

Effective: June 20, 2003

Art. 6243n. Municipal Retirement System in municipalities of 460,000 to 500,000

Scope

Sec. 1. A retirement system is established by this Act for employees of each municipality having a population of more than 600,000 and less than 700,000; provided, however, that once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right according to the terms of this Act and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population bracket as herein prescribed, and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population bracket.

Definitions

Sec. 2. The following words and phrases have the meanings assigned by this section unless a different meaning is plainly required by the context:

(1) "Accumulated deposits" means the amount standing to the credit of a member derived from the deposits required to be made by the member to the retirement system improved annually by interest credited at a rate determined by the retirement board from time to time upon the advice of the retirement board's actuary and credited as of December 31 to amounts standing to the credit of the member on January 1 of the same calendar year.

(2) "Actual retirement date" means the last day of the month during which a member retires.

(3) "Actuarial equivalent" means any benefit of equal present value when computed on the basis of actuarial tables adopted by the retirement board from time to time upon the advice of the retirement board's actuary. The actuarial tables adopted for this purpose shall be tables that are acceptable to the Internal Revenue Service and be clearly identified by resolution adopted by the retirement board.

(4) "Actuary" means the technical advisor of the retirement board regarding the operations which are based on mortality, service, and compensation experience.

(5) "Agency of the municipality" means any agency or instrumentality of the municipality or governmental or publicly owned legal entity created by the municipality, subsequent to the effective date of this Act, to perform or provide a public service or function and that employs at least one employee to provide services or accomplish its public purpose.

(6) "Approved medical leave of absence" means any absence authorized in writing by the member's employer for the purpose of enabling the member to obtain medical care or treatment or to recover from any sickness or injury.

(7) "Authorized leave of absence" means military leave of absence, including a period of not more than 90 days after the date of release from active military duty, or any other leave of absence during which a member is otherwise authorized by law to continue making contributions to the system. The term does not include an approved medical leave of absence.

(8) "Average final compensation" means the average monthly compensation, as defined and limited by Subdivision (12) of this section, less overtime, incentive, and terminal pay, plus, (i) amounts picked up by the employer pursuant to Section 10(e) of this Act, and (ii) amounts not otherwise included in the member's taxable income by reason of either an election under a "cafeteria" plan as described in Section 125 of the code or deferrals under a plan of deferred compensation within the scope of Section 457 of the code, to the extent not in excess of \$12,500 for persons who first become members after 1995 that is earned by a member during, as applicable:

(A) if the member has 120 months or more of membership service, the 36 months of membership service which yielded the highest average during the last 120 months of membership service;

(B) if the member has less than 120 months of membership service, but has at least 36 months of membership

service, then the average during the 36 months which yield the highest average; or

(C) if the member does not have 36 months of membership service, then the average during the member's months of membership service.

(9) "Beneficiary" means the member's designated beneficiary. If there is no effective beneficiary designation on the date of the member's death, or if the designated beneficiary predeceases the member (or dies as a result of the same event that caused the member's death and does not survive the member by 48 hours), the member's spouse or, if the member does not have a spouse, the member's estate shall be the beneficiary.

(10) "Board" means the boards of directors of an employer that is not a municipality as described in Section 1 of this Act.

(11) "Code" means the United States Internal Revenue Code of 1986 ([26 U.S.C. Section 1](#) et seq.) and its successors.

(12) "Compensation" means, with respect to any member, such member's wages, within the meaning of Section 3401(a) of the code (for purposes of income tax withholding at the source) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed (such as the exception for agricultural labor in Section 3401(a)(2) of the code). Compensation in excess of \$12,500 per month for any employee who first becomes a member in a year commencing after 1995 shall be disregarded. The \$12,500 limitation shall be adjusted for cost of living increases as provided under Section 401(a)(17) of the code.

(13) "Consumer price index" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States City Average, All Items) published monthly by the Bureau of Labor Statistics, United States Department of Labor, or its successor in function.

(14) "Creditable service" means the total of prior service, membership service, redeemed service, and service purchased under Section 6 of this Act.

(15) "Current service annuity" means a series of equal monthly payments payable for the member's life after retirement for membership service from funds of the retirement system equal to one-twelfth of the product of 2.7 percent or a higher percentage established by the retirement board under Section 10(g) of this Act of a member's average final compensation multiplied by the number of months of membership service.

(16) "Deposits" means the amounts required to be paid by members in accordance with the provisions of this Act.

(17) "Designated beneficiary" means any person, trust, or estate properly designated on a form provided by the retirement system by a member to receive benefits from the system in the event of the member's death. If the member is married, an individual other than the member's spouse may be the designated beneficiary only if the spouse consents to such designation in the form and manner prescribed by the retirement board.

(18) "Disability retirement" means the termination of employment of a member because of disability with a disability retirement allowance as provided in Section 8 of this Act.

(19) "Employer" means the municipality described in [Section 1](#) of this Act, the retirement board, or an agency of the municipality.

(20) "Fund" means the trust fund containing the aggregate of the assets of Fund No. 1 and Fund No. 2.

(21) "Fund No. 1" means the fund in which shall be kept all accumulated deposits of members who have not withdrawn from the system.

(22) "Fund No. 2" means the fund in which shall be kept all money contributed by the city on behalf of city employees, by an agency of the municipality on behalf of the agency's employees, and by the retirement board on behalf of retirement board employees, interest earned thereon, and all accumulations and earnings of the system.

(23) "Governing body" means the city council of the municipality described in [Section 1](#) and its successors as constituted from time to time.

(24) Repealed by Acts 1999, 76th Leg., ch. 834, § 14, eff. Oct. 1, 1999.

(25) "Investment consultant" means the person or entity that monitors the investment performance of the system and provides such other services as requested by the retirement board.

(26) "Investment manager" means the persons or entities that have the power to manage, acquire, or dispose of assets of the fund on behalf of the retirement system and that acknowledge fiduciary responsibility to the system in writing. An investment manager must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940, a bank, or an insurance company qualified to manage, acquire or dispose of assets under the laws of more than one state including this state that meets the requirements of [Section 802.204, Government Code](#).

(27) "Life annuity" means a series of equal monthly payments, payable after retirement for a member's life, consisting of a combination of prior service pension and current service annuity to which the member is entitled.

(28) "Life annuity (modified cash refund)" means a life annuity providing that, in the event of death of the retired member before that member has received payments under the life annuity totaling the amount of that member's accumulated deposits at the date of retirement, the excess of such accumulated deposits over the payments made shall be paid in one lump sum to the member's designated beneficiary.

(29) "Malfeasance" means willful misconduct or the knowingly improper performance of any act, duty, or responsibility under this Act, including non-performance, that interrupts, interferes with, or attempts to interfere with the administration, operation, and management of the retirement system or any person's duties under this Act.

(30) "Member" means any:

(A) regular full-time employee of an employer; and

(B) former regular full-time employee who has not withdrawn the member's accumulated deposits from the system.

In any case of doubt regarding the eligibility of any employee to become or remain a member of the retirement system, the decision of the retirement board is final.

(31) "Membership service" means the period of time on or after January 1, 1941, during which a person is or was employed as a regular full-time employee or is or was on an authorized leave of absence and who is eligible for participation in the system and pays into and keeps on deposit the amounts of money prescribed to be paid by the member into the system. The term includes redeemed membership service.

(32) "Normal retirement age" means:

(A) age 62; or

(B) 55 years of age with 20 years of creditable service.

(33) "Normal retirement date" means the earlier of the date a member attains a normal retirement age or the date on which the member has completed 25 years of creditable service or a lesser number of years of creditable service established by the retirement board under Section 10(g) of this Act.

(34) "Prior service" means service as an employee of the city rendered prior to January 1, 1941, for which a pension credit is allowable under prior law governing the retirement system of that city and includes redeemed prior service.

(35) "Prior service pension" means a series of equal monthly payments payable from funds of the retirement system for a member's life after retirement for prior service equal to one-twelfth of the product of 2.7 percent or a greater percentage established by the retirement board under Section 10(g) of this Act of the member's average monthly earnings during a period of five years preceding January 1, 1941, multiplied by the number of months of prior service. On retirement at an age other than normal retirement age, the monthly prior service pension herein prescribed shall be the actuarial equivalent thereof at the member's actual retirement date, based on the schedule or schedules of payments approved by the actuary and adopted by the retirement board and in effect on the member's actual retirement date.

(36) "Qualified domestic relations order" has the meaning assigned by [Section 804.001, Government Code](#), and its subsequent amendments.

(37) "Redeemed membership service" means membership service reinstated in accordance with Section 5(e) of this Act.

(38) "Redeemed prior service" means prior service reinstated in accordance with Section 5(e) of this Act.

(39) "Regular full-time employee" means an individual who is employed by the municipality, an agency of the municipality, or the retirement board who is not a commissioned civil service police officer or fire fighter, a fire or police cadet employed under civil service procedures, the mayor, or a member of the governing body; who serves in a position that is classified in the annual budget of an employer for employment for the full calendar year; and who works or is budgeted for 30 hours or more in a normal 40-hour work week. The term does not include an individual whose position is classified as seasonal or temporary by the employer, even if the individual works 30 hours or more in a normal 40-hour work week in which the individual is employed.

