

GOVERNMENT CODE  
CHAPTER 840. ADMINISTRATION  
SUBCHAPTER A. POWERS AND DUTIES

Sec. 840.001. GENERAL ADMINISTRATION. (a) The board of trustees of the Employees Retirement System of Texas, as provided by Subchapter A of Chapter 815, is responsible for the general administration and operation of the retirement system. The board of trustees shall hold all retirement system assets in trust for the exclusive benefit of the members and annuitants of the system and administer all operations funded by trust assets for the same purpose.

(b) The executive director shall recommend to the board of trustees actuarial and other services required to transact the business of the retirement system.

(c) Annually, the executive director shall prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year and shall submit the budget to the board of trustees for review and adoption.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.001 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989; Acts 2005, 79th Leg., ch. 347, Sec. 23, eff. Sept. 1, 2005.

Sec. 840.002. RULEMAKING. Subject to the limitations of this subtitle, the board of trustees may adopt rules and provide for forms it considers necessary for the administration of the retirement system.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.002 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.003. ADMINISTERING SYSTEM ASSETS. (a) All assets of the retirement system shall be credited to the trust fund provided by Section 840.305. The board of trustees shall administer all assets of the retirement system. The board is the trustee of the system's assets.

(b) The board of trustees may acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which the retirement system's assets may be invested.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.003 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.004. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS. The board of trustees shall file with the state comptroller of public accounts a duly attested copy of a board resolution that designates the authorized representatives, as provided by this chapter, who have authority to sign vouchers for payment from the funds administered by the board of trustees.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.004 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.005. ADOPTING TABLES AND RATES. The board of trustees by rule shall adopt interest rates and mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.005 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.006. RECORDS OF BOARD OF TRUSTEES. The board shall keep a record of all of its proceedings. Records of the board are open to public inspection.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.006 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.007. REPORT. Annually, the retirement system shall publish a report containing the following information:

(1) the retirement system's fiscal transactions of the preceding fiscal year;

(2) the amount of the system's accumulated cash and securities; and

(3) the balance sheet showing the financial condition of the system for the preceding fiscal year.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985.

Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.007 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.008. CORRECTION OF ERRORS. If an error in the records of the 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 shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.008 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER B. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS;  
APPROPRIATIONS

Sec. 840.102. COLLECTION OF MEMBER CONTRIBUTIONS. (a) Except as provided by Subsections (g) and (h), each payroll period, a judicial officer who is a member of the retirement system is required to contribute six percent of the officer's state compensation for the period to the retirement system.

(b) The payroll officer responsible for paying the state compensation of a member of the retirement system required by this section to make a contribution shall:

(1) make the required deductions from the member's state compensation;

(2) certify to the board of trustees the amounts deducted from the member's state compensation;

(3) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll or report to the retirement system; and

(4) pay the deducted amounts to the retirement system for deposit in the trust fund of the system.

(c) To facilitate the making of deductions, the board of trustees may modify a member's required deductions by an amount that does not exceed one-tenth of one percent of the annual compensation on which the deductions are made.

(d) The retirement system shall record all receipts of member contributions and shall credit the receipts to the appropriate account.

(e) The deductions required by this section shall be made even if the member's state compensation is reduced below the amount equal to the minimum compensation provided by law.

(f) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of state 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 payment period.

(g) Except as provided by Section 840.1025, a member who accrues 20 years of service credit in the retirement system ceases making contributions under this section but is considered a contributing member for all other purposes under this subtitle.

(h) If a member has served at least 12 years on an appellate court and the sum of the member's age and amount of service credited in the retirement system equals or exceeds the number 70, the member ceases making contributions under this section. A member described by this subsection is considered a contributing member for all other purposes under this subtitle.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.102 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1541, Sec. 30, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 1033, Sec. 7, eff. Sept. 1, 2005; Acts 2005, 79th Leg., ch. 1203, Sec. 1, eff. Sept. 1, 2005.

Sec. 840.1025. CONTRIBUTIONS AFTER 20 YEARS OF SERVICE CREDIT. (a) A judicial officer who is a member of the retirement system and who accrues 20 years of service credit in the retirement system may elect to make contributions for each subsequent year of service credit that the member accrues by filing an application with the retirement system.

(b) A member who elects to make contributions under Subsection (a) shall contribute six percent of the member's state compensation for each payroll period in the manner provided by Sections 840.102(b)-(f).

(c) A member may not make contributions under this section for more than 10 years of subsequent service credit that the member accrues.

