

## CHAPTER 57

## S.B. No. 593

## AN ACT

relating to participation and credit in, contributions to, and benefits and administration of the Texas Municipal Retirement System.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Subdivision (15), Section 851.001, Government Code, is amended to read as follows:

(15) "Amortization period" means, as to a particular municipality, the time ending with the *later* [latest] of:

(A) the expiration of 25 years after the effective date of the municipality's participation in the retirement system[, ~~after the effective date of the most recent annuity increases allowed by the municipality under Section 854.203, or after the effective date of the most recent updated service credits allowed by the municipality under Section 853.401~~]; or

(B) the expiration of 25 [20] years after the *most recent actuarial valuation date for the municipality* [date the municipality allowed any special prior service credits or antecedent service credits].

SECTION 2. Subsection (a), Section 852.006, Government Code, is amended to read as follows:

(a) Except as provided by this section, a municipality may not terminate participation in the retirement system [~~or in the supplemental disability benefits fund~~] if the municipality has employees who are members of the system [~~or who participate in the fund~~], but the municipality may elect to discontinue the participation in the system [~~or the fund~~] of persons employed or reemployed after the date of an election to discontinue.

SECTION 3. Subchapter A, Chapter 852, Government Code, is amended by adding Section 852.007 to read as follows:

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

SECTION 4. Section 852.103, Government Code, is amended to read as follows:

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

*(b) If a person to whom a withdrawal would be paid under this section elects to have all or a portion of the accumulated contributions paid directly to an eligible retirement plan and specifies the eligible retirement plan to which the contributions are to be paid, on forms approved for that purpose by the board of trustees, the retirement system shall make the payment in the form of a direct trustee-to-trustee transfer but is under no obligation to determine whether or not the other plan in fact is an eligible retirement plan for that purpose.*

SECTION 5. Subsections (a) and (c), Section 853.305, Government Code, are amended to read as follows:

(a) The governing body of a participating municipality by ordinance may authorize the granting of restricted prior service credit to an employee who is a member of the retirement system for service previously performed as an employee of any incorporated city or town in the United States or of any council of governments in this state and for which the person has not otherwise received credited service in this system, *including combined service credit under Chapter 803.*

(c) A member seeking to establish restricted prior service credit under this section must obtain from the clerk or secretary of the city or town, *or from the similar official of a council of governments,* for which the previous service was performed a detailed statement of the service, verified by that official, and file the statement with the clerk or secretary of the participating municipality by which the member is employed.

SECTION 6. The section heading to Section 853.305, Government Code, is amended to read as follows:

Sec. 853.305. CREDIT FOR SERVICE WITH NONPARTICIPATING MUNICIPALITY OR WITH COUNCIL OF GOVERNMENTS.

SECTION 7. Subsections (a), (d), and (e), Section 853.401, Government Code, are amended to read as follows:

(a) Except as provided by Subsection (b), the governing body of a participating municipality by ordinance may authorize the crediting in the retirement system of updated service credits for service performed for the municipality by members. An updated service credit authorized under this section replaces any updated service credit *or*[,] prior service credit[, special prior service credit, or antecedent service credit] previously authorized for part of the same service.

(d) ~~[An ordinance under this section also must require, beginning on the effective date of the updated service credits, that a member's monthly contributions for current service be based on the member's total monthly compensation from the municipality, if the requirement is not already in effect for employees of the municipality.~~

~~[(e)]~~ A governing body that adopts an ordinance under this section shall send it to the retirement system, and the system must receive it before the effective date of the updated service credits authorized in the ordinance.

SECTION 8. Subsection (d), Section 853.402, Government Code, is amended to read as follows:

(d) The updated service credit of a member is an amount equal to the greatest of the following:

(1) the percentage determined under Section 853.401(c), times the member's base updated service credit; or

(2) any updated service credit previously authorized by the municipality and in effect for the member, accumulated at interest as provided by Subsection (f) from the date it took effect to the date prescribed by Subsection (e); or

(3) ~~[the sum of any] prior service credit[, special prior service credit, and antecedent service credit] previously authorized by the municipality and in effect for the member, accumulated at interest as provided by Subsection (f) from the date the credit [dates the credits] took effect to the date prescribed by Subsection (e).~~

SECTION 9. Section 854.003, Government Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a) *Except as provided by Subsections (b) and (d), the [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.*

(d) *If a person who has attained age 70-1/2 terminates covered employment without applying for retirement, the retirement system shall attempt to notify that person in writing and advise the person that the person is required to retire. If, before the 91st day after the date the retirement system sends the notice, the person has not filed an application with the board for retirement, the person is considered to have retired on the last day of the month in which the person terminated employment with all participating municipalities and:*

(1) *to have elected to receive an annuity under Section 854.103, if the person did not have a spouse on the date of employment termination; or*

(2) *if the person had a spouse on the date of employment termination, to have elected to receive an annuity under Section 854.104(c)(1) and to have designated the person's spouse as the beneficiary under the annuity.*

SECTION 10. Section 854.006, Government Code, is amended by amending Subsection (c) and adding Subsections (d) and (e) to read as follows:

(c) Any selection and designation of beneficiary under Subsection (a) or (b) [~~this section~~] 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 Option 1, 2, or 5A, as defined by Section 123.3, Title 34, Texas Administrative Code, 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 an Option 2 benefit and may not exceed 66-2/3 percent of an Option 5A benefit.*

(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.*

SECTION 11. The section heading to Section 854.006, Government Code, is amended to read as follows:

Sec. 854.006. **CHANGE OF BENEFICIARY OR DIVISION OF BENEFIT FOR CERTAIN PERSONS RECEIVING MONTHLY BENEFITS [OF GUARANTEED TERM ANNUITY].**

SECTION 12. Subchapter A, Chapter 854, Government Code, is amended by adding Section 854.007 to read as follows:

Sec. 854.007. **LIMITATION ON PAYMENT OF BENEFITS.** (a) *In this section:*

(1) *"Annual benefit" means the total of all annuity payments by the retirement system to an annuitant during a calendar year, including any distributive benefit payments.*

(2) "Compensation" has the meaning assigned by Section 415, Internal Revenue Code, and the regulations adopted under that section, instead of the meaning assigned by Section 851.001.

