

CHAPTER 183

S.B. No. 505

AN ACT

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

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

SECTION 1. Subdivision (6), Section 61.001, Title 110B, Revised Statutes, as amended, is amended to read as follows:

(6) "Compensation" means the sum of payments made to an employee for performance of personal services, as certified on a written payroll of an employing department, that does not exceed any rate of compensation fixed by a governing body as the maximum salary on which member contributions to the retirement system may be based, and includes amounts by which payment for earnings is reduced by reason of:

(A) employer pick-up of employee contributions to the retirement system under Section 65.402(j) of this subtitle;

(B) deferral of compensation under benefit plans adopted by the employer pursuant to Section 401(k) or Section 457 of the United States Internal Revenue Code of 1986 (26 U.S.C. Sections 401(k), 457);

(C) cost of benefits furnished under qualified cafeteria plans adopted by the employer pursuant to Section 125 of the United States Internal Revenue Code of 1986 (26 U.S.C. Section 125);

(D) cost of tax-sheltered annuities acquired for the employee under Section 403(b) of the United States Internal Revenue Code of 1986 (26 U.S.C. Section 403(b)); and

(E) deductions for Federal Insurance Contributions Act taxes, federal income taxes, or other obligations of the employee.

SECTION 2. Section 62.003, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 62.003. SUPPLEMENTAL DISABILITY BENEFITS FUND. (a) *A municipality may not elect to participate in the supplemental disability benefits fund after the effective date of the 1987 amendment of this section.* [~~A municipality that is participating in the retirement system may elect for all of its participating departments to participate in the supplemental disability benefits fund.~~]

(b) *Each municipality that elected to participate in the supplemental disability benefits fund before the effective date of the 1987 amendment of this section ceases participation in that fund at midnight on December 31, 1987, and its employees shall cease to be covered for supplemental disability benefits as to any injuries subsequently sustained. Each municipality participating in the supplemental disability fund on December 31, 1987, is entitled to participate in any distributions and transfers authorized by the board of trustees pursuant to Section 65.313 of this subtitle.* [~~An election under this section may be made in the manner provided by Section 62.001 or 62.002 of this subtitle.~~]

SECTION 3. Section 62.101, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 62.101. GENERAL MEMBERSHIP REQUIREMENT. (a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system if:

(1) on the date a municipal department's participation in the retirement system becomes effective, the person is an employee of the department;

(2) after *August 31, 1987* [~~the date a municipal department's participation becomes effective~~], the person becomes an employee of a *participating* [~~the~~] department [~~and is less than 55 years old~~]; or

(3) the person *on August 31, 1987*, is an employee of a participating department *but is not a member because at the time of employment the person's age exceeded the maximum age for becoming a member* [~~that has an effective date of participation in the retirement system after August 26, 1979, and the person is less than 60 years old~~]; or

[(4) ~~the person was an employee before, but not on, the date a municipal department's participation in the system became effective, the person's previous service to the municipality is equal to or greater than the difference between the person's age and 55, and the person is reemployed by the municipality.~~]

(b) Any person to whom Subsection (a)(1) of this section applies becomes a member of the retirement system on the date the department's participation becomes effective, and any person to whom Subsection (a)(2) [~~or (a)(4)~~] of this section applies becomes a member of the retirement system on the date the person is employed [~~or reemployed~~]. A person to whom Subsection (a)(3) of this section applies becomes a member of the retirement system on *September 1, 1987* [~~the date the department's participation becomes effective or the date the person is employed, whichever is later~~].

