary draft of the audit report that is substantially complete.
- (g) The independent actuary shall:
  - (1) discuss the preliminary draft of the audit report with the governing body of the public retirement system; and
  - (2) request in writing that the retirement system, on or before the 30th day after the date of receiving the preliminary draft, submit to the independent actuary any response that the retirement system wants to accompany the final audit report.
- (h) The independent actuary shall submit to the governmental entity the final audit report that includes the audit results and any response received from the public retirement system:
  - (1) not earlier than the 31st day after the date on which the preliminary draft is submitted to the retirement system; and
  - (2) not later than the 60th day after the date on which the preliminary draft is submitted to the retirement system.
- (i) At the first regularly scheduled open meeting after receiving the final audit report, the governing body of the governmental entity shall:
  - (1) include on the posted agenda for the meeting the presentation of the audit results;
  - (2) present the final audit report and any response from the public retirement system; and
  - (3) provide printed copies of the final audit report and the response from the public retirement system for individuals attending the meeting.
- (j) The governmental entity shall:
  - (1) maintain a copy of the final audit report at its main office for public inspection;
  - (2) submit a copy of the final audit report to the public retirement system and the State Pension Review Board not later than the 30th day after the date the final audit report is received by the governmental entity; and
  - (3) pay all costs associated with conducting the audit and preparing and distributing the report under this section.
- (k) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

**Sec. 802.1014.                   Actuarial Experience Study.**

- (a) In this section, “actuarial experience study” means a study in which actuarial assumptions are reviewed in light of relevant experience factors, important trends, and economic projections with the purpose of determining whether actuarial assumptions require adjustment.
- (b) Except as provided by Subsection (c), a public retirement system that conducts an actuarial experience study shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study’s adoption.
- (b-1) Except as provided by Subsection (c), a public retirement system that has assets of at least \$100 million shall conduct once every five years an actuarial experience study and shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study’s adoption.
- (c) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

**Sec. 802.102.                   Audit.**

The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant in accordance with generally accepted auditing standards. A general audit of a governmental entity, as defined by Section 802.1012, does not satisfy the requirement of this section.

**Sec. 802.1024.                 Correction of Errors.**

- (a) Except as provided by Subsection (b), if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the retirement system may recover the overpayment in any manner that would be permitted for the collection of any other debt.
- (a-1) On discovery of an error described by Subsection (a), the public retirement system shall as soon as practicable, but not later than the 90th day after the date of discovery, give written notice of the error to the person receiving an incorrect amount of money. The notice must include:
  - (1) the amount of the correction in overpayment or underpayment;
  - (2) how the amount of the correction was calculated;
  - (3) a brief explanation of the reason for the correction;
  - (4) a statement that the notice recipient may file a written complaint with the retirement system if the recipient does not agree with the correction;
  - (5) instructions for filing a written complaint; and
  - (6) a payment plan option if no future payments are due.

(a-2) Except as provided by this subsection and Section 802.1025, the public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits under Subsection (a) not later than the 90th day after the date the notice required by Subsection (a-1) is delivered by certified mail, return receipt requested. If the system does not receive a signed receipt evidencing delivery of the notice on or before the 30th day after the date the notice is mailed, the system shall mail the notice a second time by certified mail, return receipt requested. Except as provided by Section 802.1025, not later than the 90th day after the date the second notice is mailed, the system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits.

(b) Except as provided by Subsection (c), a public retirement system:

- (1) may correct the overpayment of benefits to a person entitled to receive payments from the system by the method described by Subsection (a) only for an overpayment made during the three years preceding the date the system discovers or discovered the overpayment;
- (2) may not recover from the recipient any overpayment made more than three years before the discovery of the overpayment; and
- (3) may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the time prescribed by Subsection (a-2) or Section 802.1025.

(c) Subsection (b) does not apply to an overpayment a reasonable person should know the person is not entitled to receive.

### **Sec. 802.1025. Complaint Procedure.**

- (a) Not later than the 20th day after the date of receiving notice under Section 802.1024(a-1) or, if applicable, the second notice under Section 802.1024(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.
- (b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:
  - (1) how the modified correction was calculated;
  - (2) a brief explanation of the reason for the modification; and
  - (3) a payment plan option if no future payments are due.
- (c) Subject to Subsection (d), if a complaint is filed under this section, the retirement system may not adjust future payments or recover an overpayment under Section 802.1024 until:
  - (1) the 20th day after the date the notice recipient receives the response under Subsection (b), if the recipient does not file an administrative appeal by that date; or

- (2) the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the date described by Subdivision (1).
- (d) If the retirement system has begun the adjustment of future payments or the recovery of an overpayment under Section 802.1024(a-2), the system shall discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system. The system may not recommence the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as applicable. If a complaint is resolved in favor of the person filing the complaint, not later than the 30th day after the date of the resolution, the system shall pay the person the appropriate amount.
- (e) A person whose complaint is not resolved under this section must exhaust all administrative procedures provided by the retirement system. Not later than the 30th day after the date a final administrative decision is issued by the retirement system, a person aggrieved by the decision may appeal the decision to an appropriate district court.

**Sec. 802.103.                   Annual Financial Report.**

- (a) The governing body of a public retirement system shall publish an annual financial report showing the financial condition of the system as of the last day of the fiscal year covered in the report. The report must include:
  - (1) the financial statements and schedules examined in the most recent audit performed as required by Section 802.102;
  - (2) a statement of opinion by the certified public accountant as to whether or not the financial statements and schedules are presented fairly and in accordance with generally accepted accounting principles;
  - (3) a listing, by asset class, of all direct and indirect commissions and fees paid by the retirement system during the system's previous fiscal year for the sale, purchase, or management of system assets; and
  - (4) the names of investment managers engaged by the retirement system.
- (b) The governing body of a public retirement system shall, before the 211th day after the last day of the fiscal year under which the system operates, file with the State Pension Review Board a copy of each annual financial report it makes as required by law.
- (c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1152, Sec. 17, eff. September 1, 2013.
- (d) A general audit of a governmental entity, as defined by Section 802.1012, does not satisfy the requirement of this section.
- (e) The board may adopt rules necessary to implement this section.

**Sec. 802.104.                   Report of Members and Retirees.**

Each public retirement system annually shall, before the 211th day after the last day of the fiscal year under which the system operates, submit to the board a report containing the number of members and number of retirees of the system as of the last day of the immediately preceding fiscal year.

**Sec. 802.105. Registration.**

- (a) Each public retirement system shall, before the 91st day after the date of its creation, register with the State Pension Review Board.
- (b) A registration form submitted to the board must include:
  - (1) the name, mailing address, and telephone number of the public retirement system;
  - (2) the names and occupations of the chairman and other members of its governing body;
  - (3) a citation of the law under which the system was created;
  - (4) the beginning and ending dates of its fiscal year; and
  - (5) the name of the administrator of the system and the person's business mailing address and telephone number if different from those of the retirement system.
- (c) A public retirement system shall notify the board of changes in information required under Subsection (b) before the 31st day after the day the change occurs.

## Sec. 802.106. Information to Member or Annuitant.

- (a) When a person becomes a member of a public retirement system, the system shall provide the person:
  - (1) a summary of the benefits from the retirement system available to or on behalf of a person who retires or dies while a member or retiree of the system;
  - (2) a summary of procedures for claiming or choosing the benefits available from the retirement system; and
  - (3) a summary of the provisions for employer and employee contributions, withdrawal of contributions, and eligibility for benefits, including any right to terminate employment and retain eligibility.
- (b) A public retirement system shall distribute to each active member and retiree a summary of any significant change that is made in statutes or ordinances governing the retirement system and that affects contributions, benefits, or eligibility. A distribution must be made before the 271st day after the day the change is adopted.
- (c) A public retirement system annually shall provide to each active member a statement of the amounts of the member's accumulated contributions and total accumulated service credit on which benefits may be based and to each annuitant a statement of the amount of payments made to the annuitant by the system during the preceding 12 months.
- (d) A public retirement system shall provide to each active member and annuitant a summary of the financial condition of the retirement system, if the actuary of the system determines, based on a computation of advanced funding of actuarial costs, that the financing arrangement of the system is inadequate.

The actuarial determination must be disclosed to members and annuitants at the time annual statements are next provided under Subsection (c) after the determination is made. An actuary who makes a determination under this subsection must have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

- (e) A member not currently contributing to a particular public retirement system is entitled on written request to receive from that system a copy of any document required by this section to be furnished to a member who is actively contributing.
- (f) The governing body of a public retirement system composed of participating subdivisions or municipalities may provide one copy of any document it prepares under this section to each affected participating subdivision or municipality. Each participating subdivision or municipality shall distribute the information contained in the document to its employee members and annuitants, as applicable.
- (g) Information required by this section may be contained, at the discretion of the public retirement system providing the information, in one or more separate documents. The information must be stated to the greatest extent practicable in terms understandable to a typical member of the public retirement system.
- (h) A public retirement system shall submit to the board copies of the summarized information required by Subsections (a) and (b) before the 31st day after the date of publication or the date a change is adopted, as appropriate.

**Sec. 802.107. General Provisions Relating to Reports and Contact Information.**

- (a) A public retirement system shall maintain for public review at its main office and at such other locations as the retirement system considers appropriate copies of the most recent edition of each type of report or other information required by this chapter to be submitted to the State Pension Review Board.
- (b) Information required by this chapter to be submitted to the State Pension Review Board may be contained in one or more documents but must be submitted within the period provided by the provision requiring the information.
- (c) A public retirement system shall post on a publicly available Internet website:
  - (1) the name, business address, and business telephone number of a system administrator of the public retirement system; and
  - (2) a copy of the most recent edition of each report and other written information that is required by this chapter or Chapter 801 to be submitted to the board.
- (d) A public retirement system that maintains a website or for which a website is maintained shall prominently post a link on that website to the information required by Subsection (c). All other public retirement systems shall:
  - (1) prominently post the information required by Subsection (c) on a website that is maintained by the governing body of the political subdivision of which members of the public retirement system are officers or employees; or

- (2) post the information required by Subsection (c) on a publicly available website that is maintained by a state agency.
- (c) A report or other information posted under Subsection (c) must remain posted until replaced with a more recently submitted edition of the report or information.

**Sec. 802.108. Report of Investment Returns and Assumptions.**

- (a) A public retirement system shall, before the 211th day after the last day of its fiscal year, submit to the board an investment returns and actuarial assumptions report that includes:
  - (1) gross investment returns and net investment returns for each of the most recent 10 fiscal years;
  - (2) the rolling gross and rolling net investment returns for the most recent 1-year, 3-year, and 10-year periods;
  - (3) the rolling gross and rolling net investment return for the most recent 30-year period or the gross and net investment return since inception of the system, whichever period is shorter;
  - (4) the assumed rate of return used in the most recent actuarial valuation; and
  - (5) the assumed rate of return used in each of the most recent 10 actuarial valuations.
- (b) For purposes of this section, “net investment return” means the gross investment return minus investment expenses. The net investment return may be calculated as the money-weighted rate of return as required by generally accepted accounting principles. The period basis for each report of investment returns under this section must be the fiscal year of the public retirement system submitting the report.
- (c) If any information required to be reported by a public retirement system under Subsection (a) is unavailable, the governing body of the public retirement system shall, before the 211th day after the last day of the public retirement system’s fiscal year, submit to the board a letter certifying that the information is unavailable, providing a reason for the unavailability of the information, and agreeing to timely submit the information to the board if it becomes available.

**Sec. 802.1085. Biennial Report on Investments Returns of Certain Public Retirement Systems.**

- (a) This section applies only to the:
  - (1) Employees Retirement System of Texas; and
  - (2) Teacher Retirement System of Texas.
- (b) Not later than December 31 of each even-numbered year, the governing body of a public retirement system shall submit to the governor, the lieutenant governor, and each member of the legislature a report that details and compares the assumed rate of return and the annualized actual time-weighted rate of return achieved by the system for the most recent 1-year, 5-year, 10-year, and 20-year fiscal periods. The report must include:

- (1) for each period, an estimate of what the market value of the invested assets of the fund would have been as of the most recent fiscal year end had the system achieved the applicable assumed rate of return; and
- (2) a comparison of each estimate described by Subdivision (1) and the actual market value of the invested assets in the fund as of the most recent fiscal year end.
- (c) The report required by this section may be combined with any other report required by law.

**Sec. 802.109. Investment Practices and Performance Reports.**

- (a) Except as provided by Subsection (e) and subject to Subsections (c) and (k), a public retirement system shall select an independent firm with substantial experience in evaluating institutional investment practices and performance to evaluate the appropriateness, adequacy, and effectiveness of the retirement system's investment practices and performance and to make recommendations for improving the retirement system's investment policies, procedures, and practices. Each evaluation must include:
  - (1) a summary of the independent firm's experience in evaluating institutional investment practices and performance and a statement that the firm's experience meets the experience required by this subsection;
  - (2) a statement indicating the nature of any existing relationship between the independent firm and the public retirement system and confirming that the firm and any related entity are not involved in directly or indirectly managing the investments of the system;
  - (3) a list of the types of remuneration received by the independent firm from sources other than the public retirement system for services provided to the system;
  - (4) a statement identifying any potential conflict of interest or any appearance of a conflict of interest that could impact the analysis included in the evaluation due to an existing relationship between the independent firm and:
    - (A) the public retirement system; or
    - (B) any current or former member of the governing body of the system; and
  - (5) an explanation of the firm's determination regarding whether to include a recommendation for each of the following evaluated matters:
    - (A) an analysis of any investment policy or strategic investment plan adopted by the retirement system and the retirement system's compliance with that policy or plan;
    - (B) a detailed review of the retirement system's investment asset allocation, including:
      - (i) the process for determining target allocations;
      - (ii) the expected risk and expected rate of return, categorized by asset class;

- (iii) the appropriateness of selection and valuation methodologies of alternative and illiquid assets; and
  - (iv) future cash flow and liquidity needs;
- (C) a review of the appropriateness of investment fees and commissions paid by the retirement system;
- (D) a review of the retirement system's governance processes related to investment activities, including investment decision-making processes, delegation of investment authority, and board investment expertise and education; and
- (E) a review of the retirement system's investment manager selection and monitoring process.

(b) The governing body of a public retirement system may determine additional specific areas to be evaluated under Subsection (a) and may select particular asset classes on which to focus, but the first evaluation must be a comprehensive analysis of the retirement system's investment program that covers all asset classes.

(c) In selecting an independent firm to conduct the evaluation described by Subsection (a), a public retirement system:

- (1) subject to Subdivision (2), may select a firm regardless of whether the firm has an existing relationship with the retirement system; and
- (2) may not select a firm that directly or indirectly manages investments of the retirement system.

(d) In accordance with a schedule of deadlines prescribed by the board and except as provided by Subsection (e), a public retirement system shall conduct an evaluation under Subsection (a):

- (1) once every three years, if the total assets of the retirement system as of the date of the preceding evaluation were at least \$100 million; or
- (2) subject to Subsection (d-1), once every six years, if the total assets of the retirement system as of the date of the preceding evaluation were at least \$30 million and less than \$100 million.

(d-1) If a public retirement system is conducting evaluations every six years as required by Subsection (d)(2) and the system's total pension liability increases to at least \$100 million during a fiscal year, the system shall complete the next evaluation under Subsection (a) by the next appropriate deadline, as determined by the board, under the evaluation schedule.

(d-2) Subject to Subsection (d-1) and except as provided by Subsection (e), a public retirement system subject to an evaluation requirement under Subsection (d)(1) or (2) remains subject to that same requirement unless both the total assets and the total pension liability of the system decrease to an amount that is below the minimum amount prescribed by the applicable requirement.

(e) A public retirement system is not required to conduct an evaluation under Subsection (a) if the total assets of the retirement system were less than \$30 million as of the last day of the fiscal year immediately preceding the next evaluation deadline under the evaluation schedule.

- (e-1) An independent firm that completes an evaluation described by Subsection (a) shall:
  - (1) submit to the public retirement system for purposes of discussion and clarification a substantially completed draft of the evaluation report; and
  - (2) request in writing that the system submit to the firm:
    - (A) a description of any action taken or expected to be taken in response to a recommendation made in the evaluation; and
    - (B) any written response of the system that the system wants to accompany the final evaluation report.
- (f) The independent firm shall file the final evaluation report, including the evaluation results and any response received from the public retirement system, with the governing body of the system.
- (g) The governing body of a public retirement system that receives a report of an evaluation under this section shall submit the report to the board.
- (h) A governmental entity that is the employer of active members of a public retirement system evaluated under Subsection (a) may pay all or part of the costs of the evaluation. The public retirement system shall pay any remaining unpaid costs of the evaluation.
- (i) The board shall submit an investment performance report to the governor, the lieutenant governor, the speaker of the house of representatives, and the legislative committees having principal jurisdiction over legislation governing public retirement systems in the biennial report required by Section 801.203. The report must compile and summarize the information received under this section by the board during the preceding two fiscal years.
- (j) In this section:
  - (1) “Evaluation schedule” means the schedule of deadlines prescribed by the board under Subsection (d).
  - (2) “Total pension liability” means the portion of the present value of projected retirement benefit payments to be provided through the retirement system to active and inactive members that is attributable to those members’ past periods of service, in compliance with Statement No. 68 of the Governmental Accounting Standards Board.
- (k) The following reports may be used by the applicable public retirement systems to satisfy the requirement for a report of an evaluation under this section:
  - (1) an investment report under Section 10A, Article 6243g-4, Revised Statutes;
  - (2) an investment report under Section 2D, Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon’s Texas Civil Statutes); and
  - (3) a report on a review conducted on the retirement system’s investments under Section 2B, Article 6243e.2(1), Revised Statutes.
- (l) The board may adopt rules necessary to implement this section.

## **SUBCHAPTER C. ADMINISTRATION OF ASSETS**

### **Sec. 802.201. Assets in Trust.**

The governing body of a public retirement system shall hold or cause to be held in trust the assets appropriated or dedicated to the system, for the benefit of the members and retirees of the system and their beneficiaries.

### **Sec. 802.2011. Funding Policy.**

- (a) In this section:
  - (1) “Funded ratio” means the ratio of a public retirement system’s actuarial value of assets divided by the system’s actuarial accrued liability.
  - (2) “Governmental entity” has the meaning assigned by Section 802.1012.
  - (3) “Statewide retirement system” means:
    - (A) the Employees Retirement System of Texas, including a retirement system administered by that system;
    - (B) the Teacher Retirement System of Texas;
    - (C) the Texas County and District Retirement System;
    - (D) the Texas Emergency Services Retirement System; and
    - (E) the Texas Municipal Retirement System.
- (b) The governing body of a public retirement system and, if the system is not a statewide retirement system, its associated governmental entity shall:
  - (1) jointly, if applicable:
    - (A) develop and adopt a written funding policy that details a plan for achieving a funded ratio of the system that is equal to or greater than 100 percent; and
    - (B) timely revise the policy to reflect any significant changes to the policy, including changes required as a result of formulating and implementing a funding soundness restoration plan, including a revised funding soundness restoration plan, under Section 802.2015 or 802.2016;
  - (2) maintain for public review at its main office a copy of the policy;
  - (3) file a copy of the policy and each change to the policy with the board not later than the 31st day after the date the policy or change, as applicable, is adopted; and
  - (4) post a copy of the most recent edition of the policy on a publicly available Internet website in accordance with Section 802.107(c)(2).

- (c) For purposes of Subsection (b)(1)(B), the written funding policy must outline any automatic contribution or benefit changes designed to prevent having to formulate a revised funding soundness restoration plan under Section 802.2015(d), including any automatic risk-sharing mechanisms that have been implemented, the adoption of an actuarially determined contribution structure, and other adjustable benefit or contribution mechanisms.
- (d) The board may adopt rules necessary to implement this section.

**Sec. 802.2015.                   Funding Soundness Restoration Plan.**

- (a) In this section:
  - (1) “Funded ratio” has the meaning assigned by Section 802.2011.
  - (2) “Governmental entity” has the meaning assigned by Section 802.1012.
- (b) This section applies to a public retirement system and its associated governmental entity other than a public retirement system and its associated governmental entity subject to Section 802.2016.
- (c) A public retirement system shall notify the associated governmental entity in writing if the system receives an actuarial valuation indicating that the system’s actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 30 years. The governing body of the public retirement system and the governing body of the associated governmental entity shall formulate a funding soundness restoration plan under Subsection (e) if the system’s actuarial valuation shows that the system’s expected funding period:
  - (1) has exceeded 30 years for three consecutive annual actuarial valuations, or two consecutive annual actuarial valuations in the case of a system that conducts the valuations every two or three years; or
  - (2) effective September 1, 2025:
    - (A) exceeds 40 years; or
    - (B) exceeds 30 years and the funded ratio of the system is less than 65 percent.
- (d) Except as provided by Subsection (d-1), the governing body of a public retirement system and the governing body of the associated governmental entity that have an existing funding soundness restoration plan under Subsection (e) shall formulate a revised funding soundness restoration plan under Subsection (e-1) if the system becomes subject to Subsection (c) before the 10th anniversary of the date prescribed by Subsection (e)(2)(A) or (B), as applicable.
  - (d-1) The governing body of a public retirement system and the governing body of the associated governmental entity are not subject to Subsection (d) if:
    - (1) the system’s actuarial valuation shows that the system’s expected funding period exceeds 30 years but is less than or equal to 40 years; and
    - (2) the system is:
      - (A) adhering to an existing funding soundness restoration plan that was formulated before September 1, 2025; or

- (B) implementing a contribution rate structure that uses or will ultimately use an actuarially determined contribution structure and the system's actuarial valuation shows that the system is expected to achieve full funding.
- (e) A funding soundness restoration plan formulated under this section must:
  - (1) be developed by the public retirement system and the associated governmental entity in accordance with the system's governing statute;
  - (2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 30 years not later than the later of:
    - (A) the second anniversary of the valuation date stated in the actuarial valuation that required formulation of the plan under this subsection; or
    - (B) September 1, 2025;
  - (3) be based on actions agreed to be taken by the system and entity that were approved by the respective governing bodies of both the system and the entity before the plan was adopted; and
  - (4) be adopted at open meetings of the respective governing bodies of the system and the entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.
- (e-1) A revised funding soundness restoration plan formulated under this section must:
  - (1) be developed by the public retirement system and the associated governmental entity in accordance with the system's governing statute;
  - (2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 25 years not later than the second anniversary of the valuation date stated in the actuarial valuation that required formulation of a revised plan under this subsection;
  - (3) be based on actions, including automatic risk-sharing mechanisms, an actuarially determined contribution structure, and other adjustable benefit or contribution mechanisms, agreed to be taken by the system and entity that were approved by the respective governing bodies of both the system and the entity before the plan was adopted; and
  - (4) be adopted at open meetings by the respective governing bodies of the system and the entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.
- (e-2) Not later than the 90th day after the date on which the plan is adopted by both the governing body of the system and the governing body of the associated governmental entity, a system may submit to the board an actuarial valuation required under Section 802.101(a) or other law that shows the combined impact of all changes to a funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1). If a system does not provide an actuarial valuation to the board in accordance with this subsection, the board may request that the system provide a separate

analysis of the combined impact of all changes to a funding soundness restoration plan adopted under this section not later than the 90th day after the date the board makes the request. An actuarial valuation or separate analysis conducted under this subsection must include:

- (1) an actuarial projection of the public retirement system's expected future assets and liabilities between the valuation date described by Subsection (e)(2)(A) or (e-1)(2), as applicable, and the date at which the plan is expected to achieve full funding; and
- (2) a description of all assumptions and methods used to perform the analysis which must comply with actuarial standards of practice.
- (e-3) The associated governmental entity may pay all or part of the costs of the separate analysis required under Subsection (e-2). The public retirement system shall pay any costs for the analysis not paid by the associated governmental entity.
- (e-4) A funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1), may not include actions that are subject to future approval by the governing bodies of either the public retirement system or the associated governmental entity.
- (f) A public retirement system and the associated governmental entity required to formulate a funding soundness restoration plan under this section, including a revised funding soundness restoration plan, shall provide a report to the board on progress made by the system and entity in formulating the plan, including a draft of any plan and a description of any changes under consideration for inclusion in a plan, not later than the first anniversary of the date of the actuarial valuation that required formulation of the plan under Subsection (e) or (e-1) and each subsequent six-month period until the plan is submitted to the board under this section.
- (g) Each public retirement system that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan is adopted by both the governing body of the system and the governing body of the associated governmental entity or the date the change is agreed to.
- (h) The board may adopt rules necessary to implement this section.

**Sec. 802.2016. Funding Soundness Restoration Plan for Certain Public Retirement Systems.**

- (a) In this section:
  - (1) “Funded ratio” has the meaning assigned by Section 802.2011.
  - (2) “Governmental entity” has the meaning assigned by Section 802.1012.
- (b) This section applies only to a public retirement system that is governed by Article 6243i, Revised Statutes, and its associated governmental entity.
- (c) A public retirement system shall notify the associated governmental entity in writing if the system receives an actuarial valuation indicating that the system’s actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 30 years. The governing body of the associated governmental entity shall

formulate a funding soundness restoration plan under Subsection (e) if the system's actuarial valuation shows that the system's expected funding period:

- (1) has exceeded 30 years for three consecutive annual actuarial valuations, or two consecutive annual actuarial valuations in the case of a system that conducts the valuations every two or three years; or
- (2) effective September 1, 2025:
  - (A) exceeds 40 years; or
  - (B) exceeds 30 years and the funded ratio of the system is less than 65 percent.

(d) Except as provided by Subsection (d-1), the governing body of an associated governmental entity that has an existing funding soundness restoration plan under Subsection (e) shall formulate a revised funding soundness restoration plan under Subsection (e-1) if the system becomes subject to Subsection (c) before the 10th anniversary of the date prescribed by Subsection (e)(2)(A) or (B), as applicable.

(d-1) The associated governmental entity is not subject to Subsection (d) if:

- (1) the system's actuarial valuation shows that the system's expected funding period exceeds 30 years but is less than or equal to 40 years; and
- (2) the system is:
  - (A) adhering to an existing funding soundness restoration plan that was formulated before September 1, 2025; or
  - (B) implementing a contribution rate structure that uses or will ultimately use an actuarially determined contribution structure and the system's actuarial valuation shows that the system is expected to achieve full funding.

(e) A funding soundness restoration plan formulated under this section must:

- (1) be developed in accordance with the public retirement system's governing statute by the associated governmental entity;
- (2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 30 years not later than the later of:
  - (A) the second anniversary of the date valuation date stated in the actuarial valuation that required formulation of the plan under this subsection; or
  - (B) September 1, 2025;
- (3) be based on actions, including automatic risk-sharing mechanisms, an actuarially determined contribution structure, and other adjustable benefit or contribution mechanisms, agreed to be taken by the system and entity that were approved by the governing body of the associated governmental entity before the plan was adopted; and
- (4) be adopted at an open meeting of the governing body of the associated governmental entity not later than the second anniversary of the date the

actuarial valuation that required application of this subsection was adopted by the governing body of the system.

