

GOVERNMENT CODE  
CHAPTER 854. BENEFITS  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 854.001. TYPES OF BENEFITS. The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.001 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.002. COMPOSITION OF RETIREMENT ANNUITY. (a) Each retirement annuity payable under this subtitle consists of a prior service annuity and a current service annuity.

(b) A prior service annuity is actuarially determined from any updated service credit or any prior service, special prior service, or antecedent service credit in effect for a member on the date of retirement, plus accumulated interest.

(c) A current service annuity is actuarially determined on the date of a member's retirement from the sum of:

(1) the amount credited to the member's individual account in the employees saving fund; and

(2) the amount from the municipality accumulation fund equal to the amount in the member's individual account or a greater amount authorized by a participating municipality under Section 855.501.

(d) Notwithstanding any other provision of this subtitle, instead of an annuity, a person will receive from the retirement system a single payment equal to the sum of the following if on the date of that person's retirement that sum is \$10,000 or less:

(1) any updated service credit or any prior service, special prior service, or antecedent service credit for that person on the date of retirement, plus accumulated interest;

(2) the amount credited to the person's individual account in the employees saving fund; and

(3) the amount from the municipality accumulation fund equal to the amount in the member's individual account or a greater amount authorized by a participating municipality under Section 855.501.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 223, ch. 18, Sec. 80, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.002 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 83, Sec. 5, eff. Dec. 31, 1999; Acts 2001, 77th Leg., ch. 121, Sec. 9, eff. Jan. 1, 2002.

Sec. 854.003. EFFECTIVE DATE OF RETIREMENT. (a) Except as provided by Subsections (b) and (d), the effective date of a member's service retirement is the date the member designates at the time the member applies for retirement under Section 854.101, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with all participating municipalities.

(b) If a member dies before retirement and an annuity becomes payable under Section 854.105, the member is considered to have retired on the last day of the month immediately preceding the month in which death occurred, except as provided by Subsection (e).

(c) Except as provided by Subsections (b) and (d), the effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section 854.301, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with all participating municipalities.

(d) Notwithstanding any other provision of this subtitle, each distribution of a benefit under this subtitle must be determined and made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, and its subsequent amendments, including the minimum incidental death benefit requirements of Section 401(a)(9)(G) of that code. The board of trustees may adopt rules it determines necessary to comply with the distribution requirements, including rules under which a person is considered to have retired as a result of those requirements.

(e) If the person who is eligible to receive an annuity under Subsection (b) is the member's surviving spouse, the person

may elect, by notifying the retirement system not later than the 180th day after the date of the member's death, to leave the member's accumulated contributions on deposit with the retirement system until the date the member would have been eligible for service retirement. If a surviving spouse makes an election under this subsection, the deceased member is considered to have retired on the last day of the month in which the member would have attained an age for service retirement eligibility. An election under this subsection is revocable before the payment of the first annuity payment by filing a written application approved by the board of trustees to receive the member's accumulated contributions.

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. 64.003 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 57, Sec. 9, eff. Jan. 1, 1994; Acts 1995, 74th Leg., ch. 514, Sec. 9, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 121, Sec. 10, eff. Jan. 1, 2002; Acts 2003, 78th Leg., ch. 599, Sec. 10, eff. Jan. 1, 2004.

Sec. 854.004. WHEN ANNUITY IS PAYABLE; CHANGES BEFORE FIRST PAYMENT. (a) A retiree may change the retiree's choice of retirement annuity payment plans or the designation of beneficiary after the retiree's effective date of retirement by filing written notice with the board of trustees before the later of the date on which the retirement system makes the first payment or the date the first annuity payment becomes due. After the first payment has been made by the retirement system or has become due, a retiree may not change the annuity payment plan selected and may not change the designated beneficiary except under Section 854.006.

(b) For purposes of this section, the term "makes payment" includes the depositing in the mail of a payment or the crediting of an account with payment through electronic funds transfer.

(c) An annuity under this subtitle is payable for a period beginning on the last day of the first month following the month in which retirement occurs and ending, except as otherwise provided by this subtitle, on the last day of the month in which death occurs.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.004 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 83, Sec. 6, eff. Dec. 31, 1999.

Sec. 854.005. REDUCTION OF ANNUITY PAYMENTS ON REQUEST. (a) An annuitant by written request may authorize the retirement system to cease the annuitant's monthly payment or reduce the annuitant's monthly payment to an amount specified in the request. In writing, the annuitant may subsequently request the retirement system to reinstate or increase the annuitant's monthly payment at or to any specified amount that does not exceed the amount originally payable.

(b) If the retirement system receives a request under Subsection (a), the director may cause the monthly annuity payment of the requesting annuitant to be reduced or increased as specified in the request.

(c) Any amounts by which an annuity is reduced under this section are forfeited to the retirement system and are not recoverable by any person.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.005 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 11, eff. Sept. 1, 1995.

Sec. 854.006. CHANGE OF BENEFICIARY OR DIVISION OF BENEFIT FOR CERTAIN PERSONS RECEIVING MONTHLY BENEFITS. (a) A retiree who is receiving payments of an annuity for the retiree's life but with payments to continue if the retiree dies until a determined number of payments have been made may, with the consent of the retiree's spouse if there is one, revoke any existing selection and designation of beneficiary nominated to receive any monthly payments that may become due under the annuity after the retiree's death and may select a new beneficiary to whom the monthly payments are to be made.

(b) A person who, as beneficiary of a deceased retiree, is receiving monthly payments of any fixed-term annuity described by Subsection (a) may select and designate a person to whom will be paid any monthly payments that may be due under the annuity after the death of the beneficiary making the designation.

(c) Any selection and designation of beneficiary under Subsection (a) or (b) must be in writing, on forms prescribed by the board of trustees, and will become effective on filing with the director.

(d) If a qualified domestic relations order, as that term is defined by Section 804.001, so provides, the benefit payable to a retiree who is receiving payments of an annuity for the retiree's life with payments to continue after the retiree's death until the death of another person under Section 854.104(c)(1), (2), or (5) may be divided by the retirement system into two annuities if:

(1) the person who was designated to receive the continued payment after the retiree's death is the same person as the alternate payee;

(2) the domestic relations order specifies that one of the two annuities is payable over the remaining life of the retiree, with no payments to be made under that annuity after the death of the retiree;

(3) the domestic relations order specifies that the annuity payable to the alternate payee is payable over the remaining life of that person, with no payments to be made under that annuity after the death of the alternate payee named in the order; and

(4) the domestic relations order specifies that the portion of the benefit payable to the alternate payee is stated as a fixed percentage of the present benefit payable to the retiree, which percentage may not exceed 50 percent of a benefit provided under Section 854.104(c)(2) and may not exceed 75 percent of a benefit provided under Section 854.104(c)(5).