(3) "Highest average annual compensation" means the average compensation for the three consecutive calendar years of service that produces the highest average.

(4) "Internal Revenue Code" means the Internal Revenue Code of 1986 (Title 26, United States Code).

(b) If the amount of any benefit payment under this subtitle would exceed the limitations provided by this section, the retirement system shall reduce the amount of the benefit in accordance with this section.

(c) Except as otherwise provided by this section, a benefit is adjusted to an actuarially equivalent straight life annuity for the purpose of determining limitations under this section. An actuarial adjustment to a benefit is not required for the value of a qualified joint and survivor annuity and the value of postretirement cost-of-living increases made in accordance with Section 415, Internal Revenue Code.

(d) Except as provided by Subsections (f), (h), and (i), an annual benefit payable by the retirement system may not exceed the lesser of:

(1) \$115,641, or another amount as adjusted each January 1 by the secretary of the treasury under Section 415 of the Internal Revenue Code for cost-of-living increases after January 1, 1993; or

(2) 100 percent of the former member's highest average annual compensation.

(e) If payment of a benefit begins before a member attains age 62, the dollar limitation is the actuarial equivalent of an annual benefit beginning at age 62 as described by Subsection (d)(1) for a person at age 62. A reduction under this subsection may not reduce the dollar limitation below \$75,000 if the benefit begins at or after age 55 or, if the benefit begins before age 55, the actuarial equivalent of a \$75,000 limitation beginning at age 55.

(f) If payment of a benefit begins after the member attains age 65, the dollar limitation is the actuarial equivalent of an annual benefit beginning at age 65 as described by Subsection (d)(1).

(g) To determine actuarial equivalence, the interest rate assumption under Subsection (c) or (e) is the greater of the rate specified by Section 855.316(a) or five percent, and the interest rate assumption under Subsection (f) is the lesser of those rates.

(h) The limitations provided by Subsections (d), (e), and (f) do not apply to any portion of an annual benefit payable by the retirement system that is paid from the balance in the member's individual account in the employees saving fund as of December 31, 1983, or from interest credited to the member's account after December 31, 1983, as a result of deposits before that date.

(i) This section may not be applied to reduce the annual benefit payable to any person who retired under the retirement system before January 1, 1994, or to reduce the vested accrued benefit as of December 31, 1993, of any person who was a member of the retirement system on that date.

(j) If the Internal Revenue Code is amended in such a manner that limitations similar to those provided by this section are not required of governmental retirement plans to constitute qualified plans, the board of trustees may by rule eliminate all or any portion of the limitations provided by this section.

(k) An employer may not provide employee retirement or deferred benefits to the extent that, when considered together with the benefits authorized by this subtitle as required by the Internal Revenue Code, would result in the failure of the retirement system's plan to meet federal qualification standards as applied to governmental retirement plans.

SECTION 13. Section 854.104, Government Code, is amended by adding Subsection (f) to read as follows:

(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)).

SECTION 14. Subsection (b), Section 854.408, Government Code, is amended to read as follows:

(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 [the] 12 consecutive months during the three calendar years immediately preceding the year in which the retiree retired for disability [disability retirement];* or

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

SECTION 15. Section 854.604, Government Code, is amended to read as follows:

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 \$5,000 [~~\$2,500~~].

SECTION 16. Section 855.008, Government Code, is amended to read as follows:

Sec. 855.008. COMPENSATION; EXPENSES. Each trustee serves without compensation but is entitled to:

(1) reimbursement for reasonable traveling expenses incurred in attending board meetings *and authorized committee and association meetings or incurred in the performance of other official board duties;* and

(2) payment of an amount equal to any compensation withheld by the trustee's employing municipality because of the trustee's attendance at board meetings.

SECTION 17. Section 855.109, Government Code, is amended to read as follows:

Sec. 855.109. DEPOSITORIES. The board of trustees shall designate financial institutions to qualify and serve the retirement system as depositories [~~in accordance with Subchapter C of Chapter 404~~].

SECTION 18. Section 855.407, Government Code, is amended by amending Subsections (c) and (e) and adding Subsection (f) to read as follows:

(c) A reduction in the member contribution rate for employees of a participating municipality *or in the municipality's matching rate* does not reduce the maximum rate of contribution of the municipality.

(e) If the combined rates of a municipality's normal contributions and prior service contributions exceed the rate prescribed by Subsection (a), the rate for prior service contributions shall be reduced to the rate that equals the difference between the maximum rate prescribed by Subsection (a) *and under Section 855.501, if applicable,* and the normal contribution rate for the municipality.

(f) *The governing body of a municipality that is determined by the actuary to be unable to finance all obligations charged against its account in the municipality accumulation fund within 25 years after its most recent actuarial valuation date may elect to have the municipality contribute to its account in the municipality accumulation fund at a rate that does not exceed in any year the sum of two percent and the maximum contribution rate specified by Subsection (a) and by Section 855.501, if applicable, and that the actuary annually may determine as necessary to finance the existing levels of benefits before the expiration of 25 years after the most recent actuarial valuation date.*

SECTION 19. This Act takes effect January 1, 1994.

SECTION 20. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the

constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on March 31, 1993, by a viva-voce vote; passed the House on April 15, 1993, by a non-record vote.

Approved April 29, 1993.

Effective Jan. 1, 1994.