(40) "Retired member" means a person who because of creditable service or age is qualified to receive and who has retired and is eligible to continue receiving a retirement allowance as provided by this Act.

(41) "Retirement" means the termination of employment of a member after the member becomes entitled to receive a retirement allowance in accordance with the provisions of this Act.

(42) "Retirement allowance" means the life annuity (modified cash refund) to which a member may be entitled under this Act, including annuities payable on disability retirement.

(43) "Retirement board" means the board of trustees of the retirement and pensioning system herein created for the purpose of administering the retirement system.

(44) "Retirement system," "retirement and pensioning system," "pension system," or "system" means the retirement and pensioning system created by this Act for a municipality governed by this Act or a retirement system established under this Act.

(45) "Year of creditable service" means a 12-month period of creditable service determined in accordance with uniform and nondiscriminatory rules established by the retirement board.

Establishment and Applicability

Sec. 3. Subject to the authority granted the retirement board in Section 7(d) of this Act, members who retired, and the beneficiaries of members who died, prior to October 1, 1999, shall continue to receive the same retirement allowances or benefits they were entitled to receive prior to that date, together with any benefit increase authorized under this Act.

Administration

Sec. 4. (a) The retirement board of the retirement system is hereby vested the power and responsibility for the proper and effective general administration, management, and operation of the retirement system for the exclusive benefit of its present and future members and beneficiaries.

(b) The retirement board consists of 11 members as follows:

(1) place one: one member of the governing body, designated by the governing body;

(2) place two: the city manager of the municipality or the manager's designee;

(3) places three through five: three qualified voters of the city who have been city residents for the preceding five years and who are not employees, former employees, or officers of an employer;

(4) places six through nine: four active-contributory members elected by the active-contributory members; and

(5) places ten and eleven: two retired members elected by the retired members.

(c)(1) The place one retirement board member serves at the pleasure of the governing body and until the governing body redesignates the place one member, or until the member is no longer able to serve because of death, resignation, termination of position as a member of the governing body, or disability. The governing body shall appoint a person to fill a vacancy in place one not later than the 90th day after the first date of the vacancy.

(2) In December of every second even-numbered year, the governing body shall appoint, to place three, one person meeting the qualifications for place three. In December of every second odd-numbered year, the governing body shall appoint, to place four, one person meeting the qualifications for place four. In December of every second odd-numbered year, the retirement board shall appoint, to place five, one person meeting the qualifications for place five. Retirement board members holding places three through five each serve a four-year term beginning on January 1 of the year after their appointment, unless service is earlier terminated by the death, disability, resignation, or removal of that retirement board member or the retirement board member ceases to meet the qualifications of a citizen retirement board member as set forth in Section 4(b) of this Act. The governing body shall fill a vacancy in place three or four with a person meeting the qualifications for that place not later than the 90th day after the first date of the vacancy. If the governing body fails to appoint an eligible person to fill a vacancy in place three or four within the 90-day period, the retirement board may appoint a person meeting the qualifications for that place to fill the vacancy for the remainder of the unexpired term. The retirement board shall appoint a person meeting the qualifications for place five to fill a vacancy in place five for the remainder of the unexpired term.

(3) The places six through nine retirement board members each serve on the retirement board for a four-year term, unless service is earlier terminated by the death, resignation, termination of employment, disability, retirement, or removal of the retirement board member. The retirement board shall appoint an active-contributory member to fill a vacancy in each of places six through nine for the remainder of the unexpired term if the remainder of the unexpired term is 364 days or fewer. If the remainder of the unexpired term is 365 days or more, the vacancy shall be filled by the active-contributory members voting at a special election.

(4) The places ten and eleven retirement board members serve for a four-year term, unless that service is earlier terminated by the death, disability, resignation, or removal of the member. The retirement board shall appoint a retired member to fill a vacancy in place ten or eleven for the remainder of the unexpired term if the remainder of the unexpired term is 364 days or fewer. If the remainder of the unexpired term is 365 days or more, the vacancy shall be filled by the retired members voting at a special election.

(d) Members for places six through eleven shall be elected in accordance with Subsections (e)-(m) of this section.

(e) Only active-contributory members shall be eligible for election for places six through nine. Only retired members shall be eligible for election for places ten and eleven. Not more than one active-contributory member shall be eligible for election from any one department or office or similar organizational unit that is established in the annual budget of an employer and is not part of any department.

(f) Members for places six through nine shall be elected to four-year staggered terms with the terms of two of such retirement board members beginning January 1 of each even-numbered year.

(g) Members for places ten and eleven shall be elected to four-year staggered terms. One such retirement board member shall be elected at an election held in every other even-numbered year with the term of such retirement board member beginning on January 1 of the following odd-numbered year.

(h) No later than the first day of October of each odd-numbered year, the retirement board shall appoint a nominating and election committee consisting of five committee members and two alternates, all of whom are active-contributory members of the retirement system. The nominating and election committee shall make one or more nominations for each active-contributory member vacancy and shall act as election judges. The nominating and election committee shall determine and certify that each such nominee and each candidate announcing for election is an active-contributory member and prepare the ballot containing the names of all certified active-contributory member candidates.

(i) No later than the first day of October of every second even-numbered year, the retirement board shall appoint a nominating and election committee consisting of five committee members and five alternates, all of whom are retired members of the retirement system. The nominating and election committee shall make one or more nominations for the retired member vacancy and shall act as election judges. The nominating and election

committee shall determine and certify that each such nominee and each candidate announcing for election is a retired member and prepare the ballot containing the names of all certified retired member candidates.

(j) Each nominating and election committee shall publish a notice at least two weeks prior to the applicable election date, informing all active-contributory members or retired members, as applicable, of the names of the persons who have been certified as candidates.

(k) Elections for places six through nine shall be held in December of odd-numbered years. Elections for places 10 and 11 shall be held in December of every second even-numbered year. The candidates receiving the highest number of eligible votes shall be deemed elected. In case of a tie vote, selection shall be by lot drawn by an existing member of the retirement board at a meeting of the retirement board held after the election but before the first day of January of the year after the election.

(l) The applicable nominating and election committee shall canvass the returns, certify the results, and announce the official results of the election.

(m) The retirement board shall approve written procedures for the conduct of the election no later than August 1 of each year in which an election is held. The procedures may include comprehensive provisions prescribing the conduct of the election and early voting.

(n) Each member of the retirement board shall, within 30 days after appointment or election, take an oath of office that he or she will diligently and honestly administer the affairs of the retirement system and will not knowingly violate or willingly permit to be violated any law or statute applicable to the retirement system. All members of the retirement board serve without compensation.

(o) In January of each year, the retirement board shall elect from its membership a presiding officer and an assistant presiding officer for one calendar year terms.

(p) The retirement board shall hire a pension director as an employee of the retirement board. The retirement board shall establish, consistent with this Act, the duties of the pension director and shall assign the pension director a title. The pension director shall hire and may fire or suspend necessary staff members, and those staff members are employees of the retirement system. The pension director acting under the direction of the retirement board shall keep all of the records of the retirement system and a record of the proceedings of the retirement board. The pension director and each staff member shall receive such compensation as the retirement board may fix in each annual budget of the retirement system, or amendments to the budget, and that compensation shall be paid from the fund.

(q) Subject to this Act, the retirement board shall from time to time establish rules and regulations for the administration of the funds authorized to be created and for the transaction of the retirement system's business. Each member of the retirement board is entitled to one vote. Six concurring votes are necessary for a decision by the retirement board at any meeting of the retirement board, and six members constitute a quorum. Each member will be required to serve on a committee of the retirement board. Any retirement board member who is absent from four consecutive regular monthly meetings of the retirement board shall be removed from the retirement board and replaced in accordance with the provisions of this section.

(r) The retirement board shall keep or cause to be kept in convenient form such data as are necessary for actuarial valuation of the fund of the retirement system and for checking the mortality, service, compensation, and payment experience of the system. Each employer shall provide to the retirement board records that are useful for the board's administration of the retirement system or the fund.

(s) The retirement board shall keep a record of all its proceedings, which shall be open to public inspection except as otherwise specifically provided or permitted by law, and shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash, securities and other assets of the system, and the last balance sheet showing the financial condition of the system as disclosed by the most recent actuarial valuation of the assets and liabilities of the retirement system.

(t) The retirement board shall have charge of and administer the fund as trustee of the fund, shall order payments from the fund in accordance with this Act, and may increase, under Section 10(g) of this Act, the benefits and allowances the board pays from the fund. If practicable, the retirement board shall collect underpayments and refund overpayments. The retirement board shall report annually to the members on the condition of the fund and the receipts and disbursements on account of the fund.