(e) The division of an annuity under Subsection (d) is effective when the order is determined by the retirement system to be a qualified domestic relations order, and the amount of each of the two annuities shall be computed by the retirement system at that time, based on tables that have been adopted by the retirement system and in effect at that time, so that the two annuities are actuarially equivalent at the time of division to the annuity being divided.

(f) If a divorce decree or a qualified domestic relations order, as that term is defined by Section 804.001, so provides, the benefit payable to a retiree who is receiving payments of an annuity for the retiree's life with payments to continue after the retiree's death until the death of another person under Section 854.104(c)(1), (2), or (5), 854.305(c)(1), (2), or (5), or 854.410(c)(1), (2), or (5) may be increased to the amount that would have been payable if the retiree had selected an annuity payable only during the retiree's lifetime if:

(1) the proceeding in which the decree or order is entered terminates the marriage between the retiree and the person who was designated to receive the continued payment after the retiree's death;

(2) the decree or order awards the retiree all benefits resulting from the retiree's participation in the retirement system; and

(3) the decree or order is signed after December 31, 1999.

(g) A decree or order under Subsection (f) applies only to annuity payments made after the date the retirement system receives and approves the decree or order as complying with Subsection (f). Added by Acts 1991, 72nd Leg., ch. 466, Sec. 3, eff. Aug. 26, 1991. Amended by Acts 1993, 73rd Leg., ch. 57, Sec. 10, 11, eff. Jan. 1, 1994; Acts 1999, 76th Leg., ch. 83, Sec. 7, eff. Dec. 31, 1999; Acts 2003, 78th Leg., ch. 599, Sec. 11, eff. Jan. 1, 2004.

Sec. 854.007. LIMITATION ON PAYMENT OF BENEFITS. If the amount of a benefit payment under this subtitle would exceed the limitations provided by Section 415, Internal Revenue Code of 1986, and its subsequent amendments, and the regulations adopted under that section, the retirement system shall reduce the amount of the benefit to comply with that section.

Added by Acts 1993, 73rd Leg., ch. 57, Sec. 12, eff. Jan. 1, 1994. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 12 to 14, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 76, Sec. 7, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 121, Sec. 11, eff. Jan. 1, 2002.

Sec. 854.008. PARTIAL LUMP-SUM DISTRIBUTION ON RETIREMENT. (a) A member who is eligible for service retirement and who terminates employment with all participating municipalities may apply for a partial lump-sum distribution under

this section. The board of trustees may adopt rules to allow the beneficiary of a deceased member who at the time of death was eligible for service retirement but had not retired to make the same election that the member could have made under this section at the time of retirement.

(b) The amount of a lump-sum distribution under this section may not exceed three-fourths of the total contributions and accumulated interest in the member's individual account in the employees saving fund at the time of the member's retirement.

(c) Subject to the limitation in Subsection (b), the member may elect to have the lump-sum distribution be equal to the monthly annuity payments, excluding any distributive benefit payments, that the member would have received if the member had selected the standard service retirement annuity described in Section 854.103 over a period of:

- (1) 12 months after the effective date of the member's retirement;
- (2) 24 months after the effective date of the member's retirement; or
- (3) 36 months after the effective date of the member's retirement.

(d) The lump-sum distribution will be made as a single payment, payable at the same time as the first monthly annuity payment that is paid to the member.

(e) The amount of the lump-sum distribution will be deducted from the sum used in computing the member's current service annuity under Section 854.002(c). If a payment is made under Section 854.502, the amount of the lump-sum distribution will be considered to be included in the payments made by reason of the annuity.

(f) If a benefit payable under this section is subject to a domestic relations order that the retirement system determines is qualified under Section 804.003, the alternate payee under that order may elect to receive a partial lump-sum distribution under Subsection (g).

(g) The partial lump-sum distribution under Subsection (f) shall be paid as a single payment, payable at the same time as the first monthly annuity payment paid to the alternate payee, and shall be deducted from the sum used in computing the alternate payee's annuity. The amount of the lump-sum distribution shall be equal to the monthly payments, excluding any distributive benefit payments that the alternate payee would otherwise have received, during the:

- (1) 12 months after the effective date of the member's retirement;
- (2) 24 months after the effective date of the member's retirement; or
- (3) 36 months after the effective date of the member's retirement.

Added by Acts 1997, 75th Leg., ch. 76, Sec. 8, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 83, Sec. 8, eff. Dec. 31, 1999; Acts 2001, 77th Leg., ch. 121, Sec. 12, eff. Jan. 1, 2002.

#### SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

Sec. 854.101. APPLICATION FOR SERVICE RETIREMENT. A member may apply for service retirement by filing a retirement application with the board of trustees not later than the date specified by the member for retirement or, if the member has not previously selected an optional service retirement annuity under Section 854.105, not earlier than the 90th day before that date.

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. 64.101 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 599, Sec. 12, eff. Jan. 1, 2004.

Sec. 854.102. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY. (a) A member is eligible to retire and receive a service retirement annuity, if the member:

- (1) is at least 60 years old and has at least 15 years of credited service in the retirement system; or
- (2) has at least 28 years of credited service in the retirement system.

(b) A member is eligible to retire and receive a service retirement annuity, if the member is at least 50 years old and has at least 25 years of credited service in the retirement system performed for one or more municipalities that:

- (1) have effective dates of participation in the

retirement system after May 28, 1969; or

(2) have adopted a like provision under Section 854.201 or 854.202.

(c) A member is eligible to retire and receive a service retirement annuity, if the member is at least 60 years old and has at least 10 years of credited service in the retirement system performed for one or more municipalities that either have an effective date of participation in the retirement system after August 26, 1979, or have adopted a like provision under Section 854.202.

(d) A member employed by a municipality having an effective date of participation in the retirement system after May 28, 1969, may terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age provided by law for service retirement of employees of the municipality, if the member has at least 20 years of credited service performed for one or more municipalities that are either subject to this subsection or have adopted a like provision under Section 854.201(c).

(e) A member employed by a municipality having an effective date of participation in the retirement system after August 26, 1979, may terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age and service requirement, if the member has at least 10 years of credited service performed for one or more municipalities that are either subject to this subsection or have adopted a like provision under Section 854.202.

(f) A member is eligible to retire and receive a service retirement annuity if the member has at least 25 years of credited service in the retirement system performed for one or more municipalities that have participation dates after September 1, 1987, or that have adopted a like provision under Section 854.202(f).

