

GOVERNMENT CODE
CHAPTER 852. MEMBERSHIP
SUBCHAPTER A. MUNICIPAL PARTICIPATION

Sec. 852.001. ELECTION TO PARTICIPATE. (a) By vote of its governing body in the manner required for other official actions, a municipality may elect to have one or more of its departments participate in the retirement system and be subject to the provisions of this subtitle.

(b) The governing body of a municipality shall notify the board of trustees of an election under this section and shall identify the participating departments before the 11th day after the date of election.

(c) A department begins participation in the retirement system on the first day of the second month after the month the board of trustees receives notice of an election to participate. Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.001 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 852.002. REFERENDUM ON PARTICIPATION. (a) If qualified voters representing at least 10 percent of the total votes cast at the most recent regular municipal election petition the governing body of a municipality for an election on the issue of participation in the retirement system by the municipality or specified departments of the municipality, the governing body shall make arrangements for an election to be held before the 61st day after the day the petition is filed.

(b) If a majority of the votes cast in an election under this section favor municipal or departmental participation in the retirement system, the governing body of the municipality immediately shall elect to participate.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.002 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 852.003. SUPPLEMENTAL DISABILITY BENEFITS FUND. (a) A municipality may not elect to participate in the supplemental disability benefits fund after August 31, 1987.

(b) Each municipality that elected to participate in the supplemental disability benefits fund before September 1, 1987 ceases participation in that fund at midnight on December 31, 1987, and its employees shall cease to be covered for supplemental disability benefits as to any injuries subsequently sustained. Each municipality participating in the supplemental disability fund on December 31, 1987, is entitled to participate in any distributions and transfers authorized by the board of trustees pursuant to Section 855.313.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 183, Sec. 2, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.003 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 852.004. SUPPLEMENTAL DEATH BENEFITS FUND. (a) If a municipality has one or more departments participating in the retirement system on a full-salary basis, the municipality may elect to participate in the supplemental death benefits fund.

(b) A municipality that elects to participate in the fund may elect coverage providing postretirement death benefits in addition to coverage providing in-service death benefits.

(c) Repealed by Acts 1997, 75th Leg., ch. 76, Sec. 15, eff. Sept. 1, 1997.

(d) A municipality that elects to participate in the fund after the operative date of the fund may begin participation on the first day of any month after the month in which the municipality gives notice of its election to the board of trustees.

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

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, Sec. 67, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.004 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 2, eff. Sept. 1, 1995.

Sec. 852.005. STATUS AS A MUNICIPALITY. (a) For the purposes of this subtitle, the Texas Municipal Retirement System and, as limited by Subsection (b), the Texas Municipal League, have

the standing of municipalities.

(b) The Texas Municipal League has the standing conferred by this section except as to a person who is employed by the league for the first time and who is engaged in lobbying activities.

(c) For the purposes of this subtitle, a fire or police department has the standing of a municipality if:

(1) the department:

(A) was created and is operating under an interlocal cooperation agreement that has existed at least 15 years and was executed by two or more municipalities located in a county with a population of at least 3.3 million;

(B) is supervised by an administrative agency appointed by the contracting municipalities; and

(C) provides common fire protection or law enforcement services to the contracting municipalities; and

(2) the governing body of each municipality that is a party to the agreement has voted by ordinance or resolution to accept responsibility, in a manner to be determined by the participating municipalities, for all payments required of and obligations incurred by the department under this subtitle in the event that the interlocal cooperation agreement is dissolved or expires; and

(3) all ordinances adopted by the participating municipalities with regard to the participation are approved by the board of trustees.

(d) The governing board of the supervising administrative agency by order may take an action for a department described by Subsection (c) that is required or authorized by this subtitle to be made by municipal ordinance.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, Sec. 68, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.005 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 3, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1006, Sec. 1, eff. June 17, 1995; Acts 2001, 77th Leg., ch. 669, Sec. 22, eff. Sept. 1, 2001.

Sec. 852.006. TERMINATION OF PARTICIPATION. (a) Except as provided by this section, a municipality may not terminate participation in the retirement system if the municipality has employees who are members of the system, but the municipality may elect to discontinue the participation in the system of persons employed or reemployed after the date of an election to discontinue.

(b) If before November 1 of any year a municipality gives written notice of its intention to the retirement system, the municipality may terminate coverage under, and discontinue participation in, the supplemental death benefits fund. A termination under this subsection is effective on January 1 of the year following the year in which notice is given.