Added by Acts 2005, 79th Leg., ch. 1033, Sec. 8, eff. Sept. 1, 2005.

Sec. 840.1027. CONTRIBUTIONS AFTER ATTAINING RULE OF 70. (a) Notwithstanding Section 840.102(h), a judicial officer who is a member of the retirement system and who has served at least 12 years on an appellate court and the sum of the member's age and amount of service credited in the retirement system equals or exceeds the number 70 may elect to make contributions for each subsequent year of service credit that the member accrues by filing an application with the retirement system.

(b) A member who elects to make contributions under Subsection (a) shall contribute six percent of the member's state compensation for each payroll period in the manner provided by Sections 840.102(b)-(f).

(c) A member may not make contributions under this section for more than 10 years of subsequent service credit that the member accrues.

Added by Acts 2005, 79th Leg., ch. 1203, Sec. 2, eff. Sept. 1, 2005. Amended by Acts 2005, 79th Leg., 2nd C.S., ch. 3, Sec. 9, eff. Dec. 1, 2005.

Sec. 840.103. COLLECTION OF STATE CONTRIBUTIONS. (a) During each fiscal year, the state shall contribute to the retirement system an amount equal to a percentage of the aggregate state compensation of all contributing members of the retirement system for that year, as provided by Subsection (b)(1).

(b) Not later than December 31 of each even-numbered year, the retirement system shall certify to the Legislative Budget Board and to the budget division of the governor's office for review:

(1) an actuarial valuation of the retirement system to determine the percentage of annual payroll required from the state to finance fully the retirement system as provided by Section 840.106;

(2) an estimate of the amount necessary to pay the state's contribution under Subdivision (1) for the following biennium; and

(3) as a separate item, an estimate of the amount, in addition to anticipated receipts from membership fees, required to administer the retirement system for the following biennium.

(c) The amount certified under Subsection (b)(2) shall be included in the budget of the state that the governor submits to the legislature. The legislature may appropriate money to pay administrative costs of the retirement system.

(d) Before September 1 of each year, the retirement system shall certify to the state comptroller of public accounts an estimate of the amount necessary to pay the state's contribution under Subsection (a) for the following fiscal year.

(e) All money allocated and appropriated by the state to the retirement system for benefits provided by the retirement system shall be paid, based on the annual estimate of the retirement system, in monthly installments to the retirement system. The money required for state contributions shall be from money appropriated to pay the compensation of the member for whose benefit the contribution or fee is paid. If the total of the estimated required payments is not equal to the total of the actual payments required for a fiscal year, the retirement system shall certify to the state comptroller of public accounts at the end of that year the amount required for necessary adjustments, and the comptroller shall make the required adjustments.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.103 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 791, Sec. 38, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1423, Sec. 8.56, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1541, Sec. 31, eff. Sept. 1, 1999.

Sec. 840.104. COLLECTION OF CONTRIBUTIONS FOR SENIOR DISTRICT COURT JUDGES. Contributions for members appointed under Subchapter C of Chapter 75 are as provided by Section 75.113.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.104 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.105. EMPLOYER PICKUP OF MEMBER CONTRIBUTIONS. (a) For all state compensation earned after December 31, 1989, by judicial officers who are members of the retirement system, the state shall pick up the member contributions required by Section 840.102. The state shall pay the picked-up contributions to the retirement system from the same source that is used in paying state

compensation to the judicial officer members. These payments are in lieu of contributions by the members. The state shall pick up these contributions by a corresponding reduction in the cash salaries of the members, by an offset against a future salary increase, or by a combination of a salary reduction and offset against a future salary increase. Members do not have the option of choosing to receive the contributed amounts directly instead of having them paid by the state to the retirement system.

(b) Contributions picked up as provided by Subsection (a) shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, the state shall continue to withhold federal income taxes on these picked-up contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to Section 414(h) of the Internal Revenue Code of 1986 (26 U.S.C. Section 414(h)) these picked-up contributions are not includable as gross income of the member until the time that they are distributed or made available.

(c) Member contributions picked up as provided by Subsection (a) shall be transmitted to the retirement system in the manner required by Section 840.102. Member contributions picked up by the state shall be credited to the members' individual accounts and treated for all other purposes as if the amounts were a part of the members' compensation and had been deducted as provided by Section 840.102.

Added by Acts 1989, 71st Leg., ch. 56, Sec. 1, eff. May 3, 1989. Renumbered from Title 110B, Sec. 75.105 by Acts 1989, 71st Leg., ch. 1100, Sec. 4.07, eff. Sept. 1, 1989.