(g) A member is eligible to retire and receive a service retirement annuity if the member has at least 20 years of credited service in the retirement system performed for one or more municipalities that have adopted a like provision under Section 854.202(g).

(h) A member is eligible to retire and receive a service retirement annuity if the member is at least 60 years old and has at least five years of credited service in the retirement system that is performed for one or more municipalities to which the five-year vesting provision under Section 854.205 applies.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 223, ch. 18, Sec. 81, eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 183, Sec. 7, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.102 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 22, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 712, Sec. 1, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 121, Sec. 13, eff. Jan. 1, 2002.

Sec. 854.103. STANDARD SERVICE RETIREMENT ANNUITY. (a) The standard service retirement annuity payable under this subtitle is the sum of a member's prior service annuity and current service annuity.

(b) A standard service retirement annuity is payable throughout the life of a retiree.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.103 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 121, Sec. 14, eff. Jan. 1, 2002.

Sec. 854.104. OPTIONAL SERVICE RETIREMENT ANNUITY. (a) Instead of the standard service retirement annuity payable under Section 854.103, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) An optional service retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard service retirement annuity to its actuarial equivalent under the option selected under Subsection (c).

(c) An eligible person may select an optional annuity that provides that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced

annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;

(4) if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;

(5) after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of a person designated by the retiree; or

(6) if the retiree dies before 60 monthly payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) An option under Subsection (c) applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 855.308(f).

(e) To select an optional service retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(f) Notwithstanding any other provision of this subtitle, each distribution to any person or estate under this subtitle must be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)(9)).

(g) If a person who retires after August 31, 1997, elects a reduced retirement annuity that is payable until the death of the last to die of the retiree and a person designated under Subsection (e), and if the retiree survives the other person, the monthly payments to the retiree will be increased to the amounts that would have been payable if the retiree at the time of retirement had elected to receive an annuity payable only during the retiree's life, and adjustments had been made for any applicable postretirement increases in that benefit. The increased benefit becomes payable the month after the month in which the person designated under Subsection (e) dies and continues until the retiree dies.

(h) Subsection (i) applies only to a person who retired before September 1, 1997, and who elected, at retirement, to receive a reduced annuity that is payable until the death of the last to die of the retiree and a person designated as a beneficiary under Subsection (e).

(i) If both the retiree and the beneficiary described in Subsection (h) are alive, they may jointly elect in the manner provided by Subsection (j) to modify the annuity being received. An annuity modified under this subsection:

(1) begins with the first payment after one calendar month has passed since the date the form under Subsection (j) is filed, with the amount of the monthly payments, while the beneficiary is alive, being the actuarial equivalent of the previous annuity; and

(2) increases to the amount of the standard service retirement annuity that the retiree would otherwise be entitled to receive if the retiree had not selected the optional annuity with adjustments made for any postretirement increase in that benefit and becomes payable the month following the month in which the beneficiary dies and continues until the retiree dies.

(j) To make the election under Subsection (i), the retiree and beneficiary must execute and acknowledge, as provided by this subsection, a form stating that they are requesting a modification under Subsection (i) and that they understand that the modified annuity will be smaller than the standard service annuity while they are both living and if the beneficiary survives the member. The acknowledgment must be on a form prescribed by the board of trustees and be made before a notary public or other officer authorized to take acknowledgments. The retiree and beneficiary must file the executed form with the retirement system before January 1, 2003.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.104 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1,

1989. Amended by Acts 1993, 73rd Leg., ch. 57, Sec. 13, eff. Jan. 1, 1994; Acts 1997, 75th Leg., ch. 76, Sec. 9, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 121, Sec. 15, eff. Jan. 1, 2002.

Sec. 854.105. SELECTION OF OPTIONAL SERVICE RETIREMENT ANNUITY. (a) A vested member may, while continuing to perform service for a participating municipality or after terminating all service, file with the board of trustees, on a form prescribed by the board, a selection of an optional service retirement annuity available under Section 854.104 and a designation of beneficiary or a designation of beneficiary without selecting a retirement option. An annuity selected as provided by this section is payable on the member's death before retirement.

(b) A member may change a selection of an optional annuity or a designation of beneficiary at any time before the member's retirement or death in the same manner that the original selection or designation was made.

(c) If a member eligible under this section to select an optional service retirement annuity dies before retirement without having made a selection, the beneficiary designated under Subsection (a) may select an optional annuity in the same manner as if the member had made the selection, subject only to the requirements of the Internal Revenue Code of 1986, and its subsequent amendments, as to the length of time over which the payments can be made.

(d) If a beneficiary has not been designated under Subsection (a), the member's surviving spouse may elect to receive a refund of the member's accumulated contributions or an optional annuity in the same manner as if the member had made the selection.

(e) If a beneficiary has not been designated under Subsection (a) and no surviving spouse exists, the member's surviving children jointly may elect to receive:

(1) a refund of the member's accumulated contributions; or

(2) an optional annuity in the same manner as if the member had made the selection, subject only to the requirements of the Internal Revenue Code of 1986, and its subsequent amendments, as to the length of time over which the payments can be made.

(f) If there is no surviving spouse or surviving child and no beneficiary designated under Subsection (a) exists, the last person designated by the member as a beneficiary on a form filed with the retirement system may elect to receive:

(1) a refund of the member's accumulated contributions; or

(2) an optional annuity in the same manner as if the member had made the selection, subject only to the requirements of the Internal Revenue Code of 1986, and its subsequent amendments, as to the length of time over which the payments can be made.

(g) If there is not a person who is eligible to make a selection under Subsections (c)-(f), the executor or administrator of the member's estate may elect:

(1) for an estate beneficiary to receive the optional annuity under Section 854.104(c)(4), in which case the member will be considered to have retired on the last day of the month immediately preceding the month in which death occurred; or

(2) for the estate to receive a refund of the member's accumulated contributions under Section 854.501, in which case the member will be considered to have been a contributing member at the time of death.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.105 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 121, Sec. 16, eff. Jan. 1, 2002.

Sec. 854.106. NO SURVIVING SPOUSE, EXECUTOR, OR ADMINISTRATOR. (a) If a surviving spouse, or the executor or administrator of a member's estate, would be entitled to make an election under Section 854.105 because of the death of the member, the heirs of the deceased member may make that election if:

(1) no surviving spouse exists;

(2) no petition for the appointment of a personal representative of the member is pending or has been granted;

(3) 30 days have elapsed since the death of the member;

(4) the value of the entire assets of the member's estate, excluding homestead and exempt property, does not exceed \$50,000;

(5) there are not more than three heirs; and

(6) on file with the retirement system is a certified copy of a small estates affidavit that has been approved and filed in accordance with Section 137, Texas Probate Code, or an original affidavit as described by Subsection (b).

