

## **BILL ANALYSIS**

Senate Research Center  
81R33409 E

C.S.H.B. 2751  
By: Truitt (Duncan)  
State Affairs  
5/14/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Emergency Service Retirement System (TESRS) began to modernize its operations and its plan design with the codification of its law in the Government Code and subsequent legislation (H.B. 2400, 80th Legislature, Regular Session, 2007). This bill represents a further step in ensuring that TESRS can modernize its operations and deliver its promised benefits to volunteers.

An incoming volunteer who does not present a certificate of physical fitness must be assigned to support services, which has not yet been defined in the statute. This creates a discrepancy between volunteers who are assigned to support services and those that are not. This also creates a discrepancy between volunteer fire departments and paid fire departments. Specifically, volunteer fire departments are not allowed to award their support service staff with credit towards retirement, while their peers—paid emergency services departments (whether cities or districts)—already provide benefits to their support service staff.

Current law states that each person who performs services as a volunteer or auxiliary employee of a participating department is a member of TESRS, but if the person does not receive a certification of physical fitness that person currently does not qualify under the pension system.

C.S.H.B. 2751 amends current law relating to participation and credit in, benefits from, and the administration of the Texas Emergency Services Retirement System.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the state board of the pension system (state board) in SECTION 5 (Section 863.005, Government Code) of this bill.

Rulemaking authority previously granted to the state board is modified in SECTION 6 (Section 864.007, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 861.001, Government Code, by amending Subdivision (10) and adding Subdivision (11-a) to redefine "qualified service" and define "support services." Makes nonsubstantive changes.

SECTION 2. Amends Section 862.002(b), Government Code, to provide that a person is not a member of the pension system if the person does not receive a certification of physical fitness or assignment to perform support services, rather than duties, under Section 862.003.

SECTION 3. Amends Chapter 862, Government Code, by adding Section 862.0025, as follows:

Sec. 862.0025. MEMBERSHIP BY SUPPORT STAFF. (a) Authorizes the governing body of a participating department, except as provided by Subsection (b), to make an election to include all persons who provide support services for the department as members of the pension system on the same terms as all other volunteers of the department. Provides that an election under this section takes effect on the first day of the calendar month that begins after the month in which the election is made and communicated to the firefighters' pension commissioner (commissioner). Provides that once made, an election under this section is irrevocable.

(b) Provides that if a participating department has, before September 1, 2009, enrolled persons who perform support services for the department as members of the pension system, all persons who perform those services for the department are members of the system.

(c) Authorizes a participating department that previously did not enroll its support staff as members of the pension system, after an election under this section, to purchase service credit performed before the date of the election under the terms required for prior service credit for service before departmental participation.

**SECTION 4.** Amends Section 862.003, Government Code, as follows:

Sec. 862.003. **CERTIFICATION OF PHYSICAL FITNESS.** (a) Requires a prospective member to present to the local head of the department, for delivery to the local board of trustees (local board), a certification of physical fitness by a qualified physician. Provides that the person becomes a member of the pension system if the local board accepts the certification of if the local board assigns the person to perform support services, rather than duties, and enrolls its support staff as members of the system.

(b) Makes a conforming change.

**SECTION 5.** Amends Chapter 863, Government Code, by adding Section 863.005, as follows:

Sec. 863.005. **CHARGE FOR CERTAIN PAST DUE CONTRIBUTIONS.** Authorizes the state board of the pension system (state board) by rule to impose an interest charge on contributions due because of a correction of an error by a local board related to enrollment or qualified service. Requires the charge to be based on the pension system's current assumed rate of return. Requires charges collected to be deposited in the Texas emergency services retirement fund (fund).

**SECTION 6.** Amends Section 864.007, Government Code, as follows:

Sec. 864.007. **MEMBER NONSERVICE DEATH BENEFIT.** (a) Creates this Subsection from existing text. Authorizes the state board by rule to provide one or more beneficiaries, rather than the beneficiary, of a deceased member whose death did not result from the performance of emergency service duties a benefit, which may be a lump-sum amount or an annuity.

(b) Requires that a rule adopted under this section include the type of eligible recipient of the benefit, including any service or age requirement, and the method of calculating the amount of the benefit. Authorizes a rule to include any other terms the state board considers appropriate.

**SECTION 7.** Amends Chapter 864, Government Code, by adding Section 864.015, as follows:

Sec. 864.015. **BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT.** (a) Prohibits a benefit payable on the death of a member or annuitant from being paid to a person convicted of causing that death but provides that instead is payable as if the convicted person had predeceased the decedent.

(b) Provides that the pension system is not required to change the recipient of benefits under this section unless it receives actual notice of the conviction of a beneficiary. Authorizes the system to 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) Provides that the pension system is not liable for any benefit paid to a convicted person before the date the system receives actual notice of the conviction, and provides that any payment made before that date is a complete

discharge of the system's obligation with regard to that benefit payment. Provides that the convicted person holds all payments received in constructive trust for the rightful recipient.

(d) Provides that for the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person pleads guilty or nolo contendere to, or is found guilty by a court of, an offense at the trial of which it is established that the person's intentional, knowing, or reckless act or omission resulted in the death of a person who was a member or annuitant, regardless of whether sentence is imposed or probated; and has no appeal of the conviction pending and the time provided for appeal has expired.

SECTION 8. Amends Chapter 865, Government Code, by adding Section 865.020, as follows:

Sec. 865.020. MEDICAL BOARD. (a) Requires the state board to designate a medical board composed of three physicians.

(b) Requires a physician to be licensed to practice medicine in the state and be of good standing in the medical profession to be eligible to serve as a member of the medical board.

(c) Requires the medical board to investigate essential statements and certificates made by or on behalf of a member of the pension system in connection with an application for disability retirement or, as requested by the commissioner, with an application for an on-duty death benefit; and report in writing to the commissioner its conclusions and recommendations on all matters referred to it.

(d) Provides that the medical board is not subject to subpoena regarding findings it makes in assisting the commissioner under this section, and prohibits its members from being held liable for any opinions, conclusions, or recommendations made under this section.

SECTION 9. Repealer: Sections 864.008 (Vested Member Death Benefit Annuity) and 865.001(c) (relating to a requirement that the governor, when appointing six trustees, consider nominees selected by certain entities), Government Code.

SECTION 10. Effective date: September 1, 2009.