SECTION 4. Section 62.105, Title 110B, Revised Statutes, as amended, is amended to read as follows:

Sec. 62.105. OPTIONAL PRIOR SERVICE CREDITS [~~MEMBERSHIP REQUIREMENT~~]. (a) The governing body of a municipality that has an effective date of participation in the retirement system *before September 1, 1987, and that allows service retirement of a member at age 60 or older with at least 10 years of credited service may by ordinance allow prior service credit for service performed for the municipality before September 1, 1987, by any person who at the time of performing the service was not a member because at the time of employment the person's age exceeded the maximum age for becoming a member* [~~after December 31, 1975, or that previously has authorized updated service credits, by ordinance may require that each employee of each participating department of the municipality become a member of the retirement system~~]

~~if the employee is less than 60 years old or was less than 60 years old at the time of employment but did not become a member at that time because the person exceeded the maximum age for membership].~~

(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* ~~[ordinance includes the provisions specified in Section 64.202 of this subtitle and the actuary makes the determination required by Section 64.202(d) of this subtitle.~~

~~[(c) 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 Section 64.202(d) of this subtitle. The effective date of membership for a person who becomes a member under this section is the effective date of the ordinance or the date the person is employed by a participating department of the municipality that adopted the ordinance, whichever is later].~~

SECTION 5. Section 62.108, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 62.108. RESUMPTION OF SERVICE BY RETIREE. (a) *Except as provided by this section, a retiree is not entitled to be paid a service retirement benefit for any month in which the retiree is regularly employed by any participating municipality. If a retiree is paid a retirement benefit for any month during which the retiree is ineligible as provided by this section, the benefit otherwise payable to the retiree for subsequent months shall be suspended for an equivalent period. Loss of benefits pursuant to this section does not extend any period of guaranteed benefits elected pursuant to any provision of this subtitle.*

(b) *For purposes of this section, a retiree is not considered regularly employed by a participating municipality if the retiree is employed for 700 hours or less during any calendar year.*

(c) *Each participating municipality that employs a retiree shall report the fact and terms of employment and payment of the retiree on a form prescribed by the board.*

(d) *A person who has retired under this subtitle because of service may not rejoin the retirement system [or resume or continue service with a participating municipality].*

SECTION 6. Subsection (a), Section 63.102, Title 110B, Revised Statutes, as amended, is amended to read as follows:

(a) A member is eligible to receive credit in the retirement system for prior service if the member:

(1) became a member as an employee of a department of a municipality on the effective date of the department's participation in the retirement system;

(2) became a member as an employee of a department of a municipality before the fifth anniversary of the effective date of the department's participation and continued as an employee of a participating department of the municipality for at least five consecutive years after reemployment; or

(3) *became a member September 1, 1987, by virtue of Sections 62.101(a)(3) and (b) of this subtitle and has service before that date with a municipality that has adopted the provisions of Section 62.105 [was less than 55 years old on the later of January 1, 1979, or the date of employment, and became a member on August 27, 1979, by being an employee of a participating department of a municipality that adopts the provisions of Sections 62.105 and 64.202 of this subtitle; or*

~~[(4) became a member under Section 62.105 of this subtitle].~~

SECTION 7. Section 64.102, Title 110B, Revised Statutes, as amended, is amended by amending Subsections (a), (b), and (c) and adding Subsection (f) to read as follows:

(a) A member is eligible~~[beginning on the first anniversary of the effective date of the person's membership,]~~ 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~~[beginning on the first anniversary of the effective date of the person's membership,]~~ 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 64.201 or 64.202 of this subtitle.

(c) A member is eligible~~[beginning on the first anniversary of the effective date of the person's membership,]~~ 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 64.202 of this subtitle.

(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 64.202(f) of this subtitle.

SECTION 8. Section 64.202, Title 110B, Revised Statutes, as amended, is amended by amending Subsection (b) and adding Subsection (f) to read as follows:

(b) The governing body may authorize a member~~[beginning on the first anniversary of the effective date of the person's membership,]~~ 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.

(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.

SECTION 9. Subchapter C, Chapter 64, Title 110B, Revised Statutes, as amended, is amended by adding Section 64.204 to read as follows:

Sec. 64.204. OPTIONAL BENEFIT FOR SURVIVING SPOUSE OF VESTED EMPLOYEE. (a) This section applies to all 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 if 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.