(b) If no affidavit has been filed with the clerk of the court having jurisdiction and venue as provided by Section 137 of the Texas Probate Code, the retirement system may accept instead an affidavit sworn to by two disinterested witnesses, by the heirs who have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also an heir. The affidavit shall include the names and addresses of the heirs and witnesses, establish the facts listed in Subsection (a), include a list of the assets and liabilities of the estate, show the facts that constitute the basis for the right of the heirs to receive the estate, and show the fractional interests of the heirs in the estate as a result of those facts.

(c) If the retirement system, acting through the director or a person designated by the director, approves the affidavit, the heirs can make the election if each heir agrees to the election.

(d) In this section, "heirs" has the meaning assigned by Section 3, Texas Probate Code, except that the term excludes any persons who have filed with the retirement system a proper disclaimer or renunciation.

Added by Acts 1995, 74th Leg., ch. 514, Sec. 15, eff. Sept. 1, 1995. Amended by Acts 2001, 77th Leg., ch. 121, Sec. 17, eff. Jan. 1, 2002.

Sec. 854.107. DESIGNATION OF BENEFICIARY AFTER RETIREMENT UNDER STRAIGHT LIFE OR GUARANTEED TERM ANNUITY. (a) This section applies only to a retiree who marries after the date of the person's retirement and who at the time of retirement selected either:

(1) a service or disability retirement annuity that would be payable throughout the retiree's life and would not be paid after the retiree's death, except as provided by Section 854.502; or

(2) a service or disability retirement annuity that would be payable throughout the retiree's life and, if the retiree dies before 60, 120, or 180 monthly annuity payments, as appropriate, have been made, would be payable for the remainder of those months.

(b) A retiree described under Subsection (a) may replace the annuity by selecting an optional retirement annuity under Section 854.104(c)(1), (2), or (5) and by designating the person's spouse as beneficiary in the same manner as an annuity selection and designation of beneficiary may be made before retirement.

(c) The selection under Subsection (b) must be filed with the retirement system before the first anniversary of the date of the marriage unless the postretirement marriage occurred before January 1, 2002, in which case the selection must be filed with the retirement system before January 1, 2003.

(d) A person may make a postretirement designation of a beneficiary under this section only once.

(e) The retirement system shall adjust the monthly payments of the annuity under the option selected to an actuarial equivalent amount of the annuity being paid immediately before the change in benefit option and beneficiary selection.

(f) The selection of an optional annuity and designation of a beneficiary under this section is not effective if the retiree or beneficiary dies before the date the change is to take effect.

Added by Acts 2001, 77th Leg., ch. 121, Sec. 18, eff. Jan. 1, 2002.

Sec. 854.108. DESIGNATION OF BENEFICIARY AFTER RETIREMENT UNDER JOINT AND SURVIVOR ANNUITY. (a) This section applies only to a retiree who:

(1) at the time of retirement selected an optional annuity providing that, after the retiree's death, payments would be made to a beneficiary throughout the remaining life of the beneficiary and the beneficiary predeceases the retiree;

(2) marries after the date of the person's retirement; and

(3) has not previously replaced an annuity under this section.

(b) A retiree described by Subsection (a) may replace an annuity by selecting an optional annuity under Section 854.104(c)(1), (2), or (5) and designating the person's spouse as beneficiary in the same manner as an annuity selection and



designation of beneficiary may be made before retirement.

(c) The selection under Subsection (b) must be filed with the retirement system before the first anniversary of the date of the marriage unless the postretirement marriage occurred before January 1, 2002, in which case the selection must be filed with the retirement system before January 1, 2003.

(d) The retirement system shall adjust the monthly payments of the annuity under the option selected to an actuarial equivalent amount of the annuity being paid immediately before the change in benefit option and beneficiary selection.

(e) The selection of an optional annuity and designation of a beneficiary under this section is not effective if the retiree or beneficiary dies before the date the change is to take effect.

Added by Acts 2001, 77th Leg., ch. 121, Sec. 18, eff. Jan. 1, 2002.

#### SUBCHAPTER C. OPTIONAL SERVICE RETIREMENT BENEFITS

Sec. 854.201. OPTIONAL SERVICE RETIREMENT ELIGIBILITY. (a) The governing body of a municipality having an effective date of participation in the retirement system before May 29, 1969, by ordinance may authorize eligibility for a service retirement annuity as provided by this section.

(b) The governing body may authorize a member who is an employee of the municipality to be eligible for service retirement who is at least 50 years old and has at least 25 years of credited service performed for one or more municipalities that either have authorized eligibility under this section or are subject to Section 854.102(d), or to terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age provided by law for service retirement of employees of the municipality, if the member has at least 20 years of credited service performed for one or more municipalities that either have authorized eligibility under this section or are subject to Section 854.102(d).

(c) A governing body may not adopt an ordinance under this section unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in 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. 224, ch. 18, Sec. 82, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.201 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.202. ADDITIONAL OPTIONAL SERVICE RETIREMENT ELIGIBILITY. (a) The governing body of a municipality that has an effective date of participation in the retirement system after December 31, 1975, or that has previously authorized updated service credits, by ordinance may authorize eligibility for a service retirement annuity as provided by this section for a member who is or was an employee of any participating department of the municipality.

(b) The governing body may authorize a member to retire and receive a service retirement annuity, if the member:

(1) is at least 50 years old and has at least 25 years of credited service performed for one or more municipalities that have authorized eligibility under this subdivision; or

(2) is at least 60 years old and has at least 10 years of credited service performed for one or more municipalities that either have authorized eligibility under this subdivision or have a participation date in the retirement system after August 26, 1979.

(c) The governing body may authorize a member who is or was an employee of the municipality to terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age and service requirement, if the member has at least 10 years of credited service performed for one or more municipalities that either have authorized eligibility under this subsection or are subject to Section 854.102(e).

(d) An ordinance adopted under this section must also include the provisions specified in Section 852.105. 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.

(e) The governing body shall specify the effective date of an ordinance under this section, which may be the first day of any month after the month in which the actuary makes the determination required by Subsection (d).

(f) The governing body may authorize a member to retire and receive a service retirement benefit if the member has at least 25 years of credited service performed for one or more municipalities that either have authorized eligibility under this subdivision or have a participation date in the retirement system after September 1, 1987.

(g) The governing body may authorize a member to retire and receive a service retirement benefit if the member has at least 20 years of credited service performed for one or more municipalities that have authorized eligibility under this subsection.

(h) Before a governing body may elect to authorize a member to retire pursuant to Subsection (g), the governing body shall:

(1) prepare an actuarial analysis of member retirement annuities at 20 years of service; and

(2) hold a public hearing.

