

GOVERNMENT CODE
CHAPTER 864. BENEFITS

Sec. 864.001. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY. (a) The state board by rule shall determine the period of qualified service and, if appropriate, the age required for a member to receive a service retirement annuity with full benefits after the member terminates service with a participating department. The state board by rule may provide for partial vesting of benefits after a particular period.

(b) The state board may change the benefit formula for any person who is not an annuitant of the pension system.

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

Sec. 864.002. SERVICE RETIREMENT ANNUITY. (a) A service retirement annuity is payable in monthly installments based on:

(1) the governing body's average monthly contribution during the member's term of qualified service under this subtitle, not including a contribution to reduce the unfunded accrued actuarial liability of the pension system; and

(2) a formula adopted by the state board by rule that allows the pension system, assuming maximum state contributions are provided under Section 865.015, to be maintained as actuarially sound.

(b) The state board by rule may provide, for each year of qualified service in excess of the period provided under Section 864.001 for full benefits, an additional amount that is a percentage of the person's monthly pension, compounded annually. A person may receive a proportional credit for months of qualified service that make up less than a year.

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

Sec. 864.003. SERVICE RETIREMENT BENEFITS FROM MORE THAN ONE DEPARTMENT. A member who performs qualified service for more than one participating department may become eligible to receive a service retirement annuity for service from each department but, if the person dies while a member, the member's beneficiary must choose between an on-duty and off-duty death benefit, if applicable.

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

Sec. 864.004. DISABILITY RETIREMENT ANNUITY. (a) A member must, at the time of disability, elect between a service or disability retirement annuity, if eligible for both.

(b) A member who is disabled during the performance of emergency service duties is automatically vested 100 percent as of the date of disability if the disability occurs before the member has completed the period provided under Section 864.001 for full service retirement benefits.

(c) A member whose disability results from performing emergency service duties is guaranteed a disability retirement annuity of \$300 a month or a greater amount that the state board by rule adopts based on monthly contributions of a participating department for its members.

(d) A person who is determined to be temporarily disabled must apply to the Social Security Administration and be certified, not later than the second anniversary of the date the person was determined to be temporarily disabled, as permanently disabled by that agency or by any alternative procedure the state board provides by rule.

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

Sec. 864.005. CERTIFICATION AND CONTINUANCE OF DISABILITY. (a) A local board shall require a member who is receiving temporary disability benefits to file a disability rating report every three months from a physician chosen by the local board. If a report indicates a significant change of condition, the local board, after notice and a hearing, may adopt an order to terminate payments or place the member on permanent disability. The local board shall send a copy of each order adopted under this subsection to the commissioner.

(b) Disability benefits cease if the recipient becomes capable of performing the duties of the person's most recent position with a participating department or the duties of another occupation for which the person is reasonably suited by education, training, and experience. Rejection of a suitable offer of employment is conclusive evidence for purposes of this subtitle that the person is no longer eligible to receive disability retirement benefits, if the employment would provide the person with a salary equal to or greater than the salary the person was

earning at the time the disability occurred.

(c) The state board or a local board may require financial information from a person as a condition to the continued receipt of disability retirement benefits, including federal income tax returns and wage earning forms. Failure to provide requested information is a ground for terminating benefits.

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

Sec. 864.006. MEMBER SERVICE DEATH BENEFITS. (a) The surviving spouse and dependents of a member who dies as a result of performing emergency service duties are entitled to receive in equal shares a death benefit annuity equal to two-thirds of the service retirement annuity that the decedent would have been entitled to receive if the decedent had been able to retire, vested at 100 percent, on the date of the decedent's death. As long as both the spouse and one or more dependents survive, an additional one-third of that annuity is payable to the dependents in equal shares.

(b) The beneficiary of a member who dies as a result of performing emergency service duties is entitled to a lump-sum benefit of \$5,000 or a greater amount that the state board provides by rule.

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

Sec. 864.007. MEMBER NONSERVICE DEATH BENEFIT. The state board by rule may provide the beneficiary of a deceased member whose death did not result from the performance of emergency service duties a lump-sum benefit that is the greater of:

(1) the amount contributed to the fund on the decedent's behalf; or

(2) the sum that would have been contributed on the decedent's behalf from whatever source at the end of the period provided under Section 864.001 for full service retirement benefits.

