

GOVERNMENT CODE  
CHAPTER 822. MEMBERSHIP  
SUBCHAPTER A. MEMBERSHIP

Sec. 822.001. MEMBERSHIP REQUIREMENT. (a) Membership in the retirement system includes:

(1) all persons who were members of the retirement system on the day before the effective date of this subtitle; and  
(2) all employees of the public school system.

(b) Membership in the retirement system is a condition of employment for employees of the public school system unless an employee is excluded from membership under Section 822.002.

(c) to (f) Expired.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 32.001 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 201, Sec. 43, eff. Sept. 1, 2003.

Sec. 822.0015. OPTIONAL MEMBERSHIP FOR CERTAIN OFFICIALS. (a) In lieu of participating in the Employees Retirement System of Texas, the commissioner of education may elect to participate in the retirement system in the same manner and under the same conditions as a member who is an employee of the public school system.

(b) An election by the commissioner of education to participate in the retirement system must be on a form prescribed by the retirement system for that purpose.

(c) Notwithstanding Section 821.001, if the commissioner of education elects to participate in the retirement system, the State Board of Education is the employer of the commissioner for purposes of this subtitle.

Added by Acts 2003, 78th Leg., ch. 655, Sec. 1, eff. June 20, 2003.

Sec. 822.002. EXCEPTIONS TO MEMBERSHIP REQUIREMENT. An employee of the public school system is not permitted to be a member of the retirement system if the employee:

(1) is eligible and elects to participate in the optional retirement program under Chapter 830;

(2) is solely employed by a public institution of higher education that as a condition of employment requires the employee to be enrolled as a student in the institution; or

(3) has retired under the retirement system and has not been reinstated to membership pursuant to Section 824.005 or 824.307.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 832, Sec. 2, eff. June 15, 1985; Acts 1987, 70th Leg., ch. 61, Sec. 1, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 32.002 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 6.22, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1229, Sec. 3, eff. Sept. 1, 2001.

Sec. 822.003. TERMINATION OF MEMBERSHIP. (a) A person terminates membership in the retirement system by:

(1) death;

(2) retirement;

(3) withdrawal of all of the person's contributions while the person is absent from service; or

(4) not qualifying for service credit for five consecutive years.

(b) Termination of membership under Subsection (a)(4) is effective on the first September 1 that occurs after the non-qualifying years. If a person, regardless of age, has five or more years of service credit, failure to qualify for additional service credit does not terminate membership in the retirement system unless all of the person's contributions are withdrawn.

(c) A person does not terminate membership under Subsection (a)(4) if the person:

(1) is performing military service creditable in the retirement system;

(2) is on leave of absence from employment in a public school; or

(3) is earning service credit in another retirement system covered by Chapter 803 or 805.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 835, Sec. 2, eff. Sept. 1, 1989. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 32.003 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 11.05(b), (m), eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 555, Sec. 4, eff. Sept. 1, 1995.

Sec. 822.004. EFFECT OF TERMINATION. If a person terminates membership in the retirement system under Section 822.003(a)(3) or (a)(4), the retirement system shall cancel all of the person's service credit in the retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 32.004 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 822.005. WITHDRAWAL OF CONTRIBUTIONS. (a) A person who is absent from service except by death or retirement may withdraw all of the accumulated contributions credited to the person in the member savings account.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) A person is not entitled to withdraw contributions who is employed, has applied for employment, or has received a promise of employment, in a position covered by the retirement system.

(d) The retirement system shall adopt procedures to track and compile information of all applications filed under this section from the time an application is made until any warrant for the refund is issued by the retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 32.005 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1416, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1118, Sec. 1, eff. Sept. 1, 1999.

Sec. 822.006. RESUMPTION OF MEMBERSHIP AFTER TERMINATION. A person whose membership in the retirement system has been terminated and who resumes membership must enter the retirement system on the same terms as a person entering service for the first time and is not entitled to credit for previous or other terminated service unless it is reinstated under Section 823.501.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 32.006 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1229, Sec. 4, eff. Sept. 1, 2001.

#### SUBCHAPTER B. MEMBER COMPENSATION SUBJECT TO CONTRIBUTIONS AND CREDIT

Sec. 822.201. MEMBER COMPENSATION. (a) Unless otherwise provided by this subtitle, compensation subject to report and deduction for member contributions and to credit in benefit computations is:

(1) beginning with the 1981-82 school year, only a member's salary and wages for service, less any amounts excluded by rules of the board of trustees adopted pursuant to Section 825.110; and

(2) in school years before the 1981-82 school year, all compensation for service that was or should have been reported under laws and rules governing the retirement system when the compensation was paid but excluding compensation greater than \$25,000 for a school year beginning after August 31, 1969, but before September 1, 1979, and compensation greater than \$8,400 for a school year beginning before September 1, 1969.