- (e-1) A revised funding soundness restoration plan formulated under this section must:
  - (1) be developed by the associated governmental entity in accordance with the system's governing statute;
  - (2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 25 years not later than the second anniversary of the valuation date stated in the actuarial valuation that required formulation of a revised plan under this subsection;
  - (3) be based on actions agreed to be taken by the system and entity that were approved by the governing body of the associated governmental entity before the plan was adopted; and
  - (4) be adopted at an open meeting of the governing body of the associated governmental entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.
- (e-2) Not later than the 90th day after the date on which the plan is adopted by the governing body of the associated governmental entity, a system may submit to the board an actuarial valuation required under Section 802.101(a) or other law that shows the combined impact of all changes to a funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1). If a system does not provide an actuarial valuation to the board in accordance with this subsection, the board may request that the system provide a separate analysis of the combined impact of all changes to a funding soundness restoration plan adopted under this section not later than the 90th day after the date the board makes the request. An actuarial valuation or the separate analysis conducted under this subsection must include:
  - (1) an actuarial projection of the public retirement system's expected future assets and liabilities between the valuation date described by Subsection (e)(2)(A) or (e-1)(2), as applicable, and the date at which the plan is expected to achieve full funding; and
  - (2) a description of all assumptions and methods used to perform the analysis which must comply with actuarial standards of practice.
- (e-3) The associated governmental entity may pay all or part of the costs of the separate analysis required under Subsection (e-2). The public retirement system shall pay any costs for the analysis not paid by the associated governmental entity.
- (e-4) A funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1), may not include actions that are subject to future approval by the governing body of the associated governmental entity.
- (f) An associated governmental entity required to formulate a funding soundness restoration plan under this section, including a revised funding soundness restoration plan, shall provide a report to the board on progress made by the associated governmental entity in formulating the plan, including a draft of any plan and a description of any changes under consideration for inclusion in a plan, not

later than the first anniversary of the date of the actuarial valuation that required formulation of the plan under Subsection (e) or (e-1) and each subsequent six-month period until the plan is submitted to the board under this section.

- (g) An associated governmental entity that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan is adopted by the governing body of the associated governmental entity or the date the change is formulated.
- (h) The board may adopt rules necessary to implement this section.

**Sec. 802.202. Investment of Surplus.**

- (a) The governing body of a public retirement system is responsible for the management and administration of the funds of the system.
- (b) When, in the opinion of the governing body, a surplus of funds exists in accounts of a public retirement system over the amount needed to make payments as they become due within the next year, the governing body shall deposit all or as much of the surplus as the governing body considers prudent in a reserve fund for investment
- (c) The governing body shall determine the procedure it finds most efficient and beneficial for the management of the reserve fund of the system. The governing body may directly manage the investments of the system or may choose and contract for professional investment management services.
- (d) The governing body of a public retirement system shall:
  - (1) develop and adopt a written investment policy;
  - (2) maintain for public review at its main office a copy of the policy;
  - (3) file a copy of the policy with the State Pension Review Board not later than the 90th day after the date the policy is adopted; and
  - (4) file a copy of each change to the policy with the State Pension Review Board not later than the 90th day after the change is adopted.

**Sec. 802.203. Fiduciary Responsibility.**

- (a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:
  - (1) for the exclusive purposes of:
    - (A) providing benefits to participants and their beneficiaries; and
    - (B) defraying reasonable expenses of administering the system;
  - (2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;

- (3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- (4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

- (b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the interest of the participants and beneficiaries of the public retirement system.
- (c) A trustee is not liable for the acts or omissions of an investment manager appointed under Section 802.204, nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.
- (d) An investment manager appointed under Section 802.204 shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.
- (e) The investment standards provided by Subsection (a) and the policies, requirements, and restrictions adopted under Section 802.204(c) are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

#### **Sec. 802.204. Investment Manager.**

- (a) The governing body of a public retirement system may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.
- (b) To be eligible for appointment under this section, an investment manager must be:
  - (1) registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.);
  - (2) a bank as defined by that Act; or
  - (3) an insurance company qualified to perform investment services under the laws of more than one state.
- (c) In a contract made under this section, the governing body shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the governing body adopts for investments of the system.

(d) A political subdivision of which members of the public retirement system are officers or employees may pay all or part of the cost of professional investment management services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

**Sec. 802.205. Investment Custody Account.**

- (a) If the governing body of a public retirement system contracts for professional investment management services, it also shall enter into an investment custody account agreement designating a bank, depository trust company, or brokerage firm to serve as custodian for all assets allocated to or generated under the contract.
- (b) Under a custody account agreement, the governing body of a public retirement system shall require the designated custodian to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.
- (c) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of custodial services under a custody account agreement under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.
- (d) If the governing body enters into a contract under Subsection (a) with a brokerage firm, the firm must:
  - (1) be a broker-dealer registered with the Securities and Exchange Commission;
  - (2) be a member of a national securities exchange;
  - (3) be a member of the Securities Investor Protection Corporation;
  - (4) be registered with the State Securities Board; and
  - (5) maintain net regulatory capital of at least \$200 million.
- (e) A brokerage firm contracted with for custodial services under this section may not have discretionary authority over the retirement system's assets in the firm's custody.
- (f) A brokerage firm that provides custodial services under Subsection (a) must provide insurance against errors, omissions, mysterious disappearance, or fraud in an amount equal to the amount of the assets the firm holds in custody.
- (g) A brokerage firm that provides consulting advice, custody of assets, or other services to a public retirement system under this chapter shall discharge its duties solely in the interest of the public retirement system in accordance with Section 802.203.

**Sec. 802.206. Evaluation of Investment Services.**

- (a) The governing body of a public retirement system may at any time and shall at frequent intervals monitor the investments made by any investment manager for the system. The governing body may contract for professional evaluation services to fulfill this requirement.

- (b) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of professional evaluation services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

**Sec. 802.207. Custody and Use of Funds.**

- (a) An investment manager other than a bank having a contract with a public retirement system under Section 802.204 may not be a custodian of any assets of the reserve fund of the system.
- (b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the system and for other uses authorized by this subchapter and approved by the governing body.

**SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION**

**Sec. 802.301. Actuarial Impact Statements.**

- (a) Except as provided by Subsection (g), a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is required to have attached to it an actuarial impact statement as provided by this section.
- (b) An actuarial impact statement required by this section must:
  - (1) summarize the actuarial analysis prepared under Section 802.302 for the bill or resolution accompanying the actuarial impact statement;
  - (2) identify and comment on the reasonableness of each actuarial assumption used in the actuarial analysis under Subdivision (1); and
  - (3) include other information determined necessary by board rule.
- (c) The board is primarily responsible for preparing a required actuarial impact statement under this section.
- (d) A required actuarial impact statement must be attached to the bill or resolution:
  - (1) before a committee hearing on the bill or resolution is held; and
  - (2) at the time it is reported from a legislative committee of either house for consideration by the full membership of a house of the legislature.
- (e) An actuarial impact statement must remain with the bill or resolution to which it is attached throughout the legislative process, including the process of submission to the governor.
- (f) A bill or resolution for which an actuarial impact statement is required is exempt from the requirement of a fiscal note as provided by Chapter 314.
- (g) An actuarial impact statement is not required for a bill or resolution that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.

**Sec. 802.302. Preparation of Actuarial Analysis.**

- (a) The board shall request a public retirement system affected by a bill or resolution as described by Section 802.301(a) to provide the board with an actuarial analysis.
- (b) An actuarial analysis required by this section must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).
- (c) A public retirement system that receives a request under Subsection (a) must provide the board with an actuarial analysis on or before the 21st day after the date of the request, if the request relates to a bill or resolution introduced for consideration during a regular legislative session.
- (d) The board shall adopt deadlines for the provision under this section of an actuarial analysis that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.
- (e) The board may prepare an actuarial analysis for a public retirement system that receives a request under Subsection (a) and does not provide the board with an actuarial analysis within the required period under Subsection (c) or (d).
- (f) The public retirement system may reimburse the board's costs incurred in preparing an actuarial analysis under Subsection (e).
- (g) For each actuarial analysis that a public retirement system prepares, the board shall have a second actuary:
  - (1) review the actuarial analysis accompanying the bill or resolution; and
  - (2) comment on the reasonableness of each actuarial assumption used in the public retirement system's actuarial analysis.
- (h) Even if a public retirement system prepares an actuarial analysis under Subsection (c) or (d), the board may have a second actuary prepare a separate actuarial analysis.
- (i) A public retirement system is not prohibited from providing to the legislature any actuarial analysis or information that the system determines necessary or proper.

**Sec. 802.3021. State Pension Review Board Actuary.**

An actuary who reviews or prepares an actuarial analysis for the board must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

**Sec. 802.303. Contents of Actuarial Analysis.**

- (a) An actuarial analysis must show the economic effect of the bill or resolution on the public retirement system affected, including a projection of the annual cost to the system of implementing the legislation for at least 10 years. If the bill or resolution applies to more than one public retirement system, the cost estimates in the analysis may be limited to each affected state-financed public retirement system and each affected public retirement system in a city having a population of 200,000 or more.

- (b) An actuarial analysis must include a statement of the actuarial assumptions and methods of computation used in the analysis and a statement of whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound.
- (c) The projection of the effect of the bill or resolution on the actuarial soundness of the system must be based on a computation of advanced funding of actuarial costs.

**Sec. 802.304. Cost of Actuarial Analysis.**

The state may not pay the cost of a required actuarial analysis that is prepared for a public retirement system not financed by the state, except that a sponsor of the bill or resolution for which the analysis is prepared may pay the cost of preparation out of funds available for the sponsor's personal or office expenses.

**Sec. 802.305. Reports, Analyses, and Actuarial Impact Statements for Certain Bills and Resolutions.**

- (a) The board may request a state-financed public retirement system to provide the board with:
  - (1) a report listing and totaling the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during the current legislative session and that affect the state-financed public retirement system; or
  - (2) an analysis of the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during the current legislative session and that affect the state-financed public retirement system, assuming that each bill and resolution becomes law.
- (b) A state-financed public retirement system that receives a request under Subsection (a) must provide the board with the requested report or analysis on or before the 21st day after the date of the request, if the request is made during a regular legislative session. If the state-financed public retirement system does not provide the board with the requested report or analysis within the 21-day period, the board may prepare the requested report or analysis.
- (c) If the board prepares a requested report or analysis under Subsection (b), the state-financed public retirement system may reimburse the board's costs incurred in preparing the requested report or analysis.
- (d) Even if a public retirement system prepares a required report or analysis under Subsection (b), the board may have a second actuary prepare a separate report or analysis.
- (e) On or before the 70th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement listing and totaling for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during that legislative session and that affect that state-financed public retirement system.

- (f) On or before the 30th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement analyzing for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during that legislative session and that affect that state-financed public retirement system, assuming that each of the bills and resolutions becomes law.
- (g) The board also shall provide the statements required by Subsections (e) and (f) during a called legislative session.
- (h) The board shall adopt deadlines for the provision under this section of a report, analysis, or actuarial impact statement that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.
- (i) In this section:
  - (1) “Public retirement bill or resolution” means a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a state-financed public retirement system or that proposes to change a fund liability of a state-financed public retirement system.
  - (2) “State-financed public retirement system” means the Employees Retirement System of Texas, including the law enforcement and custodial officer supplemental retirement fund, or the Teacher Retirement System of Texas.

# **CHAPTER 803. PROPORTIONATE RETIREMENT PROGRAM**

## **SUBCHAPTER A. GENERAL PROVISIONS**

### **Sec. 803.001. Definitions.**

In this chapter:

- (1) “Combined service credit” means the total of a person’s service credit in only those retirement systems to which this chapter applies for which the total satisfies the length-of-service requirements for service retirement at the person’s attained age, and does not include:
  - (A) any service credit in a retirement system for which the total of a person’s service credit does not satisfy the length-of-service requirements for service retirement at the person’s attained age; or
  - (B) service credit earned with or allowed by a subdivision or municipality not participating in the program provided by this chapter or, as applicable, a subdivision or municipality whose participation is limited as provided by Section 803.103.
- (2) “Service credit” means service that is in a person’s account in a retirement system to which this chapter applies and that may be used to meet length-of-service requirements for service retirement in that system.
- (3) Repealed by Acts 1991, 72nd Leg., ch. 131, Sec. 9, eff. Sept. 1, 1991.

### **Sec. 803.002. Purpose of Chapter.**

The purpose of this chapter is to implement the authority granted the legislature by Article XVI, Section 67, of the Texas Constitution to provide a program of proportionate benefits to qualified members of more than one retirement system to which this chapter applies. It is contrary to the purpose of this chapter for a person or class of persons to receive, because of service in more than one retirement system to which this chapter applies, proportionately greater benefits from a particular system than a person who has rendered faithful career service under that one system.

### **Sec. 803.0021. Application of Chapter.**

This chapter applies only to:

- (1) a retirement system for general municipal employees in a municipality with a population of not less than 950,000 nor more than 1,050,000;
- (2) the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Texas County and District Retirement System, and the Texas Municipal Retirement System; and
- (3) a retirement system that makes an election under Section 803.101(f).

**Sec. 803.003. Construction of Chapter.**

- (a) The provisions of this chapter are exceptions to the other laws governing retirement systems to which this chapter applies and prevail over those laws to the extent of explicit conflict, but this chapter must be construed strictly as against those laws.
- (b) Notwithstanding any other law, a person who is involuntarily transferred to a position included in the coverage of a retirement system governed by Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), from a position included in a retirement system operated by a municipality that does not participate in a statewide retirement system governed by Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), may make an irrevocable election at the time of the transfer to continue membership in the municipal retirement system. An involuntary transfer is determined by the employment rules that apply to the person immediately before the time of the involuntary transfer.

**SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP**

**Sec. 803.101. Participation by Retirement Systems.**

- (a) Except as provided by Subsections (b) and (f), each retirement system to which this chapter applies is required to participate in the program of proportionate retirement benefits provided by this chapter.
- (b) A subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System is not required to participate in the proportionate retirement program if the subdivision or municipality elected not to participate under the authority of former law and has not revoked the election under Subsection (c).
- (c) A subdivision or municipality that elected not to participate in the proportionate retirement program may revoke the election and elect to participate. An election to participate may be made by vote of the governing body of the subdivision or municipality in the manner required for official actions of the governing body. The governing body shall send notice of an election to participate to the board of trustees of the retirement system in which the subdivision or municipality participates.
- (d) The effective date of participation in the proportionate retirement program by a subdivision or municipality electing to participate under Subsection (c) is the first day of the month after the month in which the appropriate board of trustees receives notice of an election.
- (e) Participation in the proportionate retirement program includes all persons who are members of a retirement system to which this chapter applies and, in the case of members of the Texas County and District Retirement System or the Texas Municipal Retirement System, who are also employees or former employees of a subdivision or municipality participating in the proportionate retirement program.

- (f) The governing body of a public retirement system in this state for municipal employees that is a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401) may elect to participate in the proportionate retirement program by adopting a resolution to that effect. A resolution may not be adopted under this subsection without the approval of the governing body of the municipality that finances the retirement system. The governing body of the retirement system shall notify all other participating retirement systems of the election. The effective date of participation in the proportionate retirement program by a retirement system for which an election is made under this subsection is the first day of the third month after the month in which notice is given under this subsection. An election under this subsection does not require the approval of the participants in the public retirement system making the election.
- (g) The governing body of a municipality described by Section 803.0021(1) that finances a public retirement system for police officers or firefighters may not approve the retirement system's election under Subsection (f) to participate in the proportionate retirement program unless an actuary acting on behalf of the municipality reviews the initial cost to the municipality of making the election.
- (h) If the governing body of a public retirement system under Subsection (g) adopts a resolution to participate in the proportionate retirement program, the governing body of the municipality that finances the retirement system shall appropriate and pay to the retirement system, at the same time the municipality makes the municipality's monthly contribution to the retirement system, the additional amount necessary, as determined by the retirement system's actuary, to fund the additional liabilities incurred by the retirement system as a result of participating in the proportionate retirement program.

**Sec. 803.102. Retirement System Membership.**

- (a) Membership in a retirement system to which this chapter applies does not terminate because of absence from service covered by that system during a period for which the member earns service credit in another retirement system to which this chapter applies for service performed for an employer other than a subdivision or municipality not participating in the program provided by this chapter.
- (b) A person may continue membership in a retirement system to which this chapter applies while absent from service with all retirement systems to which this chapter applies if the person would be eligible, under the laws governing that system, to continue membership if the person's combined service credit had been earned in that system.
- (c) In this section, a person's absence from service begins on the day after the last day of service covered by any retirement system to which this chapter applies.

**Sec. 803.103. Limitation of Participation by Retirement Systems.**

- (a) Participation in the proportionate retirement program by a subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System does not include:

- (1) participation with a retirement system described by Section 803.0021(1) if the subdivision or municipality has elected to so limit its participation and has not revoked the election under Subsection (b); or
- (2) participation with a retirement system described by Section 803.0021(3).

(b) A subdivision or municipality that has elected to limit its participation in the proportionate retirement program may revoke the election and remove the limitation on participation. An election under this subsection may be made by vote of the governing body of the subdivision or municipality in the manner required for official actions of the governing body. The governing body shall send notice of an election under this subsection to the board of trustees of the retirement system in which the subdivision or municipality participates.

(c) The effective date of a removal of a limitation on participation in the proportionate retirement program by a subdivision or municipality electing under Subsection (b) is the first day of the month after the month in which the appropriate board of trustees receives notice of the election.

## **SUBCHAPTER C. CREDITABLE SERVICE**

### **Sec. 803.201. Retirement Eligibility Based on Combined Service Credit.**

- (a) A person who has membership in two or more retirement systems to which this chapter applies is subject to the laws governing each of those systems for determination of the person's eligibility for service retirement benefits from each system, except that, for the purpose of determining whether a person meets the length-of-service requirements for service retirement of a system, the person's combined service credit must be considered as if it were all credited in each system.
- (b) A person's combined service credit is useable only in determining eligibility for service retirement benefits and may not be used in determining:
  - (1) eligibility for disability retirement benefits, death benefits, or any type of benefit other than service retirement benefits; nor
  - (2) the amount of any type of benefit.
- (c) A person receiving service retirement or lifetime disability retirement benefits from one or more retirement systems to which this chapter applies may use the program provided by this chapter to qualify for subsequent service retirement under another retirement system to which this chapter applies in which the person has service credit, if the person was not eligible to retire under the latter system at the time of previous service retirement, or qualification for lifetime disability retirement benefits from a retirement system to which this chapter applies, or if the person's previous retirement was not based on combined service credit.
- (d) Service credit earned with or allowed by more than one retirement system to which this chapter applies for the same service may be counted only once in determining the amount of a person's combined service credit.

**Sec. 803.202. Service in Certain Retirement Systems.**

- (a) The board of trustees of the Employees Retirement System of Texas by rule may:
  - (1) consider the classes of service in the Employees Retirement System of Texas as if they were, for purposes of this chapter, classes in separate statewide retirement systems; or
  - (2) permit a person who is retiring exclusively from retirement systems administered by the board to use the shortest length-of-service requirement provided for retirement in any class in which the person has service credit.
- (b) A member of a retirement system administered by the board of trustees of the Employees Retirement System of Texas may reestablish service credit previously canceled in another retirement system administered by the board if the member holds a position included in the system of which the person is a member and has held the position for at least 12 months. The method of reestablishment and the amount to be deposited are as provided by the applicable law providing for reestablishment of service credit generally in the particular retirement system.
- (c) A member of the Employees Retirement System of Texas who is subject to Chapter 820 is eligible to participate in the program provided by this chapter.
- (d) A member of the Judicial Retirement System of Texas Plan Two who is subject to Chapter 840A is eligible to participate in the program provided by this chapter.

**Sec. 803.203. Reestablishment of Service Credit by Former Member.**

- (a) Except as provided by Subsection (g), a person who is a member of a retirement system participating in the program provided by this chapter may reestablish service credit, including prior service credit if applicable, previously canceled in another retirement system that is participating in the program provided by this chapter if the person:
  - (1) is not a current member of the system under which the service was performed;
  - (2) in the case of the Texas County and District Retirement System, does not have an open account with the subdivision for which the person performed the service for which the credit is sought; or
  - (3) in the case of an employee to whom Section 803.204 applies, does not have an open account with the employing hospital district, charitable organization, or administrative agency, as applicable, for which the person performed the service for which the credit is sought.
- (b) A person may apply to reestablish service credit under this section by filing an application with the retirement system in which the service was originally credited and a certification that the applicant is currently a member of the certifying system.
- (c) Except as provided by Subsection (f), the retirement system in which the service credit was originally credited shall grant the service credit after receiving an application and a certification required by Subsection (b) and:

- (1) to reestablish service credit other than in the Texas County and District Retirement System, the Texas Municipal Retirement System, or the retirement system in which a hospital district, charitable organization, or administrative agency described by Section 803.204 participates, a contribution in the amount generally required to reestablish service credit in the system, including any applicable interest and membership fees;
- (2) to reestablish service credit in the Texas County and District Retirement System, the Texas Municipal Retirement System, or the retirement system in which a hospital district, charitable organization, or administrative agency described by Section 803.204 participates, a statement that the applicant does not wish to make a contribution for the service credit; or
- (3) at the applicant's option, to reestablish current service credit in the Texas County and District Retirement System, the actuarial present value of the additional standard service benefits that would be attributable to the credit based on rates and tables recommended by the actuary and adopted by the board of trustees of the system.

(d) A subdivision participating in the Texas County and District Retirement System under Subchapter H, Chapter 844, or a municipality participating in the Texas Municipal Retirement System may make a one-time election to authorize the reestablishment of service credit under this section by payment by an applicant of a contribution in the amount provided by Section 843.003 or 853.003, as applicable, for reestablishment of service credit generally in the particular system. If a subdivision or municipality makes an election under this subsection, the applicant has the choice of reestablishing service credit under Subsection (c)(2), (c)(3), if applicable, or this subsection.

(e) Service credit in the Texas County and District Retirement System, the Texas Municipal Retirement System, or the retirement system in which a hospital district, charitable organization, or administrative agency described by Section 803.204 participates that is reestablished under Subsection (c)(2) may be used only to meet eligibility requirements for benefits. Service credit reestablished in the Texas County and District Retirement System or the Texas Municipal Retirement System under Subsection (c)(3) or (d) has the same value as service credit performed for the particular subdivision or municipality at the time of deposit. The credit is creditable to the member's and employer's accounts in each subdivision or municipality for which the service was performed.

(f) To reestablish service credit in a public retirement system for municipal employees that has elected under Section 803.101(f) to participate in the program provided by this chapter, a person must pay the actuarial present value, as determined by the appropriate system, of the additional standard service retirement benefits that would be attributable to the credit. A person who is a member only of a system that has made an election under Section 803.101(f) must pay the actuarial present value, as determined by the appropriate system, of the additional standard service retirement benefits that would be attributable to the service credit to be reestablished in any other public retirement system participating in the program provided by this chapter.

(g) Service credit may not be reestablished under this section:

- (1) if it is subject to Section 805.002(e); or
- (2) in a subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System if the person who seeks to reestablish the credit is a member only of a retirement system that the subdivision or municipality excludes from participation in the proportionate retirement program under Section 803.103.

(h) This section applies to an employee described by Section 803.204 on the date the federal government establishes as the effective date of the transfer of federally qualified health center status from a municipality described by Section 803.0021(1) to a hospital district, charitable organization, or administrative agency described by Section 803.204.

**Sec. 803.204. Combined Service Credit in Certain Systems.**

- (a) This section applies only to an employee who:
  - (1) is a member of a municipal retirement system described by Section 803.0021(1);
  - (2) is employed by a hospital district, a charitable organization supervised, overseen, and effectively controlled by the hospital district, or an administrative agency created under Section 791.013, either before or after being employed by the employing municipality located in the same county as the hospital district, charitable organization, or administrative agency; and
  - (3) participates in a public retirement system:
    - (A) that is determined to be a qualified plan under Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)), of a hospital district, charitable organization, or administrative agency that is determined to be a governmental unit, or an agency or an instrumentality of a governmental unit; and
    - (B) that records and reports service credit as defined by Section 803.001.
- (b) Any service credit earned by an employee described by Subsection (a) with a retirement system established by the hospital district, charitable organization, or administrative agency will be combined under Section 803.201 to determine whether the employee meets the length-of-service requirements for service retirement under the municipal retirement system.
- (c) On retirement, an employee described by Subsection (a) will receive a benefit from the municipal retirement system as determined by Subchapter D, and if the hospital district or administrative agency has established or participates in a retirement program or the charitable organization has a retirement plan, will receive a benefit from the hospital district, administrative agency, or charitable organization as determined by the terms of the district's, agency's, or organization's retirement plan.
- (d) For purposes of this section, a charitable organization supervised, overseen, and effectively controlled by a hospital district or an administrative agency created under Section 791.013 is an agency or instrumentality of a governmental unit.

## **SUBCHAPTER D. BENEFITS**

### **Sec. 803.301. Computation of Benefits Generally.**

The amount of a benefit payable by a retirement system to which this chapter applies is determined according to and in the manner prescribed by laws governing that system and is based solely on a person's service credit in that system.

### **Sec. 803.302. Computation of Certain Benefits.**

- (a) If payable to or on behalf of a person who has used combined service credit to qualify for benefits from at least one retirement system to which this chapter applies, each of the following types of benefits must be computed as provided by Subsection (b):
  - (1) a base retirement annuity that does not vary in amount directly with the amount of a person's service credit;
  - (2) a fixed lump-sum death benefit payable on the death of a retiree;
  - (3) any death benefit payable on the death of a retiree who received service retirement benefits; and
  - (4) a survivor benefit payable to a beneficiary of a deceased retiree of the Teacher Retirement System of Texas.
- (b) The amount of a benefit payable under Subsection (a) by a retirement system to which this chapter applies is a percentage, but not more than 100 percent, of the benefit that would be or would have been payable if the person retired or had retired on the basis of only the service that is credited in that system. The percentage applied is equal to the amount of service credit in that system, divided by the amount of service credit that would be or would have been required for the benefit if the person retired or had retired on the basis of only the service that is credited in that system.

## **SUBCHAPTER E. ADMINISTRATION**

### **Sec. 803.401. Administration of Program.**

- (a) The board of trustees of each retirement system to which this chapter applies may adopt rules it finds necessary to implement the proportionate retirement program provided by this chapter.
- (b) Each retirement system to which this chapter applies, under this chapter and other laws governing the particular system, is responsible for determining:
  - (1) the eligibility of its members for benefits, including whether sufficient combined service credit exists to qualify members for proportionate retirement benefits from that system; and
  - (2) the amount and duration of proportionate retirement benefits payable by that system.
- (c) Each retirement system to which this chapter applies shall cooperate with the other retirement systems to which this chapter applies in the implementation of the proportionate retirement program.

**Sec. 803.402.                   Records.**

Except as provided by other law, records of members and beneficiaries of a retirement system to which this chapter applies that are in the custody of any retirement system to which this chapter applies are confidential and not subject to disclosure and are exempt from the public access provisions of Chapter 552. The records or information in the records may be transferred between retirement systems to which this chapter applies to the extent necessary to administer the proportionate retirement program provided by this chapter.

## **CHAPTER 804. DOMESTIC RELATIONS ORDERS AND SPOUSAL CONSENT**

### **SUBCHAPTER A. QUALIFIED DOMESTIC RELATIONS ORDERS**

#### **Sec. 804.001. Definitions.**

In this chapter:

- (1) “Alternate payee” means a spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a public retirement system with respect to such member or retiree.
- (2) “Domestic relations order” means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or of another state.
- (3) “Public retirement system” means the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and any other continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision or of an agency or instrumentality of the state or a political subdivision and includes the optional retirement program governed by Chapter 830. Public retirement system does not include:
  - (A) a program, other than the optional retirement program, for which benefits are administered by a life insurance company;
  - (B) a program providing only workers’ compensation benefits;
  - (C) a program administered by the federal government;
  - (D) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986;
  - (E) a plan described by Subsection (d) of Section 401 of the Internal Revenue Code of 1986;
  - (F) a group or an individual account plan consisting of an annuity contract described by Subsection (b) of Section 403 of the Internal Revenue Code of 1986, other than a 403(b) contract or plan under the optional retirement program;
  - (G) an eligible state deferred compensation plan described by Subsection (b) of Section 457 of the Internal Revenue Code of 1986; or
  - (H) the program established by Chapter 615.