(b) If a member who has sufficient credited service performed for municipalities that have adopted or are subject to this section to entitle the member to withdraw from service, to leave on deposit with the retirement system the member's accumulated contributions and, on attainment of an age prescribed by this subtitle, to retire with a service retirement benefit dies before becoming eligible for service retirement and leaves surviving a lawful spouse whom the member has designated as beneficiary

entitled to payment of the member's accumulated contributions in the event of the member's death before retirement, the surviving spouse may by written notice filed with the board elect to leave the accumulated deposits with the retirement system subject to the terms of this section. If the accumulated deposits have not been withdrawn before such time as the member, if living, would have become entitled to service retirement, the surviving spouse may elect to receive, in lieu of the accumulated deposits, an annuity payable monthly during the lifetime of the surviving spouse in the amount that would have been payable to the surviving spouse had the member lived and retired at that date under an optional annuity described by Section 64.104(c)(1) of this subtitle.

(c) At any time before payment of the first monthly benefit of an annuity, a surviving spouse to whom this section applies may, after filing a written application with the board of trustees, receive payment of the accumulated contributions credited to the account of the member in lieu of any benefits otherwise payable under this section. If the surviving spouse dies before payment of the first monthly benefit of an annuity allowed under this section, the accumulated contributions credited to the account of the member shall be paid to the estate of the spouse.

SECTION 10. Section 64.302, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 64.302. **ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY.** (a) A ~~[Except as provided by Subsection (c) of this section, 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 64.303(b)(1) of this subtitle.

(b) A ~~[Except as provided by Subsection (c) of this section, a]~~ member who has at least 10 years of credited service in the retirement system but is not eligible for a service retirement annuity is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 64.303(b)(2) of this subtitle.

~~[(c) A member is not eligible to retire for disability before the first anniversary of the effective date of the person's membership.]~~

SECTION 11. Section 64.401, Title 110B, Revised Statutes, is amended to read as follows:

Sec. 64.401. **ELIGIBILITY FOR SUPPLEMENTAL DISABILITY RETIREMENT ANNUITY.** (a) A member as an employee of a municipal department included, as provided by Section 62.003 of this subtitle, 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 64.302 of this subtitle; ~~[and]~~

(2) is the subject of a certification and finding under Section 64.402 of this subtitle, as well as a certification under the applicable finding provided by Section 64.303 of this subtitle; *and*

(3) *files 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.*

SECTION 12. Subsection (b), Section 64.402, Title 110B, Revised Statutes, is amended to read as follows:

(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.

SECTION 13. Subchapter E, Chapter 64, Title 110B, Revised Statutes, as amended, is amended by adding Sections 64.405, 64.406, 64.407, 64.408, 64.409, and 64.410 to read as follows:

Sec. 64.405. OPTIONAL OCCUPATIONAL DISABILITY BENEFITS PROGRAM.

(a) *This section and Sections 64.406, 64.407, 64.408, 64.409, and 64.410 of this subtitle, 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 64.406, 64.407, 64.408, 64.409, and 64.410 in lieu of the disability program provided for under Subchapter D of this chapter.*

(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.*

Sec. 64.406. 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 64.301 of this subtitle.

Sec. 64.407. 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 64.408 of this subtitle.*

Sec. 64.408. 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, payable monthly during the lifetime of the retiree, but reduced as to any month or series of months as provided in this section. A prior service annuity is subject to reduction under Section 65.308(f) of this subtitle.

(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 which 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 average compensation on which the retiree made membership contributions to the retirement system during the 12 months preceding disability retirement; 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 65.311 of this subtitle for the calendar year, but any amount by which the annuity is increased pursuant to Section 64.203 of this subtitle 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) of this section, the retirement system shall reduce subsequent monthly payments successively until the amounts of the overpayments have been offset.

Sec. 64.409. 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.

Sec. 64.410. OPTIONAL OCCUPATIONAL DISABILITY RETIREMENT ANNUITY. (a) Instead of the standard occupational disability retirement annuity payable under Section 64.408 of this subtitle, 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) of this section.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide 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 is payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

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

(d) An option under Subsection (c) of this section applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 65.308(f) of this subtitle.