(b) "Salary and wages" as used in Subsection (a) means:

(1) normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;

(2) amounts by which the member's salary is reduced under a salary reduction agreement authorized by Chapter 610;

(3) amounts that would otherwise qualify as salary and wages under Subdivision (1) but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986, if:

(A) the program or benefit options are made available to all employees of the employer; and

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation,

group health and disability insurance, group term life insurance, dependent care assistance programs, or group legal services plans;

(4) performance pay awarded to an employee by a school district as part of a total compensation plan approved by the board of trustees of the district and meeting the requirements of Subsection (e);

(5) the benefit replacement pay a person earns under Subchapter H, Chapter 659, except as provided by Subsection (c);

(6) stipends paid to teachers in accordance with Section 21.410, 21.411, 21.412, or 21.413, Education Code;

(7) amounts by which the member's salary is reduced or that are deducted from the member's salary as authorized by Subchapter J, Chapter 659;

(8) a merit salary increase made under Section 51.962, Education Code; and

(9) amounts received under the awards for student achievement program under Subchapter N, Chapter 21, Education Code, the educator excellence awards program under Subchapter O, Chapter 21, Education Code, or a mentoring program under Section 21.458, Education Code.

(c) Excluded from salary and wages are:

(1) expense payments;

(2) allowances;

(3) payments for unused vacation or sick leave;

(4) maintenance or other nonmonetary compensation;

(5) fringe benefits;

(6) deferred compensation other than as provided by Subsection (b)(3);

(7) compensation that is not made pursuant to a valid employment agreement;

(8) payments received by an employee in a school year that exceed \$5,000 for teaching a driver education and traffic safety course that is conducted outside regular classroom hours;

(9) the benefit replacement pay a person earns as a result of a payment made under Subchapter B or C, Chapter 661;

(10) any compensation designated as health care supplementation by an employee under Subchapter D, Chapter 22, Education Code, subject to an annual limit of \$1,000;

(11) any amount received by an employee under:

(A) former Article 3.50-8, Insurance Code;

(B) former Chapter 1580, Insurance Code;

(C) Subchapter D, Chapter 22, Education Code, as that subchapter existed January 1, 2006; or

(D) Rider 9, Page III-39, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (the General Appropriations Act); and

(12) any compensation not described in Subsection (b).

(d) For a person who first becomes a member of the retirement system after August 31, 1996, the person's annual compensation for purposes of the retirement system may not exceed the limit imposed by Section 401(a)(17) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)(17)), as adjusted by the commissioner of internal revenue for cost-of-living increases in accordance with that provision. This limit does not apply to a person who first became a member of the retirement system before September 1, 1996.

(e) For purposes of Subsection (b)(4), a total compensation plan must:

(1) describe all elements of compensation received by or available to all employees of the employer;

(2) provide for the availability of at least one type of performance pay to classroom teachers employed by the employer;

(3) identify each type of performance pay, the performance criteria for each type of performance pay, and the classes of employees eligible for each type of performance pay;

(4) contain sufficient information concerning the plan to ascertain the amount of each qualifying employee's pay under the plan;

(5) contain performance criteria for earning performance pay that preclude the exercise of discretion for awarding the pay on any basis other than an evaluation of employee or group performance or availability of funding; and

(6) satisfy any other requirements adopted by the retirement system.

Added by Acts 1985, 69th Leg., ch. 556, Sec. 2, eff. Aug. 26, 1985.

Amended by Acts 1987, 70th Leg., ch. 944, Sec. 3, eff. June 20, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 32.201 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 347, Sec. 8.18, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(34), eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 260, Sec. 35, eff. May 30, 1995; Acts 1995, 74th Leg., ch. 555, Sec. 5, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 330, Sec. 1, eff. May 26, 1997; Acts 1997, 75th Leg., ch. 1035, Sec. 54, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1416, Sec. 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 8.16, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 931, Sec. 5, eff. Aug. 30, 1999; Acts 1999, 76th Leg., ch. 1540, Sec. 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 118, Sec. 2.10, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 834, Sec. 16, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1187, Sec. 3.19, eff. Sept. 1, 2002; Acts 2001, 77th Leg., ch. 1301, Sec. 3, eff. June 16, 2001; Acts 2003, 78th Leg., ch. 313, Sec. 2.01, eff. Sept. 1, 2004; Acts 2003, 78th Leg., ch. 430, Sec. 6(a), eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 9.016, eff. Sept. 1, 2003; Acts 2005, 79th Leg., ch. 899, Sec. 18.03, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 1359, SSec. 8, 55(a)(5), eff. Sept. 1, 2005; Acts 2006, 79th Leg., 3rd C.S., ch. 5, Sec. 4.11, eff. May 26, 2006.