(i) The public hearing required under Subsection (h) shall be held pursuant to the notice provisions of the Texas Open Meetings Act, Chapter 551, Texas Government Code.

(j) A member is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 60 years of age; and

(2) has at least five years of credited service performed for one or more municipalities to which the five-year vesting provision under Section 854.205 applies.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 224, ch. 18, Sec. 83, 84, eff. Jan. 1, 1982; Acts 1987, 70th Leg., ch. 183, Sec. 8, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.202 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 23, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 712, Sec. 2, 3, eff. Sept. 1, 1995; Acts 2001, 77th Leg., ch. 121, Sec. 19, eff. Jan. 1, 2002.

Sec. 854.203. OPTIONAL INCREASE IN RETIREMENT ANNUITIES. (a) The governing body of a participating municipality by ordinance, from time to time but not more frequently than once in each 12-month period, may authorize and provide for increased annuities to be paid to retirees and beneficiaries of deceased retirees of the municipality. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of annuity increase under this section is computed as the sum of the prior and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by:

(1) the percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of the ordinance providing the increase; and

(2) 30 percent, 50 percent, or 70 percent, as specified by the governing body in the ordinance, except that if the governing body has specified a different percentage in an ordinance adopted under Section 853.404(c) and in effect on December 31, 1999, the percentage used in computing annuity increases for retirees of that municipality remains in effect until changed or discontinued under Section 853.404.

(c) Except as provided by Subsection (g), the effective date of an ordinance under this section is January 1 of the year that begins after the year in which the governing body adopts and notifies the retirement system of the ordinance.

(d) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(e) If a computation under Subsection (b) does not result in an increase in the amount of an annuity, the amount of the annuity may not be changed under this section.

(f) The amount by which an increase under this section

exceeds all previously granted increases to an annuitant is payable as a prior service annuity, is an obligation of the municipality's account in the municipality accumulation fund, and is subject to reduction under Section 855.308(f).

(g) An ordinance under this section may not take effect until it is approved by the board of trustees as meeting the requirements of this section. The board may not approve an ordinance unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period as in effect on the effective date of the increases.

(h) A governing body may not authorize and provide for annuity increases under this section unless it simultaneously provides for updated service credits under Subchapter E of Chapter 853.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 225, ch. 18, Sec. 85, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.203 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 76, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 83, Sec. 9, eff. Dec. 31, 1999.

Sec. 854.205. FIVE-YEAR VESTING. (a) This section applies to each municipality unless the municipality's governing board files with the board of trustees before December 31, 2001, an election to not provide for five-year vesting. A governing board that elects to not provide five-year vesting may revoke that election by sending notice to the board of trustees to provide for five-year vesting.

(b) After December 31, 2001, a member may terminate covered employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age as provided by law if the member has at least five years of credited service performed for one or more municipalities to which the five-year vesting provision under this section applies.

Added by Acts 2001, 77th Leg., ch. 121, Sec. 20, eff. Sept. 1, 2001.

#### SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

Sec. 854.301. APPLICATION FOR DISABILITY RETIREMENT ANNUITY. (a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's employer or legal representative.

(b) An application for a disability retirement annuity may not be filed later than the date specified by the member for retirement or earlier than the 90th day before that date.

(c) An applicant must submit to medical examination as required by the medical board.

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. 64.301 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 599, Sec. 13, eff. Jan. 1, 2004.

Sec. 854.302. ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY. (a) A member who has less than 10 years of credited service in the retirement system is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 854.303(b)(1).

(b) A member who has at least 10 years of credited service in the retirement system is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 854.303(b)(2). A member eligible to retire and receive a disability retirement annuity under this subsection may elect to retire and receive instead a service retirement benefit but may not receive both types of benefits.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 183, Sec. 10, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.302 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 466, Sec. 4, eff. Aug.

26, 1991.

Sec. 854.303. CERTIFICATION OF DISABILITY. (a) As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.

(b) The medical board shall issue a certification of disability and send it to the board of trustees if the medical board finds:

(1) in the case of a member who has less than 10 years of credited service in the retirement system, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is the direct result of injuries sustained during membership by external and violent means as a direct and proximate result of the performance of duty;

(C) the incapacity is likely to be permanent; and

(D) the member should be retired; or

(2) in the case of a member who has at least 10 years of credited service in the retirement system, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is likely to be permanent; and

(C) the member should be retired.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.303 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 466, Sec. 5, eff. Aug. 26, 1991.

Sec. 854.304. STANDARD DISABILITY RETIREMENT ANNUITY. (a) The standard disability retirement annuity payable under this subtitle is the sum of a member's prior service annuity and current service annuity.

(b) A prior service annuity is subject to reduction as provided by Section 855.308(f).

(c) A standard disability retirement annuity is payable throughout the life of a retiree. When a retiree who receives an annuity under this section dies, an additional benefit may be payable under Section 854.502.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 226, ch. 18, Sec. 86, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.304 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 83, Sec. 11, eff. Dec. 31, 1999; Acts 2001, 77th Leg., ch. 121, Sec. 21, eff. Jan. 1, 2002.

Sec. 854.305. OPTIONAL DISABILITY RETIREMENT ANNUITY. (a) Instead of the standard disability retirement annuity payable under Section 854.304, a member retiring for disability may elect to receive an optional disability retirement annuity under this section.

(b) An optional disability retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard disability retirement annuity to its actuarial equivalent under the option selected under Subsection (c).

(c) An eligible person may select an optional annuity under Section 854.104(c).

(d) An option under Subsection (c) applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 855.308(f).

(e) To select an optional disability retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(f) If a disability retirement annuity is discontinued under Section 854.308, any selection of an option that applies to the annuity becomes void.

(g) If a person who retires after August 31, 1997, elects a reduced retirement annuity that is payable until the death of the last to die of the retiree and a person designated under Subsection (e), and if the retiree survives the other person, the monthly payments to the retiree will be increased to the amounts that would have been payable if the retiree had elected to receive an annuity payable only during the retiree's life, and adjustments had been

made for any applicable postretirement increases in that benefit. The increased benefit becomes payable the month after the month in which the person designated under Subsection (e) dies and continues until the retiree dies.

Added by Acts 1981, 67th Leg., 1st C.S., p. 226, ch. 18, Sec. 87, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.3041 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 76, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 83, Sec. 12, eff. Dec. 31, 1999; Acts 2001, 77th Leg., ch. 121, Sec. 22, eff. Jan. 1, 2002.

Sec. 854.306. MEDICAL EXAMINATION OF DISABILITY RETIREE. (a) Once each year during the first five years after a person retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination by one or more physicians designated by the board.