(c) If a municipality participating in the retirement system has no employees who are members of the system and has no present or potential liabilities as a result of the participation of former employees, the municipality, on receiving a refund under Section 855.319, ceases participation in the 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. 62.006 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 57, Sec. 2, eff. Jan. 1, 1994.

Sec. 852.007. MUNICIPALITY NOT AGENT OF SYSTEM. Neither a municipality that participates in the retirement system nor any employee or officer of a participating municipality has authority to act as an agent of the retirement system. An action of or inaction on the part of a participating municipality or its employee or officer is not binding on the retirement system.

Added by Acts 1993, 73rd Leg., ch. 57, Sec. 3, eff. Jan. 1, 1994.

SUBCHAPTER B. MEMBERSHIP

Sec. 852.101. GENERAL MEMBERSHIP REQUIREMENT. (a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system if:

(1) on the date a municipal department's participation in the retirement system becomes effective, the person is an employee of the department;

(2) after August 31, 1987, the person becomes an

employee of a participating department; or

(3) the person on August 31, 1987, is an employee of a participating department but is not a member because at the time of employment the person's age exceeded the maximum age for becoming a member.

(b) Any person to whom Subsection (a)(1) applies becomes a member of the retirement system on the date the department's participation becomes effective, and any person to whom Subsection (a)(2) applies becomes a member of the retirement system on the date the person is employed. A person to whom Subsection (a)(3) applies becomes a member of the retirement system on September 1, 1987.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 183, Sec. 3, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.101 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 852.102. EXCEPTION TO GENERAL MEMBERSHIP REQUIREMENT. (a) If on the effective date of participation of the employing department, a person had with a municipality an employment contract that is violated by the membership requirement of Section 852.101(a)(1), the person is not required, but may elect, to become a member of the retirement system.

(b) If a person who is qualified to make an election under this section has been notified that the municipality has elected to participate in the retirement system, or if the person makes contributions to the retirement system, the person is considered to have elected membership in the retirement system unless before the date the municipality's participation becomes effective the person files with the board of trustees written notice of an election not to become a member.

(c) A person who elects under this section not to become a member may never become a member of 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. 62.102 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 852.103. WITHDRAWAL OF CONTRIBUTIONS; ROLLOVER DISTRIBUTIONS. (a) A living person who is not an employee of a participating department and who has not retired may, after application, withdraw all of the accumulated contributions credited to the person's individual account in the employees saving fund, and the retirement system shall close the account.

(b) The retirement system shall, in accordance with Section 401(a)(31) of the Internal Revenue Code of 1986 and its subsequent amendments 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 implement this subsection. Added by Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.103 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 57, Sec. 4, eff. Jan. 1, 1994; Acts 2003, 78th Leg., ch. 599, Sec. 3, 4, eff. Jan. 1, 2004.

Sec. 852.104. TERMINATION OF MEMBERSHIP. (a) Except as otherwise provided by this section, 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) absence from service for more than 60 consecutive months.

(b) A member of the retirement system is not absent from service during periods of military or war-related service for which the member is allowed credited service under Section 853.501.

(c) If a member of the retirement system is an employee of a participating department of a municipality that, as provided by this subtitle, allows a person to terminate employment and remain eligible for retirement after accumulating a specified amount of credited service, and if the person meets the requirement, the person may terminate employment and is not subject to loss of membership because of absence from service.

(d) Termination of membership in the retirement system terminates membership in the supplemental disability benefits

fund.

(e) A member of the retirement system is not absent from service during any leave of absence granted by the employing municipality under the Family and Medical Leave Act of 1993 (29 U.S.C. Section 2601 et seq.), and its subsequent amendments, to the extent that the leave does not exceed 12 weeks in duration. Added by Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1989, 71st Leg., ch. 462, Sec. 3, eff. Sept. 1, 1989. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.104 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 16, Sec. 11.01(c), eff. Aug. 26, 1991; Acts 2003, 78th Leg., ch. 599, Sec. 5, eff. Jan. 1, 2004.

Sec. 852.105. OPTIONAL PRIOR SERVICE CREDITS. (a) The governing body of a municipality that has an effective date of participation in the retirement system before September 1, 1987, and that allows service retirement of a member at age 60 or older with at least 10 years of credited service may by ordinance allow prior service credit for service performed for the municipality before September 1, 1987, by any person who at the time of performing the service was not a member because at the time of employment the person's age exceeded the maximum age for becoming a member.

