

GOVERNMENT CODE  
CHAPTER 865. ADMINISTRATION

Sec. 865.001. COMPOSITION OF STATE BOARD. (a) The state board of the pension system is composed of nine members appointed by the governor for staggered terms of six years, with the terms of three trustees expiring on September 1 of each odd-numbered year.

(b) Six trustees must be active members of the pension system, one of whom must represent emergency medical services personnel.

(c) In appointing the six trustees under Subsection (b), the governor shall select from a list of three to five nominees submitted by the State Firemen's and Fire Marshals' Association of Texas for each vacancy. The governor may reject a list submitted under this subsection and request a new list containing different nominees.

(d) Three trustees must be persons who have experience in the fields of finance, securities investment, or pension administration.

(e) Appointments to the state board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointee.

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

Sec. 865.002. INELIGIBILITY OF CERTAIN EMPLOYEES FOR STATE BOARD. (a) A person is not eligible for appointment to the state board if the person or the person's spouse is employed by or participates in the management of a business entity or other organization regulated by or receiving funds from the state board or the fund.

(b) A person may not serve as a trustee of the state board or act as the general counsel to the state board if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business or an association related to the operation of the state board.

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

Sec. 865.003. COMPENSATION; EXPENSES. Trustees of the state board serve without compensation but may be reimbursed for actual and necessary expenses incurred in performing state board functions.

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

Sec. 865.004. VOTING. (a) Each trustee of the state board is entitled to one vote. Except as provided by Subsection (b), at any meeting of the state board, a vote by a majority of the trustees present is necessary for a decision by the trustees.

(b) The concurrence of a majority of the members of the state board is required for a vote regarding:

(1) eligibility for service retirement described by Section 864.001;

(2) the computation of a service retirement annuity described by Section 864.002;

(3) a cost-of-living increase described by Section 864.013; or

(4) a lump-sum payment adopted under Section 864.014.

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

Sec. 865.005. GROUNDS FOR REMOVAL OF TRUSTEES. (a) It is a ground for removal from the state board that a trustee:

(1) does not have at the time of appointment the qualifications required by Section 865.001;

(2) does not maintain during service on the state board the qualifications required by Section 865.001;

(3) violates a prohibition established by Section 865.002;

(4) cannot discharge the person's duties for a substantial part of the term for which the person is appointed because of illness or disability; or

(5) is absent from more than half of the regularly scheduled state board meetings that the trustee is eligible to attend during a calendar year unless the absence is excused by a majority vote of the state board.

(b) The validity of an action of the state board is not affected by the fact that it is taken when a ground for removal of a trustee exists.

(c) If the commissioner has knowledge that a potential ground for removal exists, the commissioner shall notify the presiding officer of the state board of the ground. The presiding officer shall then notify the governor that a potential ground for

removal exists.

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

Sec. 865.006. GENERAL DUTIES OF STATE BOARD. (a) The state board shall employ a certified public accountant, an actuary, and an investment consultant for the fund and may acquire computer, custodial, or investment management services for the fund. The costs of accounting, actuarial, investment consulting, computer, custodial, or investment management services and other administrative expenses may be paid from income earned by investment of the fund. No portion of the corpus or income of the fund may be used for purposes other than the benefit of members, retired emergency services personnel, and their beneficiaries.

(b) The state board shall adopt rules necessary for the administration of the fund. The state board shall adopt rules to provide a proration of the requirements for qualified service for a member who performs service for only a portion of a calendar year and may provide by rule for the manner in which member attendance or training hours are to be computed.

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

Sec. 865.007. ADMINISTERING SYSTEM ASSETS. (a) The state board shall administer all assets of the pension system. The state board is the trustee of the pension system's assets.

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

(c) The state board or the commissioner may accept on behalf of the pension system gifts of money or other property from any public or private source.

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

Sec. 865.008. INVESTMENT OF ASSETS. (a) If a surplus exists in the fund over the amount necessary to pay benefits due for a reasonable period of time, the state board shall invest the surplus.

(b) The assets of the pension system shall be invested and reinvested in accordance with Section 67, Article XVI, Texas Constitution. A determination of whether the state board has exercised prudence with respect to an investment decision must be made, taking into consideration the investment of all assets of the trust over which the state board has management and control rather than considering the prudence of a single investment.

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

Sec. 865.009. TRUST FUND. The Texas emergency services retirement fund is a trust fund established with the comptroller.

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

Sec. 865.010. COMMISSIONER'S DUTIES. (a) The commissioner shall oversee the distribution of all benefits.

(b) The commissioner shall collect the revenues for the fund from the governing bodies of participating departments.

(c) The commissioner may request and administer, in an emergency, state funds in addition to those required by this subtitle and appropriated by the legislature.

(d) The commissioner is responsible for recovering any fraudulently acquired benefits. If it appears that fraud has occurred, the commissioner shall notify the appropriate local board and the claimant and hold a hearing. If after the hearing the commissioner determines that benefits have been or are being fraudulently acquired, the commissioner shall seek action in a court.

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

Sec. 865.011. RECORDS AND REPORTS. (a) The commissioner may at any reasonable time examine the records and accounts of local boards.

(b) The commissioner shall require in a timely manner periodic reports from the local boards and shall prepare necessary forms for use by local boards.

(c) The commissioner shall prepare an annual report on the activity and status of the fund and submit the report to the governor, the lieutenant governor, and the speaker of the house of representatives.