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

Sec. 864.008. VESTED MEMBER DEATH BENEFIT ANNUITY. (a) The surviving spouse of a deceased member who dies before retirement but after meeting the minimum age and service requirements for service retirement is entitled to two-thirds of the monthly annuity that the decedent would have received if the decedent had retired on the date of death.

(b) The surviving spouse of a deceased member who dies after terminating service with all participating departments and meeting a vesting requirement under Section 864.001 but before attaining the age of 55 is entitled to a death benefit annuity, beginning on the date that the decedent would have attained that age, equal to two-thirds of the monthly annuity to which the decedent would have been entitled on that date.

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

Sec. 864.009. RETIREE DEATH BENEFIT ANNUITY. The surviving spouse of a person who dies after retirement is entitled to two-thirds of the monthly annuity the decedent was receiving at the time of death.

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

Sec. 864.010. BENEFITS FOR MEMBERS AND RETIREES OF DEPARTMENT THAT WITHDRAWS FROM PARTICIPATION OR CEASES TO EXIST. (a) The commissioner shall continue to administer benefits of the pension system for members and retirees who perform service for a formerly participating department that has withdrawn from participation in the pension system or has ceased to exist.

(b) The governing body of a political subdivision in which a department described by Subsection (a) is or was located shall perform the duties required of a local board for the members and retirees who served for the formerly participating department.

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

Sec. 864.011. FIRST PAYMENT OF RETIREMENT OR DEATH BENEFIT ANNUITY. The cashing or depositing of the first payment of a service, disability, or death benefit annuity by a person entitled to it is considered acceptance of the amount of the annuity and, if the annuity is based on the payee's service, is conclusive evidence for purposes of this subtitle that the payee is retired.

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

Sec. 864.012. CERTAIN BENEFICIARIES. (a) If a member names more than one beneficiary for a lump-sum death benefit, the pension system shall divide the benefit equally among the named beneficiaries or, if the member has designated a proportional division, each beneficiary is entitled to the proportion

designated.

(b) Except as provided by Subsection (a), lump-sum death benefits are subject to the laws of descent and distribution if the decedent has not provided for testamentary disposition.

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

Sec. 864.013. COST-OF-LIVING INCREASE. The state board by rule may provide a cost-of-living increase for any benefit provided by the pension system. If benefits are increased, the state board shall require an increase in governing body contributions if necessary to maintain an actuarially sound pension system.

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

Sec. 864.014. STATE BOARD AUTHORITY FOR LUMP-SUM PAYMENTS. In lieu of any annuity otherwise payable under this subtitle, the state board by rule may provide for a lump-sum payment if the board determines that a lump-sum payment is cost-efficient or is necessary for the pension system to remain actuarially sound.

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

Sec. 864.015. CURRENT PLAN DESIGN. Notwithstanding any other provision of this chapter, the state board by rule may maintain the benefit structure in effect on August 31, 2005, regardless of whether the pension system is actuarially sound.

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

Sec. 864.016. CLAIM AND APPEAL PROCEDURE. (a) A claim for benefits must be filed with the local board. On receiving a claim, the local board shall hold a hearing to decide the claim. The local board shall send a written copy of its decision to the claimant and the commissioner.

(b) A person aggrieved by a decision of a local board relating to eligibility for or the amount of benefits under this subtitle may appeal the decision to the commissioner.

(c) An appeal under this section is begun by delivering a notice of appeal to the presiding officer or secretary of the local board that made the decision. The notice must be delivered not later than the 20th day after the date of the decision and contain a brief description of the reasons for the appeal. The aggrieved person must file a copy of the notice with the commissioner.

(d) An appeal under this section is held in Austin and is a contested case under Chapter 2001, conducted as a de novo hearing by the State Office of Administrative Hearings.

(e) After a hearing under Subsection (d), the commissioner shall decide each appeal from a local board decision, issue a written opinion, and notify the local board and the claimant if the commissioner overrules the local board's decision.

(f) A person aggrieved by a decision of the commissioner under this section may appeal the decision to the state board. The state board shall decide each appeal based on the hearing record.

(g) A decision of the state board may not be appealed to a court or be subject to any other legal process.

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