(u) Individual accounts shall be maintained for each member of the retirement system, showing the amount of the member's accumulated deposits. Annually a statement shall be given each member showing the total amount of that member's accumulated deposits. The board shall keep a record of the names and amounts paid to retired members, surviving spouses, and beneficiaries. The accounts of the retirement board and the retirement system shall be included in the annual independent audit of the accounts of the system performed by a certified public accounting firm selected by the retirement board. One copy of the annual audit shall be provided to the governing body and to the board of each employer.

(v) The retirement board shall designate an actuary who shall be the technical advisor of the retirement board regarding the maintenance and operations of the fund authorized by the provisions of this Act and shall perform such other duties as may be required in connection therewith, but shall not be an investment advisor or fiduciary with respect to any investments of the fund. The actuary shall make periodic valuations of the assets and liabilities of the funds and other evaluations as requested by the retirement board.

(w) From time to time on the advice of the actuary and the direction of the retirement board, the actuary shall make an actuarial investigation of the mortality, service, and compensation experience of members, retired members, surviving spouses, and beneficiaries of the retirement system and shall make a valuation of the assets and liabilities of the funds of the system. Taking into account the result of such investigation and valuation, the retirement board shall adopt for the retirement system such mortality, service, and other actuarial tables or rates as are deemed necessary. On the basis of tables and rates adopted by the retirement board, the actuary shall make a valuation at least once every two years of the assets and liabilities of the funds of the retirement system.

(x) The retirement board may retain the services of one or more investment managers who shall have full authority to invest and manage the assets of the retirement system and the fund, as specified by contract in accordance with Subchapter C, Chapter 802, Government Code. [\[FN1\]](#)

(y) The retirement board may retain the services of one or more investment consultants to monitor the investment performance of the investment managers and provide other investment-related services as requested by the retirement board.

(z) The retirement board may retain legal counsel as necessary in the judgment of the retirement board to advise, consult, assist and represent the retirement board and the system in and with respect to any legal matter, issue, cause or claim that comes before the retirement board or that may affect the retirement system or the operation of the fund.

(aa) Except as provided by Subsection (cc) of this section, the retirement board may adopt rules, policies, and procedures, correct any defect, supply any information, or reconcile any inconsistency as the retirement board considers necessary or advisable to carry out this Act. Further, the retirement board is authorized to adopt any amendment that modifies this Act to the extent necessary for the retirement system to be a qualified plan under the code.

(bb) This Act shall be construed and administered in a manner that will allow the retirement system's benefit plan to be a plan qualified under Section 401(a) of the code. The retirement board may adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan and shall adopt rules to ensure that benefits paid to a retired member or to a beneficiary do not exceed the limits provided by Section 415 of the code. Rules adopted by the retirement board are part of the plan. The retirement board may adopt rules that establish a separate qualified excess benefit arrangement under Section 415(m) of the code to provide any benefits that would have been provided under the qualified plan except for the limits in Section 415 of the code.

(cc) Any procedure, discretionary act, interpretation, or construction by the retirement board must be done in a nondiscriminatory manner based on uniform principles consistently applied and must be consistent with this Act and with Section 401(a) of the code and its subsequent amendments.

(dd) The retirement board is authorized to administer oaths to any person providing testimony at any hearing or other proceeding of the retirement board. The retirement board may remove a retirement board member for malfeasance, after notice and a hearing, by a vote of six of its members.

Membership

Sec. 5. (a) Each regular full-time employee shall become an active-contributory member as a condition of

employment and shall make the required deposits commencing with the first pay period in which the employee is compensated following the effective date of this Act. Unless on approved medical leave of absence or on leave to serve in the uniformed services, the employee shall make the deposits as long as the employee remains a regular full-time employee and shall remain a member of the system until the employee or the employee's beneficiary ceases to be entitled to any benefits from the retirement system. The membership for all new regular full-time employees shall commence on the date their employment commences.

(b) Membership in the retirement system consists of the following groups:

(1) the active-contributory members group, which consists of all members, other than those on authorized leave of absence, who are making deposits;

(2) the active-noncontributory members group, which consists of all employees on approved medical leave of absence and all employees of an employer, other than inactive-contributory members, who have been active-contributory members but who are no longer so because they are not regular full-time employees;

(3) the inactive-contributory members group, which consists of all members who are on an authorized leave of absence and who continue to make deposits into the retirement system during their absence;

(4) the inactive-noncontributory members group, which consists of all members whose status as an employee has been terminated before retirement or disability retirement but who are still entitled to or who may become entitled to, or whose beneficiary may become entitled to, benefits from the retirement system; and

(5) the retired members group, which consists of all members who have retired and who are receiving or who are entitled to receive a retirement allowance.

(c) An active-noncontributory member becomes an active-contributory member immediately on resuming employment as a regular full-time employee or on returning from an approved medical leave of absence, as applicable.

(d) It shall be the duty of the retirement board to make a final determination of the membership group to which each person who becomes a member of the retirement system properly belongs. It shall be the duty of the chief administrative officer of each employer to submit to the retirement board a statement showing the name, position, compensation, duties, date of birth, length of employment, and other information regarding each employee of the employer the retirement board may require.

(e) Any person who has ceased to be a member and has received a distribution of the person's accumulated deposits may have the person's membership service or prior service reinstated if the person is reemployed as a regular full-time employee for a continuous period of 24 months and deposits into the system, within a reasonable period established by the retirement board on a uniform and nondiscriminatory basis, the accumulated deposits withdrawn by that person, together with an interest payment equal to the amount withdrawn multiplied by an interest factor. The interest factor is equal to the annually compounded interest rate assumed to have been earned by the fund beginning with the month and year in which the person withdrew the person's accumulated deposits and ending with the month and year in which the deposit under this subsection is made. The interest rate assumed to have been earned by the fund for any period is equal to the interest rate credited for that period to the accumulated deposits of members, divided by 0.75.

(f) From time to time the retirement board, subject to the approval of the system's actuary, may elect to permit the reinstatement of membership service forfeited in accordance with the terms of this section.

Creditable service

Sec. 6. (a) The retirement allowance of a member is based on the member's creditable service as of the member's actual retirement date.

(b) The retirement board shall determine by nondiscriminatory rules and regulations consistently applied, subject to the provisions of this Act, in case of absence, illness, or other temporary interruption in service as a regular full-time employee, the portion of each calendar year to be allowed as creditable service. No credit shall be allowed as creditable service for any period exceeding one month during which an employee was absent continuously without pay, except for an authorized leave of absence as provided in this Act. The retirement board shall verify the records

for creditable service claims filed by the members of the retirement system, subject to the provisions of this Act and in accordance with such administrative rules and regulations as the retirement board may from time to time adopt.

(c)(1) Uniformed service creditable in the retirement system is any service required to be credited by the Uniformed Services Employment and Reemployment Rights Act of 1994 ([38 U.S.C. Section 4301](#) et seq.), as amended, and certain federal duty service in the armed forces of the United States performed before the beginning of employment with the employer, other than service as a student at a service academy, as a member of the reserves, or any continuous active military service lasting less than 90 days. A member may use uniformed service to establish creditable service subject to the conditions of Subdivisions (2)- (6) of this subsection.

(2) A member may establish uniformed creditable service for an authorized leave of absence from employment for military service under this subsection by making periodic payments or a lump-sum payment. If the member elects to make periodic payments, the member shall make, each pay period during the period that the member is on authorized leave, a deposit in an amount equal to the amount of the member's deposit for the last complete pay period that the member was paid by the employer as a regular full-time employee. If the member elects to make a lump-sum payment, the member and the employer shall, not later than the fifth anniversary of the date the member returns to employment with the employer, make separate lump-sum payments equal to the total amount of the contributions the member would have made if the member had made periodic contributions. A lump-sum payment may not exceed the amount required under the Uniformed Services Employment and Reemployment Rights Act of 1994 ([38 U.S.C. Section 4301](#) et seq.), as amended, if the member makes the contributions within the time required by that Act. The employer shall make contributions to the retirement fund as though the member has continued employment at the salary of the member for the last complete pay period before the absence for military service. The employer's contributions shall be made each pay period if the member is making periodic payments during the period. During an authorized leave of absence, the member accrues membership service for the pay periods in which the member makes a deposit. Membership service credit for a lump-sum payment accrues at the time of payment.

(3) A member may establish uniformed creditable service for active federal duty service in the armed forces of the United States, other than service as a student at a service academy, as a member of the reserves, or any continuous active military service lasting less than 90 days, performed before the first day of employment of the member's most recent membership in the retirement system or its predecessor system. To establish creditable service under this subdivision, the member must contribute a lump-sum payment equal to 25 percent of the estimated cost of the retirement benefits the member will be entitled to receive. The retirement board will determine the required contribution based on a procedure recommended by the actuary and approved by the retirement board.

(4) A member is not eligible to establish uniformed service credit unless the member was released from active military duty under conditions other than dishonorable.

(5) A member may not establish creditable service in the retirement system for uniformed service for more than the greater of the creditable service required under the Uniformed Services Employment and Reemployment Rights Act of 1994 ([38 U.S.C. Section 4301](#) et seq.), as amended, or 48 months of creditable service in the retirement system for uniformed service under this subsection.