(b) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall suspend the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the board shall revoke all rights of the retiree to an annuity.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.305 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 466, Sec. 6, eff. Aug. 26, 1991.

Sec. 854.307. CERTIFICATION OF END OF DISABILITY. (a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is able to engage in gainful occupation, it shall certify its findings and submit them to the board of trustees.

(b) If the board of trustees concurs in a certification under this section, it shall discontinue annuity payments to the retiree.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, Sec. 88, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.306 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.308. RETURN OF DISABILITY RETIREE TO ACTIVE SERVICE OR EMPLOYMENT. (a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity resumes employment with a participating municipality or otherwise becomes gainfully employed, the person automatically resumes membership in the retirement system, and the board of trustees shall terminate the person's annuity payments.

(b) If a person resumes membership under this section, the retirement system shall restore to effect any prior service credit, special prior service credit, antecedent service credit, or updated service credit used in determining the amount of the person's annuity at the time of disability retirement. If the person subsequently retires, the retirement system shall allow the person credit for all current service for which required contributions have been made and not withdrawn.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, Sec. 89, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.307 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.309. REFUND AT ANNUITY DISCONTINUANCE. (a) Except as provided by Subsection (b), if a disability retirement annuity is discontinued under Section 854.307 or the right to an annuity revoked under Section 854.306(c), the retiree is entitled to a lump-sum payment in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of current service annuity payments made before the date the annuity was discontinued or the right to an annuity revoked.

(b) The benefit provided by this section is not payable to a retiree who resumes employment with a participating subdivision or otherwise becomes gainfully employed.

(c) The benefit provided by this section is payable from the current service annuity reserve fund.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, Sec. 90, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.308 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

SUBCHAPTER E. OPTIONAL DISABILITY RETIREMENT BENEFITS

Sec. 854.401. ELIGIBILITY FOR SUPPLEMENTAL DISABILITY RETIREMENT ANNUITY. (a) A member as an employee of a municipal department included, as provided by Section 852.003, in the coverage of the supplemental disability benefits fund is eligible to retire and receive a supplemental disability retirement annuity if the member:

(1) is eligible to receive a disability retirement annuity under Section 854.302;

(2) is the subject of a certification and finding under Section 854.402, as well as a certification under the applicable finding provided by Section 854.303; and

(3) filed an application for the benefits before January 1, 1989.

(b) Any claim for supplemental disability benefits not filed with the board of trustees before January 1, 1989, is barred. Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 183, Sec. 11, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.401 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.402. CERTIFICATION AND FINDING OF DISABILITY. (a) The medical board shall issue and send to the board of trustees a certification of disability for a member included in the coverage of the supplemental disability benefits fund if, after a medical examination of the member, the medical board finds that the member is mentally or physically incapacitated and is unable to engage in gainful occupation.

(b) A member is entitled to a supplemental disability retirement annuity if the board of trustees, after receiving a certification of disability for the member under this section, finds that the member's incapacity:

(1) is the direct result of injuries sustained after the effective date of coverage of the member in the supplemental disability benefits fund and before January 1, 1988, as a direct and proximate result of the performance of the duties of the member's employment; and

(2) is likely to be permanent.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 183, Sec. 12, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.402 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.403. SUPPLEMENTAL DISABILITY RETIREMENT ANNUITY. (a) A supplemental disability retirement annuity payable under this subtitle is an amount that, when added to a member's standard disability retirement annuity or, if the member is eligible for service retirement, to the member's standard service retirement annuity, equals one-half of the member's average monthly compensation for service as an employee of a participating department of a municipality:

(1) for the 60 months immediately preceding the month in which the injury occurred; or

(2) if the member did not perform service in each of the 60 months immediately preceding the month in which the injury occurred, for the number of months of service within the 60-month period.

(b) In a computation of average monthly compensation under this section, compensation is excluded that exceeds the maximum amount on which the member was required to make contributions to 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. 64.403 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.404. CONDITIONS FOR BENEFITS. (a) Supplemental disability benefits payable from the supplemental disability benefits fund cease on the death of the disability retiree and are, except as provided by this subchapter, subject to the same terms of issuance as are standard disability retirement benefits. The suspension or discontinuance of a disability retirement annuity automatically suspends or discontinues, as applicable, a

supplemental disability retirement annuity based on the same service.

(b) The board of trustees may reduce proportionally all supplemental disability benefits payable from the supplemental benefits fund at any time and for a period that the board finds necessary to prevent payments from the fund in a year from exceeding available assets in the fund in that year.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 227, ch. 18, Sec. 91, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.404 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.405. OPTIONAL OCCUPATIONAL DISABILITY BENEFITS PROGRAM. (a) This section and Sections 854.406, 854.407, 854.408, 854.409, and 854.410, providing for an occupational disability benefits program, apply to municipalities having a participation date in the retirement system after August 31, 1987. The governing body of any municipality having an earlier effective date of participation may by ordinance adopt the provisions of this section and Sections 854.406, 854.407, 854.408, 854.409, and 854.410 in lieu of the disability program provided for under Subchapter D.

(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.

Added by Acts 1987, 70th Leg., ch. 183, Sec. 13, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.405 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.406. APPLICATION FOR OCCUPATIONAL DISABILITY BENEFITS. A member who is employed by a municipality that has adopted or is subject to the occupational disability benefits program may apply for an occupational disability retirement benefit in the same form and manner as that prescribed by Section 854.301.

Added by Acts 1987, 70th Leg., ch. 183, Sec. 13, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.406 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.407. ELIGIBILITY FOR BENEFITS AND DETERMINATION OF DISABILITY. (a) As soon as practicable after an application for occupational disability benefits has been filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application. The medical board may require the member to be examined by one or more physicians designated by it.

(b) The medical board shall issue a certification of occupational disability and send it to the board of trustees if the medical board finds:

- (1) that the member is physically or mentally disabled for further performance of the duties of the member's employment;
- (2) that the disability is likely to be permanent; and
- (3) that the member should be retired.

(c) A member who is issued a certificate by the medical board as provided by this section is eligible to receive a standard occupational disability retirement annuity on the terms prescribed by Section 854.408.

Added by Acts 1987, 70th Leg., ch. 183, Sec. 13, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.407 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.408. STANDARD OCCUPATIONAL DISABILITY RETIREMENT ANNUITY. (a) The standard occupational disability retirement annuity payable under this subchapter is the sum of the member's prior service annuity and current service annuity. A prior service annuity is subject to reduction under Section 855.308(f). A standard occupational disability retirement annuity:

- (1) is payable throughout the life of the retiree; and
- (2) is reducible as to any month or series of months as provided by this section.