Sec. 840.106. ACTION INCREASING AMORTIZATION PERIOD. (a) A rate of member or state contributions to or a rate of interest required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an actuarial valuation.

Added by Acts 1993, 73rd Leg., ch. 791, Sec. 39, eff. Sept. 1, 1993.

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

Sec. 840.201. LEGAL ADVISER. The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.201 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.202. 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 report in writing to the chief justice of the supreme court its conclusions and recommendations on all matters referred to it.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.202 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.203. OTHER PHYSICIANS. The board of trustees may employ physicians in addition to the medical board to report on special cases.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.203 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.204. ACTUARY. (a) The board of trustees shall

designate an actuary.

(b) 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.).

(c) At least once every five years the actuary, under the direction of the board of trustees, shall make an actuarial investigation of the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(d) On the basis of tables adopted by the board of trustees under Section 840.005, the actuary shall make a valuation of the assets and liabilities of the retirement system's funds annually.

(e) The actuary shall perform such other duties as are required by the board of trustees.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.204 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.205. FINANCIAL AND INVESTMENT SERVICES. The board of trustees may employ persons, either as full-time employees or as independent contractors, to assist the board in investing assets of the retirement system, in evaluating investments or investment services, or in otherwise managing financial operations of the retirement system.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.205 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.206. COMPTROLLER. (a) The comptroller is the custodian of the securities, bonds, and funds of the retirement system, except as provided by Section 840.3011 or 840.3012 of this subtitle.

(b) The comptroller shall pay money from the trust fund of the retirement system on warrants drawn by the state comptroller supported on vouchers signed by the executive director and the chairman of the board of trustees or their authorized representatives.

(c) The comptroller annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the comptroller's custody.

(d) The board of trustees may, in the exercise of its constitutional discretion to manage the funds of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian of all or part of the retirement system's assets.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.206 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 251, Sec. 9, 10, eff. Aug. 28, 1989; Acts 1997, 75th Leg., ch. 1423, Sec. 8.57, eff. Sept. 1, 1997.

Sec. 840.207. COMPENSATION OF EMPLOYEES; PAYMENT OF EXPENSES. (a) The board of trustees shall compensate all persons whom it employs and shall pay all expenses necessary to operate the retirement system at rates and in amounts approved by the board. Those rates and amounts may not exceed those paid for the same or similar service for the state.

(b) The board of trustees shall pay compensation and expenses required by Subsection (a) from an appropriate account of the retirement system.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.207 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.209. INTEREST IN INVESTMENT PROFITS PROHIBITED. Except for an interest in retirement funds as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains or profits of any investment made by the board and may not receive any pay or emolument for services other than the person's designated compensation and authorized expenses.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.209 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. 840.301. INVESTMENT OF ASSETS. (a) The board of trustees may, under the standard of care provided by Section 840.303, invest and reinvest the retirement system's assets and may commingle assets of the trust fund with the assets of the Employees Retirement System of Texas, including its trust fund and the law enforcement and custodial officer supplemental retirement fund, for investment purposes, as long as proportionate ownership records are maintained and credited.

(b) The board of trustees shall:

(1) invest the assets of the retirement system as a single fund without distinction as to their source; and

(2) hold securities purchased with the assets collectively for the proportionate benefit of all accounts of the system established under Section 840.305(b).

(c) 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).

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 138, Sec. 2, eff. May 25, 1989. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.301 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1989, 71st Leg., ch. 1100, Sec. 4.06(a), eff. Sept. 1, 1989; Acts 1993, 73rd Leg., ch. 791, Sec. 40, eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1541, Sec. 32, eff. Sept. 1, 1999.

Sec. 840.3011. CUSTODY AND INVESTMENT OF ASSETS PENDING TRANSACTIONS. The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, 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 such custodian to invest the cash so held in such short-term securities as the board of trustees determines, subject only to the provisions of Section 840.301 of this subtitle.

Added by Acts 1989, 71st Leg., ch. 251, Sec. 11, eff. Aug. 28, 1989.

Sec. 840.3012. SECURITIES LENDING. (a) The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, 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 operation of a fully secured securities loan program;

(2) maintain adequate capital 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 fully indemnifying the retirement system against loss resulting from borrower default in its operation of a securities loan program for the system's securities; 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 in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities.