(6) After the member makes the deposit required by this subsection, the retirement system shall grant the member one month of creditable service for each month of creditable uniformed service established under this subsection.

(d) At any time before the actual retirement date of a member, the employer of the member may purchase for the member additional creditable service that shall be credited to the member. The incremental cost of eligibility under this subsection shall be purchased by the employer at the full actuarial cost of the additional creditable service as determined by the retirement board acting on the advice of the actuary.

(e) At any time before a member's actual retirement date, the member may purchase noncontributory creditable service equal in amount to the period the member:

(1) was on verifiable workers' compensation leave due to an injury sustained in the course and scope of employment by an employer;

(2) was on an authorized leave of absence from an employer; or

(3) performed service for an employer in a position the service for which is not otherwise creditable in the retirement

system.

(f) The full actuarial cost of noncontributory creditable service purchased as provided by Subsection (e) of this section is payable by the member purchasing the credit.

(g) In this section, "noncontributory creditable service" means creditable service for which an employer contribution is not made.

Service Retirement and Withdrawal Benefits

Sec. 7. (a) Except as provided by Subsection (b) of this section, a member who retires on or after the member's normal retirement date and applies in writing for a retirement allowance shall receive a life annuity (modified cash refund) beginning on the last day of the month after the month in which the member retired. Unless Section 8 of this Act applies, a member whose employment by the employer terminates before the member's normal retirement date is entitled to a distribution of the member's accumulated deposits in a single lump sum. On receiving that distribution, a member is not entitled to any other benefit under this Act. If a member has at least five years of creditable service and does not withdraw the member's accumulated deposits, the member is entitled to a life annuity (modified cash refund) beginning on the first day of the month after the month in which the member's normal retirement date occurs.

(b) A member who terminates employment with the employer and who has less than five years of creditable service is not entitled to a retirement allowance unless the member is eligible and participates in the proportionate retirement program under Chapter 803, Government Code.

(c) The amount of each retirement allowance and all other benefits payable under this statute shall be subject at all times to such adjustments as may be required to ensure actuarial soundness as may be approved by the actuary and adopted by the retirement board, except that annuities already accrued may not be reduced.

(d) Subject to the conditions, limitations, and restrictions set forth in this Act, the retirement board may once each December:

(1) authorize a cost of living adjustment (hereinafter referred to as the "adjustment") payment of which, once authorized, shall be added to the current monthly payment of all retirement annuities, pensions, or allowances of each retired member and beneficiary who became entitled to benefits on or before December 31 of the year before the year in which the adjustment is approved; or

(2) authorize a lump-sum additional benefit payment that shall be paid to each retired member or beneficiary receiving a retirement annuity, pension, or allowance who became entitled to benefits on or before December 31 of the year before the year in which the additional payment is approved.

(e) Before December 31 of each year, the retirement board shall make a separate determination as to whether to authorize the payment of an adjustment or additional payment and the amount of the adjustment or additional payment, if any. In determining whether to authorize an adjustment or additional payment, the retirement board may consider the changes in the consumer price index over the preceding 12-month period, the actuarial experience of the fund, the investment experience of the fund, the amount of any prior or current adjustments or additional payments, and other factors that the retirement board and the actuary consider appropriate.

(f) In determining whether to authorize the payment and the amount of any adjustment or additional payment, the retirement board shall be governed by Subsections (g)-(i) of this section.

(g) Any determinations to authorize payment of any adjustment or additional payment amount must be based on the ability of the fund to pay the amount and may not be based on the individual needs of any particular retired members or beneficiaries.

(h) Prior to the retirement board's authorizing the payment of an adjustment or additional payment, the actuary must recommend such an adjustment or additional payment to the retirement board and certify in writing that, based on the sound application of actuarial assumptions and methods consistent with sound actuarial principles and standards, it is demonstrable that the fund has and likely will continue to have the ability to pay such an amount out of its realized income after all other obligations of the fund have been paid.

(i) The amount of the adjustment or additional payment for each retired member or beneficiary:

(1) shall be a uniform percentage of the monthly payment being received by a member, or by a beneficiary by reason of a member, who was retired at least one year before the adjustment;

(2) may not exceed six percent of the monthly payment due the retired member or beneficiary before the adjustment if the payment is an adjustment;

(3) may not exceed an amount equal to the amount of the monthly payment being received by a member before the addition of any adjustment made during that year if the payment is an additional payment; and

(4) for members who retired during the year in which the adjustment or additional payment is authorized, the adjustment or additional payment shall be prorated, and the increase for the first year in which the adjustment is being paid shall be prorated in the ratio that the number of completed months after the member's retirement in the year of the member's retirement bears to 12. After the first year the member is entitled to the full amount of any adjustment or additional payment without proration.

(j) Any adjustment payments or additional payment shall be in addition to the benefits to which a retired member or beneficiary is otherwise entitled under this Act.

(k) Any member who qualifies for retirement by reason of creditable service attained with one or more retirement programs participating in the proportionate retirement program established under Chapter 803, Government Code, shall be eligible for proportionate retirement. A member who qualifies for proportionate retirement and retires shall begin receiving retirement benefits beginning on the last day of the month after the month in which the member retired.

(l) A member may file a written designation, which, if approved by the retirement board, shall entitle the member, on retirement, to receive the actuarial equivalent of the life annuity in the form of one of the following options:

(1) Option I. 100 Percent Joint and Survivor Annuity. This option is a reduced monthly annuity payable to the member but with the provision that on the member's death the annuity shall be continued throughout the life of and be paid to such person as the member shall designate before the member's actual retirement date.

(2) Option II. 50 Percent Joint and Survivor Annuity. This option is a reduced monthly annuity payable to the member but with the provision that on the member's death one-half of the annuity shall be continued throughout the life of and be paid to such person as the member shall designate before the member's actual retirement date.

(3) Option III. 66 2/3 Percent Joint and Survivor Annuity. This option is a reduced monthly annuity payable to the member but with the provision that on the member's death two-thirds of the annuity shall be continued throughout the life of and be paid to such person as the member shall designate before the member's actual retirement date.

(4) Option IV. Joint and 66 2/3 Percent Last Survivor Annuity. This option is a reduced monthly annuity payable to the member but with the provision that two-thirds of the annuity to which the member would be entitled shall be continued throughout the life of and be paid to the survivor after the death of either the member or such person as the member shall designate before the member's actual retirement date.

(5) Option V. 15-Year Certain and Life Annuity. This option is a reduced annuity payable to the member for life. In the event of the member's death before 180 monthly payments have been made, the remainder of the 180 payments shall be paid to the member's beneficiary or, if there is no beneficiary, to the member's estate.

(6) Option VI. Equivalent Benefit Plan. If a member requests in writing, any other form of benefit or benefits may be paid either to the member or to such person or persons as the member shall designate before the member's actual retirement date, provided that the benefit plan requested by the member is certified by the actuary for the system to be the actuarial equivalent of the life annuity with guaranteed refund of the retired member's accumulated deposits. If, on the death of the member and all other persons entitled to receive payments under an optional benefit, the member's accumulated deposits as of the member's actual retirement date exceed the sum of all payments made under that optional benefit, that excess shall be paid in one lump sum to the member's beneficiary.

(m) For purposes of Subsection (l) of this section, the designation of a beneficiary must be made in writing on a form and in the manner prescribed by the retirement board. If a member has chosen Option I, II, III, IV, or VI, the

member's designation of a beneficiary may not be revoked after a member retires, and any attempted revocation of a designation for those options is void. Spousal consent shall not be required for a member to select Option I, II, III, or IV. If the member is married, spousal consent is required for the member to select an optional benefit other than Option I, II, III, or IV. At any time before retirement, a member may file with the retirement board a written statement designating one or more persons to be entitled to receive as beneficiary the reduced annuity payable under one of the optional benefits. If a married member designates as a beneficiary any person other than the member's spouse, the member's spouse must consent in writing to the beneficiary designation, and the beneficiary designation may not be changed without spousal consent, unless the consent of the spouse expressly permits designations by the member without the requirement of further consent by the spouse. The spouse's consent is irrevocable and must acknowledge the effect of the designation and be witnessed by a retirement board employee or notary public. Spousal consent is not required if it is established to the satisfaction of the retirement board that the required consent cannot be obtained because there is no spouse, the spouse cannot be located, or other circumstances exist as prescribed by United States Treasury regulations. Notwithstanding other provisions of this subdivision, the option election or beneficiary designation made by a member and consented to by the member's spouse may be revoked by the member in writing without consent of the spouse at any time before retirement. The number of revocations is not limited. A former spouse's waiver or consent is not binding on a new spouse. An option selection becomes effective on the member's actual retirement date. The member retains the right to change the option selected or the beneficiary designated until the member's actual retirement date, subject to this subsection.

(n) After filing the written statement selecting one of the optional benefits, the member may continue in employment and retire any time after the member becomes eligible by filing a written application for retirement. If the member dies before retirement but after becoming eligible for retirement, the effective date of the member's retirement is the last day of the calendar month of death, and the benefit is computed on the optional benefit selected as if the member had retired on that date.