(b) During any month in which a retiree who is less than 60 years old receives earned income subject to taxation under the Federal Insurance Contributions Act or that would be subject to

those taxes if the employer were not an exempt organization, the standard occupational disability retirement annuity may not exceed the greater of the following amounts:

(1) the amount that is required to be added to the retiree's earned income for the month to equal the highest average compensation on which the retiree made membership contributions to the retirement system during any 12 consecutive months during the three calendar years immediately preceding the year in which the retiree retired for disability, when the highest average compensation is multiplied by the percentage increase, if any, in the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before a computation is made under this subsection; or

(2) the monthly annuity attributable to the retiree's accumulated contributions at the time of the person's retirement.

(c) For purposes of this section, the amount received as the standard occupational disability retirement benefit during any month is considered to include 1/12 of the amount of any distributive benefit payable to the member under authority of Section 855.311 for the calendar year, but any amount by which the annuity is increased pursuant to Section 854.203 is excluded.

(d) If a retiree is paid an occupational disability retirement annuity for any month or series of months in amounts exceeding the sum allowable under Subsection (b), the retirement system shall reduce subsequent monthly payments successively until the amounts of the overpayments have been offset.

Added by Acts 1987, 70th Leg., ch. 183, Sec. 13, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.408 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 57, Sec. 14, eff. Jan. 1, 1994; Acts 1999, 76th Leg., ch. 83, Sec. 13, eff. Dec. 31, 1999; Acts 2003, 78th Leg., ch. 599, Sec. 14, eff. Jan. 1, 2004.

Sec. 854.409. REPORTS REQUIRED OF RETIREES. (a) A disability retiree who is less than 60 years old and who accepts employment or during any month receives income that is subject to taxation under the Federal Insurance Contributions Act shall promptly notify the board of trustees in writing if the amount of the earnings, when added to the amount of the standard occupational disability retirement benefit, produces a sum in excess of the average monthly compensation on which the retiree made member contributions during the 12-month period preceding the date of the person's retirement.

(b) Each retiree who is receiving an occupational disability retirement annuity and is less than 60 years old shall make annual reports to the board of trustees on such form as the board may prescribe, concerning receipt by the retiree of income that is subject to taxation under the Federal Insurance Contributions Act or that would be subject to those taxes if the employer were not an exempt organization, along with any supporting information as may be required by the board of trustees. If a retiree fails to provide the information required under this section, the director may suspend payments of the annuity until the retiree provides the required information.

Added by Acts 1987, 70th Leg., ch. 183, Sec. 13, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.409 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.410. OPTIONAL OCCUPATIONAL DISABILITY RETIREMENT ANNUITY. (a) Instead of the standard occupational disability retirement annuity payable under Section 854.408, a member retiring for disability may elect to receive an optional occupational disability retirement annuity under this section.

(b) An optional occupational disability retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard occupational disability retirement annuity to its actuarial equivalent under the option selected under Subsection (c).

(c) An eligible person may select an optional annuity under Section 854.104(c).

(d) An option under Subsection (c) applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 855.308(f).

(e) To select an optional occupational disability retirement annuity, a member or retiree must make the selection and



designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(f) If a retiree's disability retirement annuity is subject to reduction under Section 854.408, the reduction of the optional occupational disability retirement annuity will be based on the relationship of the optional annuity to the standard disability retirement annuity.

(g) If a person who retires after August 31, 1997, elects a reduced retirement annuity that is payable until the death of the last to die of the retiree and a person designated under Subsection (e), and if the retiree survives the other person, the monthly payments to the retiree will be increased to the amounts that would have been payable if the retiree at the time of retirement had elected to receive an annuity payable only during the retiree's life, and adjustments had been made for any applicable postretirement increases in that benefit. The increased benefit becomes payable the month after the month in which the person designated under Subsection (e) dies and continues until the retiree dies.

Added by Acts 1987, 70th Leg., ch. 183, Sec. 13, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.410 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 76, Sec. 12, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 83, Sec. 14, eff. Dec. 31, 1999; Acts 2003, 78th Leg., ch. 599, Sec. 15, eff. Jan. 1, 2004.

#### SUBCHAPTER F. DEATH BENEFITS

Sec. 854.501. RETURN OF CONTRIBUTIONS. (a) Except as provided by Subsection (c), if a member dies before retirement, a lump-sum death benefit is payable from the employees saving fund in the amount of:

(1) the amount credited to the member's individual account in the fund; plus

(2) interest computed from the beginning of the year in which death occurs through the end of the month immediately preceding the month in which death occurs at the rate allowed on member contributions during the preceding year.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) A benefit is not payable under this section if an annuity based on the decedent's service is payable under this subtitle.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.501 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.502. REFUND OF UNRECOVERED CONTRIBUTIONS. (a) If monthly payments of any standard service retirement annuity under Section 854.103, optional service retirement annuity under Section 854.104, standard disability retirement annuity under Section 854.304, optional disability retirement annuity under Section 854.305, standard occupational disability retirement annuity under Section 854.408, or optional occupational disability retirement annuity under Section 854.410 cease before the sum of all payments of the annuity equals or exceeds the amount of accumulated contributions in the individual account in the employees saving fund at the time of retirement of the member on whose service the annuity was based, a lump-sum benefit equal to the amount by which the amount of the accumulated contributions exceeds the sum of all payments made by reason of the annuity is payable:

(1) to the designated beneficiary, if living, or if not living, to the estate of the designated beneficiary, if the designated beneficiary survived the retiree; or

(2) to the estate of the retiree, if the designated beneficiary predeceased the retiree.

(b) The benefit provided by this section is payable from the current service annuity reserve fund and the municipality accumulation fund in the ratio that the part of the annuity that was payable from each of those funds bears to the entire benefit determined on the effective date of retirement.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, Sec. 92, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.502 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff.

Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 466, Sec. 7, eff. Aug. 26, 1991.

Sec. 854.503. TRUST AS BENEFICIARY. (a) Except as provided by Subsection (b), a member or retiree may designate a trust as beneficiary for the payment of benefits from the retirement system. If a trust is designated beneficiary, the beneficiary of the trust is considered the designated beneficiary for the purpose of determining eligibility for and the amount and duration of benefits. The trustee is entitled to exercise any rights to elect benefit options and name subsequent beneficiaries.

(b) A trust having more than one beneficiary may not receive benefits to which multiple designated beneficiaries are not eligible under this chapter.

Added by Acts 1995, 74th Leg., ch. 514, Sec. 16, eff. Sept. 1, 1995.