- (4) “Qualified domestic relations order” means a domestic relations order which creates or recognizes the existence of an alternate payee’s right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree under a public retirement system, which directs the public retirement system to disburse benefits to the alternate payee, and which meets the requirements of Section 804.003.
- (5) “Statewide retirement system” means the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Teacher Retirement System of Texas, the Texas County and District Retirement System, or the Texas Municipal Retirement System.

**Sec. 804.002. Application of Chapters.**

This subchapter and Subchapter C apply to each statewide retirement system and to the optional retirement program governed by Chapter 830. This subchapter and Subchapter C also apply to each other public retirement system for which the board of trustees of the system elects to adopt the provisions of this subchapter and Subchapter C. An election under this section must be by order or resolution and need not set out the text of this subchapter or Subchapter C. A board of trustees may not elect to adopt only this subchapter or Subchapter C.

**Sec. 804.003. Qualified Domestic Relations Orders.**

- (a) Sections 811.005, 821.005, 831.004, 836.004, 841.006, and 851.006 and any similar anti-alienation provisions contained in any other public retirement system shall apply to the creation, assignment, recognition, or enforcement of a right to any benefit payable with respect to a member or retiree of a public retirement system to which the section applies pursuant to a domestic relations order unless the order is determined to be a qualified domestic relations order.
- (b) Except as provided in Subsection (d), the administrative head of a public retirement system to which this chapter applies and to which a domestic relations order is submitted or his designee has exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A determination by the administrative head or his designee under this section may be appealed only to the board of trustees of the public retirement system. An appeal to the board of trustees of a statewide retirement system is a contested case under Chapter 2001. However, the board of a statewide retirement system by rule may waive the requirement of an appeal to the board. On appeal of a decision made by the board of trustees or by the administrative head if there is no appeal to the board under this section, the standard of review is by substantial evidence.
- (c) Except as provided in Subsection (d), a court does not have jurisdiction over a public retirement system to which this chapter applies with respect to a divorce or other domestic relations action in which an alternate payee’s right to receive all or a portion of the benefits payable to a member or retiree under the public retirement system is created or established. A party to such an action who attempts to make a public retirement system a party to the action contrary to the provision of this subsection shall be liable to the public retirement system for its costs and attorney’s fees.

(d) Under the optional retirement program, applicable carriers shall determine whether a domestic relations order is a qualified domestic relations order. If a dispute arises over the determination of whether a domestic relations order is a qualified domestic relations order which cannot be resolved by the procedure described in Subsection (g), the court which issued the order or which otherwise has jurisdiction over the matter shall resolve the dispute with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a member or retiree under the optional retirement program is created or established.

(e) For the purposes of this section, benefits payable with respect to a member or retiree under the retirement system include the types of benefits payable by a public retirement system and a withdrawal of contributions from a public retirement system.

(f) A domestic relations order is a qualified domestic relations order only if such order:

- (1) clearly specifies the:
  - (A) name and last known mailing address of:
    - (i) the member or retiree; and
    - (ii) each alternate payee covered by the order; and
  - (B) social security number, or an express authorization for the parties to use an alternate method acceptable to the public retirement system to verify the social security number, of the member or retiree and each alternate payee covered by the order;
  - (2) clearly specifies the amount or percentage of the member's or retiree's benefits to be paid by a public retirement system to each such alternate payee or the manner in which such amount or percentage is to be determined;
  - (3) clearly specifies the number of payments or the period to which such order applies;
  - (4) clearly specifies that such order applies to a designated public retirement system;
  - (5) does not require the public retirement system to provide any type or form of benefit or any option not otherwise provided under the plan;
  - (6) does not require the public retirement system to provide increased benefits determined on the basis of actuarial value;
  - (7) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and
  - (8) does not require the payment of benefits to an alternate payee before the retirement of a member, the distribution of a withdrawal of contributions to a member, or other distribution to a member required by law.

(g) A public retirement system may reject a domestic relations order as a qualified domestic relations order unless the order:

- (1) provides for a proportional reduction of the amount awarded to an alternate payee in the event of the retirement of the member before normal retirement age;
- (2) does not purport to require the designation of a particular person as the recipient of benefits in the event of a member's or annuitant's death;
- (3) does not purport to require the selection of a particular benefit payment plan or option;
- (4) provides clearly for each possible benefit distribution under plan provisions;
- (5) does not require any action on the part of the retirement system contrary to its governing statutes or plan provision other than the direct payment of the benefit awarded to an alternate payee;
- (6) does not make the award of an interest contingent on any condition other than those conditions resulting in the liability of a retirement system for payments under its plan provisions;
- (7) does not purport to award any future benefit increases that are provided or required by the legislature;
- (8) provides for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the retiree or member are reduced by law; and
- (9) if required by the retirement system, conforms to a model order adopted by the retirement system.

(h) The administrative head of a public retirement system to which this chapter applies or his designee (or applicable carrier, if under the optional retirement program), upon receipt of a certified copy of a domestic relations order, shall determine whether such order is a qualified domestic relations order and shall notify the member or retiree and each alternate payee of such determination. If the order is determined to be a qualified domestic relations order, the public retirement system (or applicable carrier, if under the optional retirement program), shall pay benefits in accordance with the order. If the order is determined not to be a qualified domestic relations order, the member or retiree or any alternate payee named in the order may appeal the administrative head's determination in the manner specified in Subsection (b) or the optional retirement program carrier's determination in the manner specified in Subsection (d) and may petition the court which issued the order to amend the order so that it will be qualified. The court which issued the order or which would otherwise have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined by the agency administrative head, his designee, the board of trustees, a court of competent jurisdiction, optional retirement program carrier, or otherwise, the public retirement system shall separately account for the amounts, in this section referred to as the "segregated amounts," which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

- (j) Except as provided by subsection (k-1) or (k-2), if a domestic relations order is determined to be a qualified domestic relations order, then the public retirement system (or applicable carrier, if under the optional retirement program) shall pay the segregated amounts without interest to the person or persons entitled thereto and shall thereafter pay benefits pursuant to the order.
- (k) Except as provided by subsection (k-1) or (k-2), if a domestic relations order is determined not to be a qualified domestic relations order or if within 18 months of the date a domestic relations order is received by the public retirement system (or applicable carrier, if under the optional retirement program) the issue as to whether such order is a qualified domestic relations order is not resolved, then the public retirement system (or applicable carrier, if under the optional retirement program) shall pay the segregated amounts without interest and shall thereafter pay benefits to the person or persons who would have been entitled to such amounts if there had been no order. This subsection shall not be construed to limit or otherwise affect any liability, responsibility, or duty of a party with respect to any other party to the action out of which the order arose.
- (k-1) Payment of segregated amounts by a public retirement system, or applicable carrier if under the optional retirement program, under Subsections (j) and (k) related to a benefit payable with respect to a member or retiree subject to Chapter 820 must include annual interest provided by Section 820.102 and gain sharing interest provided by Section 820.103.
- (k-2) Payment of segregated amounts by a public retirement system, or applicable carrier if under the optional retirement program, under Subsections (j) and (k) related to a benefit payable with respect to a member or retiree subject to Chapter 840A must include annual interest provided by Section 840A.103 and gain sharing interest provided by Section 840A.104.
- (l) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period shall be applied prospectively only.
- (m) The public retirement system, the board of trustees, and officers and employees of the public retirement system (or applicable carrier, if under the optional retirement program) shall not be liable to any person for making payments of any benefits in accordance with a domestic relations order in a cause in which a member or a retiree was a party or for making payments in accordance with Subsection (k).
- (n) The board of trustees of a public retirement system may promulgate rules it deems necessary to implement the provisions of this section.
- (o) Except as specifically provided in this subtitle or by any other statute, public employment does not confer special privileges or immunities on a public employee. An ownership or beneficial interest in any retirement, pension, or other financial plan not included in the definition of "public retirement system" as set forth in Section 804.001 held in whole or in part by an officer or employee of the state or a political subdivision or of an agency or an instrumentality of either, whether obtained in connection with that employment or otherwise, shall be subject to the requirements of the federal laws governing qualified domestic relations orders.
- (p) A public retirement system may assess administrative fees on a party who is subject to a domestic relations order for the review of the order under this subchapter and, as applicable, for the administration of payments under an order that is determined

to be qualified. In addition to other methods of collecting fees that a retirement system may establish, the retirement system may deduct fees from payments made under the order.

**Sec. 804.004.           Life Annuity or Lump-Sum Payment in Lieu of Benefits Awarded by a Qualified Domestic Relations Order.**

- (a) The board of trustees of a public retirement system to which this chapter applies may by rule provide that, in lieu of paying an alternate beneficiary the interest awarded by a qualified domestic relations order, the system may pay the alternate beneficiary an amount that is the actuarial equivalent of such interest in the form of:
  - (1) an annuity payable in equal monthly installments for the life of the alternate payee; or
  - (2) a lump sum.
- (b) The determination of whether to pay an amount authorized by this section in lieu of the interest awarded by the qualified domestic relations order shall be at the sole discretion of the public retirement system.
- (c) If a public retirement system elects to pay the alternate payee pursuant to this section, the benefit payable by the system to the member, retiree, or beneficiary shall be reduced by the interest in the benefit awarded to the alternate payee by the qualified domestic relations order.
- (d) If the public retirement system pays the alternate payee pursuant to this section, the retirement system shall be entitled to rely on a beneficiary designation or benefit option selection made or changed pursuant to its plan without regard to any domestic relations order.

**Sec. 804.005.           Payment in Certain Circumstances in Lieu of Benefits Awarded by Qualified Domestic Relations Order.**

- (a) This section applies only to the Employees Retirement System of Texas and the Teacher Retirement System of Texas.
- (b) A public retirement system to which this section applies shall pay an alternate payee of a member of the retirement system who is described by Subsection (c), if the alternate payee so elects and in lieu of the interest awarded by a qualified domestic relations order on or after January 1, 1985, an amount that is the alternate payee's portion of the actuarial equivalent of the accrued retirement benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election. The amount becomes payable at the time the actuarial equivalent is determined, and the amount is payable in the form of an annuity payable in equal monthly installments for the life of the alternate payee.
- (c) A member whose benefits are subject to partial payment under this section is one who has not retired from the retirement system, has attained the greater of the age of 62 or normal retirement age and the service requirements for service retirement, and retains credit and contributions in the retirement system attributable to that service.
- (d) If an alternate payee elects to be paid under this section, the retirement system shall reduce the benefit payable by the system to the member or the member's

beneficiary by the alternate payee's portion of the actuarial equivalent determined under Subsection (b).

- (e) In determining under Subsection (b) the actuarial equivalent of an accrued retirement benefit, the system shall consider the member's benefit as a normal age standard service retirement annuity, without regard to any optional annuity chosen or beneficiary designated by the member.
- (f) The beginning of monthly payments under this section terminates any interest that the alternate payee who receives the payment might otherwise have in benefits that accrue to the account of the member after the date the initial payment to the alternate payee is made.
- (g) A public retirement system may adopt rules for administration of this section.

## **SUBCHAPTER B. SPOUSAL CONSENT REQUIREMENTS**

### **Sec. 804.051. Authority to Require Spousal Consent.**

A public retirement system may adopt rules to require spousal consent for the selection of a service retirement annuity other than a joint and survivor annuity that pays benefits to the member's spouse on the death of the member or for the selection of a death benefits plan that pays benefits in the form of an annuity to a person other than the member's spouse on the death of the member.

## **SUBCHAPTER C. TERMINATION OF INTEREST IN PUBLIC RETIREMENT SYSTEM**

### **Sec. 804.101. Termination of Interest in Public Retirement System.**

The death of an alternate payee as defined in Section 804.001 or the death of a spouse of a member or retiree of a public retirement system to which this chapter applies shall terminate the interest of the alternate payee or spouse in that public retirement system. This section shall not affect an interest in a public retirement system accrued to an individual as a member of the public retirement system.

## **CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT ISRAEL**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 808.001. Definitions.**

In this chapter:

- (1) “Boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- (2) “Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- (3) “Direct holdings” means, with respect to a company, all securities of that company held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests.
- (4) “Indirect holdings” means, with respect to a company, all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to the provisions of this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986.
- (5) “Listed company” means a company listed by the comptroller under Section 808.051.
- (6) “State governmental entity” means:
  - (A) the Employees Retirement System of Texas, including a retirement system administered by that system;
  - (B) the Teacher Retirement System of Texas;
  - (C) the Texas Municipal Retirement System;
  - (D) the Texas County and District Retirement System;
  - (E) the Texas Emergency Services Retirement System; and
  - (F) the permanent school fund.

**Sec. 808.002.                   Other Legal Obligations.**

With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies as required by this chapter, a state governmental entity and the comptroller are exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of companies, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.

**Sec. 808.003.                   Indemnification of State Governmental Entities, Employees, and Others.**

In a cause of action based on an action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend:

- (1) an employee, a member of the governing body, or any other officer of a state governmental entity;
- (2) a contractor of a state governmental entity;
- (3) a former employee, a former member of the governing body, or any other former officer of a state governmental entity who was an employee, member of the governing body, or other officer when the act or omission on which the damages are based occurred;
- (4) a former contractor of a state governmental entity who was a contractor when the act or omission on which the damages are based occurred; and
- (5) a state governmental entity.

**Sec. 808.004.                   No Private Cause of Action.**

- (a) A person, including a member, retiree, or beneficiary of a retirement system to which this chapter applies, an association, a research firm, a company, or any other person may not sue or pursue a private cause of action against the state, a state governmental entity, a current or former employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter.
- (b) A person who files suit against the state, a state governmental entity, an employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

**Sec. 808.005. Inapplicability of Requirements Inconsistent with Fiduciary Responsibilities and Related Duties.**

A state governmental entity is not subject to a requirement of this chapter if the state governmental entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

**Sec. 808.006. Reliance on Company Response.**

The comptroller and a state governmental entity may rely on a company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

**SUBCHAPTER B. DUTIES REGARDING INVESTMENTS**

**Sec. 808.051. Listed Companies.**

- (a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all companies that boycott Israel. In maintaining the list, the comptroller may review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities.
- (b) The comptroller shall update the list annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (a).
- (c) Not later than the 30th day after the date the list of companies that boycott Israel is first provided or updated, the comptroller shall file the list with the presiding officer of each house of the legislature and the attorney general and post the list on a publicly available website.

**Sec. 808.052. Identification of Investment in Listed Companies.**

Not later than the 30th day after the date a state governmental entity receives the list provided under Section 808.051, the state governmental entity shall notify the comptroller of the listed companies in which the state governmental entity owns direct holdings or indirect holdings.

**Sec. 808.053. Actions Relating to Listed Company.**

- (a) For each listed company identified under Section 808.052, the state governmental entity shall send a written notice:
  - (1) informing the company of its status as a listed company;
  - (2) warning the company that it may become subject to divestment by state governmental entities after the expiration of the period described by Subsection (b); and
  - (3) offering the company the opportunity to clarify its Israel-related activities.

- (b) Not later than the 90th day after the date the company receives notice under Subsection (a), the company must cease boycotting Israel in order to avoid qualifying for divestment by state governmental entities.
- (c) If, during the time provided by Subsection (b), the company ceases boycotting Israel, the comptroller shall remove the company from the list maintained under Section 808.051 and this chapter will no longer apply to the company unless it resumes boycotting Israel.
- (d) If, after the time provided by Subsection (b) expires, the company continues to boycott Israel, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by Section 808.055, according to the schedule provided by Section 808.054.

**Sec. 808.054.                   Divestment of Assets.**

- (a) A state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed company shall comply with the following schedule:
  - (1) at least 50 percent of those assets must be removed from the state governmental entity's assets under management not later than the 180th day after the date the company receives notice under Section 808.053 or Subsection (b) unless the state governmental entity determines, based on a good faith exercise of its fiduciary discretion and subject to Subdivision (2), that a later date is more prudent; and
  - (2) 100 percent of those assets must be removed from the state governmental entity's assets under management not later than the 360th day after the date the company receives notice under Section 808.053 or Subsection (b).
- (b) If a company that ceased boycotting Israel after receiving notice under Section 808.053 resumes its boycott, the state governmental entity shall send a written notice to the company informing it that the state governmental entity will sell, redeem, divest, or withdraw all publicly traded securities of the company according to the schedule in Subsection (a).
- (c) Except as provided by Subsection (a), a state governmental entity may delay the schedule for divestment under that subsection only to the extent that the state governmental entity determines, in the state governmental entity's good faith judgment, and consistent with the entity's fiduciary duty, that divestment from listed companies will likely result in a loss in value or a benchmark deviation described by Section 808.056(a). If a state governmental entity delays the schedule for divestment, the state governmental entity shall submit a report to the presiding officer of each house of the legislature and the attorney general stating the reasons and justification for the state governmental entity's delay in divestment from listed companies. The report must include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by Section 808.056(a), including objective numerical estimates. The state governmental entity shall update the report every six months.

**Sec. 808.055. Investments Exempted from Divestment.**

A state governmental entity is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit letters to the managers of each investment fund containing listed companies requesting that they remove those companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed companies. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the 450th day after the date the fund is created.

**Sec. 808.056. Authorized Investment in Listed Companies.**

- (a) A state governmental entity may cease divesting from one or more listed companies only if clear and convincing evidence shows that:
  - (1) the state governmental entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the state governmental entity as a result of having to divest from listed companies under this chapter; or
  - (2) an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed companies under this chapter.
- (b) A state governmental entity may cease divesting from a listed company as provided by this section only to the extent necessary to ensure that the state governmental entity does not suffer a loss in value or deviate from its benchmark as described by Subsection (a).
- (c) Before a state governmental entity may cease divesting from a listed company under this section, the state governmental entity must provide a written report to the comptroller, the presiding officer of each house of the legislature, and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed company.
- (d) The state governmental entity shall update the report required by Subsection (c) semiannually, as applicable.
- (e) This section does not apply to reinvestment in a company that is no longer a listed company.

**Sec. 808.057. Prohibited Investments.**

Except as provided by Section 808.056, a state governmental entity may not acquire securities of a listed company.

## **SUBCHAPTER C. REPORT; ENFORCEMENT**

### **Sec. 808.101. Report.**

Not later than January 5 of each year, each state governmental entity shall file a publicly available report with the presiding officer of each house of the legislature and the attorney general that:

- (1) identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 808.054;
- (2) identifies all prohibited investments under Section 808.057; and
- (3) summarizes any changes made under Section 808.055.

### **Sec. 808.102. Enforcement.**

The attorney general may bring any action necessary to enforce this chapter.

# **CHAPTER 809. PROHIBITION ON INVESTMENT IN FINANCIAL COMPANIES THAT BOYCOTT CERTAIN ENERGY COMPANIES**

## **SUBCHAPTER A. GENERAL PROVISIONS**

### **Sec. 809.001. Definitions.**

In this chapter:

- (1) “Boycott energy company” means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:
  - (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or
  - (B) does business with a company described by Paragraph (A).
- (2) “Company” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.
- (3) “Direct holdings” means, with respect to a financial company, all securities of that financial company held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests.
- (4) “Financial company” means a publicly traded financial services, banking, or investment company.
- (5) “Indirect holdings” means, with respect to a financial company, all securities of that financial company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to the provisions of this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986. .
- (6) “Listed financial company” means a financial company listed by the comptroller under Section 809.051. .
- (7) “State governmental entity” means:
  - (A) the Employees Retirement System of Texas, including a retirement system administered by that system;
  - (B) the Teacher Retirement System of Texas;
  - (C) the Texas Municipal Retirement System;
  - (D) the Texas County and District Retirement System;

- (E) the Texas Emergency Services Retirement System; and
- (F) the permanent school fund.

**Sec. 809.002. Other Legal Obligations.**

With respect to actions taken in compliance with this chapter, including all good faith determinations regarding financial companies as required by this chapter, a state governmental entity and the comptroller are exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of financial companies, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.

**Sec. 809.003. Indemnification of State Governmental Entities, Employees, and Others.**

In a cause of action based on an action, inaction, decision, divestment, investment, financial company communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend:

- (1) an employee, a member of the governing body, or any other officer of a state governmental entity;
- (2) a contractor of a state governmental entity;
- (3) a former employee, a former member of the governing body, or any other former officer of a state governmental entity who was an employee, member of the governing body, or other officer when the act or omission on which the damages are based occurred;
- (4) a former contractor of a state governmental entity who was a contractor when the act or omission on which the damages are based occurred; and
- (5) a state governmental entity.

**Sec. 809.004. No Private Cause of Action.**

- (a) A person, including a member, retiree, or beneficiary of a retirement system to which this chapter applies, an association, a research firm, a financial company, or any other person may not sue or pursue a private cause of action against the state, a state governmental entity, a current or former employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, financial company communication, report, or other determination made or taken in connection with this chapter.
- (b) A person who files suit against the state, a state governmental entity, an employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

**Sec. 809.005. Inapplicability of Requirements Inconsistent with the Fiduciary Responsibilities and Related Duties.**

A state governmental entity is not subject to a requirement of this chapter if the state governmental entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

**Sec. 809.006. Reliance on Financial Company Response.**

The comptroller and a state governmental entity may rely on a financial company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

**SUBCHAPTER B. DUTIES REGARDING INVESTMENTS**

**Sec. 809.051. Listed Financial Companies.**

- (a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all financial companies that boycott energy companies. In maintaining the list, the comptroller may:
  - (1) review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding financial companies, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities; and
  - (2) request written verification from a financial company that it does not boycott energy companies and rely, as appropriate in the comptroller's judgment and without conducting further investigation, research, or inquiry, on a financial company's written response to the request.
- (b) A financial company that fails to provide to the comptroller a written verification under Subsection (a)(2) before the 61st day after receiving the request from the comptroller is presumed to be boycotting energy companies.
- (c) The comptroller shall update the list annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (a).
- (d) Not later than the 30th day after the date the list of financial companies that boycott energy companies is first provided or updated, the comptroller shall file the list with the presiding officer of each house of the legislature and the attorney general and post the list on a publicly available Internet website.

**Sec. 809.052. Identification of Investment in Listed Financial Companies.**

Not later than the 30th day after the date a state governmental entity receives the list provided under Section 809.051, the state governmental entity shall notify the comptroller of the listed financial companies in which the state governmental entity owns direct holdings or indirect holdings.

**Sec. 809.053. Actions Relating to Listed Financial Company.**

- (a) For each listed financial company identified under Section 809.052, the state governmental entity shall send a written notice:
  - (1) informing the financial company of its status as a listed financial company;
  - (2) warning the financial company that it may become subject to divestment by state governmental entities after the expiration of the period described by Subsection (b); and
  - (3) offering the financial company the opportunity to clarify its activities related to companies described by Sections 809.001(1)(A) and (B).
- (b) Not later than the 90th day after the date the financial company receives notice under Subsection (a), the financial company must cease boycotting energy companies in order to avoid qualifying for divestment by state governmental entities.
- (c) If, during the time provided by Subsection (b), the financial company ceases boycotting energy companies, the comptroller shall remove the financial company from the list maintained under Section 809.051 and this chapter will no longer apply to the financial company unless it resumes boycotting energy companies.
- (d) If, after the time provided by Subsection (b) expires, the financial company continues to boycott energy companies, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the financial company, except securities described by Section 809.055, according to the schedule provided by Section 809.054.

**Sec. 809.054. Divestment of Assets.**

- (a) A state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed financial company shall comply with the following schedule:
  - (1) at least 50 percent of those assets must be removed from the state governmental entity's assets under management not later than the 180th day after the date the financial company receives notice under Section 809.053 or Subsection (b) unless the state governmental entity determines, based on a good faith exercise of its fiduciary discretion and subject to Subdivision (2), that a later date is more prudent; and
  - (2) 100 percent of those assets must be removed from the state governmental entity's assets under management not later than the 360th day after the date the financial company receives notice under Section 809.053 or Subsection (b).
- (b) If a financial company that ceased boycotting energy companies after receiving notice under Section 809.053 resumes its boycott, the state governmental entity shall send a written notice to the financial company informing it that the state governmental entity will sell, redeem, divest, or withdraw all publicly traded securities of the financial company according to the schedule in Subsection (a).
- (c) Except as provided by Subsection (a), a state governmental entity may delay the schedule for divestment under that subsection only to the extent that the state

governmental entity determines, in the state governmental entity's good faith judgment, and consistent with the entity's fiduciary duty, that divestment from listed financial companies will likely result in a loss in value or a benchmark deviation described by Section 809.056(a). If a state governmental entity delays the schedule for divestment, the state governmental entity shall submit a report to the presiding officer of each house of the legislature and the attorney general stating the reasons and justification for the state governmental entity's delay in divestment from listed financial companies. The report must include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by Section 809.056(a), including objective numerical estimates. The state governmental entity shall update the report every six months.

**Sec. 809.055. Investments Exempted from Divestment.**

A state governmental entity is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit letters to the managers of each investment fund containing listed financial companies requesting that they remove those financial companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed financial companies. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the 450th day after the date the fund is created.

**Sec. 809.056. Authorized Investment in Listed Financial Companies.**

- (a) A state governmental entity may cease divesting from one or more listed financial companies only if clear and convincing evidence shows that:
  - (1) the state governmental entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the state governmental entity as a result of having to divest from listed financial companies under this chapter; or
  - (2) an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed financial companies under this chapter.
- (b) A state governmental entity may cease divesting from a listed financial company as provided by this section only to the extent necessary to ensure that the state governmental entity does not suffer a loss in value or deviate from its benchmark as described by Subsection (a).
- (c) Before a state governmental entity may cease divesting from a listed financial company under this section, the state governmental entity must provide a written report to the comptroller, the presiding officer of each house of the legislature, and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed financial company.
- (d) The state governmental entity shall update the report required by Subsection (c) semiannually, as applicable.

- (e) This section does not apply to reinvestment in a financial company that is no longer a listed financial company.

**Sec. 809.057. Prohibited Investments.**

Except as provided by Section 809.056, a state governmental entity may not acquire securities of a listed financial company.

**SUBCHAPTER C. REPORT; ENFORCEMENT**

**Sec. 809.101. Report.**

Not later than January 5 of each year, each state governmental entity shall file a publicly available report with the presiding officer of each house of the legislature and the attorney general that:

- (1) identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 809.054;
- (2) identifies all prohibited investments under Section 809.057; and
- (3) summarizes any changes made under Section 809.055.

**Sec. 809.102. Enforcement.**

The attorney general may bring any action necessary to enforce this chapter.