(o) The amount of the annuity payment in Options I, II, III, IV, V, and VI shall be determined without considering the minimum cumulative payment of the retired member's accumulated deposits since that refund feature will stay in effect as indicated herein.

(p) If a member who is eligible for retirement dies without having filed a written selection of one of the enumerated options and if the member leaves a surviving spouse, that spouse may select the optional benefit in the same manner as if the member had made the selection or may select a lump-sum payment equal to the deceased member's accumulated deposits plus an equivalent amount from Fund No. 2. If the member does not leave a surviving spouse, the member's designated beneficiary is entitled to elect either Option V, to become effective at the beginning of the calendar month after the month in which the death of the member occurs, or the sum of a lump-sum payment equal to the deceased member's accumulated deposits plus an equivalent amount from Fund No. 2. If the surviving spouse dies before the spouse receives retirement allowances equal to the amount of the member's accumulated deposits on the date of the member's death, the excess of the accumulated deposits over the retirement allowances paid shall be distributed in one lump sum to the member's estate.

(q) In the event of death of a member who is ineligible for retirement, the member's accumulated deposits and an equivalent amount from Fund No. 2 shall be paid in a lump sum to the member's beneficiary.

(r) If a designation of intent to participate in the proportionate retirement program under Chapter 803, Government Code, has not been filed with the retirement system and a prior demand for withdrawal of accumulated deposits has not been made within seven years after termination of employment by a member with less than five years' of creditable service, the member's accumulated deposits shall be returned to the member or the member's beneficiary. Except as provided by Subsection (s) of this section, if the system is unable to locate the member or the member's beneficiary, the member's accumulated deposits shall thereafter be forfeited and become a part of Fund No. 2.

(s) If the member or member's beneficiary later appears and requests in writing the payment of the member's accumulated deposits, the system shall:

(1) reinstate the account of the member;

(2) credit to that account an amount equal to all of the accumulated deposits previously standing to the member's credit plus interest that would have been earned on those accumulated deposits if the funds had remained in Fund No. 1 between the date of forfeiture to Fund No. 2 and the date of reinstatement of the member's account;

(3) fund the account from the monies in Fund No. 2; and

- (4) make all necessary payments to the member or member's beneficiary from the reinstated account.
- (t) On payment of the accumulated deposits under this subsection, plus any interest on those deposits to which the member may be entitled, to the member or member's beneficiary in accordance with this subsection, the terminated employee ceases to be a member of the system.
- (u) If the member's accumulated deposits are not withdrawn, notice of intent to participate in proportionate retirement is given, and eligibility to participate in proportionate retirement is established, the member's account shall be reinstated and credited but not refunded as provided by Subsection (s) of this section, and the member is entitled to receive a proportionate retirement allowance as provided by this Act.
- (v) If a demand for withdrawal of funds is made after the 10th anniversary of the date of termination of employment and system records do not affirmatively establish that the accumulated deposits remain on deposit in the fund, the retirement board shall consider system records and evidence presented by the member or beneficiary in determining if any payment is due. The member or beneficiary bears the burden of proof. A decision by the retirement board is final.
- (w) In the event of the death of a member receiving a retirement allowance, the sum of \$10,000 shall be payable in a lump sum to the member's beneficiary.
- (x) When monthly survivor benefits are deemed payable as a result of the death of a member before retirement, an additional sum of \$10,000 shall be payable as a death benefit to the member's designated beneficiary.
- (y) In the event of the death of the retired member then receiving a retirement allowance under any retirement option and the death of the beneficiary designated by the retired member, when either Option I, Option II, Option III, or Option IV is in effect, before retirement allowances have been received that are equal or greater than the retired member's accumulated deposits, the member's estate will receive the excess of the retired member's accumulated deposits over the retirement allowances paid.
- (z) If the person designated in writing by the member under Option I, Option II, or Option III, predeceases the retired member, the reduced annuity of a retired member who selected the optional lifetime retirement annuity shall be increased to the standard service retirement annuity that the retiree would have been entitled to receive if the retired member had not selected Option I, Option II, or Option III. The standard service retirement annuity shall be appropriately adjusted for early retirement and for the postretirement increases in retirement benefits. The increase in the annuity under this subsection is payable to the retired member for life and begins with the later of the monthly payment made to the retired member for the month following the month in which the person designated by the member dies or the month following the month in which the retired member gives the system notice of the designated person's death.
- (aa) Notwithstanding any contrary provision of this Act, the distribution of a member's benefits, including benefits payable after the member's death, made on or after January 1, 1985, shall be made in accordance with Subsections (bb)- (gg) of this section and shall otherwise comply with Section 401(a)(9) of the code and related regulations, including Regulation Section 1.401(a)(9)-2.
- (bb) A member's benefits shall be distributed to the member, or the distribution of those benefits shall begin, not later than April 1 of the calendar year after the calendar year in which occurs the later of the date on which the member attains age 70 1/2 or the date on which the member's employment by the employer terminates.
- (cc) A member's benefits shall be distributed over a period not exceeding the life of the member or the lives of the member and the member's beneficiary or over a period not exceeding the life expectancy of the member or the life expectancy of the member and the member's beneficiary.
- (dd) If the distribution of a member's benefit has begun and the member dies before the member's entire benefit is distributed, the remaining portion of that benefit shall be distributed at least as rapidly as under the form of benefit selected as of the date of the member's death, adjusted as necessary under this subsection.
- (ee) If a member dies before the distribution of the member's benefit has begun, the member's death benefit shall be distributed to the member's beneficiary within five years after the date of the member's death. This five-year rule does not apply to any portion of the deceased member's benefit that is payable to or for the benefit of the member's

surviving spouse. A benefit payable to or for the benefit of the member's surviving spouse may be distributed over the life of the spouse or over a period not exceeding the life expectancy of the spouse, provided that payment of the benefit begins not later than the date on which the deceased member would have attained age 70 1/2 . If the surviving spouse dies before distributions to that spouse begin, the five-year rule applies as if the spouse had been the member.

(ff) The five-year rule does not apply to distributions payable to a beneficiary over the life or life expectancy of the beneficiary, provided that payment of the benefit begins not later than the first anniversary of the date of the member's death.

(gg) In applying the requirements of this subsection, the life expectancy of the member and the member's beneficiary shall be redetermined annually in accordance with regulations under Section 401(a)(9) of the code and its subsequent amendments.

(hh) Forfeitures that may result from the termination of any right of a member may not be used to increase benefits to remaining members. This subsection shall not preclude an increase in benefits by amendment to this Act or action of the retirement board in accordance with Subsection (d) of this section that is made possible by forfeitures or for any other reason.

Disability retirement

Sec. 8. (a) Only active-contributory members, inactive-contributory members, and members on approved medical leave of absence are eligible for consideration for disability retirement. A member may apply for disability retirement at any date prior to the member's normal retirement date, and the member remains in the member's membership category for the 90-day period following the date of termination for inability to perform all employment duties. Inactive-noncontributory members are not eligible for consideration for disability retirement and may not receive any benefits under this section.

(b) If a member who is eligible for consideration for disability retirement has become mentally or physically incapacitated for the performance of all employment duties as a direct result of injuries sustained in the performance of the member's employment duties subsequent to the member's effective date of membership in the retirement system, the member may apply for disability retirement. Such application, made by or on behalf of the injured member, shall show that the injury sustained:

(1) was by external and violent means;

(2) came as a direct and proximate result of the performance of the member's employment duties with the employer; and

(3) is likely to be permanent.

(c) On recommendation of the physician or physicians appointed or selected by the retirement board that the eligible member's incapacity is likely to be permanent and after determining on that basis, or on the basis of any additional evidence which the retirement board deems relevant, that the member meets the requirements of Subsection (b) of this section, the retirement board shall award such member a disability retirement allowance. The decision of the retirement board is final subject to the reexamination, discontinuance and revocation rules at Subsections (h) and (i) of this section.

(d) If a member who is eligible for consideration for disability retirement, and who has more than five years of creditable service, has become mentally or physically incapacitated for the performance of all employment duties, such member may apply for disability retirement. The application made on behalf of the disabled member shall show that the incapacity is likely to be permanent. On recommendation of the physician or physicians appointed or selected by the retirement board that the eligible member's incapacity is likely to be permanent and after determining on that basis, or on the basis of any additional evidence which the retirement board deems relevant, that the member meets the requirements of this subsection, the retirement board shall award such member a disability retirement allowance. The decision of the retirement board is final subject to the reexamination, discontinuance and revocation rules at Subsections (h) and (i) of this section.

(e) On award of a disability retirement allowance, the member shall receive a disability retirement allowance, beginning on the last day of the month after the month in which the member became disabled, which shall be

computed in the same manner that a retirement allowance would be computed at the member's normal retirement date, based on compensation and creditable service at the date of disability retirement. The disabled member may choose to receive a life annuity (modified cash refund) or a benefit as described by Section 7(l) of this Act as Option I, Option II, Option III, or Option IV.

