

Chapter 697

AN ACT

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

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

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

(10) "Qualified service" means service:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 Sec. 863.005. CHARGE FOR CERTAIN PAST DUE CONTRIBUTIONS.  
7 The state board by rule may impose an interest charge on  
8 contributions due because of a correction of an error by a local  
9 board related to enrollment or qualified service. The charge must  
10 be based on the pension system's current assumed rate of return.  
11 Charges collected shall be deposited in the fund.

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

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

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

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

26 Sec. 864.015. BENEFICIARY CAUSING DEATH OF MEMBER OR  
27 ANNUITANT. (a) A benefit payable on the death of a member or

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

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

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

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

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

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

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

1 adding Section 865.020 to read as follows:

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

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

9 (c) The medical board shall:

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

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

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

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

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

David Newkirk

President of the Senate

Jon Stroman

Speaker of the House

I certify that H.B. No. 2751 was passed by the House on April 22, 2009, by the following vote: Yeas 149, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2751 on May 29, 2009, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

Robert Harey

Chief Clerk of the House

I certify that H.B. No. 2751 was passed by the Senate, with amendments, on May 27, 2009, by the following vote: Yeas 31, Nays 0.

Antony Spaw

Secretary of the Senate

APPROVED: 19 JUN '09

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE  
SECRETARY OF STATE

2 PM O'CLOCK

JUN 19 2009

Colby Shuter III