# CHAPTER 809A. PROHIBITION ON INVESTMENT IN CERTAIN CHINESE-AFFILIATED ENTITIES

## SUBCHAPTER A. GENERAL PROVISIONS

### Sec. 809A.001. Definitions.

In this chapter:

- (1) “Chinese-affiliated entity” means a publicly traded entity that:
  - (A) is both:
    - (i) incorporated or headquartered in the People's Republic of China, including in the Hong Kong special administrative region, other than a U.S. subsidiary, as that term is defined by 15 C.F.R. Section 772.1; and
    - (ii) publicly confirmed to be controlled by the People's Republic of China, the Chinese Communist Party, or a provincial division, municipality, governmental agency, sovereign wealth fund, or political instrumentality of the People's Republic of China; or
  - (B) is identified by one or more of the appropriate government agencies to be required by the National Intelligence Law of the People's Republic of China (2017), as amended in 2018, or any successor law, to support, assist, and cooperate with the state intelligence work of the People's Republic of China and keep the secrets of the national intelligence work of the People's Republic of China.
- (2) “Direct holdings” means, with respect to a restricted entity, all securities of that restricted entity held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests.
- (3) “Entity” means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.
- (4) “Indirect holdings” means, with respect to a restricted entity, all securities of that restricted entity held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to the provisions of this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(k) or 457).
- (5) “Listed restricted entity” means a restricted entity listed by the comptroller under Section 809A.051.
- (6) “Restricted entity” means a Chinese-affiliated entity or other entity associated with the People's Republic of China that is identified or included on an entities list maintained by the federal government for the purpose of imposing prohibitions or restrictions on or against entities to address national security concerns, protect human rights, or combat unfair trade practices. The term includes an entity that:

- (A) is listed on the entity list under supplement No. 4 to 15 C.F.R. Part 744 as associated with the People's Republic of China because there is reasonable cause to believe the entity is involved, has been involved, or poses a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States of America; and
- (B) is listed in the Federal Register by the United States Secretary of Defense as a Chinese military company operating directly or indirectly in the United States or in any territory or possession of the United States on the most recent list compiled under Section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. No. 116-283, reprinted in note, 10 U.S.C. Section 113), or any successor list of Chinese military companies the secretary is required by law to compile and publish.

(7) “State governmental entity” means:

- (A) the Employees Retirement System of Texas, including a retirement system administered by that system;
- (B) the Teacher Retirement System of Texas;
- (C) the Texas Municipal Retirement System;
- (D) the Texas County and District Retirement System;
- (E) the Texas Emergency Services Retirement System; or
- (F) the permanent school fund.

### **Sec. 809A.002.        Other Legal Obligations.**

With respect to actions taken in compliance with this chapter, including all good faith determinations regarding restricted entities as required by this chapter, a state governmental entity and the comptroller are exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of restricted entities, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.

### **Sec. 809A.003.        Indemnification of State Governmental Entities, Employees, and Others.**

In a cause of action based on an action, inaction, decision, divestment, investment, restricted entity communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend:

- (1) an employee, a member of the governing body, or any other officer of a state governmental entity;
- (2) a contractor of a state governmental entity;
- (3) a former employee, a former member of the governing body, or any other former officer of a state governmental entity who was an employee, member of the

governing body, or other officer when the act or omission on which the damages are based occurred;

- (4) a former contractor of a state governmental entity who was a contractor when the act or omission on which the damages are based occurred; and
- (5) a state governmental entity.

**Sec. 809A.004. No Private Cause of Action.**

- (a) A person, including a member, retiree, or beneficiary of a retirement system to which this chapter applies, an association, a research firm, a restricted entity, or any other person may not sue or pursue a private cause of action against the state, a state governmental entity, a current or former employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, restricted entity communication, report, or other determination made or taken in connection with this chapter.
- (b) A person who files suit against the state, a state governmental entity, an employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

**Sec. 809A.005. Inapplicability of Requirements Inconsistent with Fiduciary Responsibilities and Related Duties.**

A state governmental entity is not subject to a requirement of this chapter if the state governmental entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of its assets or other duties imposed by law relating to the investment of its assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

**Sec. 809A.006. Reliance on Federal Determination and Restricted Entity Response.**

The comptroller may rely on the following, in the following order of priority, without conducting any further investigation, research, or inquiry:

- (1) a determination by a federal agency or officer made under a federal law, regulation, or executive order regarding whether an entity is a restricted entity; and
- (2) a restricted entity's response to a communication made under this chapter.

**SUBCHAPTER B. DUTIES REGARDING INVESTMENTS**

**Sec. 809A.051. Listed Restricted Entities.**

- (a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all restricted entities. In maintaining the list, the comptroller may:

- (1) review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding restricted entities, including information provided or made available by federal, state, or local governments, nonprofit organizations, research firms, and international organizations; and
- (2) request written verification from a restricted entity that it does not meet any of the criteria in Section 809A.001(6) and rely, as appropriate in the comptroller's judgment and without conducting further investigation, research, or inquiry, on the entity's written response to the request.

- (b) A restricted entity that fails to provide to the comptroller a written verification under Subsection (a)(2) before the 61st day after receiving the request from the comptroller is presumed to be a restricted entity.
- (c) The comptroller shall update the list annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (a).
- (d) Not later than the 30th day after the date the list of restricted entities is first provided or updated, the comptroller shall file the list with the presiding officer of each house of the legislature and the attorney general and post the list on a publicly available Internet website.

**Sec. 809A.052. Identification of Investment in Listed Restricted Entities.**

Not later than the 30th day after the date a state governmental entity receives the list provided under Section 809A.051, the state governmental entity shall notify the comptroller of the restricted entities in which the state governmental entity owns direct holdings or indirect holdings.

**Sec. 809A.053. Notice of Divestment to Listed Restricted Entity.**

For each listed restricted entity identified under Section 809A.052, the state governmental entity shall send a written notice:

- (1) informing the restricted entity of its status as a restricted entity; and
- (2) warning the restricted entity that it may become subject to divestment by the state governmental entity.

**Sec. 809A.054. Divestments of Assets.**

- (a) A state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed restricted entity shall comply with the following schedule:
  - (1) at least 50 percent of those assets must be removed from the state governmental entity's assets under management not later than the 180th day after the date the restricted entity receives notice under Section 809A.053 unless the state governmental entity determines, based on a good faith exercise of its fiduciary discretion and subject to Subdivision (2), that a later date is more prudent; and
  - (2) 100 percent of those assets must be removed from the state governmental entity's assets under management not later than the 360th day after the date the restricted entity receives notice under Section 809A.053.

(b) Except as provided by Subsection (a), a state governmental entity may delay the schedule for divestment under that subsection only to the extent that the state governmental entity determines, in the state governmental entity's good faith judgment, and consistent with the state governmental entity's fiduciary duty, that divestment from listed restricted entities will likely result in a loss in value or a benchmark deviation described by Section 809A.056(a). If a state governmental entity delays the schedule for divestment, the state governmental entity shall submit a report to the presiding officer of each house of the legislature and the attorney general stating the reason and justification for the state governmental entity's delay in divestment from listed restricted entities. The report must include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by Section 809A.056(a), including objective numerical estimates. The state governmental entity shall update the report every six months.

**Sec. 809A.055. Investments Exempted from Divestment.**

A state governmental entity is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit letters to the managers of each investment fund containing listed restricted entities requesting that they remove those restricted entities from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed restricted entities. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the 450th day after the date the fund is created.

**Sec. 809A.056. Authorized Investments in Listed Restricted Entities.**

(a) A state governmental entity may cease divesting from one or more listed restricted entities only if clear and convincing evidence shows that:

- (1) the state governmental entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the state governmental entity as a result of having to divest from listed restricted entities under this chapter; or
- (2) an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed restricted entities under this chapter.

(b) A state governmental entity may cease divesting from a listed restricted entity as provided by this section only to the extent necessary to ensure that the state governmental entity does not suffer a loss in value or deviate from its benchmark as described by Subsection (a).

(c) Before a state governmental entity may cease divesting from a listed restricted entity under this section, the state governmental entity must provide a written report to the comptroller, the presiding officer of each house of the legislature, and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed restricted entity.

- (d) The state governmental entity shall update the report required by Subsection (c) semiannually, as applicable.

**Sec. 809A.057. Prohibited Investments.**

Except as provided by Section 809A.056, a state governmental entity may not acquire securities of a listed restricted entity.

**SUBCHAPTER C. REPORT; ENFORCEMENT**

**Sec. 809A.101. Report.**

Not later than January 5 of each year, each state governmental entity shall file a publicly available report with the presiding officer of each house of the legislature and the attorney general that:

- (1) identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 809A.054;
- (2) identifies all prohibited investments under Section 809A.057; and
- (3) summarizes any changes made under Section 809A.055.

**Sec. 809A.102. Enforcement.**

The attorney general may bring any action necessary to enforce this chapter.

## CHAPTER 810. MISCELLANEOUS PROVISIONS

### Sec. 810.001. Establishment of Public Retirement System.

- (a) In this section:
  - (1) “Political entity” means a municipality or any agency thereof, a junior college district, river authority, water district, appraisal district, or other special purpose district or authority that is created pursuant to state law and that is not an agency of the state.
  - (2) “Public retirement system” means a continuing, organized program or plan (including a plan qualified under Section 401(a) of the Internal Revenue Code of 1986) of service retirement, disability retirement, or death benefits for officers or employees of a political entity, other than:
    - (A) a program providing only workers’ compensation benefits;
    - (B) a program administered by the federal government;
    - (C) an individual retirement account or individual retirement annuity within the meaning of Section 408 or a retirement bond within the meaning of Section 409 of the Internal Revenue Code of 1986 (26 U.S.C. Sections 408, 409);
    - (D) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403); or
    - (E) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).
- (b) Except as provided by Subsection (d), the governing body of a political entity may establish and maintain a public retirement system for its appointive officers and employees and determine the benefits, funding source and amount, and administration of the system. Each active member of a public retirement system established under the authority provided by this section shall contribute to the system an amount, if any, determined by the political entity. The political entity shall contribute for each active member in a defined contribution plan or a defined benefit plan an amount determined by the political entity to be required to meet the system’s benefit plan.
- (c) The governing body of the political entity may arrange for administration of the system by a private provider of public retirement benefits, whether or not the provider is also a source of benefits provided for under the system.
- (d) The authority granted by Subsections (b) and (c) does not apply to a political entity to the extent that the entity, by specific statute, is:
  - (1) required to establish or participate exclusively in a particular public retirement system; or
  - (2) prohibited from establishing or participating in any public retirement system or in a particular retirement system.

- (e) The authority granted by Subsections (b) and (c) is in addition to any other statutory authority to provide a public retirement system or programs specifically excluded from the definition of a public retirement system.
- (f) Every political entity which establishes or maintains a public retirement system covered under this Act shall file all reports with the State Pension Review Board required by Chapter 802. If a political subdivision establishes a retirement program that would be a “public retirement system” within the meaning ascribed to that term by Section 801.001, but for the fact that the program is administered by a life insurance company, the subdivision shall notify the State Pension Review Board of the establishment of the program and the name of the administering company.
- (g) “Civil union” means any relationship status that grants to the parties of the relationship the same legal protections, benefits, and responsibilities as are granted to the spouses of a marriage.
- (h) For purposes of this title, the state may not give effect to a:
  - (1) public act, record, or judicial proceeding that recognizes or validates a marriage or civil union between persons of the same sex; or
  - (2) right or claim asserted as a result of the purported marriage or civil union.
- (i) Subsection (h) does not preclude the enforcement in this state of an order issued in another state relating to child custody, child support, or property division, including a qualified domestic relations order.
- (j) A single governmental employer is not considered to be permitting a person who is a public employee, officer, or retiree of that employer to be receiving benefits from more than one system or program of retirement for the same service if:
  - (1) the employer participates in the Texas Municipal Retirement System or the Texas County and District Retirement System and also sponsors one or more supplemental plans:
    - (A) funded by the employer, the employee, or a combination of the employer and the employee; and
    - (B) established before January 1, 2005; and
  - (2) the amount of the combined benefits paid to the person by the Texas Municipal Retirement System or the Texas County and District Retirement System and all of the supplemental plans described by Subdivision (1) is in compliance with Section 415, Internal Revenue Code of 1986.

## **Sec. 810.002. Alternative Benefit Plan for Certain Municipalities.**

- (a) In this section, “alternative benefit plan” means a continuing, organized benefit plan, including a plan qualified under Section 401(a) of the Internal Revenue Code of 1986, of service retirement, disability retirement, or death benefits for officers or employees of a municipality.
- (b) This section applies only to a municipality subject to Article 6243a-1, Revised Statutes.
- (c) Notwithstanding any other law and subject to Subsection (f), the governing body of a municipality subject to this section may by ordinance:

- (1) establish an alternative benefit plan and determine the benefits, funding source and amount, and administration of the alternative benefit plan; and
- (2) require an employee first hired by the municipality on or after the date the alternative benefit plan is implemented to participate in the alternative benefit plan instead of participating in the pension system provided under Article 6243a-1, Revised Statutes.
- (d) Each active participant of an alternative benefit plan established under this section shall contribute to the plan an amount, if any, determined by the municipality. The municipality shall contribute for each active participant in an alternative benefit plan established under Subsection (c) an amount determined by the municipality.
- (e) A municipality that establishes an alternative benefit plan under this section shall file all reports with the State Pension Review Board required by Chapter 802.
- (f) The governing body of a municipality may only establish an alternative benefit plan under this section if:
  - (1) the qualified actuary of the pension system established under Article 6243a-1, Revised Statutes, determines that after establishment and implementation of the alternative benefit plan, the pension system would continue to comply with funding and amortization period requirements applicable to the pension system under Subchapter C, Chapter 802; and
  - (2) the State Pension Review Board conducts a review of and validates the determination made under Subdivision (1).

**Sec. 810.003.                    Certain Elected Officials Ineligible for Retirement Annuity.**

- (a) In this section:
  - (1) “Governing body of a public retirement system” and “public retirement system” have the meanings assigned by Section 802.001.
  - (2) “Qualifying felony” means any felony involving:
    - (A) bribery;
    - (B) the embezzlement, extortion, or other theft of public money;
    - (C) perjury;
    - (D) coercion of public servant or voter;
    - (E) tampering with governmental record;
    - (F) misuse of official information;
    - (G) conspiracy or the attempt to commit any of the offenses described by Paragraphs (A)-(F); or
    - (H) abuse of official capacity.
- (b) This section applies only to a person who is:
  - (1) a member of the elected class of the Employees Retirement System of Texas as described by Section 812.002(a)(1) or (2); or
  - (2) otherwise eligible for membership in a public retirement system wholly or partly because the person was elected or appointed to an elected office.

- (c) Except as provided by Subsection (d), a member of a public retirement system is not eligible to receive a service retirement annuity under the retirement system if the member is convicted of a qualifying felony committed while in office and arising directly from the official duties of that elected office.
- (d) The retirement system, on receipt of notice of a conviction under Subsection (e) or (k), any similar notice of a conviction of a qualifying felony from a United States district court or United States attorney, or any other information that the retirement system determines by rule is sufficient to establish a conviction of a qualifying felony, shall suspend payments of a service retirement annuity to a person the system determines is ineligible to receive the annuity under Subsection (c). A person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:
  - (1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and
  - (2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (f).
- (e) Not later than the 30th day after the conviction of a person of a qualifying felony, the governmental entity to which the person was elected or appointed must provide written notice of the conviction to the public retirement system in which the person is enrolled. The notice must comply with the administrative rules adopted by the public retirement system under Subsection (j).
- (f) A member who is ineligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. A refund under this subsection is subject to an award of all or part of the member's service retirement annuity contributions to a former spouse, including as a just and right division of the contributions on divorce, payment of child support, or payment of spousal maintenance or contractual alimony or other order of a court.
- (g) Benefits payable to an alternate payee under Chapter 804 who is recognized by a qualified domestic relations order established before the effective date of this subsection are not affected by a member's ineligibility to receive a service retirement annuity under Subsection (c).
- (h) On conviction of a member for a qualifying felony:
  - (1) a court may, in the same manner as in a divorce or annulment proceeding, make a just and right division of the member's service retirement annuity by awarding to the member's spouse all or part of the community property interest in the annuity forfeited by the member; and )
  - (2) a court shall, if the member's service retirement annuity was partitioned or exchanged by written agreement of the spouses as provided by Subchapter B, Chapter 4, Family Code, before the member's commission of the offense, award the annuity forfeited by the member to the member's spouse as provided in the agreement.
- (i) Ineligibility for a service retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

- (j) The governing body of a public retirement system shall adopt rules and procedures to implement this section.
- (k) A court shall notify the retirement system of the terms of a conviction of a person convicted of an offense described by Subsection (c).
- (l) Notwithstanding any other provision of this section, if the spouse of a member convicted of a qualifying felony is convicted of the felony as a party to the offense as defined by Section 7.01, Penal Code, or of another qualifying offense arising out of the same criminal episode as defined by Section 3.01, Penal Code, the spouse forfeits the member's service retirement annuity and service retirement contributions to the same extent as the member.

**Sec. 810.004.                    Certain Corrections Employees Ineligible for Retirement Annuity.**

- (a) In this section:
  - (1) "Governing body of a public retirement system" and "public retirement system" have the meanings assigned by Section 802.001.
  - (2) "Qualifying felony" means any felony involving an incarcerated member of a criminal street gang as defined by Section 71.01, Penal Code, including:
    - (A) bribery;
    - (B) the embezzlement, extortion, or other theft of public money;
    - (C) perjury;
    - (D) engaging in organized criminal activity;
    - (E) tampering with governmental record;
    - (F) misuse of official information;
    - (G) abuse of official capacity; or
    - (H) conspiracy or the attempt to commit any of the offenses described by Paragraphs (A)-(G).
- (b) This section applies only to a person who is:
  - (1) a member of the employee class of the Employees Retirement System of Texas as described by Section 812.003 because the person serves as a corrections officer for the Texas Department of Criminal Justice or the Texas Juvenile Justice Department; or
  - (2) otherwise eligible for membership in a public retirement system wholly or partly because the person served as a corrections officer for the Texas Department of Criminal Justice or the Texas Juvenile Justice Department.
- (c) Except as provided by Subsection (d), a member of a public retirement system is not eligible to receive a service retirement annuity under the retirement system if the member is convicted of a qualifying felony for conduct arising directly from the member's service as a corrections officer.
- (d) The retirement system, on receipt of notice of a conviction under Subsection (j), any similar notice of a conviction of a qualifying felony from a United States district

court or United States attorney, or any other information that the retirement system determines by rule is sufficient to establish a conviction of a qualifying felony, shall suspend payments of a service retirement annuity to a person the system determines is ineligible to receive the annuity under Subsection (c). A person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

- (1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and
- (2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (e).

(e) A member who is ineligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. A refund under this subsection is subject to an award of all or part of the member's service retirement annuity contributions to a former spouse, including as a just and right division of the contributions on divorce, payment of child support, or payment of spousal maintenance or contractual alimony or other order of a court.

(f) Benefits payable to an alternate payee under Chapter 804 who is recognized by a qualified domestic relations order established before the effective date of this subsection are not affected by a member's ineligibility to receive a service retirement annuity under Subsection (c).

(g) On conviction of a member for a qualifying felony:

- (1) a court may, in the same manner as in a divorce or annulment proceeding, make a just and right division of the member's service retirement annuity by awarding to the member's spouse all or part of the community property interest in the annuity forfeited by the member; and
- (2) a court shall, if the member's service retirement annuity was partitioned or exchanged by written agreement of the spouses as provided by Subchapter B, Chapter 4, Family Code, before the member's commission of the offense, award the annuity forfeited by the member to the member's spouse as provided in the agreement.

(h) Ineligibility for a service retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(i) The governing body of a public retirement system shall adopt rules and procedures to implement this section.

(j) A court shall notify the retirement system of the terms of a conviction of a person convicted of an offense described by Subsection (c).

(k) Notwithstanding any other provision of this section, if the spouse of a member convicted of a qualifying felony is convicted of the felony as a party to the offense as defined by Section 7.01, Penal Code, or of another qualifying offense arising out of the same criminal episode as defined by Section 3.01, Penal Code, the spouse forfeits the member's service retirement annuity and service retirement contributions to the same extent as the member.

**Sec. 810.006. Minimum Retirement Funding Requirements for Defunding Municipalities.**

- (a) In this section:
  - (1) “Defunding municipality” means a municipality that is considered to be a defunding municipality under Chapter 109, Local Government Code.
  - (2) “Public retirement system” has the meaning assigned by Section 802.001.
- (b) This section applies only to a municipality that is:
  - (1) an employer of active members of a public retirement system administering a defined benefit plan; and
  - (2) a defunding municipality.
- (c) Notwithstanding any other law and as soon as practicable after the date the criminal justice division of the office of the governor issues a written determination under Section 109.003(2), Local Government Code, with respect to a municipality, the municipality shall for the purpose of funding retirement benefits increase municipal contributions to a public retirement system in which its employees participate as members in a manner that ensures that the total amount the municipality and members contribute to the system for the fiscal year on which the determination is based is not less than the total amount the municipality and members of the system contributed to the system for the fiscal year immediately preceding the fiscal year on which the determination is based.
- (d) A municipality subject to this section shall increase contributions in the manner provided by Subsection (c) for each fiscal year for which the municipality is considered a defunding municipality.

# **TEXAS GOVERNMENT CODE**

## **TITLE 8. PUBLIC RETIREMENT SYSTEMS**

### **SUBTITLE F. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM**

#### **CHAPTER 841. GENERAL PROVISIONS**

##### **SUBCHAPTER A. GENERAL PROVISIONS**

###### **Sec. 841.001. Definitions.**

In this subtitle:

- (1) “Actuarial equivalent” means a benefit that, at the time it is begun, has the same present value as the benefit it replaces, based on seven percent annual interest and either:
  - (A) the mortality table published by the Conference of Actuaries in Public Practice and known as the UP-1984 table with an age setback of five years for retired or disabled annuitants and an age setback of 10 years for beneficiaries, with a 30-percent reserve refund assumption for the standard benefit; or
  - (B) a mortality basis adopted under Section 845.110(c).
- (1-a) “Accrued benefit” means the sum of a member’s accumulated contributions and service credit calculated as of a specified date.
- (2) “Accumulated contributions” means the contributions, other member deposits, and interest credited to a member’s individual account in the employees saving fund.
- (3) “Annuity” means an amount of money payable in equal monthly installments at the end of each month for a period determined under this subtitle.
- (4) “Beneficiary” means an individual or entity designated by a member or annuitant or by statute to receive a benefit payable under this subtitle because of the death of a member or an annuitant. The term does not include an “alternate payee” as defined by Section 804.001.
- (5) “Board of trustees” means the persons appointed under this subtitle to administer the retirement system.
- (6) “Compensation” means the sum of payments that are made to an employee for performance of personal services as certified by a participating subdivision, including nonmonetary compensation, the value of which is determined by the governing body of the subdivision, on which contributions by an employee to the retirement system are based, which may not exceed either the limit provided by Section 401(a)(17) of the Internal Revenue Code of 1986, as indexed in the manner provided by that section, or a lesser amount established by rule of the board of trustees.

The term includes amounts by which payment for earnings is reduced because of employer pick-up of employee contributions to the retirement system under Section 845.403, deferral of compensation under benefit plans or tax-sheltered annuity programs adopted by the subdivision under Section 401(k), 403(b), or 457 of the Internal Revenue Code of 1986, the costs of benefits furnished under qualified cafeteria plans adopted by the subdivision under Section 125 of the Internal Revenue Code of 1986, and deductions for Federal Insurance Contribution Act taxes, federal income taxes, or other obligations of the employee. The term does not include workers' compensation benefits received by a member under Section 504.011, Labor Code.

- (7) "Credited service" means the number of months of prior, current, and optional service ascribed to a member in the retirement system.
- (7-a) "Director" means the person appointed as director under Section 845.202.
- (8) "Employee" means a person, other than a person determined by a subdivision to be a temporary employee, who is certified by a subdivision as being employed in, or elected or appointed to, a position or office in the subdivision for which the person is compensated by the subdivision. The term includes a person described by Section 842.107 only as provided by that section.
- (9) "Governing body" means the commissioners court of a county or, in any other subdivision, the body that is authorized to raise and expend revenue.
- (10) "Initial deposit rate" means the percentage of the annual compensation of an employee of a participating subdivision that is required by the subdivision on the effective date of subdivision participation in the retirement system as the rate for employee contributions to the retirement system.
- (11) "Local pension system" means a public retirement benefit program of less than statewide scope.
- (12) "Retirement" means the withdrawal from service with a retirement benefit granted under this subtitle.
- (13) "Retirement annuity" means the service, disability, or survivor benefit paid under this subtitle in the form of an annuity.
- (14) "Retirement system" means the Texas County and District Retirement System.
- (15) "Service" means the time a person is an employee.
- (16) "Service credit" means the monetary credits allowed a member for service for a participating subdivision.
- (17) "Subdivision" means a political subdivision of the state that is not eligible to participate in any other statewide retirement system or that is not currently participating in a retirement system established by the legislature. The term includes the Texas Association of Counties, the retirement system, and a city-county hospital jointly managed under Subchapter B, Chapter 265, Health and Safety Code. The term does not include a branch, division, department, employee classification group, or other separately identified component of a political subdivision.

- (18) “Optional group term life program” means the voluntary, employer-funded optional death benefit program established under Subchapter F, Chapter 844.
- (19) “Vested member” means a member who may withdraw from employment with all participating subdivisions, leave the member’s accumulated contributions on deposit with the retirement system, and, on meeting the age and length-of-service requirements for service retirement, file an application for retirement and begin to receive a service retirement annuity.

**Sec. 841.002. Purpose of Subtitle.**

The purpose of this subtitle is to establish a program of benefits for members, retirees, and their beneficiaries and to establish rules for the management and operation of the retirement system. The assets of the retirement system are held in trust for the exclusive benefit of the members, the retirees, and their beneficiaries and may not be diverted. Forfeitures may not be applied to increase the benefits any person would otherwise receive under this subtitle.

**Sec. 841.003. Retirement System.**

The Texas County and District Retirement System is continued in existence and is the name by which the business of the retirement system shall be transacted, all its funds invested, and all its cash and other property held.

**Sec. 841.004. Powers, Privileges, and Immunities.**

- (a) The retirement system is a governmental entity and has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.
- (b) The board of trustees, director, investment officer, and employees of the retirement system are not liable for any action taken or omission made or suffered by them in the good faith performance of any duty in connection with any program or benefit administered by the retirement system.

**Sec. 841.005. Actions for Accounting.**

- (a) The retirement system or the board of trustees may initiate, or cause to be initiated on its behalf, an action against a participating subdivision, a board of the subdivision, or individual officers of the subdivision, to compel an accounting of sums due to the retirement system or to require the withholding and accounting of sums due from members.
- (b) The venue of an action brought under this section is in either Travis County or a county in which the subdivision is situated.

**Sec. 841.0051. Venue**

- (a) The venue of any action brought against the retirement system in a state court or before the State Office of Administrative Hearings is in Travis County.
- (b) The venue of any action brought in a state court by the retirement system is in Travis County or in the county in which the defendant is situated, domiciled, or does business.

**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.

**Sec. 841.007. Reduction of Annuity Payment on Request.**

- (a) An annuitant by written request may authorize the retirement system to reduce the annuitant's monthly payment to an amount specified in the request. In writing, the annuitant may subsequently request the retirement system to increase the annuitant's monthly payment to any specified amount that does not exceed the amount payable if a reduction had never been requested.
- (b) If the retirement system receives a request under Subsection (a), the director may cause the monthly annuity payment of the requesting annuitant to be reduced or increased as specified in the request.
- (c) Any amounts by which an annuity is reduced under this section are forfeited to the retirement system and are not recoverable by any person.

**Sec. 841.008. Applications by, and Payments to, Persons Other Than Members, Beneficiaries, and Annuitants.**

- (a) The board of trustees may accept an application for any benefit under this subtitle that is signed on behalf of a person entitled to the benefit by:
  - (1) an appointed guardian of the person and estate of the person; or
  - (2) an attorney in fact authorized to act on behalf of the person by a written power of attorney that provides that the power is not revoked by disability of the person, except that an attorney in fact who is not the person's spouse may not select a benefit in which the attorney in fact or a direct ancestor or lineal descendant of the attorney in fact is a named beneficiary, unless the attorney in fact designates as the person's beneficiary:
    - (A) the same individuals, with the same share of the benefit that each would have received if the person had died immediately before the beneficiary designation by the attorney in fact; or
    - (B) all individuals who bear the same relationship to the attorney in fact, with the same share of the benefit that each would have received if the person had died intestate.