(f) A member receiving a disability retirement allowance shall periodically file a report with the retirement board concerning continued proof of disability. The retirement board shall adopt rules establishing the required supporting information to accompany the reports, the content of the reports, and deadlines for filing the reports. The report shall include:

(1) a current statement of the member's physical or mental condition stating the existence of continued disability, signed by the member's attending physician; and

(2) a statement of all employment activities pursued in the preceding year.

(g) A disabled member shall file periodic reports required by Subsection (f) of this section no later than the deadlines established by the retirement board. The retirement board may require that all periodic reports, including the member's most recent tax return, be filed in the same calendar month. The retirement board may verify all information submitted in the report.

(h) The pension director will be responsible for a yearly report to the retirement board listing those disabled members who should be examined. The retirement board shall have the right to order examinations of any person on disability retirement each year until the member reaches the normal retirement date. If the member fails or refuses to submit to an examination by a physician or physicians appointed by the retirement board or if the member fails or refuses to submit a periodic report in accordance with Subsection (g) of this section concerning continued proof of disability, the disability retirement allowance shall be discontinued until the member has submitted to an examination requested by the retirement board and has submitted any delinquent report. Should such failure or refusal continue for a period of one year, the disability retirement allowance may be revoked by the retirement board. If a member's disability retirement allowance has been revoked for failure to file a periodic report or to submit to any requested examination, the retirement board may reinstate the member's disability retirement allowance on a prospective basis only on the member's full performance of and compliance with all requirements of this section and the retirement board's determination that the member's disability is continuing.

(i)(1) If an investigation of the disabled member's activities or a medical examination shows that the member is no longer physically or mentally incapacitated for the purposes of the performance of employment duties or if the member is found to be engaged in or is able to engage in substantial gainful occupation, as defined by Social Security disability income guidelines, for which the member is reasonably suited by education, training, or experience, the retirement board shall discontinue the disability retirement allowance.

(2) If the disability retirement allowance of a member who had less than five years of creditable service is discontinued under this subsection or Subsection (h) of this section and not reinstated, and the member is not reemployed by the employer, the member is entitled to any amount by which the sum of the member's accumulated deposits as of the date of disability retirement exceeds the sum of all disability retirement benefits paid to the member by the system.

(3) If the disability retirement allowance of a member is discontinued under this subsection or Subsection (h) of this section and not reinstated, and the member is not reemployed by the employer, the member may withdraw any amount by which the sum of the member's accumulated deposits as of the date of the disability retirement exceeds the sum of all disability retirement benefits paid to the member by the system. If a member has five or more years of creditable service and does not withdraw the excess, the member is entitled to a life annuity (modified cash refund) beginning on the first day of the month after the month in which the member's normal retirement date occurs.

(j) If a disabled member returns to active employment service with the employer, the disability retirement allowance shall cease. If the person is reemployed as a regular full-time employee, the person shall be reinstated as an active-contributory member of the system and shall comply with all requirements of this Act. If reinstated as an active-contributory member, membership service credits accumulated prior to disability shall be restored to the full amount standing to the member's credit as of the date the retirement board found the member eligible for disability retirement, and any prior service credit shall be restored in full. The member is not required to reimburse the fund for any disability retirement allowance amounts received by the member.

Limitations on benefits

Sec. 9. (a) Notwithstanding any other provisions of this Act, the annual benefit provided with respect to any member may not exceed the benefits allowed for a plan qualified under Section 415 of the code.

(b) If the aggregate benefits otherwise payable to any member under this Act and any other defined benefit plan or plans maintained by the employer would otherwise exceed the limit provided by Section 415 of the code, the reductions in benefits shall be made in the benefits provided under this Act, to the extent necessary to enable each plan or plans to satisfy those limitations, unless the retirement board is informed by the administrator of the other plan that the reductions are required to be made in the other plan.

(c) to (o) Repealed by Acts 1999, 76th Leg., ch. 834, § 14, eff. Oct. 1, 1999.

(p) A retired member who resumes regular full-time employment with an employer automatically resumes membership as an active contributory member, and the retirement board shall terminate the person's retirement allowance. The retirement allowance of a retired member shall be suspended if the member is employed by an employer for at least six months of any consecutive 12 calendar months and works, is budgeted, or is compensated for more than 29 hours in a calendar week. When the person again retires, the retirement system shall compute the benefit based on service before and after the initial retirement. The resulting benefit is reduced actuarially to reflect the value of the benefits received before the resumption of full-time employment.

Method of financing

Sec. 10. (a) Each active-contributory member shall make deposits to the retirement system at a rate equal to seven percent of the member's base compensation, pay, or salary, exclusive of overtime, incentive, or terminal pay or at a higher contribution rate approved by a majority vote of regular full-time employee members. Deposits shall be made by payroll deduction each pay period. If a regular full-time employee works at least 75 percent of a normal 40-hour work week but less than the full 40 hours, the employee shall make deposits as though working a normal 40-hour work week even though the rate of contribution may exceed seven percent of the employee's actual compensation, pay, or salary, and the employee's average final compensation shall be computed on the basis of the compensation, pay, or salary for a normal 40-hour work week. No deposits may be made nor membership service credit received for periods during which an employee's authorized normal work week is less than 75 percent of a normal 40-hour work week. A person who is eligible for inactive-contributory membership status and who chooses to be an inactive-contributory member shall make deposits to the retirement system each pay period in an amount that is equal to the amount of the member's deposit for the last complete pay period that the member was a regular full-time employee. The regular full-time employee members may increase, by a majority vote of all such members voting at an election to consider an increase in contributions, each member's contributions above seven percent or above the higher rate in effect and approved by majority vote in whatever amount the retirement board recommends. Each employer shall contribute amounts equal to seven percent of the compensation, pay, or salary of each active-contributory member and each inactive-contributory member employed by the employer, exclusive of overtime, incentive, or terminal pay. If a regular full-time employee of the employer works at least 75 percent of a normal 40-hour work week but less than the full 40 hours, the employer shall make contributions for that employee as though that employee works a normal 40-hour work week even though the rate of contribution may exceed seven percent of that employee's actual compensation, pay, or salary. The governing body of the city may authorize the city to make additional contributions to the system in whatever amount the governing body may determine. If the governing body authorizes additional contributions to the system by the city for city employees, the board of each other employer may increase the contributions for such employer's respective employees by the same percentage. Employer contributions shall be made each pay period.

(b) In addition to the contributions by the city required by Subsection (a) of this section, the city shall contribute to the retirement fund each month two-thirds of such amounts as are required for the payment of prior service pensions that are payable during that month, and one-third of each prior service pension payable that month shall be made from Fund No. 2.

(c) Employer contributions shall be paid to the retirement system after appropriation by the respective governing body or board.

(d) Expenses for administration and operation of the retirement system that are approved by the retirement board shall be paid by the retirement board from funds of the retirement system. Such expenses shall include salaries of

retirement board employees and fees for actuarial services, legal counsel services, physician services, accountant services, annual audits by independent certified public accountants, investment manager services, investment consultant services, preparation of annual reports, and staff assistance.

(e) Each employer shall pick up the contributions required to be made to the fund by its respective employees. Active contributory member deposits will be picked up by each employer by a reduction in each such employee's monetary compensation. All such employee contributions shall be treated as employer contributions in accordance with Section 414(h)(2) of the code for the purpose of determining tax treatment of the amounts under the code. Such contributions are not includable in the gross income of the employee until such time as they are distributed or made available to the employee. Each employee deposit picked up as provided by this subsection shall be credited to the individual accumulated deposits account of each such employee and shall be treated as compensation of the employee for all other purposes of this Act and for the purpose of determining contributions to social security. The provisions of this subsection shall remain in effect as long as the plan covering employees of the employers is a qualified retirement plan under Section 401(a) of the code and its related trust is tax exempt under Section 501(a) of the code .

(f) Under no circumstances and in no event may any of the contributions and income of the retirement system revert to the employer or otherwise be diverted to or used for any purpose other than the exclusive benefit of the members, retirees and their beneficiaries. It shall be impossible for the diversion or use prohibited by the preceding sentence to occur, whether by operation or natural termination of the retirement system, by power of revocation or amendment, by the happening of a contingency, by collateral arrangement, or by any other means.

(g) Notwithstanding any other provision of this Act, if the retirement board obtains an actuarial study indicating that a proposed change will not make the fund financially unsound and the proposed change is not inconsistent with the code, the retirement board may:

- (1) provide additional member benefits;
- (2) reduce the requirements for unreduced retirement benefits; or
- (3) increase any retirement allowance or other benefit authorized by this Act.

Investments of the retirement board

Sec. 11. (a) The retirement board shall be the trustee of the funds of the retirement system and shall have full power in its sole discretion to invest and reinvest, alter, and change the form of investment of the funds. The retirement board shall invest the funds in whatever instrument or investments the retirement board considers prudent. In making investments for the funds, the retirement board shall discharge its duties:

(1) for the exclusive purposes of:

(A) providing benefits to members and their beneficiaries; and

(B) defraying reasonable expenses of administering the funds;

(2) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;

(3) by diversifying the investments of the funds to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the laws, documents, and instruments governing the funds.