Added by Acts 1989, 71st Leg., ch. 251, Sec. 11, eff. Aug. 28, 1989. Amended by Acts 1997, 75th Leg., ch. 1048, Sec. 36, eff. Sept. 1, 1997.

Sec. 840.3013. NOMINEE TO HOLD SECURITIES. (a) 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.

(b) The records and all relevant reports or accounts of the retirement system must show the ownership interest of the retirement system in these assets and the facts regarding the system's holdings.

(c) A trustee or employee of the retirement system shall

have no personal economic interest in any entity listed in Subsection (a), but shall undertake such action and duties with respect to these entities as the board of trustees determines to be in the interest of the retirement system. This subsection does not prohibit:

(1) an interest in the assets as a member of the retirement system;

(2) the right to receive expense reimbursements at the same rate that the board member or employee would have received as a board member or employee; and

(3) such indemnification as is authorized by the board of trustees.

(d) The records of an agent, nominee, or other entity that are maintained by the retirement system are subject to audit by the state auditor.

Added by Acts 1989, 71st Leg., ch. 251, Sec. 12, eff. Aug. 28, 1989.

Sec. 840.303. DUTY OF CARE.

Text of section as amended by Acts 2003, 78th Leg., ch. 1103, Sec. 12

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. Investment decisions are subject to the standard provided in the Texas Trust Code by Section 117.004(b), Property Code.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.303 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1048, Sec. 37, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1103, Sec. 12, eff. Jan. 1, 2004.

For text of section as amended by Acts 2003, 78th Leg., ch. 1111, Sec. 32, see Sec. 840.303, post.

Sec. 840.303. DUTY OF CARE.

Text of section as amended by Acts 2003, 78th Leg., ch. 1111, Sec. 32

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. A determination of whether the board of trustees has exercised prudence with respect to an investment decision must be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.303 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1048, Sec. 37, eff. Sept. 1, 1997; Acts 2003, 78th Leg., ch. 1111, Sec. 32, eff. Sept. 1, 2003.

For text of section as amended by Acts 2003, 78th Leg., ch. 1103, Sec. 12, see Sec. 840.303, ante.

Sec. 840.304. CASH ON HAND. (a) The board of trustees shall keep a sufficient amount of cash on hand to make payments as they become due each year under the retirement system.

(b) The amount of cash on hand may not exceed 10 percent of the total amount in the funds of the retirement system on deposit with the comptroller.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.304 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 1423, Sec. 8.59, eff. Sept. 1, 1997.

Sec. 840.305. ESTABLISHMENT OF FUND AND ACCOUNTS. (a) A trust fund for the Judicial Retirement System of Texas Plan Two is established in the state treasury.

(b) The board of trustees may establish such accounts for money in the trust fund of the retirement system as it considers necessary, in addition to members' individual accounts, for the administration of the system. All assets of the retirement system are creditable, according to the purpose for which they are held, to an appropriate account.

(c) The retirement system may transfer assets from one account to another, except from one member's individual account to another's, to pay benefits and administrative expenses as needed.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985.

Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.305 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.306. INTEREST RATE. (a) Interest on money in a member's individual account in the retirement system is earned monthly and is computed at the rate of five percent a year on the mean balance of the member's account for the fiscal year.

(b) Unless an account is closed before the last day of the fiscal year, interest is computed for the fiscal year and is credited to the member's account as of the last day of the fiscal year.

(c) If an account is closed before the last day of the fiscal year, interest is computed for the following period:

(1) if the account is closed because of death, from the first day of the fiscal year through the last day of the month that preceded the month in which the member's death occurred;

(2) if the account is closed by withdrawal of accumulated contributions, from the first day of the fiscal year through the last day of the month that precedes the month in which the withdrawal request is validated by the retirement system; or

(3) if the account is closed because of retirement, from the first day of the fiscal year through the effective date of retirement.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.306 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER E. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. 840.401. TRANSFER OF ACCUMULATED CONTRIBUTIONS IN CERTAIN CIRCUMSTANCES. (a) Except as provided by Subsection (b), if a valid application for payment based on money or credit in a member's individual account in the retirement system is not filed with the retirement system before the expiration of five years after the last day of the most recent month of service for which the member has credit in the retirement system, the retirement system shall mail a notice to the member at the member's most recent address as shown on system records. If no address is available or if the notice is returned unclaimed, the retirement system shall cause a notice to be published in a newspaper of general circulation in the state.

(b) This section does not apply to an account of a member who has enough service credit in the retirement system to enable the member to retire at an attained age.