(b) If it is made to appear to the director by affidavit of a licensed physician that a person entitled to a benefit is not mentally capable of managing the person's own affairs, and if the director reasonably believes that the estate of the person is insufficient to justify the expense of establishing a guardianship, or continuing a guardianship after letters of guardianship have expired, then until current letters of guardianship are filed with the retirement system, the director may make payment of any annuity or other benefit:

- (1) to the spouse of the person, as trustee for the person;
- (2) to an individual or entity actually providing for the needs of and caring for the person, as trustee for the person; or
- (3) to a public agency or private charitable organization providing assistance or services to the aged or incapacitated that agrees to accept and manage the payment for the benefit of the person as a trustee.

(c) If requested by the person entitled to the benefit or the guardian, attorney in fact, or trustee of the person, the director may, if the director determines that it is in the best interest of the person entitled to the benefit, make payments directly to the trustee of:

- (1) a trust described by Subchapter B, Chapter 1301 Estates Code, that has been created for the management of guardianship funds for the benefit of the person; or
- (2) a trust described by 42 U.S.C. Section 1396p(d)(4)(A), (B), or (C) that has been established to qualify the person for benefits or other assistance under a state or federal program or to supplement the benefits or other assistance provided under the program.

(c-1) If the director reasonably believes that the individual or entity accepting benefits for the person has breached a fiduciary duty owed to the person or is failing to act in the interest of or for the benefit of the person and the person may suffer personal or financial harm as a result, the retirement system, on giving notice to the individual or entity receiving payments on behalf of the person, may cease making payments to the individual or entity. Thereafter, the system may make payment of any annuity or other benefit in a manner provided by Subsection (b). This subsection does not apply if a court of competent jurisdiction has appointed the individual or entity accepting benefits for the person.

(d) The director may require proof of facts used to establish a right under this section by evidence the director determines is satisfactory.

**Sec. 841.009.      Divorce-Decree Payments Protected.**

The system and officials of the system are not liable to any person for making payments of any benefits in accordance with the provisions of a decree of divorce in a cause in which the member or annuitant was a party.

**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.

**Sec. 841.010. Distribution Requirements.**

- (a) Notwithstanding any other provision of this subtitle, all distributions under this subtitle must be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401) and the regulations adopted under that provision, including the minimum incidental death benefit distribution requirement of Section 401(a)(9)(G) of that code. The board of trustees may adopt rules relating to the selection, payment, and distribution of benefits to ensure compliance with federal statutes and regulations.
- (b) The entire vested interest of a participant must be distributed or begin to be distributed not later than the required beginning date as determined in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986 and the regulations adopted under that provision. If the participant dies after distribution of the participant's interest has begun, the remaining portion of the interest will continue to be distributed at least as rapidly as the method of distribution being used before the participant's death. If the participant dies before distribution of the participant's interest begins, distribution of the participant's entire interest must be made in a manner complying with Section 401(a)(9)(B) of the code.

**Sec. 841.011. Full Vesting of Accrued Benefits at Termination.**

If the retirement system is terminated or if there is a complete discontinuance of contributions to the retirement system, each member will become fully vested in that member's accrued benefit to the extent funded as of the date of termination or contribution discontinuance.

**SUBCHAPTER B. PENAL PROVISIONS**

**Sec. 841.101. Offenses; Penalty.**

- (a) A person commits an offense if the person knowingly makes a false statement in a report or application to the retirement system in an attempt to defraud the retirement system.
- (b) A person commits an offense if the person knowingly makes a false certificate of an official report to the retirement system.
- (c) A person commits an offense if the person knowingly fails to return money received from the retirement system to which the person is not entitled.
- (d) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000, by confinement in jail for not less than 30 days nor more than one year, or both.

## **CHAPTER 842. MEMBERSHIP**

### **SUBCHAPTER A. SUBDIVISION PARTICIPATION**

#### **Sec. 842.001. Subdivision Participation.**

- (a) A subdivision, in the manner required for official actions of the subdivision, may elect to join the retirement system and be subject to the provisions of this subtitle.
- (b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(1), eff. January 1, 2008.
- (c) A political subdivision other than a county may participate in the retirement system only upon approval of the board of trustees of the system.
- (d) Subject to the approval of the board of trustees, an electing subdivision under this section may begin participation in the retirement system on the date specified by the subdivision's governing body.

#### **Sec. 842.002. Rules for Participating Subdivisions.**

The board of trustees may adopt rules concerning:

- (1) notices, information, and reports the board of trustees requires from a subdivision that elects to participate in the retirement system;
- (2) the time that a subdivision that elects to participate in the retirement system may begin participation and the actions that subdivision may take in anticipation of board approval under Section 842.001; and
- (3) the powers and duties of a participating subdivision to adopt orders or resolutions, make elections, and otherwise exercise decision-making authority concerning the rights and benefits of the members and annuitants under a plan adopted or assumed by the subdivision.

#### **Sec. 842.003. Repealed.**

#### **Sec. 842.004. Optional Group Term Life Program.**

- (a) A subdivision participating in the retirement system may elect to participate in the optional group term life program.
- (b) A subdivision that elects to participate in the program may elect coverage providing postretirement death benefits in addition to coverage providing in-service death benefits.
- (c) A subdivision that elects to participate in the program may begin participation on the first day of any month after the month in which the subdivision gives notice of its election to the board of trustees.
- (d) If before November 1 of any year a subdivision gives written notice of its intention to the retirement system, the subdivision may terminate coverage under and discontinue participation in the program. A termination under this subsection is effective on January 1 of the year following the year in which notice is given.

(e) If a subdivision has previously discontinued participation in the program, the board of trustees in its discretion may restrict the right of the subdivision to participate again.

**Sec. 842.007. Subdivision Not Agent of System.**

Neither a subdivision that participates in the retirement system nor any employee or officer of a participating subdivision has authority to act as an agent of the retirement system. An action or inaction on the part of a participating subdivision or its employee or officer is not binding on the retirement system.

**Sec. 842.0075. Assumption by Successor Subdivision.**

- (a) The governing body of a participating subdivision may, with the consent of the board of trustees and on terms approved by the board, assume the subdivision account and pension liabilities of a subdivision that no longer exists, is in the process of dissolution, is changing its operational form, or no longer has employees. The account and pension liabilities of a subdivision described by this subsection may not be assumed if the subdivision has executed a voluntary termination agreement under Section 842.052 or if the board has specified a date under Section 842.053 for the involuntary termination of the subdivision's participation in the retirement system.
- (b) Subject to any limitation set by the board of trustees, the governing body of the assuming subdivision may exercise any authority with respect to plan provisions applicable to members and annuitants of the subdivision plan being assumed that the governing body of that subdivision could have exercised.
- (c) Except as otherwise provided by this section, all retirement plan provisions in effect on the assumption date remain in effect until changed by the governing body of the assuming subdivision.
- (d) As of the assumption date, the account in the subdivision accumulation fund being assumed and the account of the assuming subdivision will be treated as one account for the purposes of receiving allocations under this subtitle and paying benefits accrued with respect to either subdivision.
- (e) The retirement system is not liable to any person for any claim or loss of benefits resulting from the assumption by another participating subdivision of the account and pension liabilities of a subdivision described by Subsection (a).
- (f) The board of trustees by rule may establish standards, definitions, and procedures it considers necessary to administer this section and shall take reasonable actions and exercise its discretion in a fair and equitable manner on a case-by-case basis to preserve accrued benefits.

**Sec. 842.008. Partial Assumption by Transferee Subdivision.**

If a function or activity previously performed by employees of a participating subdivision is transferred to or otherwise taken over by another participating subdivision and any of the employees performing the function or activity transfer to and become employees of the subdivision taking over the function or activity, with the consent of and on terms approved by the board of trustees, the pension liabilities accrued by the transferring employees for service with the transferring subdivision, together with an appropriate portion of trust assets in the account of the transferring subdivision, may be treated as and considered to be a separate account and pension liabilities of the subdivision taking over the function or activity.

**SUBCHAPTER A-1.TERMINATION OF PARTICIPATION BY SUBDIVISIONS**

**Sec. 842.051. General Provisions.**

- (a) Notwithstanding any provision of this subchapter to the contrary, to the extent required by applicable provisions of the Internal Revenue Code of 1986, on termination of a subdivision's participation in the retirement system or on complete discontinuance of contributions, each member becomes fully vested in the member's accrued benefit with respect to the subdivision to the extent funded as of the date of termination or contribution discontinuance.
- (b) The retirement system is not liable to any person for any claim or loss of benefits resulting from the termination of a subdivision's participation in the system or the failure of a subdivision to make required contributions or payments under a termination agreement.
- (c) The board of trustees by rule may establish standards, definitions, and procedures it considers necessary to administer this subchapter and shall take reasonable actions and exercise its discretion in a fair and equitable manner on a case-by-case basis to preserve accrued benefits.

**Sec. 842.052. Voluntary Termination of Participation.**

- (a) With the consent of the board of trustees, a subdivision other than a county may voluntarily terminate its participation in the retirement system if the subdivision agrees to be contractually and legally bound, on terms approved by the board, to fund:
  - (1) all benefits accrued before the date specified in the termination agreement and payable on or after that date in accordance with Subsection (e); and
  - (2) all supplemental annuities.
- (b) Beginning with the date specified in the termination agreement, additional employee contributions or deposits may not be made to a member's account and additional service with the subdivision may not be credited to a member, except as authorized by the board. Except as otherwise provided by this section, all other retirement plan provisions then in effect remain in effect.

- (c) Beginning with the date specified in the termination agreement, the subdivision's account in the subdivision accumulation fund ceases to receive allocations under this subtitle for any prior, current, or future plan year, except as authorized by the board.
- (d) On full performance of the termination agreement, the subdivision is released from all liability for its accrued benefits and supplemental annuities. The retirement system shall make transfers from the subdivision's account to the appropriate funds within the system in amounts actuarially equivalent to the accrued benefits and supplemental annuities. The retirement system shall pay any amounts remaining in the subdivision's account after satisfaction of all the subdivision's pension liabilities to the subdivision or its governmental successor in interest in accordance with Section 845.317(b).
- (e) On full performance of the termination agreement, each member who has not received a refund of accumulated contributions becomes fully vested in the member's accrued benefits with respect to the subdivision and is immediately eligible to retire with a service retirement annuity or to take a distribution of the accrued benefits in a lump sum, regardless of age, service, or employment.
- (f) A member vested under Subsection (e) or Section 842.051(a) is an eligible member under Section 844.407. For the purpose of determining any death benefit payable under Section 844.402, the member's individual account consists only of the deposits and contributions made by the member and the accumulated interest attributable to those amounts.

**Sec. 842.053.                   Involuntary Termination of Participation.**

- (a) The board of trustees by order may terminate the participation of a subdivision other than a county if the board determines that:
  - (1) the subdivision has failed to perform in accordance with a termination agreement under Section 842.052;
  - (2) the subdivision has ceased to exist, is in the process of dissolving, or is changing its operational form;
  - (3) benefits accrued for service with the subdivision may be at risk of forfeiture;
  - (4) the retirement system no longer serves as an effective program for providing retirement, disability, and death benefits to the employees of the subdivision because of the action or inaction of the subdivision or because of a significant change in covered payroll, number of contributing members, workforce composition, general revenues, or other circumstances of the subdivision; or
  - (5) the continued participation of the subdivision is not in the best interest of the retirement system, the subdivision, the employees of the subdivision, or the other participating subdivisions.
- (b) Beginning with a date specified by the board, additional employee deposits or contributions may not be made to a member's account with the subdivision and additional service with the subdivision may not be credited to a member, except as authorized by the board. Except as otherwise provided by this subchapter, all other retirement plan provisions then in effect remain in effect.

- (c) Beginning with a date specified by the board, the subdivision's account in the subdivision accumulation fund ceases to receive allocations under this subtitle for any prior, current, or future plan year except as authorized by the board.
- (d) Beginning with a date specified by the board, the retirement system shall value the accrued benefits and supplemental annuities with respect to the subdivision's participation as immediately payable under this subchapter. If the assets in the subdivision's account exceed the actuarial equivalent value of pension benefits, the subdivision is released from all liability with respect to the accrued benefits and supplemental annuities. The retirement system shall make transfers from the subdivision's account to the appropriate funds within the system in amounts actuarially equivalent to all accrued benefits and supplemental annuities. The retirement system shall pay any amount remaining in the subdivision's account after satisfaction of all the subdivision's pension liabilities to the subdivision or its governmental successor in interest in accordance with Section 845.317(b).
- (e) If the actuarial equivalent value of pension benefits exceeds the assets in the subdivision's account, the subdivision or its governmental successor in interest may make a contribution in any amount to the subdivision's account. The retirement system shall transfer the assets of the subdivision's account in the subdivision accumulation fund to appropriate funds within the system and allocate the assets as provided by Sections 842.054–842.057.

**Sec. 842.054.                    Class A.**

In a case of involuntary termination under Section 842.053, the retirement system shall make a proportionate transfer to the individual account of each member of the subdivision eligible to retire based on the ratio that the member's current service credit bears to the total current service credit of the class. The transfer to a member's individual account may not exceed 100 percent of the member's current service credit.

**Sec. 842.055.                    Class B.**

If any assets remain after the transfers are made under Section 842.054, the retirement system shall make a proportionate transfer to the individual account of each member of the subdivision not eligible to retire based on the ratio that the member's current service credit bears to the total current service credit of the class. The transfer to a member's individual account may not exceed 100 percent of the member's current service credit.

**Sec. 842.056.                    Class C.**

If any assets remain after the transfers are made under Sections 842.054 and 842.055, the retirement system shall make a transfer to the closed subdivision annuity reserve fund in an amount computed as necessary to fund the basic and supplemental annuities of the annuitants of the subdivision and a transfer to the individual account of each member of the class eligible to retire in an amount that equals the multiple matching credits and prior service credits of the member. If necessary, the retirement system shall proportionately reduce an individual's total credits or supplemental annuity, as applicable, based on the ratio that the individual's total actuarial equivalent of benefits described by this section bears to the aggregate total actuarial equivalent of all those benefits of the class.

**Sec. 842.057. Class D.**

If any assets remain after the transfers are made under Sections 842.054, 842.055, and 842.056, the retirement system shall make a proportionate transfer to the individual account of each member not eligible to retire based on the ratio that the sum of the member's multiple matching credits and prior service credits bears to the total multiple matching credits and prior service credits of the class. The transfer to a member's individual account may not exceed 100 percent of the member's multiple matching credits and prior service credits.

**Sec. 842.058. Benefits.**

- (a) After the transfers, allocations, and any necessary reductions described by Sections 842.054–842.057 have been made, each member who has not received a refund of accumulated contributions becomes fully vested in the member's accrued benefits with respect to the subdivision to the extent funded and is immediately eligible to retire with a service retirement annuity or to take a distribution of the accrued benefits in a lump sum, regardless of age, service, or employment.
- (b) A member vested under this section or Section 842.051(a) is an eligible member under Section 844.407. For the purpose of determining any death benefit payable under Section 844.402, the member's individual account consists only of the deposits and contributions made by the member and the accumulated interest attributable to those amounts.

**SUBCHAPTER B. MEMBERSHIP**

**Sec. 842.101. General Membership Requirements.**

- (a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system on the latest of:
  - (1) the date the subdivision's participation in the retirement system becomes effective, if the person is a subdivision employee on that date;
  - (2) the date the person becomes a subdivision employee; or
  - (3) January 1, 2006, if the person is an employee of a participating subdivision on that date and was previously excluded from retirement system membership.
- (b) Except as otherwise provided by this subtitle or by rules adopted by the board of trustees, the rights and benefits of a member are determined separately with respect to each subdivision with which the member has credited service.
- (c) If a person's status as a temporary employee ceases, and the person becomes an employee within the meaning of this subtitle, the subdivision shall certify the change to the retirement system, and the person becomes a member effective on the date of the certification, but without credit for the period during which the person was a temporary employee.

**Sec. 842.102. Repealed.**

**Sec. 842.103. Repealed.**

**Sec. 842.104. County Hospital Employees.**

- (a) If a county elects to participate in the retirement system, the commissioners court of the county may elect to deny membership to the employees of a county hospital governed by Chapter 263, Health and Safety Code.
- (b) After making an election under this section, the commissioners court may at any time reverse its decision and require that county hospital employees become members on a date fixed by order of the commissioners court.
- (c) If the commissioners court reverses an election under this section and requires the employees of a county hospital to become members of the retirement system, for the purposes of this subtitle the employees of the county hospital comprise a separate subdivision from other county employees.
- (d) If on the effective date of participation in the retirement system a county is not operating a county hospital, the order or resolution of the commissioners court electing to participate in the system does not include employees of a hospital later established or operated by the county. The commissioners court may elect to have the employees of a hospital later established or operated by the county participate in the retirement system as a unit, which for purposes of this subtitle comprises a subdivision separate from other county employees.
- (e) The commissioners court is the governing body of a county hospital for the purposes of this subtitle.

**Sec. 842.105. Status as an Employee.**

For the purposes of this subtitle, a person has the standing of an employee in a participating subdivision if the person is an employee, other than a temporary employee, of a community supervision and corrections department that has executed a contract with the participating subdivision under Section 76.006, Government Code.

**Sec. 842.106. Multiple Retirement System Membership.**

A person who is a member of this retirement system and another state or local retirement system authorized under Section 67, Article XVI, Texas Constitution, may receive a benefit from this system only to the extent that the amount of the benefit is computed solely on the member's accumulated contributions and service credit in this system. Service credited by another retirement system may not be used to determine eligibility for a benefit in this retirement system except as provided by Chapter 803.

**Sec. 842.107. Optional Membership**

- (a) A subdivision may authorize to be a member of the retirement system a person who is accruing benefits in another statewide retirement system for service in an elected or appointed judicial or district office or as an employee of the state or a governmental unit of the state during the same period the person is receiving supplemental compensation from the subdivision. A person described by this subsection who is first included for optional membership after December 31, 2005, may not contribute to the employees saving fund or receive any service credit for any supplemental compensation received before the date the subdivision makes the person eligible to become a member.

- (b) The board by rule may establish reasonable restrictions and limitations on the granting of membership and service credit under this section.

**Sec. 842.108.                   Withdrawal of Accumulated Contributions.**

- (a) A member who has separated from employment with a participating subdivision may submit an application to withdraw the member's accumulated contributions attributable to service with that subdivision. A withdrawal cancels the person's service credit attributable to service with that subdivision on the date the retirement system makes payment of any portion of the member's accumulated contributions.
- (b) Except for a membership terminated under prior law or in accordance with Section 842.109(b), interest is computed on the balance in the member's individual account in the employees saving fund on January 1 of the year of withdrawal through the month before the month in which the withdrawal occurs.
- (c) If a person eligible to receive a withdrawal or another non-periodic distribution elects to have all or a portion of the distribution paid directly to an eligible retirement plan and specifies the plan to which the distribution is to be paid on forms approved by the board of trustees, the retirement system shall make the payment in the form of a direct trustee-to-trustee transfer but is under no obligation to determine whether the other plan in fact is an eligible retirement plan for that purpose.
- (d) Notwithstanding Subsection (c), the board of trustees shall adopt rules to administer this section as necessary to maintain the retirement system as a qualified plan under Section 401(a) of the Internal Revenue Code of 1986. The rules may include the adoption of definitions and limitations relating to distributions, eligible recipients, and eligible retirement plans.

**Sec. 842.109.                   Termination of Membership.**

- (a) A person terminates membership in the retirement system by:
  - (1) retirement from all participating subdivisions with which the person has service credit; or
  - (2) withdrawal of all of the person's accumulated contributions.
- (b) Unless terminated under Subsection (a), a person's membership in the retirement system terminates on the earlier of the date of the person's death or the last day of the month ending before the person's required beginning date determined in accordance with Section 841.010.
- (c) A member of the retirement system who leaves employment with a participating subdivision to perform and does perform qualified military 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 is not absent from service and continues to accumulate credited service with that subdivision if:
  - (1) the person applies for reemployment with the same subdivision not later than the 90th day after the date the person is discharged from military service under honorable conditions or released from hospitalization continuing after

being discharged under honorable conditions for a period of not more than two years; and

(2) the person is reemployed by the same participating subdivision.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(4), eff. January 1, 2008.

**Sec. 842.110. Resumption of Service After Withdrawal or Retirement.**

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

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

(c) A membership established under the requirements of Subsection (a) is considered to be a new membership for the purposes of beneficiary determinations and benefit selections.

(d) After terminating employment with a participating subdivision, a member who has previously retired with a service retirement annuity under this subtitle and who meets the requirements of Subsection (a) is eligible to apply for and receive an additional standard or optional service retirement annuity or a refund of the member's accumulated contributions for service with the subdivision, without regard to any age or credited service requirement, except as provided by Subsection (f).

(e) On the death of a member who meets the requirement of Subsection (d), a person may apply for and receive an optional service retirement annuity or a refund of the decedent's accumulated contributions in the manner provided by Subsection (d), except as provided by Subsection (f).

(f) The waiver of an age or credited service requirement under this section does not apply to a person who becomes eligible to retire solely as a result of a subdivision's termination of participation under Subchapter A-1, Chapter 842.

**Sec. 842.111. Repealed.**

**Sec. 842.112.****Correction of Errors.**

- (a) The retirement system may correct an error caused by an act or omission of the retirement system by any appropriate means.
- (b) If an act or omission of a participating subdivision causes a person to receive more or less credited service, service credit, or benefits than the person is entitled to receive, the correction of the error is the responsibility of the subdivision.
- (c) An error caused by an act or omission of a participating subdivision may be corrected:
  - (1) by the subdivision on its own motion if approved by the retirement system and if satisfactory proof of the error is submitted to the retirement system; or
  - (2) through a judicial or quasi-judicial proceeding between the person and the participating subdivision resulting in a judgment, order, or settlement agreement that meets the requirements of Section 842.113.
- (d) A person seeking the correction of an error relating to membership, rights, benefits, or benefit payments under the retirement system must timely provide to the appropriate subdivision or the retirement system written notice specifically describing the error. The written notice must be received before the first anniversary of the earlier of the date the person discovers the error or the date a reasonable, diligent person should have discovered the error.
- (e) If the act of a third person causes the retirement system to make a payment of a survivor benefit or death benefit to someone other than the person entitled to the payment, the system shall, after receiving credible evidence of an erroneous payment, determine the beneficiary entitled to the benefit and, if necessary, adjust future payments to the extent practicable to ensure that the present value of the remainder of the benefit will be paid to the person entitled to it.
- (f) The retirement system is not liable to any person for any payments described by Subsection (e) made before the date the system receives credible evidence of an erroneous payment. Any payments made before that date are a complete discharge of the system's responsibility for those payments and benefits.
- (f-1) If, pursuant to a valid application for a withdrawal or for retirement, the retirement system issues a check made payable to the applicant, properly addressed as directed on the application and sent by first-class mail, and the check is negotiated by any person, the system is not liable to any person with respect to the payment after the first anniversary of the date the check was mailed.
- (f-2) If, pursuant to a valid application for a withdrawal or for retirement, the retirement system causes funds to be electronically transferred to the account specified on the application, the system is not liable to any person for that payment or any claim relating to the payment beginning on the date of the transfer.
- (g) A recipient who receives a payment to which the recipient is not entitled holds the payment in constructive trust for the person entitled to the payment.

**Sec. 842.113.****Judgments, Orders, and Settlement Agreements.**

- (a) If, as a result of a suit against a participating subdivision in a court of competent jurisdiction or as a result of a complaint or grievance against a participating subdivision filed with the United States Equal Employment Opportunity Commission, the civil rights division of the Texas Workforce Commission, or a county civil service commission, a judgment or order is issued or a settlement agreement is executed, the terms of which require that a person's membership record be adjusted with respect to the person's account balance, service credit, or credited service, the retirement system shall make appropriate adjustments if:
  - (1) the judgment or order has become final and is no longer subject to appeal;
  - (2) a certified copy of the judgment, order, or settlement agreement accompanies the application; and
  - (3) the retirement system receives payment on behalf of the person in an amount equal to the contributions the person would have made to the system if the acts or omissions that resulted in the order, judgment, or settlement agreement requiring an adjustment to the person's membership record had not occurred or, if restoration of a refunded account is required, the system receives payment on behalf of the person in an amount equal to the amount withdrawn.
- (b) The retirement system may not implement an order, judgment, or settlement agreement in a manner that would grant a person a status, right, or benefit not otherwise available under this subtitle.
- (c) The retirement system may seek, or require the parties to seek, clarification or modification of any judgment or order, or may require the parties to provide a binding agreement as to the interpretation of any settlement if the director determines that the terms of the judgment, order, or agreement are unclear or cannot be feasibly implemented by the system.

**Sec. 842.114.****Burden of Proof.**

- (a) A person disputing the validity of a form, application, or other document filed with the retirement system has the burden of proving the document to be false, fraudulent, or otherwise invalid.
- (b) A person seeking a correction based on an error caused by an act or omission of the retirement system or a subdivision has the burden of proving the error and the act or omission causing the error.
- (c) A person described by Subsection (a) or (b) has the burden of showing:
  - (1) reasonableness and diligence in discovering the invalidity or error; and
  - (2) timeliness in notifying the retirement system or the appropriate subdivision.

## **CHAPTER 843. CREDITABLE SERVICE**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 843.001. Types of Creditable Service.**

The types of service creditable as credited service in the retirement system are prior service, current service, and optional service. A member may not be credited in this system with more than one month of credited service for a specific calendar month, regardless of the number of employers of the member, the positions held, or the types of service.

#### **Sec. 843.002. Benefit Eligibility and Amount.**

A member's eligibility to receive a benefit is based on the member's amount of credited service and attained age on the effective date of retirement. The monthly amount of a standard retirement annuity is based on the sum of the member's service credit and accumulated contributions and is computed using the member's attained age and the actuarial assumptions described by Section 841.001(1).

#### **Sec. 843.003. Authorization to Reestablish Service Credit Previously Forfeited.**

- (a) An eligible member who has withdrawn contributions from the retirement system may reestablish the forfeited service credit in the system if the current service on which the credit was based was performed for a participating subdivision the governing body of which by order authorizes reestablishment of the credit by eligible employee members of the subdivision.
- (b) A member eligible to reestablish service credit under this section is one who is a member as an employee of the subdivision on the effective date of an order authorized by the subdivision under Subsection (a).
- (c) A member eligible under this section may reestablish service credit by depositing with the retirement system in a lump sum the amount withdrawn from the system, plus a withdrawal charge computed at an annual rate of five percent from the date of withdrawal to the date of redeposit.
- (d) Prior service credit forfeited because of a withdrawal of contributions may not be reestablished under this section.

#### **Sec. 843.0031. Option to Pay Lump-Sum Amount.**

- (a) Repealed by Acts 2009, 81st Leg., R.S., Ch. 300, Sec. 38(1), eff. January 1, 2010.
- (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.
- (c) With respect to the account with the subdivision for which contributions had been withdrawn, after the date an amount is deposited under Subsection (b), the member is ineligible to reestablish any service credit with the subdivision that had been forfeited

before the date of redeposit, even if the member would otherwise be eligible under an order adopted under Section 843.003.

**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.

**SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE GENERALLY**

**Sec. 843.101. Creditable Prior Service.**

Prior service creditable in the retirement system is service performed as an employee of a participating subdivision before the date the subdivision's participation in the retirement system became effective.

