

GOVERNMENT CODE  
SUBTITLE H. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM  
CHAPTER 861. GENERAL PROVISIONS

Sec. 861.001. DEFINITIONS. In this subtitle:

(1) "Actuarially sound pension system" means a system in which the amount of contributions is sufficient to cover the normal cost and amortize the unfunded accrued actuarial liability in a period that does not exceed 30 years.

(2) "Auxiliary employee" means a person who receives compensation at a rate that does not exceed the federal minimum wage by more than \$2 an hour, as established under the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), for performing emergency services and is certified by a political subdivision of this state as being regularly engaged in the performance of duties for a participating department in an appointive office or position that normally requires services from the person for fewer than 1,000 hours a year, but excludes a person who is eligible to receive credit for the same service in either the Texas County and District Retirement System or the Texas Municipal Retirement System.

(3) "Commissioner" means the firefighters' pension commissioner appointed under Section 21, Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes).

(4) "Dependent" means an unmarried child, natural or adopted, who:

(A) is less than 18 years of age;

(B) is less than 19 years of age and a full-time student at an elementary or secondary school; or

(C) became disabled before the child's 22nd birthday and remains disabled.

(5) "Emergency services" means only those services relating to fire, rescue, and emergency medical services, including support services for those duties, performed by a volunteer or auxiliary employee of a participating department.

(6) "Fund" means the Texas emergency services retirement fund.

(7) "Local board" means a local board of trustees established under Section 865.012.

(8) "Member" means a volunteer or auxiliary employee who participates in the pension system.

(9) "Pension system" means the Texas Emergency Services Retirement System.

(10) "Qualified service" means service:

(A) for a participating department that is recognized as an emergency services department by its governing body and that conducts at least 48 hours of training in a calendar year; and

(B) that is performed by a member in good standing in the department who attends at least 20 hours of annual training and at least 25 percent of the department's emergencies in a calendar year or who does not attend because the member is absent because of military duty.

(11) "State board" means the state board of trustees established under Section 865.001.

(12) "Volunteer" means a person who performs emergency services for civic, charitable, or humanitarian reasons, receives no monetary compensation from a participating department, and is not subject to the compensation requirements provided for employees by the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.).

Added by Acts 2005, 79th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2005.

Sec. 861.002. PENSION SYSTEM. The pension system is a public entity. The Texas Emergency Services Retirement System is the name by which all its business shall be transacted, all its funds invested, and all its cash, securities, and other property held.

Added by Acts 2005, 79th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2005.

Sec. 861.003. POWERS AND PRIVILEGES. The pension system has the powers, privileges, and immunities of a corporation as well as the powers, privileges, and immunities conferred by this subtitle.

Added by Acts 2005, 79th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2005.

Sec. 861.004. EXEMPTION FROM EXECUTION. All benefit payments, contributions, money in the pension system fund, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation,

levies, and any other process and are unassignable.

Added by Acts 2005, 79th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2005.

Sec. 861.005. NO DIVERSION OF ASSETS. The fund must be maintained for the exclusive benefit of members, retirees, and their beneficiaries. At no time before the termination of the fund and the satisfaction of all liabilities with respect to members, retirees, and their beneficiaries may any part of the principal or interest from fund assets be used for or diverted to a purpose other than the exclusive benefit of the members, retirees, and their beneficiaries.

Added by Acts 2005, 79th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2005.

Sec. 861.006. PLAN QUALIFICATION AND DISTRIBUTIONS. (a) The legislature intends that this subtitle be construed and administered in a manner so that the pension system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). The state board may adopt rules that modify the plan as necessary to meet those qualification requirements.

(b) Notwithstanding any other provision of this subtitle, all distributions under this subtitle must be made in accordance with applicable provisions of the Internal Revenue Code of 1986 and regulations adopted under that code.

(c) The state board by rule may authorize an eligible rollover distribution to be made in the form of a direct trustee-to-trustee transfer.

Added by Acts 2005, 79th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2005.

Sec. 861.007. FORFEITURE NOT TO INCREASE BENEFITS. A forfeiture that occurs under this subtitle may not be used to increase the benefits that any member would otherwise receive under this subtitle.

Added by Acts 2005, 79th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2005.