(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 64.408 of this subtitle, 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.

SECTION 14. Section 65.313, Title 110B, Revised Statutes, as amended, is amended to read as follows:

Sec. 65.313. SUPPLEMENTAL DISABILITY BENEFITS FUND. (a) The retirement system shall deposit in the supplemental disability benefits fund contributions to provide supplemental disability benefits in accordance with Section 65.408 of this subtitle. The retirement system may not establish separate accounts in the fund for municipalities participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental disability benefits only from money in the supplemental disability benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The beginning date of participation of each municipality participating in the supplemental disability benefits fund is that determined by the board of trustees. Participation terminates January 1, 1988 [The board of trustees shall determine the operative date of the fund].

(d) As soon as practicable after December 31, 1988, the actuary shall calculate the amount of reserves required to pay all annuities that are obligations of the supplemental disability benefits fund. If the board of trustees determines, on the basis of the calculations made by the actuary, that the money to the credit of the fund is materially in excess of the amount of reserves needed to assure payment of all annuities that are obligations of the fund, the board may direct that a portion of the excess shall be transferred from the supplemental disability benefits fund to the municipality accumulation fund and credited to the respective accounts of the participating municipalities in such proportions as the board of trustees determines to be the ratio of their respective contributions to the total of all contributions to the supplemental disability benefits fund. When all annuities payable from the supplemental disability benefits fund have been finally paid and discharged, the board of trustees shall direct that the money remaining in the supplemental disability benefits fund shall be transferred and credited to the accounts of the respective participating municipalities in the municipality accumulation fund in proportion to the same ratios of their contributions to the total of all contributions to the supplemental disability benefits fund. [The effective participation date of a municipality is:

(1) the operative date of the fund if the municipality elected to participate in the fund on or before the fund's operative date; or

(2) the first day of the second calendar month after the month in which the municipality notifies the board of its election to enter the fund.

[(e) The board of trustees shall notify each municipality of its effective participation date.]

SECTION 15. Subsection (a), Section 65.401, Title 110B, Revised Statutes, is amended to read as follows:

(a) Each municipality that has one or more departments participating in the retirement system by ordinance shall designate the rate of member contributions for employees of a participating department. The municipality shall elect a rate of three, five, *six*, or seven percent of the employees' compensation. Different departments of a municipality may have different rates of member contributions.

SECTION 16. Subsection (e), Section 65.402, Title 110B, Revised Statutes, is amended to read as follows:

(e) The treasurer or disbursing officer of each participating municipality shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll; and

(3) pay the deductions in cash to the board of trustees at the board's home office before the 16th day of the month following that for which the deductions are required to be made.

SECTION 17. Section 65.408, Title 110B, Revised Statutes, is repealed.

SECTION 18. Subchapter E, Chapter 65, Title 110B, Revised Statutes, as amended, is amended by adding Section 65.411 to read as follows:

Sec. 65.411. INTEREST ON LATE CONTRIBUTIONS. (a) A participating municipality that fails to remit before the 16th day of the month all contributions required by this subchapter to be made and remitted to the retirement system by that date shall pay to the retirement system, in addition to the contributions, interest on the past-due amounts at an annual rate that is the total of the rates of interest credited by the retirement system to accounts in the municipality accumulation fund for the preceding calendar year, plus two percent. The retirement system shall notify participating municipalities of the rate of interest that will be due on late payments.

(b) Payment is considered timely made if transmitted by first-class United States mail, postage prepaid, and postmarked not later than the 15th day of the month in which the payment is due.

SECTION 19. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately.

(b) Section 17 of this Act takes effect January 1, 1988.

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, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed the Senate on April 2, 1987, by the following vote: Yeas 31, Nays 0. Passed the House on May 14, 1987, by a non-record vote.

Approved May 26, 1987.

Effective Aug. 31, 1987, 90 days after date of adjournment, except § 17, effective Jan. 1, 1988.