**Sec. 843.102. Eligibility for Prior Service Credit.**

- (a) A member is eligible to receive service credit in the retirement system for prior service if the member became a member as an employee of a subdivision:
  - (1) on the effective date of the subdivision's participation in the retirement system; or
  - (2) before the second anniversary of the effective date of its participation and continues as an employee of the subdivision for at least six months after reemployment.
- (b) The board of trustees may adopt rules concerning eligibility for prior service credit under Subsection (a).
- (c) A person who has withdrawn contributions from an account for service for a subdivision and who subsequently resumes employment with the subdivision is not eligible to receive service credit under this section for prior service for the subdivision.

**Sec. 843.103. Repealed.**

**Sec. 843.104. Certification of Service and Average Compensation.**

- (a) A member eligible to receive prior service credit may claim the credit by filing a detailed statement of the service with the subdivision for which the service was performed. After the statement is filed, the subdivision shall certify the amount of the member's prior service and the member's average prior service compensation.
- (b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(6), eff. January 1, 2008.
- (c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(6), eff. January 1, 2008.
- (d) The board of trustees may adopt rules concerning certification of service and the definition and computation of average prior service compensation under this section.

**Sec. 843.105. Determination of Maximum and Allocated Prior Service Credit.**

- (a) After receiving a certification of prior service and average prior service compensation under Section 843.104, the retirement system shall credit to the member the prior

service certified and determine the member's maximum and allocated prior service credits.

- (b) The maximum prior service credit is an amount equal to the accumulation at interest of a series of equal monthly amounts for the number of months of certified prior service. Each monthly amount equals twice the subdivision's initial deposit rate, times the member's average prior service compensation. Interest is allowed at the end of each 12-month period on an accumulated amount at the beginning of each period and is credited only for each whole 12-month period. The rate of interest allowed on a maximum prior service credit is three percent a year.
- (c) Allocated prior service credit is a monetary credit granted by a subdivision to be computed at a member's retirement date and, together with any multiple matching credit, used in determining a member's supplemental annuity. The allocated prior service credit of a member is an amount equal to a percentage of the maximum prior service credit, increased from the subdivision's effective date of participation to the member's effective date of retirement at the applicable rate of interest provided under this subtitle or prior law for the period.
- (d) The governing body of a subdivision may adopt a percentage to be used to determine allocated prior service credits. The rate may be limited to zero or any multiple of five percent.

## **SUBCHAPTER C. OPTIONAL PRIOR SERVICE**

### **Sec. 843.201. Service Credit for Certain Public Employment.**

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.

## **SUBCHAPTER D. REPEALED.**

## **SUBCHAPTER E. ESTABLISHMENT OF CURRENT SERVICE**

### **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.

### **Sec. 843.402. Current Service Credit and Multiple Matching Credit.**

- (a) Current service credit is a monetary amount credited by a subdivision to be computed at a member's effective retirement date and used in determining the member's basic annuity. At the determination date, a member's current service credit is an amount equal to the sum of the employee contributions in the member's individual account and the interest accumulated on those contributions as provided by this subtitle.

- (b) Multiple matching credit is a monetary amount credited by the governing body of a subdivision to be computed at a member's effective retirement date and, together with any prior service credit, used in determining a member's supplemental annuity. Multiple matching credit is an amount equal to a percentage of the sum of employee contributions in a member's individual account that were made for a particular calendar year and the interest accumulated on those contributions as provided under this subtitle. At the determination date, the multiple matching credit of a member is equal to the sum of the multiple matching credit for all years of the person's membership.
- (c) The percentage to be used in the computation of the multiple matching credit for a particular year is adopted by the governing body of a subdivision and applied in accordance with this subtitle.

## **SUBCHAPTER F. OPTIONAL CREDITED SERVICE**

### **Sec. 843.501. Credited Service For Legislative Service.**

A member may establish credited service in the retirement system for service performed as a member of the legislature. A member claiming credited service for previous legislative service shall file with the retirement system a detailed statement of the service.

### **Sec. 843.502. Credited Service for Qualified Military Service.**

- (a) In this section:
  - (1) "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. 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.
- (c) An eligible member may establish credited service in the retirement system for qualified active duty military service not creditable under Subsection (b). 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. An eligible member may establish not more than five years of credited service under this subsection by filing an application with the retirement system.
- (d) Repealed by Acts 2009, 81st Leg., R.S., Ch. 300, Sec. 38(2), eff. January 1, 2010.
- (e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 300, Sec. 38(2), eff. January 1, 2010.

**Sec. 843.503. Credited Service for Service with Subdivision Predecessor.**

The governing body of a participating subdivision may, with the consent of and on terms approved by the board of trustees, authorize the establishment of credited service in the retirement system for service performed as an employee of the immediate predecessor entity of the subdivision.

**Sec. 843.504. No Double Crediting of Service.**

Except as provided by Chapter 803, only one month of credited service may be established in the retirement system for any calendar month for all service that is creditable under this subtitle.

**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.

## **CHAPTER 844. BENEFITS**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **Sec. 844.001. Types of Benefits.**

- (a) Pension benefits payable from the retirement plan and trust are:
  - (1) retirement annuities payable on service retirements;
  - (2) retirement annuities payable on disability retirements;
  - (3) survivor annuities payable on the deaths of members; and
  - (4) refunds of accumulated contributions.
- (b) Non-pension group term life coverage may be provided by an electing subdivision for its employees and retirees under the optional group term life program. The board of trustees shall administer the program, and insurance proceeds are payable from the optional group term life fund.

#### **Sec. 844.002. Composition of Retirement Annuity.**

- (a) Each retirement annuity payable under this subtitle consists of a basic annuity and a supplemental annuity.
- (b) A basic annuity is an amount payable from the subdivision accumulation fund and is actuarially determined from the sum of a member's:
  - (1) accumulated contributions; and
  - (2) current service credit.
- (c) A supplemental annuity is an amount payable from the subdivision accumulation fund, subject to limitation under Section 844.008, and is actuarially determined from the sum of:
  - (1) a member's allocated prior service credit; and
  - (2) a member's multiple matching credit.
- (d) Any increase in the annuity granted by a participating subdivision is payable from the subdivision accumulation fund as part of the supplemental annuity.
- (e) A separate retirement annuity is payable with respect to each subdivision from which a person retires under this subtitle or is considered to have retired.

#### **Sec. 844.003. Effective Date of Retirement**

- (a) Except as otherwise provided by this section, the effective date of a member's service retirement is the date the member designates at the time the member applies for retirement under Section 844.101, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with the subdivision from which the member seeks to retire.

- (b) If a member who is an eligible member under Section 844.407 dies before retirement, the member is considered to have retired on the last day of the month before the month in which death occurred.
- (b-1) A vested member who has not retired before the member's required beginning date determined under Section 841.010 is considered to have retired on the last day of the month preceding the member's required beginning date.
- (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 employment with all participating subdivisions.
- (d) A member who is eligible for service retirement and who terminates employment with a participating subdivision may apply for and receive a service retirement annuity based on service for that subdivision despite the fact that the member is or becomes an employee of another participating subdivision.
- (e) Notwithstanding Subsections (a), (b), (b-1), (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.

**Sec. 844.004. Standard Retirement Annuity.**

- (a) The standard retirement annuity payable under this subtitle is computed with an allowance for the possible payment of a benefit under Section 844.402 and is the actuarial equivalent of the sum of a member's:
  - (1) accumulated contributions;
  - (2) current service credit;
  - (3) allocated prior service credit; and
  - (4) multiple matching credit.
- (b) A standard retirement annuity is payable throughout the life of a retiree.

**Sec. 844.0041. Optional Retirement Annuities.**

- (a) Instead of the standard retirement annuity payable under Section 844.004, a retiring member may receive an optional retirement annuity under this section or an optional retirement annuity in another form authorized by the board of trustees.
- (b) At a member's effective retirement date, an optional retirement annuity is actuarially equivalent to the standard retirement annuity to which the member is entitled.
- (c) An optional retirement annuity under this section is:

- (1) a retirement annuity that is payable monthly throughout the life of a retiree, and after the retiree's death, throughout the life of an individual designated by the retiree; or
- (2) a monthly retirement annuity that is payable throughout the life of a retiree and, if the retiree dies before 180 monthly payments have been made, the remainder of the 180 monthly payments are payable to the retiree's beneficiary or, if a beneficiary does not exist, to the retiree's spouse or, if no surviving spouse exists, to the retiree's estate.
- (d) The board of trustees by rule may authorize additional forms of optional retirement annuities, each of which must be actuarially equivalent to the standard retirement annuity to which the retiree is entitled as of the effective retirement date.

**Sec. 844.0042. Authority to Pay Benefits Under Alternate Forms.**

- (a) The board of trustees may authorize the payment of the benefit that is due a recipient to be made as a lump sum or in another alternate form that is actuarially equivalent to the benefit that would otherwise be payable to the recipient at the time payments to the recipient would begin. An authorization under this subsection may be made as a policy of general application or may be made on a case-by-case basis considering the particular facts and circumstances.
- (b) Payment to a retiree in a lump sum or other alternate form may not be made without the retiree's consent if the payment is to be sent to an address in the United States and the present value of the retiree's benefit exceeds a minimum amount set by the board of trustees. A retiree who receives payment in a lump sum or other alternate form under this section continues as a retiree for purposes of a benefit provided by the subdivision under the optional group term life program.
- (c) Except as otherwise limited under Subsection (b), payment under this section is within the exclusive discretion of the board of trustees, and payment in a lump sum or other alternate form constitutes full satisfaction of the retirement benefit otherwise owed to the recipient.
- (d) The board of trustees may adopt rules for the administration of this section, including rules for the payment of benefits internationally and for the verification of a continuing right to receive payments.

**Sec. 844.005. When Annuity is Payable; Changes Before First Payment.**

- (a) A retiree may revoke an application for retirement, change the retiree's choice of retirement annuity payment plans, or change the designation of beneficiary after the retiree's effective date of retirement by filing written notice with the retirement system not later than the last day of the month a benefit payment is first made. After that day, a retiree may not revoke the application for retirement, change the annuity payment plan selected, or change the designated beneficiary except under Section 844.006.

- (b) If an applicant for retirement dies on or before the last day that the application for retirement could have been revoked under Subsection (a), the decedent's application for retirement is considered canceled, except that the valid beneficiary designations made in connection with the retirement application remain in effect. The beneficiary of a decedent who had been an eligible member under Section 844.407 may receive an annuity in accordance with that section.
- (b-1) Under rules established by the board of trustees, the retirement system may cancel an application for retirement if the applicant fails to timely provide all information and forms necessary to put the retirement into effect.
- (c) An annuity under this subtitle is payable to a retiree or beneficiary through the month in which the retiree or beneficiary dies. A continuation of an optional annuity begins with payment for the month following the month in which death occurs.

**Sec. 844.006. Change of Beneficiary or Division of Benefit for Certain Persons Receiving Monthly Benefits.**

- (a) A retiree who is receiving payments under a retirement annuity computed on the life of the retiree only may revoke any existing selection and designation of beneficiary nominated to receive any payments that may become due under the annuity after the retiree's death and may select a new beneficiary to whom payments may be made.
- (b) A person who, as beneficiary of a deceased retiree, is receiving monthly payments of any fixed-term annuity described by Subsection (a) may select and designate a person to whom shall be paid any monthly payments that may become due under the annuity after the death of the beneficiary making the designation. If a valid beneficiary designation is not on file with the retirement system, any monthly payments that become due after the death of the beneficiary are payable to the beneficiary's spouse or, if no surviving spouse exists, to the beneficiary's estate.
- (c) A retiree who is receiving payments under a retirement annuity computed on the joint lives of the retiree and the retiree's designated beneficiary may revoke the designation of the beneficiary to receive the annuity on the death of the retiree, if a court of competent jurisdiction in a divorce proceeding involving the retiree and beneficiary awards to the retiree the entire retirement benefit earned by the retiree. The order awarding the retirement benefit may be set forth in the divorce decree or in an order approving the terms of a property settlement agreement incident to the divorce of the retiree and beneficiary but must be dated on or after December 31, 1999. The revocation takes effect when the retirement system receives it and cancels the optional annuity selection made by the retiree. Beginning with the month following the month in which the retirement system receives the notice of revocation, the retiree is entitled to receive a standard retirement annuity in the same amount that the retiree would receive for the same month if the retiree had originally retired with a standard retirement annuity.
- (d) The benefit payable to a retiree who is receiving payments of a standard or optional retirement annuity 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.
- (e) The division of an annuity under Subsection (d) is effective when the order is determined by the retirement system to be a qualified domestic relations order, and the

amount of each of the two annuities shall be computed by the retirement system at that time, based on tables that have been adopted by the retirement system and in effect at that time, so that the two annuities are actuarially equivalent at the time of division to the annuity being divided.

(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 by rule may establish requirements for forms, documentation, and procedures necessary or desirable for the administration of this section.

**Sec. 844.007. Interest Credit for Other than December Retirements.**

A member who retires with an effective retirement date other than December 31 will be credited interest on the beginning balance in the member's individual account from January 1 of the year of retirement to the effective date of retirement.

**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 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 for purposes of Section 415 of that code. The limitation year for determining maximum benefits is the calendar year.

(b) An employer may not provide employee retirement 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, and the benefits of the other plan will automatically be reduced, eliminated, or adjusted to the extent necessary to prevent the failure.

**Sec. 844.009. Partial Lump-Sum Distribution on Service Retirement.**

(a) With the consent of the board of trustees, the governing body of a subdivision may authorize partial lump-sum distributions under this section.

(b) A member who is eligible and applies for service retirement may simultaneously apply for a partial lump-sum distribution under this section.

- (c) The amount of a lump-sum distribution under this section may not exceed 100 percent of the total accumulated contributions in the member's individual account in the employees saving fund attributable to service with the subdivision for which the member has applied for retirement.
- (d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(12), eff. January 1, 2008.
- (e) For all purposes, the member's basic annuity is the annuity actuarially determined from the sum remaining under Section 844.002(b) after deducting the amount of the lump-sum distribution.
- (f) The amount of a lump-sum distribution made under this section is considered to be an annuity payment for the purpose of determining whether the amount in the retiree's individual account in the employees saving fund available for distribution at the time of retirement exceeds the total amount of annuity payments made.
- (g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(12), eff. January 1, 2008.
- (h) No portion of a benefit awarded to an alternate payee under a qualified domestic relations order may be distributed in the form of a lump sum under this section, unless the member and the alternate payee agree in writing that the alternate payee will receive all or a portion of the lump-sum distribution payable under this section instead of or as part of the benefits awarded under the qualified domestic relations order.
- (i) Repealed by Acts 2001, 77th Leg., ch. 122, Sec. 56(2), eff., Dec. 31, 2001.

**Sec. 844.010.                    Certain Beneficiary Designations.**

- (a) A beneficiary designation that names a former spouse as beneficiary is invalid for purposes of this subtitle unless the designation:
  - (1) is made or confirmed in writing after the date of divorce; or
  - (2) was made by a retiree who, at the time of divorce, is receiving payments under an optional service or disability retirement with payments to continue to the beneficiary for the beneficiary's life.
- (b) In addition to the authority provided by Section 804.051, the board of trustees may adopt rules to require consent of a member's spouse to:
  - (1) the member's designation of a beneficiary who is not the member's spouse;
  - (2) the member's selection of an optional form of retirement benefit; or
  - (3) the member's election of a withdrawal of contributions.
- (c) A benefit payable under this subtitle is not subject to a will, other testamentary document, or the law of intestacy to the extent that the member, retiree, or other former member has a different beneficiary under the retirement system than under the testamentary document or law of intestacy.
- (d) The board of trustees may adopt rules concerning the designation, validity, cancellation, revocation, and eligibility of beneficiaries under this subtitle.

## **SUBCHAPTER B. SERVICE RETIREMENT BENEFITS**

### **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.

### **Sec. 844.102. Systemwide Eligibility for Service Retirement Annuity.**

- (a) A member is eligible to apply for and receive a service retirement annuity if the member:
  - (1) is at least 60 years old and has at least 10 years of credited service in the retirement system;
  - (2) has at least 30 years of credited service in the retirement system; or
  - (3) has at least 10 years of credited service in the retirement system and the sum of the member's credited service and attained age equals or exceeds the number 80.
- (b) A person who has retired under this section with a service retirement annuity is eligible, without regard to any age or credited service requirement, to apply for and receive a service retirement annuity based on the member's accumulated contributions and service credit with any participating subdivision from which the person has terminated employment.

### **Sec. 844.1021. Optional Eligibility Provisions for Service Retirement.**

- (a) In accordance with this subtitle, a subdivision may adopt any optional service retirement eligibility provision described by this section or authorized by the board of trustees.
- (b) A subdivision may not revoke its adoption of an optional service retirement eligibility provision described by this section. A subdivision may adopt an optional service retirement eligibility provision providing less restrictive eligibility requirements.
- (c) An optional service retirement eligibility provision may provide that a member who has at least 10 years of credited service is eligible to apply for retirement if the member has attained age 60 or an age at which the sum of the member's credited service and attained age equals or exceeds the number 75.
- (d) An optional service retirement eligibility provision may provide that a member who has at least eight years of credited service is eligible to apply for retirement if the member has attained age 60.
- (e) An optional service retirement eligibility provision may provide that a member who has at least five years of credited service is eligible to apply for retirement if the member has attained age 60.
- (f) An optional service retirement eligibility provision may provide that a member who has at least 20 years of credited service is eligible to apply for retirement.
- (g) The board of trustees may authorize additional optional service retirement eligibility provisions for adoption by participating subdivisions.

- (h) The board of trustees shall establish rules for recognizing and combining a member's service credited under dissimilar retirement eligibility provisions for purposes of meeting the retirement eligibility provisions of the respective subdivisions.

**Sec. 844.1022. Special Eligibility Provisions for Service Retirement.**

- (a) Subject to the consent of the board of trustees and effective for the period and on terms that the board approves, a subdivision may adopt a special service retirement eligibility provision that relates to a singular, identifiable event or action particular to the subdivision and that applies only to its members who satisfy the specific terms of the special eligibility provision.
- (b) A special service retirement eligibility provision must bear a rational relationship to the operation, management, and function of the subdivision.
- (c) A special service retirement eligibility provision may not be adopted or implemented under this section in a manner that has the effect of establishing a separate, ongoing retirement program for a branch, department, division, employee occupational group, or other separately identifiable component of the subdivision.

**SUBCHAPTER C. OPTIONAL RETIREMENT BENEFITS**

**Sec. 844.201. – 844.207. Repealed.**

**Sec. 844.208. Optional Increase in Retirement Annuities.**

- (a) The governing body of a participating subdivision, from time to time but not more frequently than once in each 12-month period, may provide for increased annuities to be paid to retirees and beneficiaries of deceased retirees of the subdivision. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.
- (b) The amount of annuity increase under this section is computed as the sum of the basic and supplemental annuities on the effective date of retirement of the person on whose service the annuities are based and is computed as if the person had selected a standard retirement annuity on the person's effective date of retirement, multiplied by:
  - (1) the percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the month in which the effective date of the order or resolution providing the increase occurs; and
  - (2) a fraction, specified by the governing body in the order or resolution, that is not less than 10 percent nor more than 100 percent and is a multiple of 10 percent.
- (c) The effective date of an order or resolution under this section is January 1 of the year that begins after the year in which the governing body adopts and notifies the retirement system of the order or resolution.

- (d) An increase in an annuity that was reduced because of an option selection or partial lump-sum distribution is reducible in the same proportion and in the same manner that the original annuity was reduced.
- (e) If a computation under Subsection (b) does not result in an increase in the amount of annuity, the amount of the annuity may not be changed under this section.
- (f) The amount by which an increase under this section exceeds all previously granted increases to an annuitant is payable as a supplemental annuity, is an obligation of the subdivision's account in the subdivision accumulation fund, and is subject to reduction under Section 845.307(c).
- (g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(17), eff. January 1, 2008.

**Sec. 844.209. Alternative Optional Increase in Retirement Annuities.**

- (a) The governing body of a participating subdivision, from time to time but not more frequently than once in each 12-month period, may provide for increased annuities to be paid to retirees and beneficiaries of deceased retirees of the subdivision. The governing body of the subdivision may not elect an increase in retirement annuities under Section 844.208 and under this section in the same 12-month period.
- (b) An increase under this section applies to all annuities for which the effective retirement date is at least twelve months before the effective date of the increase.
- (c) The amount of annuity increase under this section is computed as the sum of the person's basic and supplemental annuities on the effective date of the increase multiplied by the integer percentage increase specified by the governing body for all annuitants in the order or resolution adopting the increase. The specified percentage increase may not exceed the percentage established by the board of trustees as the maximum allowable percentage increase.
- (d) Except as provided by Subsection (g), the effective date of an order or resolution under this section is January 1 of the year that begins after the year in which the governing body adopts and notifies the retirement system of the order or resolution.
- (e) An increase in an annuity that was reduced because of an option selection or partial lump-sum distribution is reducible in the same proportion and in the same manner that the original annuity was reduced.
- (f) The amount of an increase under this section is payable as a supplemental annuity, is an obligation of the subdivision's account in the subdivision accumulation fund, and is subject to reduction under Section 845.307(c).
- (g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(18), eff. January 1, 2008.

**SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS**

**Sec. 844.301. Application for Disability Retirement.**

- (a) A member may apply for disability retirement by filing a valid application for retirement with the retirement system.

(b) An applicant must provide medical and other pertinent information for evaluation by the medical board and submit to medical examination as required by the medical board.

**Sec. 844.3011. Annuity Payable on Disability Retirement.**

Except for eligibility requirements and as otherwise provided by this subtitle, a retirement annuity payable on the disability retirement of a member is equal in amount and equivalent in all respects under this subtitle to a retirement annuity payable on the service retirement of the member at the same age.

**Sec. 844.302. Eligibility for Disability Retirement Annuity.**

- (a) A member who is not vested for service retirement beginning on or before the date the member attains age 60 and who has applied for disability retirement is eligible to receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 844.303(b)(1).
- (b) A member who is vested for service retirement based on service in this system alone beginning on or before the date the member attains age 60 and who has applied for disability retirement is eligible to receive a retirement annuity if the member is the subject of a certification issued as provided by Section 844.303(b)(2).
- (c) If a member who has filed an application for disability retirement under this subchapter is eligible for service retirement, an evaluation by the medical board under Section 844.303 will not be made and the retirement system shall consider the retirement application as an application filed for service retirement.

**Sec. 844.303. Certification of Disability.**

- (a) Except as provided by Section 844.302(c) and Subsection (c) of this section, as soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.
- (b) The medical board shall issue a certification of disability and submit it to the board of trustees, if the medical board finds:
  - (1) in the case of a member described by Section 844.302(a), that:
    - (A) the member is mentally or physically incapacitated for any gainful occupation;
    - (B) the incapacity is the direct result of injuries sustained during membership by external and violent means as a direct and proximate result of the performance of duty; and
    - (C) the incapacity is likely to be permanent; or
  - (2) in the case of a member described by Section 844.302(b), that:
    - (A) the member is mentally or physically incapacitated for any gainful occupation; and
    - (B) the incapacity is likely to be permanent.

- (c) The board of trustees may establish a procedure for summary disposition of disability retirement applications without medical board review under facts and circumstances that the board has determined cause a review by the medical board to be unnecessary. The board may delegate to the director the authority and discretion to make determinations under the summary disposition procedure and, if appropriate, to issue a certification of disability described by Subsection (b) or refer the matter to the medical board. The director is not authorized under this section to make a finding that an applicant is not permanently incapacitated.
- (d) The board of trustees may define terms and standards to be applied by the medical board in making its determinations and shall establish such other rules as the board considers necessary to administer this subchapter.

**Sec. 844.3051. Disability Retirement Considered Service Retirement.**

- (a) The retirement annuity of a disability retiree may not be terminated under this subchapter after the earlier of:
  - (1) the date a disability retiree attains age 60; or
  - (2) the date the disability retiree would otherwise be eligible for service retirement under this subtitle.
- (b) The disability retirement of a disability retiree described by Subsection (a) is considered for all purposes under this subtitle as a service retirement.

## Sec. 844.306. Medical Examination of Disability Retiree.

- (a) Until the date a disability retirement is considered a service retirement under Section 844.3051, once each year during the first five years after a person retires for disability, and once in each three-year period after that, the board of trustees may, in accordance with rules and procedures established by the board, require a disability retiree to undergo a medical examination and provide current medical and other information reaffirming the status of the retiree as disabled within the meaning of this subchapter.
- (b) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(24), eff. January 1, 2008.
- (c) If a disability retiree refuses to submit to medical examination or fails to provide current medical or other information confirming the status of the retiree as disabled, the board of trustees may cancel the disability retirement and terminate the retirement annuity.

## Sec. 844.307. Cancellation of Disability Retirement.

(a) If the medical board finds that a disability retiree has experienced medical improvement to the extent that the retiree is no longer mentally or physically incapacitated, it shall certify its findings and submit them to the board of trustees.

- (b) In accordance with rules and procedures adopted by the board, the board of trustees may adopt the findings of the medical board and cancel the disability retirement and terminate annuity payments to the retiree.

**Sec. 844.308.                   Repealed.**

**Sec. 844.309.                   Adjustments at Annuity Termination.**

- (a) If a disability retirement is canceled and the retirement annuity terminated under this subchapter, the person automatically resumes membership in the retirement system and the retirement system shall transfer from the subdivision accumulation fund and credit to the person's individual account in the employees saving fund an amount equal to the amount of accumulated contributions transferred to the subdivision accumulation fund at the time of retirement reduced by one percent for each year or part of a year during which disability annuity payments were made.
- (b) If a person whose membership resumes under this section was receiving a supplemental annuity based in whole or in part on prior service credit, the retirement system shall restore to effect as the person's maximum prior service credit an amount equal to the person's maximum prior service credit at the time of disability retirement reduced by one percent for each year or part of a year during which disability annuity payments were made.
- (c) A person who resumes membership under this section is entitled to restoration of credited service in the number of months accumulated and allowed before disability retirement.
- (d) The board of trustees may adopt rules for the computation and transfer of amounts and credits for a membership resumed under this subchapter.

**SUBCHAPTER E. DEATH BENEFITS**

**Sec. 844.401.                   Return of Accumulated Contributions.**

- (a) Except as provided by Subsection (c), if a member dies before retirement, a lump-sum death benefit is payable from the employees saving fund in the amount of:
  - (1) the decedent's accumulated contributions; plus
  - (2) interest computed on the decedent's accumulated contributions on January 1 of the year of death from the beginning of that year through the end of the month before the month in which death occurs.
- (b) The benefit provided by this section is payable to the decedent's beneficiary or, if no surviving beneficiary exists, to the decedent's spouse or, if no surviving spouse exists, to the decedent's estate.
- (c) A benefit is not payable under this section if an annuity based on the same service with the subdivision is payable under this subtitle.

**Sec. 844.402.****Return of Excess Contributions.**

- (a) After the death of a member or former member and after the final payment has been made under any service, disability, or survivor annuity, a lump-sum death benefit is payable in an amount, if any, by which the amount in the person's individual account in the employees saving fund on which the annuity was computed exceeds the amount of annuity payments made.
- (b) The benefit provided by this section is payable to the person entitled to receive the final monthly payment of the annuity. If that person is deceased, the benefit provided by this section is payable to the person's beneficiary or, if no surviving beneficiary exists, to the person's spouse or, if no surviving spouse exists, to the person's estate.
- (c) The benefit provided by this section is payable from the subdivision accumulation fund.
- (d) For plans terminated under Subchapter A-1, Chapter 842, the benefit provided by this section is payable from the closed subdivision annuity reserve fund.

**Sec. 844.403.****Repealed.****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 unless it receives actual notice of the conviction of a beneficiary. 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 retirement system shall pay in a lump sum the actuarial equivalent of the remainder of any annuity or payments that would otherwise have been payable to the convicted person to the person entitled to the benefit under Subsection (a) or to the decedent's estate. 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) 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.