(b) A member of the retirement board is not liable for any losses incurred in the investment of the fund in accordance with this section.

(c) No member of the retirement board and no employee of the retirement board, except as herein provided, shall have any interest, directly or indirectly, in the funds or receive any pay or emolument for his or her services. No member of the retirement board or employee thereof shall, directly or indirectly, for himself or herself or as an

agent, in any manner use the funds or deposits of the retirement system except to make such current and necessary payments as are authorized by the retirement board, nor shall any member or employee of the retirement board become an endorser or surety or in any manner an obligor for money loaned by or borrowed from the retirement system.

(d) Subject to the exceptions provided by this subsection, the funds or money mentioned in this Act are not assignable and are not subject to execution, levy, attachment, garnishment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever. This subsection does not apply to a qualified domestic relations order. The retirement board shall establish written procedures to determine the qualified status of domestic relations orders and to administer distributions under those orders. To the extent necessary to authorize distributions pursuant to a qualified domestic relations order, a former spouse of a member will be treated as the spouse or surviving spouse of the member.

(e) Subject to the exceptions provided by this subsection, the right of a member to a pension, an annuity, a disability retirement allowance, or a retirement allowance, to the return of accumulated deposits, the pension, annuity, or retirement allowance itself, any optional benefit or death benefits, or any other right accrued or accruing to any person under the provisions of this Act is unassignable and is not subject to execution, levy, attachment, garnishment, the operation of bankruptcy or insolvency law, or any other process of law whatsoever. This subsection does not apply to a qualified domestic relations order.

(f) If the retirement board makes an election to have Subchapters A and C of Chapter 804, [\[FN2\] Government Code](#), and their subsequent amendments, apply to the system, the death of an alternate payee, as defined by [Section 804.001, Government Code](#), and its subsequent amendments, or the death of a member's spouse terminates any interest of the alternate payee or spouse that would otherwise exist under this Act, except an interest accrued by that person as a member.

Miscellaneous

Sec. 12. (a) A person who with intent to deceive makes any statement or report required under this Act which is untrue or falsifies or knowingly permits to be falsified any record or records of the retirement system shall forfeit any office or rights held by the person under the system, and such deception, falsification, or acquiescence in falsification is deemed a Class B misdemeanor.

(b) If any change or error in the records of the retirement system is discovered or results in any member, surviving spouse, or beneficiary receiving from the retirement system more or less than the member, surviving spouse, or beneficiary would have been entitled to receive had the records been correct, the retirement board shall have the power to correct such error. Except as provided by [Section 802.1024, Government Code](#), the retirement system shall, as far as possible, adjust the payments in such a manner that the actuarial equivalent of the benefits to which the member, surviving spouse, or beneficiary was correctly entitled shall be paid.

(c) On the full or partial termination of the retirement and pensioning system, or on the complete discontinuance of contributions by all employers under this Act, the retirement allowance of each affected member who is employed by an employer on the date of termination is determined by reference to the member's average final compensation and creditable service determined as of the date of termination or partial termination of the system or the date of discontinuance of deposits as if the member had attained normal retirement age on that date, and such amount shall become nonforfeitable to the extent then funded. This subsection does not accelerate the date on which the payment of that benefit would otherwise begin.

(d) Notwithstanding any other provision in this Act to the contrary, the municipality or its governing body may not deny or abridge a vested right of any member or a right or privilege of the retirement system, and the retirement system shall continue to be authorized by and administer this Act without regard to any action taken by the municipality or its governing body.

(e) Notwithstanding any provision of this Act to the contrary that would otherwise limit a distributee's election, a distributee may elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. For purposes of this subsection:

(1) An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made over the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary;

(B) any series of payments for a specified period of ten years or more;

(C) any distribution to the extent such distribution is required under Section 401(a)(9) of the code; or

(D) the portion of any distribution that is not includable in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities).

(2) An "eligible retirement plan" is an individual retirement account described in Section 408(a) of the code, an individual retirement annuity described in Section 408(b) of the code, an annuity plan described in Section 403(a) of the code, or a qualified trust described in Section 401(a) of the code, that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity only.

(3) A "distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the code, are distributees with regard to the interest of the spouse or the former spouse.

(4) A "direct rollover" is a payment by the retirement system to the eligible retirement plan specified by the distributee.

(f) Repealed by Acts 1997, 75th Leg., ch. 64, § 5.

Confidentiality

Sec. 13. (a) Information contained in records that are in the custody of the retirement board or the system concerning an individual member, retiree, annuitant, beneficiary, or alternate payee is confidential under this section 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 pension director determines is acting in the interest of the individual or the individual's estate;

(B) a spouse or former spouse of the individual if the pension director 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 retirement system;

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

(D) the individual's employer as defined in this Act; or

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

(2) the information is disclosed pursuant to a subpoena and the pension director 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, beneficiary, or alternate payee of the retirement system.

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

(d) A determination and disclosure under Subsection (a) of this section may be made without notice to the individual

member, retiree, annuitant, beneficiary, or alternate payee.

CREDIT(S)

[Acts 1991, 72nd Leg., ch. 451, eff. Aug. 26, 1991](#). Amended by [Acts 1993, 73rd Leg., ch. 180, § § 1 to 10, eff. July 1, 1993](#); [Acts 1995, 74th Leg., ch. 743, § 1, eff. Oct. 1, 1995](#); Acts 1997, 75th Leg., ch. 64, § § 1 to 5; [Acts 1999, 76th Leg., ch. 834, § § 1 to 12, 14, eff. Oct. 1, 1999](#); [Acts 2001, 77th Leg., ch. 669, § 168, eff. Sept. 1, 2001](#).

Sec. 12(b) amended by [Acts 2003, 78th Leg., ch. 416, § 2, eff. June 20, 2003](#).

[FN1] [V.T.C.A., Government Code § 802.201](#) et seq.

[FN2] [V.T.C.A., Government Code § § 804.001](#) et seq. and [804.101](#) et seq., respectively.

HISTORICAL AND STATUTORY NOTES

2006 Electronic Update

Section 5 of Acts 2003, 78th Leg., ch. 416 provides:

"This Act applies to an underpayment or overpayment of benefits by a public retirement system made by the governing body of the system regardless of whether the underpayment or overpayment was made before the effective date of this Act, except that it does not apply to an overpayment that has been resolved by agreement made before the effective date of this Act between the governing body of a public retirement system and the recipient of the overpayment."

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Sections 11 and 12 of Acts 1993, 73rd Leg., ch. 180 provide:

"Sec. 11. (a) Retirement allowances being paid by the retirement and pensioning system created by Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article **6243n**, Vernon's Texas Civil Statutes), to members of the retirement system, or to the beneficiaries of those members, who retired before December 1, 1989, are increased beginning with the payments due at the end of September in 1993.

"(b) The amount of the increase for a member, or the beneficiary of the member, is by a percentage equal to:

"(1) 2.2 percent divided by the retirement formula in effect on the date of the member's retirement;

"(2) minus one; and

"(3) multiplied by 100.

"Sec. 12. (a) The changes in law made by this Act to Section 5(e), Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article **6243n**, Vernon's Texas Civil Statutes), as redesignated by this Act, permit a member who, before July 1, 1993, reinstated any portion of the member's membership service or prior service under a city ordinance that was in effect before July 1, 1993, to reinstate any membership service or prior service to which the member was not entitled to reinstate under that city ordinance.

"(b) The changes in law made by this Act to Section 7, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article **6243n**, Vernon's Texas Civil Statutes), apply only to an option election or beneficiary designation made on or after the effective date of this Act. An option election or beneficiary designation made before the effective date of this Act is governed by the law in effect at the time the election or designation was made, and that law is continued in effect for this purpose only."

Section 2 of Acts 1995, 7th Leg., ch. 743 provides:

"(a) Retirement allowances being paid by the retirement and pensioning system created by Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article **6243n**, Vernon's Texas Civil Statutes), to members of the

retirement system, or to the beneficiaries of those members, who retired before October 1, 1995, are increased beginning with the payments due at the end of October 1995.

"(b) The amount of the increase for a member, or the beneficiary of the member, is by a percentage equal to:

"(1) 2.3 percent divided by the retirement formula in effect on the date of the member's retirement;

"(2) minus one; and

"(3) multiplied by 100."

Sections 6 and 7 of Acts 1997, 75th Leg., ch. 64 provide:

"Sec. 6. (a) A retirement allowance being paid to a member of the retirement system created by Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article **6243n**, Vernon's Texas Civil Statutes), who retired before October 1, 1997, or to a beneficiary of such a member of that system, is changed beginning with the payments due at the end of October, 1997.

"(b) This change is made to reflect the change in the benefit multiplier to 2.6 percent effective October, 1997. The amount of the change for a member or a beneficiary of a member is equal to the percentage multiplied by the retirement allowance otherwise due. The percentage is equal to 13.04 percent.

"Sec. 7. Subsection (d), Section 6, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article **6243n**, Vernon's Texas Civil Statutes), as added by this Act, takes effect on the date the Internal Revenue Service issues the next favorable determination letter regarding the qualification of the retirement system created by Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article **6243n**, Vernon's Texas Civil Statutes)."