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

Sec. 865.012. LOCAL BOARD. (a) A local board is composed of:  
(1) one trustee selected by the governing body of the political subdivision of which a participating department is a part;

(2) three trustees who are active members representing a participating department chosen by a majority of the emergency services personnel in the department who are eligible to participate in the pension system; and

(3) two trustees who are representatives of the political subdivision who are chosen by the other members of the local board.

(b) Trustees of a local board serve staggered two-year terms. At the first meeting of a local board, the trustees shall draw lots to determine the length of the term to be served, with the terms of two trustees to be two years and the terms of two trustees to be one year. The first appointments of trustees appointed by other members of the local board are to be one trustee for a two-year term and one trustee for a one-year term.

(c) A local board shall hold not fewer than four meetings a year under Chapter 551.

(d) A vacancy on a local board is filled for the remainder of the unexpired term by the procedure by which the position was originally filled.

(e) A local board shall elect a presiding officer from the trustees at its first meeting.

(f) At any meeting of a local board, a vote by a majority of the trustees present is necessary for a decision by the trustees.

(g) A trustee of a local board may not receive compensation for service as a trustee but may be reimbursed by the governing body of a participating department for actual and necessary expenses incurred in performing local board functions.

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

Sec. 865.013. MONITORING OF CONTRIBUTION SUBMISSION. A local board shall monitor the timely submission of required contributions to the commissioner.

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

Sec. 865.014. LOCAL CONTRIBUTIONS. (a) Each governing body of a political subdivision of which a participating department is a part shall contribute for each member for each month of service beginning on the date that the member enters the pension system at a rate determined in accordance with Subsection (b) and may make additional contributions as determined by the political subdivision. If the participating department is located in more than one political subdivision, the governing bodies of the political subdivisions shall contribute equally for each member for each month of service.

(b) The state board by rule shall determine the minimum, and may determine a maximum, contribution for each member of a participating department for each month of qualified service at a rate the state board determines necessary, after consultation with the actuary, to make the pension system actuarially sound.

(c) Contributions required as provided by this section shall be paid at the times and in the manner that the state board prescribes by rule. Contributions required by this section shall be submitted by electronic funds transfer unless the commissioner grants an exception based on the difficulty of a participating department's use of that payment method. Contributions that are not paid within the time required by the state board accrue interest at the most recent assumed actuarial rate of return on investments of the fund.

(d) The state board may by rule require a monthly contribution from political subdivisions that do not participate in the pension system but whose employees or former employees are members or retirees of the pension system in an amount necessary to pay the expenses of administering benefits for those persons.

(e) The attorney general may file suit to collect unpaid accrued interest. Interest recovered shall be deposited in the fund.

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

Sec. 865.015. STATE CONTRIBUTIONS. The state shall contribute the amount necessary to make the pension system actuarially sound each year, except that the state's contribution may not exceed one-third of the total of all contributions by governing bodies in a particular year.

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

Sec. 865.016. ADMINISTRATIVE PENALTY. (a) The state board may impose an administrative penalty on a local board that fails to file a required report in a timely manner.

(b) The amount of the penalty may not exceed \$5,000. The

amount shall be based on:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter a future violation;
- (4) efforts to correct the violation; and
- (5) any other matter that justice may require.

(c) The state board may adopt rules for determining the amount of a penalty.

(d) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the state board to contest the affidavit as provided by those rules.

(e) The attorney general may file suit to collect the penalty. Penalties recovered will be deposited in the fund.

(f) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001.

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

Sec. 865.017. INTERRUPTION OF PAYMENTS. (a) The pension system shall withhold payment of a monthly retirement annuity if a participating department attempts to provide information to the commissioner relating to continued eligibility to receive the payments and the recipient fails to cooperate or provide the requested information. The state board may adopt rules to enforce this subsection.

(b) The pension system may not begin service or disability retirement annuity or death benefit payments based on the service of a person whose local board is not current in its filing of a required periodic report.

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

Sec. 865.018. CERTIFICATION OF FUND. (a) In this section, "qualified actuary" means a fellow of the Society of Actuaries or a member of the American Academy of Actuaries who has at least five years of experience with public retirement systems.

(b) The commissioner and the state board shall certify the actuarial and financial soundness of the fund every two years with the assistance of a qualified actuary.

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

Sec. 865.019. CONFIDENTIALITY OF INFORMATION ABOUT MEMBERS, ANNUITANTS, AND BENEFICIARIES. (a) Information contained in records that are in the custody of the pension system concerning an individual member, annuitant, or beneficiary is confidential under Section 552.101 and may not be disclosed in a form identifiable with a specific individual unless:

(1) the information is disclosed to:

(A) the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the commissioner determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual after the commissioner determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the pension system;

(C) a governmental official or employee after the commissioner determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or

(D) a person authorized by the individual in writing to receive the information; or

(2) the information is disclosed under a subpoena and the commissioner determines that the individual will have a reasonable opportunity to contest the subpoena.

(b) This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the pension system.

(c) The commissioner may designate other employees of the pension system to make the necessary determinations under Subsection (a).

(d) A determination and disclosure under Subsection (a) may

be made without notice to the individual member, annuitant, or beneficiary.  
Added by Acts 2005, 79th Leg., ch. 803, Sec. 1, eff. Sept. 1, 2005.