**Sec. 844.405. Trust as Beneficiary.**

- (a) Except as limited by Subsection (b), a member or retiree may designate a trust as beneficiary for the payment of benefits from the retirement system or may designate multiple trusts as beneficiaries for the payment of benefits from the system in the same manner and with the same limitations that apply to the designation of multiple beneficiaries. If a trust is designated beneficiary, the beneficiary of the trust is considered the designated beneficiary for the purpose of determining eligibility for and the amount and duration of benefits. The trustee is entitled to exercise any rights granted a designated beneficiary to elect benefit options and name subsequent beneficiaries.
- (b) Multiple trusts or a single trust having multiple beneficiaries may not receive benefits to which multiple designated beneficiaries are not eligible under this chapter.

**Sec. 844.406. Simultaneous Death of Member and Beneficiary.**

When a member or retiree and the spouse or beneficiary of the member or retiree have died within a period of less than 120 hours of each other, the member or retiree is considered to have survived the spouse or beneficiary for the purpose of determining the rights to amounts payable under this subtitle on the death of the member or retiree.

**Sec. 844.407. Survivor Annuity.**

- (a) In this section "eligible member" means a member who has four or more years of credited service with one or more subdivisions that are participating in the retirement system.
- (b) Instead of any other benefit allowed under this subtitle other than an optional group term life benefit, an annuity described by this section may be paid on the death of an eligible member who had not filed an application for retirement or whose application for retirement had been revoked or canceled under Section 844.005.
- (c) An annuity under this section is payable to the valid beneficiary designated on the unrevoked form most recently executed by the member and filed with the system naming a beneficiary. If no valid beneficiary exists or if the member died without having designated a valid beneficiary, the annuity is payable to the deceased member's surviving spouse or, if no surviving spouse exists, to the deceased member's estate.
- (d) Any annuity payable under this section must be actuarially equivalent to the deceased member's benefit accrued under this subtitle determined as of the last day of the month preceding the month of the member's death. The annuity is payable in the form and manner authorized by the board of trustees.

- (e) An annuity under this section is payable from the same accounts and is subject to the same conditions that are applicable to a service retirement benefit for the same member.
- (f) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(27), eff. January 1, 2008.
- (g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(27), eff. January 1, 2008.
- (h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(27), eff. January 1, 2008.
- (i) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(27), eff. January 1, 2008.
- (j) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(27), eff. January 1, 2008.

**Sec. 844.408. No Surviving Spouse, Executor, or Administrator.**

- (a) In this section “heirs” has the meaning assigned by Chapter 22, Estates Code, except that the term excludes any person who has filed a proper disclaimer or renunciation with the retirement system.
- (b) If the administrator of a deceased member’s estate would be entitled to a refund or an annuity because of the death of the member, the heirs of the deceased member may apply for and receive the benefit if:
  - (1) no petition for the appointment of a personal representative of the member is pending or has been granted;
  - (2) 30 days have elapsed since the date of death of the member;
  - (3) the value of the entire assets of the member’s probate estate, excluding homestead and exempt property, does not exceed \$50,000; and
  - (4) on file with the retirement system is a certified copy of a small estates affidavit that has been approved and filed in accordance with Chapter 205, Estates Code, or an original affidavit described by Subsection (c).
- (c) If no affidavit has been filed with the clerk of the court having jurisdiction and venue as provided by Chapter 205, Estates Code, the retirement system may accept instead an affidavit sworn to by two disinterested witnesses and by those heirs who have legal capacity and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also an heir. The affidavit must include the names and addresses of the heirs and witnesses, establish the facts listed in Subsection (b), include a list of the assets and liabilities of the estate, show the facts that constitute the basis for the right of the heirs to receive the estate, and show the fractional interests of the heirs in the estate as a result of those facts.
- (d) If the retirement system, acting through the director or a person designated by the director, approves the affidavit, the heirs may make the election if each heir agrees to it.

**SUBCHAPTER F. OPTIONAL GROUP TERM LIFE PROGRAM**

**Sec. 844.501. Coverage in Optional Group Term Life Program.**

- (a) An employee of a participating subdivision is included within the coverage of the optional group term life program on that day in the first month in which:

- (1) the employing subdivision is participating in the program for coverage of all members it employs;
- (2) the employee is a member of the retirement system; and
- (3) the employee is required to make a contribution to the retirement system.

- (b) Once established, coverage of a person in the program continues until the last day of a month in which a requirement of Subsection (a) is not met.
- (c) The optional group term life program constitutes “group term life insurance purchased for employees” as described by Section 79, Internal Revenue Code of 1986.

**Sec. 844.502.                   Extended Optional Group Term Life Coverage.**

- (a) A member included in the coverage of the optional group term life program who fails to earn compensation in a month for service to a subdivision participating in the program may be eligible to receive extended coverage in the program under this section.
- (b) A member who dies within 24 months after the date the member last made a required contribution to the retirement system is considered to have received extended program coverage if the retirement system receives at its office after the member’s death:
  - (1) evidence that the retirement system considers satisfactory to establish that, as a result of illness or injury, the member was unable to engage in gainful employment throughout the period beginning with the date of the last required contribution and ending on the date of death;
  - (2) a statement from the subdivision, on a form approved by the board of trustees, that the member was on leave of absence under the Family and Medical Leave Act of 1993 (Pub. L. 103-3) throughout the period beginning with the date of the last required contribution and ending on the date of death; or
  - (3) a statement from the subdivision, on a form approved by the board of trustees, that the member was on leave of absence under the Family and Medical Leave Act of 1993 (Pub. L. 103-3) during part of the period beginning with the date of the last required contribution and ending on the date of death, with evidence that the retirement system considers satisfactory to establish that, throughout the rest of the period, the member was unable to engage in gainful employment as a result of illness or injury.
- (c) Repealed by Acts 2001, 77th Leg., ch. 122, Sec. 56(6), eff. Dec. 31, 2001.
- (d) [Blank]
- (e) Repealed by Acts 1999, 76th Leg., ch. 427, Sec. 64(16), eff. Dec. 31, 1999.
- (f) Repealed by Acts 1999, 76th Leg., ch. 427, Sec. 64(16), eff. Dec. 31, 1999.

**Sec. 844.503. Member Optional Group Term Life.**

- (a) In this section, the terms “regular rate of pay,” “hours worked,” “salary basis,” and “regular salary” have meanings that are consistent with the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).
- (b) If a person included in the coverage or extended coverage of the optional group term life program dies, a lump-sum supplemental death benefit is payable from the optional group term life fund in an amount equal to the current annual compensation of the member at the time of death.
- (c) The current annual compensation of a member who is not exempt from the minimum wage and maximum hour requirements of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) is computed by converting to an annual basis the regular rate of pay of the member for the most recent hour worked and proportionately reducing that annual basis if the member is not employed in a full-time position. The current annual compensation of a member who is exempt from those minimum wage and maximum hour requirements and who is paid on a salary basis is computed by converting to an annual basis the regular salary paid to the member for the most recent pay period of active employment.
- (d) If a member, because of a change in employment, makes contributions to the retirement system during the same month as an employee of more than one subdivision participating in the optional group term life program, a death benefit is payable only on the basis of the member’s most recent employment. If a member, because of simultaneous employment by more than one subdivision, makes contributions to the retirement system during the same month as an employee of more than one subdivision participating in the program, a death benefit is payable on the basis of the member’s employment by each subdivision participating in the program.
- (e) The board of trustees by rule may require such proof of compensation and periods of employment as it finds necessary.

**Sec. 844.504. Retiree Optional Group Term Life Benefit.**

If a retiree dies who was receiving a retirement annuity based on service for a subdivision that has elected to provide, and continues to provide, postretirement optional group term life coverage, a lump-sum death benefit is payable from the optional group term life fund in the amount of \$5,000.

**Sec. 844.505. Beneficiary of Optional Group Term Life Benefit.**

- (a) Unless a member has directed otherwise on a form prescribed by the board of trustees and filed with the retirement system:
  - (1) an optional group term life benefit under Section 844.503 is payable to the person entitled to receive the decedent’s accumulated contributions, unless the decedent was an eligible member under Section 844.407, in which case the benefit is payable to the beneficiary designated by the decedent or, if no designation was made, to the person entitled under that section to receive a survivor annuity; and
  - (2) an optional group term life benefit under Section 844.504 is payable to a person entitled to receive any remaining payments of the decedent’s annuity.

(b) If a person entitled under this section to receive an optional group term life benefit does not survive the member or retiree covered by the optional group term life program, the benefit is payable to the person to whom a benefit under Subchapter B or D is payable, or if no benefit is payable under those subchapters, to the person to whom a benefit under Subchapter E is or would be payable.

## **SUBCHAPTER G. FIXED CONTRIBUTION RATE PLAN**

### **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.

## **SUBCHAPTER H. ANNUALLY DETERMINED CONTRIBUTION RATE PLAN**

### **Sec. 844.701.              Applicability.**

Except for a county described by Section 844.601, this subchapter applies to each subdivision that participates in the retirement system.

### **Sec. 844.702.              Member Contributions.**

- (a) The governing body of the subdivision may designate the rate of member contributions for employees of the subdivision to take effect beginning on the effective date of adoption of the plan provisions of this subchapter. The subdivision may elect a rate of four, five, six, or seven percent of the current service compensation of its employees. The governing body of the subdivision may thereafter increase or decrease the contribution rate to take effect on the next January 1 after the date of adoption of the increase or decrease, in accordance with the provisions of Sections 845.402(b) and (c).
- (b) If necessary under Section 844.703(h), a subdivision's member contribution rate may be reduced to one, two, three, four, five, or six percent of the current service compensation of its employees.

### **Sec. 844.703.              Subdivision Contributions.**

- (a) Each participating subdivision adopting the plan provisions of this subchapter shall pay to the subdivision accumulation fund as its normal contribution an amount equal to a percentage of the compensation of members employed by the subdivision for that month. The rate of contribution is the normal contribution rate determined annually by the actuary and approved by the board of trustees.
- (b) Each subdivision adopting the plan provisions of this subchapter shall pay to the subdivision accumulation fund, as its prior service contribution, an amount equal to a percentage of the compensation of members employed by the subdivision for that month. The rate of contribution is the rate determined annually by the actuary and approved by the board of trustees as being the rate required to fund all unfunded obligations charged against the subdivision's account in the subdivision accumulation fund within the subdivision's amortization period without probable future depletion of that account or, if there are no unfunded obligations, the rate required to amortize any overfunded obligations within a period of 30 years.
- (c) The combined rates of a subdivision's normal contributions and prior service contributions under this subchapter may not exceed 11 percent unless the governing body of the subdivision elects to waive this limitation. A waiver under this subsection becomes effective on January 1 of the year after the year in which it is adopted and remains effective until January 1 of the year following a repeal of the waiver by the subdivision's governing body.

- (d) The actuary annually shall determine the subdivision normal contribution rate and the prior service contribution rate for subdivisions adopting the plan provisions of this subchapter from the most recent data available at the time of determination. Before January 1 of each year, the board of trustees shall certify the rates of each subdivision that has adopted the plan provisions of this subchapter. If the combined rates of the subdivision's normal contributions and prior service contributions under this subchapter exceed the rate prescribed by Subsection (c), and if the governing body of the subdivision has not waived that maximum rate, the rate for prior service contributions must be reduced to the rate that equals the difference between the maximum rate prescribed by Subsection (c) and the normal contribution rate. The governing body may elect to contribute at a rate that is greater than the sum of the subdivision's normal contribution rate and prior service contribution rate as determined under Subsections (a) and (b). An elected rate may not exceed the maximum rate prescribed by Subsection (c), unless the governing body has elected to waive that maximum rate. An elected rate remains in effect for each subsequent calendar year until it is rescinded by the governing body. For years in which the sum of the rates determined under Subsections (a) and (b) exceeds the elected rate, the governing body must contribute the sum of the rates determined under Subsections (a) and (b). For years in which the elected rate exceeds the sum of the rates determined under Subsections (a) and (b), the prior service contribution rate is increased to the rate that equals the difference between the elected rate and the normal contribution rate prescribed by Subsection (a).
- (e) In addition to the normal contributions and prior service contributions under this subchapter, the subdivision shall make the picked-up employee contributions provided by Section 845.403(i), and those contributions, along with optional group term life contributions, are not subject to the maximum subdivision contribution rates prescribed by Subsection (c).
- (f) The prior service contribution rate prescribed by Subsection (b) must be based on an open or closed amortization period as recommended by the actuary and adopted by the board of trustees but may not exceed 30 years. The board of trustees may establish criteria for the circumstances under which a subdivision's amortization period, if closed, will be renewed, extended, or shortened.
- (g) If the combined rates of the subdivision's normal contributions and prior service contributions under this subchapter exceed the maximum rate prescribed by Subsection (c) before the adjustment prescribed by Subsection (d), and if the governing body of the subdivision has not waived that maximum rate, the actuary shall determine what lower percentage for determining multiple matching credits of future member contributions is necessary to make the combined rates of the subdivision not exceed the maximum rate prescribed by Subsection (c). The actuary shall give written notice of the determination to the director, who shall give written notice to the governing body of the subdivision.

The lower percentage determined by the actuary and specified in the notice to the governing body becomes effective as to all members who perform current service for the affected subdivision on or after the first day of the first calendar year that begins after the date of the notice, unless before the effective date, the governing body of the subdivision adopts an order or resolution, approved by the board of trustees, authorizing a reduction in the percentage used in determining multiple matching credits in accordance with Section 844.704(a) or authorizing a reduction in the rate of member contributions in accordance with Section 844.702, or authorizing both a reduction in the percentage used in determining multiple matching credits and a reduction in the rate of member contributions.

- (h) If the combined rates of the subdivision's normal contributions and prior service contributions under this subchapter exceed the maximum rate prescribed by Subsection (c), and if the governing body of the subdivision has not waived that maximum rate, and if all reductions under Subsection (g), in the opinion of the actuary, result in the combined rates of the subdivision remaining in excess of the maximum rate prescribed by Subsection (c), the retirement system shall reduce the rate of member contributions to a lower rate authorized by Section 844.702 that, in the opinion of the actuary, is required to produce a combined rate that does not exceed the rate prescribed by Subsection (c). At the time the actuary determines that the rate of employee contributions that was in existence before a reduction under this subsection no longer would result in a combined rate in excess of the maximum rate prescribed by Subsection (c), the retirement system shall reinstate the employee contribution to the rate that was in effect at the time of the reduction, unless the governing body of the subdivision has elected to change to some other rate authorized by Section 844.702(a). Any change under this section shall be made on January 1 of the year following the applicable determination by the actuary. During the time that the member contribution rate is reduced, the combined rates of the subdivision's normal contributions and prior service contributions shall be equal to the maximum rate prescribed by Subsection 844.703(c).
- (i) Notwithstanding any provision in this section to the contrary and if approved by the board of trustees, a participating subdivision that has experienced or is anticipating circumstances that cause employer contributions based on covered payroll to be an unreasonable method of funding shall contribute in an actuarially approved method that is reasonable to regularly and consistently fund all of its pension liabilities in the retirement system.

## **Sec. 844.704. Benefits.**

- (a) The governing body of a subdivision shall select a percentage for determining multiple matching credits of zero or any percentage that is a multiple of five percent and that does not exceed 150 percent. 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.

In its order or resolution, the governing body may provide that the increased percentage will be used in determining multiple matching credits 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 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 governing body shall select a percentage for determining allocated prior service credits of zero or any percentage that is a multiple of five percent. The governing body may increase the percentage used in determining allocated prior service credits, 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 governing body of a subdivision may adopt any benefit increase or additional benefit, option, right, or feature as authorized under this subtitle.
- (e) The governing body may not adopt an increase or addition to the subdivision's plan 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 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 order or resolution adopted after participation begins may take effect only on January 1 of a year.

## **CHAPTER 845. ADMINISTRATION**

### **SUBCHAPTER A. BOARD OF TRUSTEES**

#### **Sec. 845.001. Composition of Board of Trustees.**

The board of trustees is composed of nine members.

#### **Sec. 845.002. Appointment.**

The governor shall appoint the members of the board of trustees with the advice and consent of the senate.

#### **Sec. 845.003. Eligibility.**

- (a) To be eligible to serve as a trustee a person must be:
  - (1) a member of the retirement system and an employee of a participating subdivision; or
  - (2) a retiree of the retirement system.
- (b) If a person serving as a trustee ceases to meet an eligibility requirement under Subsection (a), the person shall vacate the office of trustee.
- (c) A person serving as trustee who fails to attend four consecutive regular meetings of the board of trustees may not act as a trustee and is considered to have vacated the office of trustee.

#### **Sec. 845.004. Term of Office.**

Trustees hold office for staggered terms of six years, with the terms of three trustees expiring December 31 of each odd-numbered year.

#### **Sec. 845.005. Oath of Office.**

Before taking office as a trustee, a person shall take the constitutional oath prescribed for officers of the state.

#### **Sec. 845.006. Repealed.**

#### **Sec. 845.007. Meetings.**

- (a) The board of trustees shall hold four regular meetings each year and special meetings when called by the director.
- (b) Before the fifth day preceding the day of a special meeting, the director shall give written notice of the meeting to each trustee unless notice is waived.
- (c) Except as otherwise permitted by Section 845.301(a-1), Chapter 551, or other law, all meetings of the board must be open to the public.
- (d) The board shall hold its meetings in the office of the board or in a place specified by the notice of the meeting.

- (e) Notwithstanding Chapter 551 or any other law, the board of trustees may hold an open or closed meeting by telephone conference call, videoconference, or other similar telecommunication method. The board may use a telephone conference call, videoconference, or other similar telecommunication method for purposes of establishing a quorum or voting or for any other meeting purpose in accordance with Subsection (f) and this subsection. This subsection applies without regard to the subject matter discussed or considered by the board at the meeting.
- (f) A meeting held by telephone conference call, videoconference, or other similar telecommunication method:
  - (1) is subject to the notice requirements applicable to other board meetings;
  - (2) may not be held unless notice of the meeting specifies the location of the meeting at which at least one trustee of the board will be physically present; and
  - (3) must be open and audible to the public at the location specified in the notice under Subdivision (2) during the open portions of the meeting.

**Sec. 845.008. Compensation; Expenses.**

Each trustee serves without compensation but is entitled to:

- (1) reimbursement for reasonable traveling expenses incurred in attending board meetings or authorized committee and association meetings or incurred in the performance of other official board duties; and
- (2) payment of an amount equal to any compensation withheld by the trustee's employing subdivision because of the trustee's attendance at board meetings.

**Sec. 845.009. Voting.**

- (a) Each trustee is entitled to one vote.
- (b) At any meeting of the board, five or more concurring votes are necessary for a decision or action by the board.

**SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES**

**Sec. 845.101. Administration.**

- (a) The retirement system is a trust.
- (b) The board of trustees is responsible for the administration of the retirement system.

**Sec. 845.102. Rules and Standards.**

- (a) The board of trustees shall adopt rules and perform reasonable activities necessary or desirable for efficient administration of the system.

(b) Subject to the provisions of this subtitle, the board of trustees may establish systemwide standards to which all subdivisions are subject and that apply to all members of the retirement system or to all members similarly situated in a class. The board may establish or modify a systemwide standard at a time and in a manner the board determines to be appropriate and in the best interests of the system, the members, or their beneficiaries.

**Sec. 845.103. Administering System Assets.**

(a) The board of trustees may sell, assign, exchange, or trade and transfer any security in which the retirement system's assets are invested. The board may use or reinvest the proceeds as the board determines that the system's needs require.

(b) In handling the funds of the retirement system, the board of trustees has all powers and duties granted to the comptroller that formerly were granted to the State Depository Board.

**Sec. 845.104. Accepting Gift, Grant, or Bequest.**

The board of trustees shall accept a gift, grant, or bequest of money or securities:

(1) for the purpose designated by the grantor if the purpose provides an endowment or retirement benefits to some or all participating employees or annuitants of the retirement system; or

(2) otherwise, for deposit in the endowment fund.

**Sec. 845.105. Indebtedness; Payment.**

(a) The board of trustees may:

(1) incur indebtedness;

(2) on the credit of the retirement system, borrow money to pay expenses incident to the system's operation;

(3) renew, extend, or refund its indebtedness; or

(4) issue and sell negotiable promissory notes or negotiable bonds of the system.

(b) A note or bond issued under this section must expressly state that the note or bond is not an obligation of this state.

**Sec. 845.106. Grants and Payment of Benefits.**

The board of trustees, in accordance with this subtitle, shall consider all applications for annuities and benefits and shall decide whether to grant the annuities and benefits. The board may suspend one or more payments in accordance with this subtitle.

**Sec. 845.107.****Audits and Reviews.**

- (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.

**Sec. 845.108.****Designation of Authority to Disburse Funds.**

The director is authorized to sign checks and authorize fund transfers for payments from the assets of the retirement system. The director may designate in writing additional persons to have authority to sign checks and authorize fund transfers for payments from the assets of the retirement system.

**Sec. 845.109.****Depositories.**

The board of trustees shall designate financial institutions to qualify and serve the retirement system as depositories in accordance with Subchapter C of Chapter 404.

**Sec. 845.110.****Adopting Rates and Tables.**

- (a) The board of trustees shall adopt rates and tables that the board considers necessary for the retirement system after considering the results of the actuary’s investigation of the mortality and service experience of the system’s members and annuitants.
- (b) Based on recommendations of the actuary, the board of trustees shall adopt rates and tables necessary to determine the supplemental death benefits contribution rates for each subdivision participating in the supplemental death benefits fund. The initial rates and tables become effective on the date that the fund and coverage become operative.

- (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.

**Sec. 845.111.                    Insurance.**

Notwithstanding any other law, the board of trustees may self-insure or purchase any insurance the board considers reasonable and prudent for the performance of board duties and prerogatives.

**Sec. 845.112.                    Records of Board of Trustees.**

- (a) The board of trustees shall keep, in convenient form, data necessary for required computations and valuations by the actuary.
- (b) The board shall keep a permanent record of all of its proceedings.
- (c) Records of the board are open to the public.

**Sec. 845.113.                    Office.**

- (a) The board of trustees shall maintain the offices of the retirement system in Austin and may, but is not required to:
  - (1) cause the system to own real estate on or in which those offices are located;
  - (2) contract for and construct a building or buildings to house those offices, along with related structures such as parking garages;
  - (3) lease office space from others;
  - (4) lease space in its offices, or in a building that previously has been its offices, to other persons or entities;
  - (5) maintain, modify, or construct improvements on any real estate, whether for the retirement system or a tenant; or
  - (6) sell real estate that previously has been the retirement system's offices.
- (b) The board shall keep the books and records of the retirement system in those offices.

**Sec. 845.114.                    Definition of Participant; Obtaining Information.**

- (a) In this chapter, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system.
- (b) The retirement system shall obtain from participants and subdivisions information necessary for the proper operation and administration of the system.
- (c) Each participant and subdivision shall timely provide to the retirement system in the form and manner specified by the system information the board of trustees determines to be necessary for the proper operation and administration of the system.

**Sec. 845.115.****Confidentiality of Participant Information.**

- (a) Information contained in records in the custody of the retirement system or maintained in the custody of another governmental entity or an administrator or carrier acting in cooperation with or on behalf of the retirement system concerning a participant is confidential. Except as otherwise provided by this section, the retirement system is not required to accept or comply with a request for a record or information about a record of a participant or to seek an opinion from the attorney general because the records of a participant are exempt from the public information provisions of Chapter 552. The information may not be disclosed in a form identifiable with a specific individual unless:
  - (1) the information is disclosed to:
    - (A) the participant or the participant's attorney, guardian, executor, administrator, conservator, or other person who the director determines is acting in the interest of the participant or the participant's estate;
    - (B) a spouse or former spouse of the participant and the director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;
    - (C) a governmental official or employee and the director determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or
    - (D) a person authorized by the participant in writing to receive the information; or
  - (2) the information is disclosed pursuant to a subpoena and the director determines that the participant will have a reasonable opportunity to contest the subpoena.
- (b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.
  - (b-1) This section does not require the retirement system to compile or disclose a list of participants' names, addresses, social security numbers, or other descriptive or demographic information.
  - (c) The director may designate other employees of the retirement system to make the necessary determinations under Subsection (a).
  - (d) A determination and disclosure under Subsection (a) may be made without notice to the participant.
  - (e) The records of a participant remain confidential after release to a person as authorized by this section. The records of the participant may become part of a public record of an administrative or judicial proceeding, and the participant waives the confidentiality of the records, including medical records, unless the records are closed to public access by a protective order issued under applicable law.
  - (f) Repealed by Acts 2009, 81st Leg., R.S., Ch. 300, Sec. 38(4), eff. January 1, 2010.

**Sec. 845.1151. Electronic Information.**

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.

**Sec. 845.116. Electronic Transfer of Funds and Electronic Filing of Documents.**

- (a) In this section:
  - (1) “Electronic filing” means the filing of data transmitted to the retirement system by the communication of information by facsimile or in the form of digital electronic signals transformed by computer and stored on microfilm, magnetic tape, optical disks, or any other medium.
  - (2) “Electronic transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone instrument, computer, or magnetic media to order, instruct, or authorize a financial institution to debit or credit an account.
- (b) The board of trustees may adopt rules and procedures relating to the electronic transfer of funds and the electronic filing of documents and required reports.
- (c) Funds that are electronically transferred in accordance with those rules and procedures are considered to have been timely received by the retirement system. Documents and required reports that are electronically filed in accordance with those rules and procedures are considered to have been properly filed with the retirement system.

**SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES**

**Sec. 845.201. Officers.**

- (a) The board of trustees annually shall elect from members of the board:
  - (1) a chairman; and
  - (2) a vice-chairman.
- (b) The board may appoint the director or a member of the board as secretary.

**Sec. 845.202. Director.**

- (a) The board of trustees shall appoint a director.
- (b) The director shall manage and administer the retirement system under the supervision and direction of the board.
- (c) The board of trustees may delegate to the director powers and duties in addition to those stated by Subsection (b).
- (d) The director annually shall:

- (1) prepare an itemized budget showing the amount required to pay the retirement system's administrative expenses for the following fiscal year; and
- (2) submit the administrative budget to the board for review, amendment, and adoption.

**Sec. 845.203. Legal Adviser.**

- (a) The board of trustees shall appoint an attorney.
- (b) The attorney shall act as the legal adviser to the board.

**Sec. 845.204. Medical Board.**

- (a) The board of trustees shall designate a medical board composed of three physicians.
- (b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.
- (c) The medical board shall:
  - (1) review all medical examinations required by this subtitle;
  - (2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and
  - (3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

**Sec. 845.205. Other Physicians.**

The board of trustees may employ physicians in addition to the medical board to report on special cases.

**Sec. 845.206. Actuary.**

- (a) The board of trustees shall appoint an actuary.
- (b) The actuary shall perform duties in connection with advising the board concerning operation of the system's funds.
- (c) At least once every five years the actuary shall:
  - (1) make a general investigation of the mortality and service experience of the members and annuitants of the system; and
  - (2) on the basis of the results of the investigation, recommend for adoption by the board required tables and rates.
- (d) On the basis of tables and rates adopted by the board, the actuary shall make an annual valuation of the assets and liabilities of the retirement system and of each participating subdivision with regard to the retirement system.

**Sec. 845.207. Other Employees.**

The board of trustees shall employ actuarial, clerical, legal, medical, and other assistants required for the efficient administration of the retirement system.

**Sec. 845.208. Compensation of Employees.**

The board of trustees shall determine the amount of compensation that employees of the retirement system receive.