(b) A governing body may not adopt an ordinance under this section unless the actuary first determines, on the basis of mortality and other tables adopted by the board of trustees, that all obligations of the municipality to the municipality accumulation fund, including obligations proposed under the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, Sec. 69, eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 183, Sec. 4, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.105 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 852.106. INELIGIBILITY FOR MEMBERSHIP; MULTIPLE RETIREMENT SYSTEM MEMBERSHIP. (a) Except as provided by this section, a person who is elected to public office is not an employee eligible for membership in the retirement system.

(b) A person may simultaneously receive credit or benefits for service performed during the same period in the retirement system and the federal program providing old age and survivors insurance.

(c) If a volunteer firefighter or an elected officer is employed by a participating municipality in another capacity that satisfies the definition of "employee" under this subtitle, the person may be a member of, and receive service credit in, the retirement system for service performed in the other capacity.

(d) If a person is elected to an office of a municipality that began participating in the retirement system after December 31, 1981, the person is required to become a member of the retirement system as of the date the person takes office or the effective date of participation, whichever is later. If a person is elected to an office of a municipality that has adopted an ordinance under Section 852.107, the person is required to become a member of the retirement system as of the date the person takes office or the effective date of the ordinance, whichever is later.

(e) A person may simultaneously be a member of this retirement system and another state or local retirement system authorized or established under Section 67, Article XVI, Texas Constitution. However, a person may receive a benefit from this system only to the extent that the amount of the benefit is computed solely with respect to the member's compensation and accumulated contributions as those terms are defined in this subtitle. Service credited with or allowed by another retirement system may not be counted for purposes of retirement eligibility in this retirement system except in accordance with the provisions of the proportionate retirement program described by Chapter 803.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 219, ch. 18, Sec. 70, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.106 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 121, Sec. 2, eff. Jan. 1, 2002.

Sec. 852.107. OPTIONAL MEMBERSHIP REQUIREMENT FOR ELECTED

OFFICERS. (a) The governing body of a municipality that began participation in the retirement system before January 1, 1982, by ordinance may provide that persons who hold and are regularly engaged in the performance of duties of an elective office that normally requires actual performance of services in a participating department of the municipality for not less than 1,000 hours a year are employees required to become members of the retirement system.

(b) An ordinance under this section takes effect on the first day of any calendar month after adoption that is designated by the governing body adopting the ordinance.

(c) A person required to become a member under an ordinance adopted under this section becomes a member on the effective date of the ordinance or the date the person takes office, whichever is later, unless the date the person takes office is after the effective date of the ordinance and the person is then ineligible for membership under applicable age restrictions of this subtitle.

(d) A person who becomes a member as provided by this section is entitled to prior service credit as provided by Section 853.302.

Added by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, Sec. 71, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.107 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 852.108. RESUMPTION OF SERVICE WITH SAME EMPLOYER BY RETIREE. (a) In this section and Section 852.109, a person's reemploying municipality is the municipality for which the person was performing creditable service at the time of the person's retirement under this subtitle.

(b) A person who has retired with a service retirement benefit under this subtitle and later becomes an employee of the person's reemploying municipality also becomes a member of the system on the date of employment, but credits and benefits allowable to the person under this subtitle are limited as provided by this section.

(c) The retirement system shall discontinue and suspend payments of each service retirement annuity that is allowed because of the person's previous service with the reemploying municipality beginning with the month the retirement system determines that the person has again become an employee of the reemploying municipality. After the suspension, the retirement system may not make payments of the annuity for any month during which the person remains an employee of the reemploying municipality. The suspension of a benefit under this section does not suspend payment of a benefit to an alternate payee under a qualified domestic relations order.

(d) Member contributions under Section 855.402 shall be made on all compensation paid to the employee by the reemploying municipality at the same rate as is required of other employees of the department. The retirement system shall deposit the contributions on receipt in an individual account for the member in the employees saving fund and shall credit the account with interest annually at the same rate and manner as the accounts of other members are credited. The compensation paid to the employee by the reemploying municipality shall be included in computing the monthly contributions the municipality makes to the municipality accumulation fund.

(e) After termination of employment with the reemploying municipality and after filing of an application for resumption of retirement with the board of trustees, a person described by Subsection (b) is entitled to receive future payments of the suspended annuity, as provided by Subsection (f), and to the additional benefits as provided by Subsections (g), (h), and (i).

(f) Monthly payments of a suspended annuity shall be resumed in the month following the month in which employment is terminated with the reemploying municipality, without change in the amount except for any increase allowed under Section 854.203 or the duration of or another condition pertaining to the suspended benefit. Payment of the resumed benefit may not be made for any month during which the payment was suspended under this section.