(c) A notice under this section must include the name of the member, the name of the court or commission on which the member most recently acquired service credit, a statement that the member is entitled to a payment of money, and a statement of the procedure for keeping the member's account open or claiming a payment.

(d) Before the 31st day after the day a notice is mailed or published under this section, whichever is later, an application must be filed with the retirement system:

(1) by the member, requesting that the account be kept open; or

(2) by the member or, if the member has died, by any other person entitled to payment based on the member's account, requesting payment based on money or credit in the account.

(e) If a valid application is made as provided by Subsection (d)(2), the retirement system shall pay the applicant any benefit to which the applicant is entitled.

(f) If a valid application is not made as provided by Subsection (d), the retirement system shall cancel the service credit in the member's account, transfer the accumulated contributions in the account to an appropriate account, and close the member's account.

(g) Except as provided by Subsection (j), if a person files with the retirement system a valid application for payment based on a closed account the accumulated contributions of which have been transferred under Subsection (f), the retirement system shall reopen the member's individual account, reinstate in the account the amount transferred and credit canceled, and pay any benefit to which the applicant is entitled.

(h) Except as provided by Subsection (j), if a person whose accumulated contributions have been transferred under Subsection (f) again becomes a member, the retirement system shall reinstate in the member's active individual account in the retirement system the amount transferred and credit canceled.



(i) Except as provided by Subsection (j), if a person whose accumulated contributions have been transferred under Subsection (f) would be eligible to receive a benefit from the retirement system under Chapter 803 were the person's account not closed, the person may file with the retirement system an application for retirement, and the retirement system shall reopen the person's account and reinstate the canceled credit for the purpose of allowing the person to retire.

(j) A payment under Subsection (g), a reinstatement under Subsection (h), or a retirement under Subsection (i) precludes action under any other of those subsections.

(k) If a member makes an application as provided by Subsection (d)(1), the retirement system, after the fifth anniversary of the date the application was filed, shall reinstitute the process provided by Subsections (a), (c), (d), (e), and (f) if disposition of money and credit in the account has not been made before that time.

(l) The retirement system may apply the process provided by Subsections (a), (c), (d), (e), and (f) to other money it holds for payment if the system first determines that no claim for the money is likely to be filed.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.401 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.402. RETIREMENT SYSTEM RECORDS. Records of members, annuitants, retirees, beneficiaries, and alternate payees of the retirement system are confidential in the manner provided by Section 815.503.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.402 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 5.95(98), eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 1541, Sec. 33, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1231, Sec. 25, eff. Sept. 1, 2001.

Sec. 840.403. REPRODUCTION AND PRESERVATION OF RECORDS. (a) The retirement system may photograph, microphotograph, or film any record in its possession.

(b) If a record is reproduced under Subsection (a), the retirement system may destroy or dispose of the original record if the system first:

(1) places the reproduction in a conveniently accessible file; and

(2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(d) The executive director or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.403 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.404. BUDGET AND ACTUARIAL INFORMATION. The retirement system shall keep, in convenient form, data necessary for actuarial valuation of the funds of the retirement system and for checking the system's expenses.

Added by Acts 1985, 69th Leg., ch. 602, Sec. 1, Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 75.404 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 840.405. TRUSTEE-TO-TRUSTEE TRANSFER. Notwithstanding Section 836.004 and to the extent required as a condition of plan qualification under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401), the retirement system shall, in

accordance with Section 401(a)(31) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)(31)) and related regulations, permit the distributee of an eligible rollover distribution to elect to have the distribution paid directly to an eligible retirement plan specified by the distributee in the form of a direct trustee-to-trustee transfer. The board of trustees may adopt rules to carry out this section. Terms used in this section have the meanings assigned by the Internal Revenue Code of 1986 (Title 26, United States Code).

Added by Acts 1993, 73rd Leg., ch. 791, Sec. 41, eff. Sept. 1, 1993.

Sec. 840.406. PLAN QUALIFICATION. (a) The provisions of this subtitle shall be interpreted and administered in a manner that permits the retirement system's benefit plan to be considered a qualified plan under Section 401, Internal Revenue Code of 1986 (26 U.S.C. Section 401). The board of trustees may adopt rules necessary to accomplish that purpose, and those rules are considered a part of the plan.

(b) The retirement system's benefit plan shall be considered the primary retirement plan for members of the retirement system in determining qualification status under Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)).

Added by Acts 1993, 73rd Leg., ch. 791, Sec. 42, eff. Sept. 1, 1993.