Acts 1999, 76th Leg., ch. 834, in § 2, rewrote subsec. (14), in subsecs. (15) and (35) substituted "2.7 percent or a higher percentage established by the retirement board under Section 10(g) of this Act" for "2.6 percent", and repealed subsec. (24) defining "hospital authority"; in § 3 substituted "October 1, 1999" for "September 1, 1997"; in § 4, rewrote subsec. (a), in subsec. (b)(1) deleted a proviso allowing the member to be removed or redesignated by the governing board, in subsec. (c)(3) and (4) added the sentences at the end of each relating to vacancies if the remainder of the unexpired term is 365 days or more, redesignated subsecs. (d)(1) to (8) as (e) to (m), (e) to (h) as (n) to (q), (i)(1) to (8) as (r) to (y), (j) and (k) as (z) and (aa), and (l) and (m) as (cc) and (dd), and as redesignated, in subsec. (e) added the clause relating to an office that is not part of any department, in subsec. (g) deleted a sentence relating to previous elections, in subsec. (n) deleted a sentence relating to removal of a board member for malfeasance, rewrote subsec. (t), added a subsec. (bb), and added the sentence relating to malfeasance in subsec. (dd); in § 5, from the end of subsec. (a) deleted "and all current active contributory members shall be deemed to have additional creditable service equal to the time elapsed between the date their regular full-time employment commenced and the date they became an active contributory member, but not in excess of six months", deleted a former subsec. (f) relating to members on authorized leaves of absence, and redesignated subsec. (g) as (f); in § 6, rewrote subsecs. (c) and (d); in § 7, in subsec. (a) deleted the last sentence which prior thereto read: "If a member has 20 years of creditable service and does not withdraw the member's accumulated deposits, the member is entitled to a retirement benefit on attaining age 55.", in subsec. (b) added the proviso on participation in the proportionate retirement program, redesignated subsec. (d) as (d) to (j) adding subsecs. (d)(2) and (i)(3), redesignated subsecs. (e) and (f) as (k) and (l), rewriting subsec. (k) and deleting the Level Income Option and the 66 2/3 Percent Joint and Survivor/Level Income Option from subsec. (l), redesignated subsecs. (g) to (k) as (m) to (t), added subsecs. (u) and (v), redesignated subsecs. (l) to (n) as (w) to (y), added subsec. (z), and redesignated subsecs. (o) and (p) as subsecs. (aa) to (hh); in § 8, in subsec. (a) inserted the clause providing for the member to remain in the membership category for the 90-day period following date of termination for inability to perform duties, in subsec. (d) substituted 5 years of creditable service for 10 years such service, and rewrote the introductory paragraph to subsec. (f) and subsec. (g); in § 9, in subsec. (a) at the end substituted "the benefits allowed for a plan qualified under Section 415 of the code" for "\$90,000", repealed subsec. (c) to (o) which related to adjustments to the maximum benefits permitted, and in subsec. (p) inserted the second sentence relating to suspension of a retirement allowance; in § 10, in subsec. (a) inserted the references to a higher contribution rate approved by majority vote, and added subsec. (g); in § 12, rewrote subsec. (d) and redesignated subsec. (e)(1)(1) to (4) as (e)(1)(A) to (D); in § 13, in subsecs. (a) and (c) substituted "director" for "officer" throughout; and made other nonsubstantive changes. Prior to being rewritten or repealed § § 2(14), 4(a), 6(c) and (d), 7(e)[now 7(k)], and 12(d) read:

"Sec. 2. (14) 'Creditable service' means the total of prior service and membership service."

"Sec. 4. (a) There is hereby created a retirement board of the retirement and pensioning system, in which retirement board is hereby vested the power and responsibility for the proper and effective general administration, management, and operation of the retirement system. The retirement board shall be organized immediately after its members have qualified and taken the oath of office."

"Sec. 6. (c) At any time before a member's actual retirement date, a member may establish creditable service for uniformed service performed that is creditable as provided under this subsection according to the following conditions, limitations, and restrictions.

"(1) Uniformed service creditable in the retirement system is any service required to be credited by the Uniformed Services Employment and Reemployment Rights Act of 1994 ([38 U.S.C. Section 4301](#) et seq.), as amended, and certain active federal duty service in the armed forces of the United States performed before the commencement of employment with the employer, other than service as a student at a service academy, as a member of the reserves, or any continuous active military service lasting less than 90 days. To be creditable, the uniformed service must have been performed before the beginning of the member's most recent period of membership in the retirement system or its predecessor system.

"(2) A member is not eligible to establish uniformed service credit unless the member was released from active military duty under conditions other than dishonorable.

"(3) A member may not establish creditable service in the retirement system for uniformed service for more than the greater of the creditable service required under the Uniformed Services Employment and Reemployment Rights Act of 1994 ([38 U.S.C. Section 4301](#) et seq.), as amended, or 48 months of creditable service in the retirement system for uniformed service under this subsection.

"(4) A member may establish creditable service under this subsection by contributing to the retirement system a single payment equal to 25 percent of the estimated cost of the additional projected retirement benefits the member will be entitled to receive. The retirement board will determine the required contribution based on a procedure recommended by the actuary and approved by the retirement board, provided, however, notwithstanding the amount determined under the preceding sentence, such contribution may not exceed the amount required under the Uniformed Services Employment and Reemployment Rights Act of 1994 ([38 U.S.C. Section 4301](#) et seq.), as amended, in the case of a member who makes such contributions within the time prescribed by such act.

"(5) After the member makes the deposit required by this subsection, the retirement system shall grant the member one month of creditable service for each month of creditable uniformed service established under this subsection.

"(d) At any time before the actual retirement date of a member, who was not at any time a highly compensated employee within the meaning of Section 414(q) of the code, a member may be considered to qualify for unreduced retirement benefits at the age of 55 or, if the member is more than 55 years of age, at the time of the purchase of additional service credit by an employer. The incremental cost of eligibility under this subsection shall be purchased by the employer at the full actuarial cost of the additional creditable service as determined by the retirement board acting on the advice of the actuary."

"Sec. 7. (e) Any member shall be eligible for early retirement if the member attains the age of 55 years and completes at least 20 years of creditable service. Such member shall be entitled to a benefit equal to a life annuity (modified cash refund). A member who take early retirement shall begin receiving the benefits provided by this subsection beginning on the last day of the month after the month in which the member retired."

"Sec. 12. (d) Notwithstanding any other provision in this Act to the contrary, in the event of a termination of the retirement and pensioning system, the benefit of any highly compensated employee or former employee is limited to a benefit that is nondiscriminatory under Section 401(a)(4) of the code. Benefits distributed to any of the 25 most highly compensated active and former highly compensated employees are restricted such that the annual payments are no greater than an amount equal to the payment that would be made on behalf of an employee under a single life annuity that is the actuarial equivalent of the sum of the employee's accrued benefit and the employee's other benefits under the plan. The preceding sentence shall not apply if: (1) after payment of the benefit to an employee described in that sentence, the value of plan assets equals or exceeds 110 percent of the value of the current liabilities, as defined in Section 412(l)(7) of the code, or (2) the value of the benefits for any employee described in that paragraph is less than one percent of the value of current liabilities. For purposes of this subsection, benefit includes loans in excess of the amount set forth in Section 72(p)(2)(A) of the code, any periodic income, any

withdrawal values payable to a living employee and any death benefits not provided for by insurance on the employee's life."

Section 13 of Acts 1999, 76th Leg., ch. 834 provides:

"(a) A retirement allowance being paid to a member of the retirement system created by Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article **6243n**, Vernon's Texas Civil Statutes), who retired before October 1, 1999, or the beneficiary of a member of that system, is changed beginning with the payments due at the end of October 1999.

"(b) This change is made to reflect the change in the benefit multiplier to 2.7 percent effective October 1, 1999. The amount of the change for a member or a beneficiary of a member is equal to the percentage multiplied by the retirement allowance otherwise due. The percentage is equal to 3.85 percent."

Acts 2001, 77th Leg., ch. 669, in § 1 substituted "600,000" for "460,000" and "700,000" for "500,000, according to the most recent federal census".

Title of Act:

An Act relating to the establishment of, participation and credit in, and benefits and administration of a retirement system for employees of certain municipalities; creating an offense and providing a penalty. Acts 1991, 72nd Leg., ch. 451.

LIBRARY REFERENCES

2003 Main Volume

Municipal Corporations  220(9).
Westlaw Topic No. 268.
[C.J.S. Municipal Corporations § § 649 to 660.](#)

NOTES OF DECISIONS

In general 1

1. In general

An employee of a municipal retirement system created under V.T.C.S. Art. **6243n** is not an employee of a political subdivision and may therefore be required to register as a lobbyist under Chapter 305 of the Government Code. Tex.Ethics Comm.Op. No. 127 (1993).

Vernon's Ann. Texas Civ. St. Art. **6243n**, TX CIV ST Art. **6243n**

Current through the end of the 2005 2nd Called Session of the 79th Legislature