(g) If a person with credited service under this section dies before a payment under Subsection (i) is made, the person's beneficiary, or if there is no beneficiary surviving, the executor or administrator of the person's estate, may elect payment as provided by Section 854.105.

(h) The additional service retirement benefit allowable to

a person to whom this section applies is, at the option of that person, either:

(1) a refund of accumulated contributions made since reemployment plus any accrued interest on the accumulated contributions allowed by the retirement system; or

(2) a benefit consisting of:

(A) a basic annuity actuarially determined from the sum of the member's deposits made and accumulated since the date the person last became a member, together with interest accumulated on that amount since the person last became a member; or

(B) a greater amount authorized by the municipality under Section 855.501.

(i) The additional benefit described by Subsection (h) is payable as a standard service retirement benefit or, at the election of the member, any optional benefit authorized under this subtitle that is the actuarial equivalent of the standard retirement benefit. The first benefit payment date under this subsection is the later of the end of the month following the last month of employment or the end of the month following the month in which the person files an application for payment. The first payment may not be made if the person has resumed employment with the reemploying municipality in a position that would make the person an employee.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.107 by Acts 1981, 67th Leg., 1st C.S., p. 220, ch. 18, Sec. 71, eff. Jan. 1, 1982. Amended by Acts 1987, 70th Leg., ch. 183, Sec. 5, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 62.108 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 4, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 121, Sec. 3, eff. Jan. 1, 2002.

Sec. 852.109. RESUMPTION OF SERVICE WITH DIFFERENT EMPLOYER BY RETIREE. (a) If a person becomes an employee of a municipality after beginning to receive a retirement benefit, and the municipality is not the person's reemploying municipality, the person again becomes a member of the retirement system, and the person's retirement annuity is not suspended.

(b) Member contributions under Section 855.402 shall be made on all compensation paid to the employee by the municipality at the same rate as is required of other employees of the department. The retirement system shall deposit the contributions on receipt in an individual account for the member in the employees saving fund and shall credit the account with interest at the same rate and in the same manner as the accounts of other members are credited. The compensation paid to the employee by the municipality shall be included in computing the monthly contributions the municipality makes to the municipality accumulation fund.

(c) If a person with credited service under this section dies before a payment under Subsection (e) is made, the person's beneficiary, or if there is no beneficiary surviving, the executor or administrator of the person's estate, may elect payment as provided by Section 854.105.

(d) The additional service retirement benefit allowable to a person to whom this section applies is, at the option of that person, either:

(1) a refund of accumulated contributions made since reemployment plus any accrued interest on the accumulated contributions allowed by the retirement system; or

(2) a benefit consisting of:

(A) a basic annuity actuarially determined from the sum of the member's deposits made and accumulated since the date the person last became a member together with interest accumulated on that amount since the person last became a member and an amount from the municipality accumulation fund equal to the amount of the deposits credited to the member's individual account since the person last became a member together with interest accumulated on that amount since the person last became a member; or

(B) a greater amount authorized by the municipality under Section 855.501.

(e) The additional benefit described by Subsection (d) is payable as a standard service retirement benefit or, at the election of the member, any optional benefit authorized under this subtitle that is the actuarial equivalent of the standard retirement benefit. The first benefit payment date under this subsection is the later of the end of the month following the last

month of employment or the end of the month following the month in which the person files an application for payment. The first payment may not be made if the person has resumed employment that would result in suspension of a benefit.

(f) If a person became an employee of a municipality other than the person's reemploying municipality after beginning to receive a retirement benefit, and the person's service retirement annuity was suspended under Section 852.108 as it existed at the time of reemployment, the person may, on written application to the retirement system, resume receiving the suspended annuity.

Added by Acts 1995, 74th Leg., ch. 514, Sec. 5, eff. Sept. 1, 1995.
Amended by Acts 2001, 77th Leg., ch. 121, Sec. 4, eff. Jan. 1, 2002.

Sec. 852.110. CORRECTION OF ERRORS. (a) The retirement system, under rules adopted by the board of trustees, shall correct an error in current service performed, or current service credit that should have been received, not more than four years before the date an application for the correction, on a form approved by the board of trustees, is received by the retirement system.

(b) The retirement system shall correct an error in prior service credit if the retirement system receives the person's written application for the correction not later than the fourth anniversary of the later of the date the municipality began participation in, or the person first became a member of, the retirement system.

Added by Acts 1999, 76th Leg., ch. 83, Sec. 2, eff. Dec. 31, 1999.
Amended by Acts 2003, 78th Leg., ch. 599, Sec. 6, eff. Jan. 1, 2004.