**SUBCHAPTER D. MANAGEMENT OF ASSETS**

**Sec. 845.301. Investment of Assets.**

- (a) The assets of the retirement system shall be invested and reinvested without distinction as to their source in accordance with Section 67, Article XVI, Texas Constitution. For purposes of the investment authority of the board of trustees under Section 67, Article XVI, Texas Constitution, “securities” means any investment instrument within the meaning of the term as defined by Section 4, The Securities Act (Article 581-4, Vernon’s Texas Civil Statutes), 15 U.S.C. Section 77b(a)(1), or 15 U.S.C. Section 78c(a)(10). An interest in a limited partnership or investment contract is considered a security without regard to the number of investors or the control, access to information, or rights granted to or retained by the retirement system. Any instrument or contract intended to manage transaction, currency exchange, or interest rate risk in purchasing, selling, or holding securities, or that derives all or substantially all of its value from the value or performance of one or more securities, including an index or group of securities, is considered to be a security. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 117.004(b), Property Code.
- (a-1) Notwithstanding any provision of Chapter 551 or any other law, the board of trustees may discuss an investment or potential investment with one or more employees of the retirement system or with a third party to the extent permitted to the board of trustees of the Texas growth fund under Section 551.075.
- (b) The board of trustees shall exercise control of the investment operations by employing an investment officer, who shall supervise the investment operations for the board of trustees. The investment officer shall prepare and submit to the board for review, amendment, and adoption an itemized budget showing the amount required to pay the investment expenses of the retirement system for the following fiscal year.
- (c) The board of trustees, acting on the recommendations of the investment officer, may contract with private professional investment managers to assist in investing the assets of the retirement system. The board of trustees also has the authority set forth in Section 802.204 to appoint investment managers for the retirement system, with the effect described by Section 802.203(c).
- (d) The board of trustees shall employ one or more performance measurement services to evaluate and analyze the investment results of those assets of the retirement system for which reliable and appropriate measurement methodology and procedures exist. Each service shall compare investment results with the written investment objectives developed by the board of trustees and shall also compare the investment of assets being evaluated and analyzed with the investment of other public funds.

- (e) The assets of the retirement system may be held in the name of agents, nominees, depository trust companies, or other entities designated by the board of trustees. The records and all relevant reports or accounts of the retirement system must show the ownership interests of the retirement system in these assets and the facts regarding the system's holdings.
- (f) The board of trustees shall establish written investment objectives concerning the investment of assets of the retirement system.

**Sec. 845.302. Custody and Investment of Assets Pending Transactions.**

The board of trustees, in the exercise of its discretion to manage the assets of the retirement system, may select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's cash or securities pending completion of an investment transaction and may authorize the custodian to invest the cash so held in such short-term securities as the board of trustees determines.

**Sec. 845.303. Securities Lending.**

- (a) The board of trustees, in the exercise of its discretion to manage the assets of the retirement system, may select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's securities and to lend the securities under rules adopted by the board of trustees and as required by this section.
- (b) To be eligible to lend securities under this section, a bank or brokerage firm must:
  - (1) be experienced in the operations of a fully secured securities lending program;
  - (2) maintain capital adequate in the prudent judgment of the retirement system to assure the safety of the securities;
  - (3) execute an indemnification agreement satisfactory in form and content to the retirement system; and
  - (4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian collateral in the form of cash or United States government securities, the market value of which must equal not less than 100 percent of the market value, from time to time, of the loaned securities.

**Sec. 845.304. Repealed.**

**Sec. 845.305. Crediting System Assets.**

- (a) The retirement system shall deposit all receipts with a depository designated under Section 845.109 or a custodian designated under Section 845.302.
- (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) closed subdivision annuity reserve fund;
- (4) income fund;
- (5) endowment fund; or
- (6) expense fund.

(c) Amounts contributed by a subdivision to provide benefits under the optional group term life program for its participating employees and retirees shall be deposited to the optional group term life fund and maintained by the board of trustees as the optional group term life trust.

**Sec. 845.306. Employees Saving Fund.**

- (a) The retirement system shall deposit in a member's individual account in the employees saving fund:
  - (1) the amount of contributions to the retirement system deducted from the member's compensation;
  - (2) interest allowed in accordance with this subtitle;
  - (3) the contribution made by a member in an amount equal to the amount withdrawn to reinstate service credit under Section 843.003;
  - (4) the amount deposited by a member in accordance with Section 843.0031; and
  - (5) the amount contributed by a member in accordance with Section 843.601(b) to establish current service credit for military service under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.).
- (b) The retirement system shall establish and maintain a separate member individual account for each subdivision with which the member has credited service.
- (c) On December 31 of each year, the retirement system shall credit to each member's individual account interest as allowed by this subtitle on the amount of accumulated contributions credited to the member's account on January 1 of that year.

**Sec. 845.307. Subdivision Accumulation Fund.**

- (a) The retirement system shall credit or charge to the account of a participating subdivision in the subdivision accumulation fund:
  - (1) all benefit contributions made by the subdivision to the system pursuant to Section 845.404(a)(2);
  - (2) net investment income or loss allocated to the fund under Section 845.315;
  - (3) amounts deposited by the subdivision under Section 845.408;
  - (4) the withdrawal charge for reinstatement of service credit as provided by Section 843.003; and
  - (5) other credits and charges that may be authorized under this subtitle.

- (b) Subject to Subsection (c), the retirement system shall pay from the subdivision accumulation fund all payments for annuities and other benefit payments granted by a participating subdivision.
- (c) The board of trustees may proportionately reduce all payments under prior service annuities and supplemental annuities at any time and for a period necessary to prevent payments under those annuities for a year from exceeding the amount available in the participating subdivision's account.
- (d) If credited service previously forfeited is reinstated in accordance with Section 843.003, the retirement system shall charge the subdivision's account in the subdivision accumulation fund with the necessary reserves to fund the credits restored to the member.

**Sec. 845.308.                   Closed Subdivision Annuity Reserve Fund.**

- (a) The retirement system shall deposit and hold in the closed subdivision annuity reserve fund all reserves for annuities payable to annuitants who were members of subdivisions that terminated participation with the retirement system under Subchapter A-1, Chapter 842.
- (b) The retirement system shall pay from the closed subdivision annuity reserve fund annuities described by Subsection (a) and all benefits in lieu of those annuities as provided by this subtitle.

**Sec. 845.309.                   Income Fund.**

- (a) The income fund shall account for the determination and allocation of net investment income or loss.
- (b) Net investment income or loss will be determined annually as of December 31.
- (c) Net investment income or loss will be allocated each year in accordance with Section 845.315.
- (d) Repealed by Acts 2005, 79th Leg., Ch. 506, Sec. 33(14), eff. January 1, 2006.
- (e) Repealed by Acts 2005, 79th Leg., Ch. 506, Sec. 33(14), eff. January 1, 2006.

**Sec. 845.310.                   Endowment Fund.**

- (a) The endowment fund consists of the general reserves account and other accounts as necessary.
- (b) Repealed by Acts 2005, 79th Leg., Ch. 506, Sec. 33(15), eff. January 1, 2006.
- (c) The retirement system shall credit or charge to the general reserves account amounts allocated to the endowment fund in accordance with Section 845.315.
- (c-1) As of December 31, the board of trustees shall provide from the general reserves account the amount needed to pay the retirement system's estimated operating expenses for the next fiscal year.
- (d) The board of trustees may allocate any amount in the endowment fund to any other account or fund in the pension trust.

- (e) Any allocation of reserves to an account of a subdivision to which Section 842.052, 842.053, or 845.317 applies must be specifically authorized by board resolution.
- (f) Repealed by Acts 2005, 79th Leg., Ch. 506, Sec. 33(15), eff. January 1, 2006.

The expense fund shall account for the administrative revenues and expenses of the retirement system.

**Sec. 845.312.      Optional Group Term Life Fund.**

- (a) The retirement system shall deposit in the optional group term life fund contributions paid by subdivisions to the retirement system to provide optional group term life benefits in accordance with Section 845.406. The retirement system may not establish separate accounts in the fund for subdivisions participating in the optional group term life program but shall credit contributions to a single account.
- (b) The retirement system shall pay benefits under the optional group term life program only from money in the optional group term life fund, and the benefits are not an obligation of other funds of the system.
- (c) The effective participation date of a subdivision is the first day of any calendar month after the month in which the subdivision notifies the board of its election to enter the fund.

## Sec. 845.313. Disbursements.

- (a) Disbursements from the assets of the retirement system may be made by check, electronic funds transfer, or any other means generally available within the banking industry and must be signed or otherwise authorized by a person designated for that purpose in accordance with Section 845.108.
- (b) When a check or fund transfer is properly signed or otherwise authorized, a depository with which assets of the system are deposited shall accept and pay the check or complete the fund transfer. The depository is released from liability for payment made on the check or authorized fund transfer.
- (c) The retirement system shall make payments by electronic funds transfer to annuitants whose first annuity payment under this subtitle occurs after January 1, 2002, except that the system may make payment by check to an annuitant if making the payment by electronic funds transfer would be impractical for the system or if the annuitant properly notifies the system that:
  - (1) receiving the payment by electronic funds transfer would be impractical for the person;
  - (2) receiving the payment by electronic funds transfer would be more costly to the person than receiving the payment by check; or
  - (3) the person is unable to establish a qualifying account at a financial institution to receive electronic funds transfers.
- (d) If payment by check to an individual would be, or has become, impractical, insecure, or proportionally more costly for the retirement system than payment by check to other

persons, the system may hold or suspend any payment and require the individual to accept payment by another means or method that is practical, secure, and cost-effective.

**Sec. 845.314. Interest Rates.**

Unless this subtitle expressly states another specified rate of interest, for periods beginning after December 31, 1996, the annual rate of interest is seven percent.

**Sec. 845.315. Annual Allocation of Net Investment Income or Loss.**

- (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 closed subdivision annuity reserve fund, interest as allowed under this subtitle on the mean amount in the closed subdivision annuity reserve fund during that year;
  - (2) to the optional group term life fund, interest as allowed under this subtitle on the mean amount in the optional group term life 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, positive or negative amounts as determined under rules adopted by the board prescribing the allocation methodology for the accounts; 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, and if a subdivision terminates participation before December 31 of that year, the board shall determine the allocation amount and transfer date before December 31 of that year.
- (b) The account of a subdivision that has ceased participation according to Section 845.317(a) will not receive an allocation under this section.

**Sec. 845.316. Transfer of Assets on Retirement.**

- (a) When a member retires, the retirement system shall transfer from the employees saving fund to the subdivision accumulation fund, the member's accumulated contributions.
- (b) When a member retires from a subdivision that has terminated participation with the retirement system under Subchapter A-1, Chapter 842, the retirement system shall transfer the member's individual account to the closed subdivision annuity reserve fund.
- (c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 873, Sec. 92(30), eff. January 1, 2008.

**Sec. 845.317. Payment to Formerly Participating Subdivision.**

- (a) If a participating subdivision, other than a subdivision described by Subsection (b), has no employees who are members of the retirement system and has no present or

potential liabilities resulting from the participation of former employees, the subdivision's participation in the system stops and the system shall repay to the subdivision on application any amount in the subdivision accumulation fund that is credited to the subdivision.

- (b) If the participation of a subdivision has terminated under Section 842.052 or 842.053 and the subdivision has no present or potential liabilities resulting from the participation of current or former employees, the retirement system, after application by the subdivision or its governmental successor in interest, shall pay to the subdivision or its governmental successor any remaining credit to the account of the subdivision in the subdivision accumulation fund.
- (c) A subdivision that has terminated participation in the retirement system has no right or claim to any amounts in the system, except as provided by this section.
- (d) If a participating subdivision has ceased to exist and diligent efforts by the retirement system to identify a governmental entity as the successor in interest to the subdivision have been unsuccessful, the board of trustees may close the subdivision's account and transfer the remaining credit to the endowment fund.

**Sec. 845.318. Consolidation of County's Accounts in Subdivision Accumulation Fund; Return of Excess Funds.**

- (a) If a county that has provided for participation of county hospital employees separately from other county employees stops operating a county hospital, the commissioners court of the county, by order, may direct the retirement system to consolidate the separate accounts of the county in the subdivision accumulation fund.
- (b) The retirement system shall consolidate the accounts and after consolidation shall charge each obligation of the county arising under this subtitle because of service performed by employees of the county against the consolidated account.
- (c) If the participation of a county hospital as a subdivision separate from other county employees is terminated under this subtitle, the retirement system shall pay to the county any excess funds remaining in the subdivision accumulation fund to the credit of the account of the county hospital.

## **SUBCHAPTER E. COLLECTION OF CONTRIBUTIONS**

## Sec. 845.402. Member Contributions.

- (a) Each participating subdivision, by order or resolution of its governing body, shall designate the rate of member contributions for its employees. The subdivision may elect a rate of four, five, six, or seven percent of the current service compensation of its employees.
- (b) After timely notice to the board of trustees, the governing body of a participating subdivision may increase the rate of its member contributions effective with the first pay period beginning in the following calendar year.

- (c) After timely notice to the board of trustees, the governing body of a participating subdivision may reduce the rate of its member contributions effective with the first pay period beginning in the following calendar year.
- (d) Repealed by Acts 1997, 75th Leg., Ch. 309, Sec. 33, eff. Dec. 31, 1997.
- (e) Repealed by Acts 1997, 75th Leg., Ch. 309, Sec. 33, eff. Dec. 31, 1997.
- (f) Repealed by Acts 1997, 75th Leg., Ch. 309, Sec. 33, eff. Dec. 31, 1997.

**Sec. 845.403. Collection of Member Contributions.**

- (a) Each payroll period after the effective date of a subdivision's participation, the subdivision shall cause the contribution for that period to be deducted from the compensation of each member that it employs.
- (b) Repealed by Acts 1991, 72nd Leg., Ch. 460, Sec. 30, eff. August 26, 1991.
- (c) Repealed by Acts 2005, 79th Leg., Ch. 506, Sec. 33(16), eff. January 1, 2006.
- (d) A participating subdivision shall certify to the board of trustees on each payroll, or in another manner prescribed by the board, the amount to be deducted from the compensation of each member that it employs.
- (e) Each participating subdivision shall:
  - (1) make deductions from each member's compensation for contributions to the retirement system;
  - (2) transmit monthly, or at the time designated by the board of trustees, the payroll and other pertinent information prescribed by the board; and
  - (3) pay the deductions to the board of trustees at the board's home office.
- (f) After the deductions for member contributions are paid, the board of trustees shall:
  - (1) record all receipts; and
  - (2) deposit the receipts to the credit of the employees saving fund.
- (g) The participating subdivision shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.
- (h) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payroll period.

- (i) Each participating subdivision shall pick up the employee contributions required of each member by Section 845.402 and this section for all compensation earned after December 31, 1985, and shall pay these picked-up employee contributions from the same source of funds used in paying earnings to the employee. The participating subdivision may pick up these contributions by a reduction in the cash salary of the employee or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase; unless it is otherwise determined by the governing body of the participating subdivision, the pick-up shall be accomplished by a corresponding reduction in the cash salary of the employee.
- (j) Contributions picked up as provided by Subsection (i) shall be treated as employer contributions in determining tax treatment of the amounts under Section 414(h) of the United States Internal Revenue Code of 1986. Each employee contribution that is picked up shall be deposited as provided in Section 845.306 to the individual account of the member, on whose behalf the contribution is made, and shall be treated for all other purposes of this subtitle in the same manner as if the amount had been deducted from the compensation of and made by the employee pursuant to Sections 845.402 and this section.

**Sec. 845.4031. Contributions in Anticipation of Participation.**

- (a) After a subdivision has officially elected to join the retirement system and has specified the date for its participation to begin, and before the board of trustees has approved its participation, the subdivision may, with the consent of the director, begin deducting from an employee's compensation for each payroll period beginning on or after the specified participation date the contribution that would be deducted if the subdivision were then participating.
- (b) The subdivision shall collect and segregate the amounts deducted from its employees' compensation and the contributions that the subdivision would be required to make under this subtitle if it were then participating.
- (c) The period during which contributions may be deducted from an employee's compensation in anticipation of board approval of participation may not exceed six months and may not extend into a subsequent calendar year without consent of the board of trustees. During the period that board approval is pending, the subdivision may not participate in, and the subdivision's employees may not be covered by, the optional group term life program.
- (d) On approval of participation, the subdivision shall immediately transfer to the retirement system, for credit to the appropriate funds within the system, the amounts collected and segregated under Subsection (b). If the subdivision previously elected to participate in the optional group term life program, participation in that program begins on the first day of the month following the month in which the board of trustees approves participation in the system.
- (e) If the board of trustees disapproves the subdivision's participation in the retirement system, the subdivision shall pay all employee contributions collected and segregated in anticipation of board approval to the employees from whom the contributions were withheld.

**Sec. 845.404. Collection of Subdivision Contributions.**

- (a) Before the 16th day of each month, each participating subdivision shall pay or cause to be paid to the retirement system at the system's office:
  - (1) the member contributions, or "picked-up" member contributions, provided for by Sections 845.402 and 845.403, which shall be deposited to the individual accounts of the members; and
  - (2) the contributions that a subdivision is required to make under this subtitle, which shall be deposited to the account of the subdivision in the subdivision accumulation fund.
- (b) Unless otherwise provided for and paid by a subdivision, a subdivision shall pay its contributions to the retirement system from:
  - (1) the fund from which compensation is paid to members; or
  - (2) the general fund of the subdivision.

**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.

**Sec. 845.406. Optional Group Term Life Program.**

- (a) In addition to other contributions to the retirement system required by this subtitle, each subdivision participating in the optional group term life program monthly shall pay to the optional group term life fund an amount equal to the rate of contribution computed in accordance with this section, multiplied by the total compensation for the month of the members employed by the subdivision.

- (b) A limitation on subdivision contribution rates provided by this subtitle does not apply to the rate of the contribution to the optional group term life fund.
- (c) At the time of each investigation of members' mortality and service experience required by Section 845.110, the actuary shall investigate the mortality experience of the members and eligible annuitants participating in the program. On the basis of the result of that investigation, the actuary shall recommend to the board of trustees rates and tables necessary to determine optional group term life program contribution rates. The rates and tables may provide for the anticipated mortality experience of the persons covered under the program and for a contingency reserve.
- (d) Before a subdivision's participation date in the program and before January 1 of each subsequent year, the actuary shall compute, on the basis of rates and tables adopted by the board of trustees, the contribution rate of a subdivision participating in the program. The rate must be expressed as a percentage of the compensation of members employed by the subdivision. When the rate is approved by the board of trustees, the rate is effective for the calendar year for which it was approved.
- (e) The board of trustees, in the exercise of its discretion to manage the assets of the retirement system, may lend money to the optional group term life fund if the amount in the fund is insufficient to pay the benefits due. Any loan is an investment of the retirement system and must be repaid solely from future contributions to the fund and its share of trust earnings. The terms of the loan shall be set by the board of trustees, but the loan must bear a commercially reasonable interest rate. The board may adjust future contributions to the fund for purposes of repayment of the loan.
- (f) To protect against adverse claim experience, the board of trustees may secure reinsurance from one or more stock insurance companies doing business in this state if the board determines that reinsurance is necessary. The retirement system shall pay the premiums for reinsurance from the optional group term life fund.

#### **Sec. 845.407. Penalty for Late Contributions.**

- (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 fund. The administrative fee portion of the penalty shall be deposited by the retirement system in the expense fund.
- (b) Payments and required reports are considered to be made when received by the retirement system.
- (c) A penalty will not be assessed under this section for a late payment or report made in a document sent to the correct address:

- (1) by certified mail, return receipt requested, not later than the 10th day of the month in which the payment or report becomes due; or
- (2) using a same-day or overnight delivery method, approved by the board of trustees, not later than the 14th day of the month in which the payment or report becomes due.
- (d) If the retirement system does not receive a payment or report, a penalty will not be assessed under this section if the subdivision provides proof satisfactory to the system that the document containing the payment or report was sent in accordance with Subsection (c).
- (e) The retirement system may extend the due date provided by this section if a subdivision applies for an extension before the due date and the director determines that good cause exists for the extension and that the need for the extension is not caused by neglect, indifference, or lack of diligence.

**Sec. 845.408.                   Additional Optional Deposits by Subdivisions.**

In addition to the deposits that a subdivision is required to make under this subtitle, the governing body of a participating subdivision may elect to deposit to the subdivision's account in the subdivision accumulation fund one or more lump-sum payments. Once a payment is deposited, it cannot be withdrawn from that fund by the subdivision.

**SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES**

**Sec. 845.501.                   Statement of Amount in Account.**

- (a) As soon as possible after the end of each calendar year, the board of trustees shall send to the governing body of each subdivision and to each requesting member an annual statement that contains the basic financial statements of the retirement system.
- (b) The board of trustees shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. During a calendar year, the board is not required to furnish to a member more than one statement requested under this subsection.

**Sec. 845.502.                   Interest in Assets.**

A particular person or subdivision has no right in a specific security or in an item of cash other than an undivided interest in the assets of the retirement system.

**Sec. 845.503.                   Authority to Recoup or Make Adjustments for Payments Made in Error.**

- (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. 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 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.
- (c) The retirement system may adjust amounts in a subdivision's account in the subdivision accumulation fund to correct an error caused by an act or omission of the subdivision.

**Sec. 845.504.                   Excess Benefit Program.**

- (a) If the board of trustees determines that it is in the interest of the retirement system and will benefit members and annuitants, the board by rule may establish an excess benefits program for the payment of benefits under Section 415(m) of the Internal Revenue Code of 1986, and its subsequent amendments, that would otherwise be barred by the limitation on benefits imposed by Section 415 of that code.
- (b) Notwithstanding any other provision of this subtitle, the board of trustees by rule may provide for the transfer of contributions as part of the excess benefits program in a manner consistent with a governmental excess benefit arrangement.

**Sec. 845.505.                   Undistributed Benefits.**

- (a) If a person's membership in the retirement system has terminated and a valid application for a retirement annuity or a refund of accumulated contributions has not been filed with the retirement system, the retirement system shall mail the notice described by Subsection (b) to the most recent address of the former member as shown on system records and make reasonable efforts to locate any person entitled to apply for the benefit.
- (b) A notice under this section must include the name of the former member, the name of each subdivision with which the former member has an individual account, a statement that no additional interest is credited after a membership has terminated, a statement that a benefit is payable, and a statement of the procedure for obtaining payment of that benefit.
- (c) If a person files with the retirement system a valid application for an annuity based on a membership that terminated under Section 842.109(b), the retirement system shall pay an annuity computed as of the former member's effective retirement date as determined under that section.
- (d) An applicant who is a former member may select the standard retirement annuity or an optional retirement annuity under Section 844.0041(c) or (d). An applicant who is the surviving beneficiary or the personal representative of a deceased former member may select an annuity payable in a form authorized by the board of trustees under Section 844.407. All annuity payments that previously would have been paid if the annuity had begun on the effective retirement date will be paid to the applicant.
- (e) If a person files with the retirement system a valid application for a refund of a former member's accumulated contributions or a valid application for a benefit payable under the optional group term life program, the retirement system shall pay to the applicant the portion of the former member's accumulated contributions or the portion of the optional group term life benefits to which the applicant is entitled.

- (f) If a person eligible to receive a benefit fails to provide accurate and verifiable information regarding the identity, age, taxpayer identification number, or residential address of the person or the person's beneficiary, the retirement system may hold or delay payment of any benefit until the information is provided. If a person receiving an annuity fails to negotiate two or more annuity payments, fails to respond to a written request for information relevant to the annuitant's continuing right to receive benefits or relevant to the responsibility of the system to report accurately the distribution under federal or state law, fails to provide the system with an address for the delivery of a benefit that is safe and secure from loss, theft, or misdelivery, or fails in any other manner that interferes with or impedes the efficient administration of the system, the system may suspend and hold all benefit payments until the failure is corrected.
- (f-1) If there is a continuation of an optional annuity, the retirement system shall pay to the person receiving the continuing annuity any amount held by the system to which the deceased person was entitled. If the annuity terminates with the death of the person, any amount held by the retirement system to which a deceased person was entitled is payable under rules and procedures adopted by the board of trustees.
- (g) If a benefit becomes payable as the result of the death of a person receiving an annuity, the retirement system shall mail a notice similar to the notice described by Subsection (b) to the most recent address of the decedent's beneficiary as shown on system records and make reasonable efforts to locate each person to whom the benefit is payable. After receipt of a valid application, the retirement system shall pay the applicant the benefit to which the applicant is entitled. All annuity payments that would previously have been paid if the annuity had begun on the date required under this subtitle will be paid to the applicant.
- (h) A person entitled to a benefit under this section is solely responsible for a tax or penalty relating to the distribution of the benefit without regard to whether the person received notice from the retirement system.
- (i) The board of trustees may adopt rules concerning the notice, distribution, management, transfer, and administration of unclaimed, held, delayed, and suspended benefits, the authority of an applicant to act as trustee of an absent beneficiary in the selection of a payment option or receipt of an absent beneficiary's benefit under this section, and the distribution of benefits to an alternate payee under a qualified domestic relations order with respect to a terminated membership.

#### **Sec. 845.506.                   Appeal of Administrative Decision.**

- (a) A decision of the retirement system is final and conclusive unless an appeal is filed in writing with the system by regular mail or electronic filing, as that term is defined by Section 845.116(a)(1), not later than the 90th day after the earlier of the date the person subject to the decision receives notice of the decision by any means or the date the system files notice of its decision with the person by regular mail or electronic means.
- (b) A person may appeal a decision to the board of trustees if the person is aggrieved by a decision of the retirement system relating to the system or any program administered by the system under this subtitle:

- (1) denying or limiting membership, service credit, or eligibility for or the amount of benefits payable by the system; or
- (2) regarding to whom benefits should be paid under the system or program.

(c) The director or the director's designee may refer an appeal made under Subsection (a) to the State Office of Administrative Hearings for a hearing or employ, select, or contract for the services of an administrative law judge or hearing examiner not affiliated with the State Office of Administrative Hearings to conduct a hearing. This subsection prevails over any other law to the extent of any conflict.

(d) An appeal under this section is considered to be a contested case under Chapter 2001. The appellant in a contested case under this section has the burden of proof on all issues, including issues in the nature of an affirmative defense.

(e) The board of trustees may in its sole discretion make a final decision on a contested case under this section. Notwithstanding any other law, the board may in its sole discretion modify, refuse to accept, or delete any proposed finding of fact or conclusion of law contained in a proposal for decision submitted by an administrative law judge or other hearing examiner, or make alternative findings of fact and conclusions of law, in a proceeding considered to be a contested case under Chapter 2001. The board shall state in writing the specific reason for its determination and may adopt rules for the implementation of this subsection. The board may delegate its authority under this subsection to the director.

(f) Notwithstanding Subsections (d) and (e), the retirement system and a person aggrieved by a decision of the system may at any time informally negotiate an award of benefits. Negotiated benefits may not exceed the maximum benefits otherwise available or required by law.

(g) A final decision of the board of trustees in a contested case 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.

**Sec. 845.507. Qualification.**

It is intended that this subtitle be construed and administered in a manner that the retirement system will be considered qualified under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). The board of trustees may adopt rules that it determines necessary for the retirement system to be considered qualified. Rules adopted by the board of trustees relating to qualification issues are considered a part of the plan.

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## Endnote

For TCDRS “credited service” is time, 841.001(7), and “service credit” is money in a member’s account, 841.001(16). This contrasts with the Proportionate Retirement Program definition of “service credit”, 803.001(2). In sister systems, “service credit” means time as an employee. In summary, the other statewide systems use “service credit” in a different manner from the TCDRS definition.



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