Sec. 854.504. PERSON CAUSING DEATH OF MEMBER OR ANNUITANT. (a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable to a person who would be entitled to the benefit had the convicted person predeceased the decedent. If no person would be entitled to the benefit, the benefit is payable to the decedent's estate.

(b) The retirement system is not required to pay a benefit under Subsection (a) of this section unless it receives actual notice of the conviction of the person who would have been entitled to the benefits. However, the retirement system may 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) The retirement system shall convert the remainder of any annuity that would otherwise have been payable throughout the life of the convicted person to an actuarially equivalent annuity payable to the decedent's estate in 60 monthly annuity payments. The time of the actuarial equivalence is the earlier of the time the retirement system receives the notice of the conviction under Subsection (b) or the time the retirement system begins the delay in payment of a benefit according to Subsection (b).

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

(1) has pleaded guilty or nolo contendere to or has been 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

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

Added by Acts 1995, 74th Leg., ch. 514, Sec. 17, eff. Sept. 1, 1995.

Sec. 854.505. SIMULTANEOUS DEATH OF MEMBER AND BENEFICIARY. When a member or retiree and the spouse or beneficiary of the member or retiree have died within a period of less than 120 hours of each other, the member or retiree is considered to have survived the spouse or beneficiary for the purpose of determining the rights to amounts payable under this subtitle on the death of the member or retiree.

Added by Acts 1995, 74th Leg., ch. 514, Sec. 18, eff. Sept. 1, 1995.

#### SUBCHAPTER G. OPTIONAL DEATH BENEFITS

Sec. 854.601. COVERAGE IN SUPPLEMENTAL DEATH BENEFIT PROGRAM. (a) An employee of a participating municipality is included within the coverage of the supplemental death benefit program on the first day of the first month in which:

(1) the employing municipality is participating in the supplemental death benefits fund for coverage of all members it employs;

(2) the employee is a member of the retirement system; and

(3) the employee is required to make a contribution to the retirement system.

(b) Once established, coverage of a person in the supplemental death benefit program continues until the last day of a month in which a requirement of Subsection (a) is not met.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.601 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.602. EXTENDED SUPPLEMENTAL DEATH BENEFIT COVERAGE. (a) A member included in the coverage of the supplemental death benefit program who fails to earn compensation in a month for service to a municipality participating in the supplemental death benefits fund is eligible to receive extended coverage in the program on complying with this section.

(b) A member may apply to the retirement system for extended program coverage and submit evidence of eligibility for extended coverage.

(c) The board of trustees shall grant extended coverage in the supplemental death benefit program to an applicant, if the board finds:

(1) that as a result of illness or injury, the member is unable to engage in gainful occupation; and

(2) that the member made a required contribution to the retirement system as an employee of a municipality participating in the supplemental death benefits fund for the month immediately preceding the first full month in which the member was unable to engage in gainful occupation.

(d) Once established, extended coverage of a person in the supplemental death benefit program continues until the last day of the month in which:

(1) the member returns to work as an employee of a participating municipality;

(2) the board of trustees finds that the member is able to engage in gainful occupation;

(3) the person's membership in the retirement system is terminated; or

(4) the member retires under this subtitle.

(e) The board of trustees by rule may require a member to submit to it annual proof of continued inability to engage in gainful occupation. The board may require a member to undergo a medical examination by a physician designated by the board. Failure of a member to undergo a medical examination as required by this subsection is a ground for the board's finding that the member has become able to engage in gainful occupation.

(f) If a member included in the coverage of the supplemental death benefit program becomes eligible to apply for the extended coverage but fails to comply with Subsections (b) and (c) before the member's death, the member will be considered to have had the extended coverage if proof is furnished that the member could have qualified for extended coverage if application for the coverage had been made according to Subsections (b) and (c) and that the death occurred within six months after the date the coverage of the supplemental death benefit program was discontinued under Section 854.601.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, Sec. 93, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.602 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 514, Sec. 19, eff. Sept. 1, 1995.

Sec. 854.603. MEMBER SUPPLEMENTAL DEATH BENEFIT. (a) If a person included in the coverage or extended coverage of the supplemental death benefit program dies, a lump-sum supplemental death benefit is payable from the supplemental death benefits fund in an amount equal to the current annual salary of the member at the time of death.

(b) Except as provided by Subsection (c), the current annual salary of a member is computed as the amount paid to the member for service on which contributions were made to the retirement system during the 12 months immediately preceding the month of death. If a member did not receive compensation for service in each of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the amount paid to the member on which contributions were made to the system during the period of employment within the 12-month period. If a member did not receive compensation for service in any of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the rate of compensation payable to the member during the month of death.

(c) The current annual salary of a member included in the extended coverage of the supplemental death benefit program is computed in the manner provided by Subsection (b) but as if the

member had died during the first month of extended coverage.

(d) If a member makes contributions to the retirement system during the same month as an employee of more than one municipality participating in the supplemental death benefits fund, a death benefit is payable only on the basis of the member's most recent employment.

(e) The board of trustees by rule may require such proof of compensation and periods of employment as it finds necessary. Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 228, ch. 18, Sec. 94, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.603 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 854.604. RETIREE SUPPLEMENTAL DEATH BENEFIT. If a retiree dies whose most recent employment as a member of the retirement system was with a municipality that has elected to provide, and continues to provide, postretirement supplemental death benefits, a lump-sum supplemental death benefit is payable from the fund in the amount of \$7,500.

Added by Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 229, ch. 18, Sec. 95, eff. Jan. 1, 1982. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.604 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 57, Sec. 15, eff. Jan. 1, 1994; Acts 2003, 78th Leg., ch. 599, Sec. 16, eff. Jan. 1, 2004.

Sec. 854.605. BENEFICIARY OF SUPPLEMENTAL DEATH BENEFIT. (a) Unless a member has directed otherwise on a form prescribed by the board of trustees and filed with the retirement system:

(1) a supplemental death benefit under Section 854.603 is payable to the person entitled to receive the decedent's accumulated contributions; and

(2) a supplemental death benefit under Section 854.604 is payable to a person entitled to receive any remaining payments of the decedent's annuity.

(b) If a person entitled under this section to receive a supplemental death benefit does not survive the member or retiree covered by the supplemental death benefit program, the benefit is payable to the estate of the covered member or retiree.

(c) If a member or retiree who has designated a beneficiary to receive supplemental death benefits under Section 854.603 or 854.604 subsequently designates a different beneficiary to receive other benefits under this subtitle in the event of the death of the member or retiree, the supplemental death benefits shall be paid to the subsequently designated beneficiary unless the member or retiree contemporaneously or subsequently designates another beneficiary to receive the supplemental death benefit.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 64.605 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 121, Sec. 23, eff. Jan. 1, 2002.