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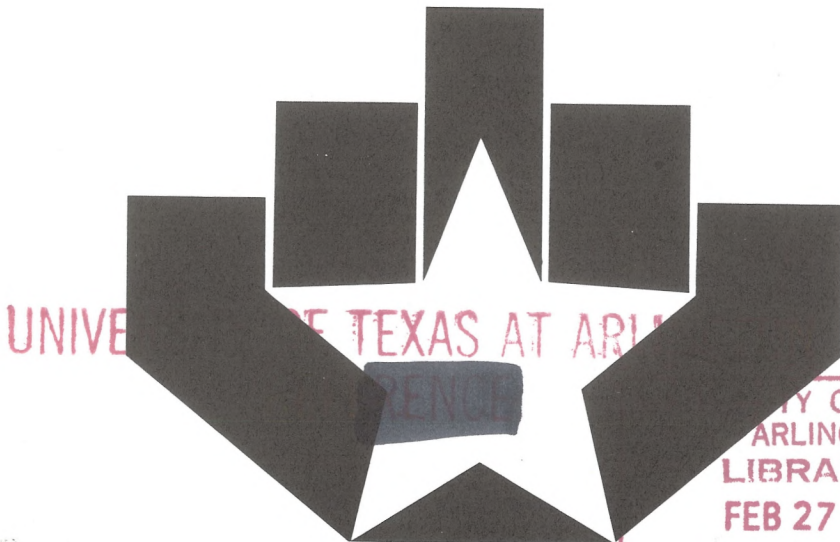
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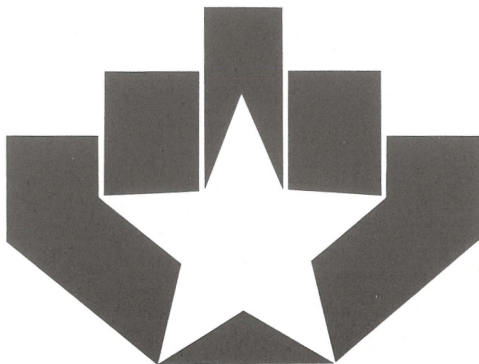
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**CONSTITUTIONAL
PROVISIONS**



ARTICLE 16, SECTION 67 OF THE CONSTITUTION OF TEXAS

(a) General Provisions.

(1) The legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.

(2) A person may not receive benefits from more than one system for the same service, but the legislature may provide by law that a person with service covered by more than one system or program is entitled to a fractional benefit from each system or program based on service rendered under each system or program calculated as to amount upon the benefit formula used in that system or program. Transfer of service credit between the Employees Retirement System of Texas and the Teacher Retirement System of Texas also may be authorized by law.

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.

(4) General laws establishing retirement systems and optional retirement programs for public employees and officers in effect at the time of the adoption of this section remain in effect, subject to the general powers of the legislature established in this subsection.

(b) State Retirement Systems.

(1) The legislature shall establish by law a Teacher Retirement System of Texas to provide benefits for persons employed in the public schools, colleges, and universities supported wholly or partly by the state. Other employees may be included under the system by law.

(2) The legislature shall establish by law an Employees Retirement System of Texas to provide benefits for officers and employees of the state and such state-compensated officers and employees of appellate courts and judicial districts as may be included under the system by law.

(3) The amount contributed by a person participating in the Employees Retirement System of Texas or the Teacher Retirement System of Texas shall be established by the legislature but may not be less than six percent of current compensation. The amount contributed by the state may

not be less than six percent nor more than 10 percent of the aggregate compensation paid to individuals participating in the system. In an emergency, as determined by the governor, the legislature may appropriate such additional sums as are actuarially determined to be required to fund benefits authorized by law.

(c) Local Retirement Systems.

(1) The legislature shall provide by law for:

(A) the creation by any city or county of a system of benefits for its officers and employees;

(B) a statewide system of benefits for the officers and employees of counties or other political subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and

(C) a statewide system of benefits for officers and employees of cities in which cities may voluntarily participate.

(2) Benefits under these systems must be reasonably related to participant tenure and contributions.

(d) Judicial Retirement System.

(1) Notwithstanding any other provision of this section, the system of retirement, disability, and survivors' benefits heretofore established in the constitution or by law for justices, judges, and commissioners of the appellate courts and judges of the district and criminal district courts is continued in effect. Contributions required and benefits payable are to be as provided by law.

(2) General administration of the Judicial Retirement System of Texas is by the Board of Trustees of the Employees Retirement System of Texas under such regulations as may be provided by law.

(e) Anticipatory Legislation. Legislation enacted in anticipation of this amendment is not void because it is anticipatory.

STATUTORY PROVISIONS



Amendments to Title 110B by Acts of the 71st Texas Legislature, Regular Session, 1989 are effective and should be read into the corresponding Government Code provisions. The amendments are set forth in italics after the corresponding Government Code provision. The citations in the text of the amendments are those of the old Title 110B codification.

STATUTORY PROVISIONS

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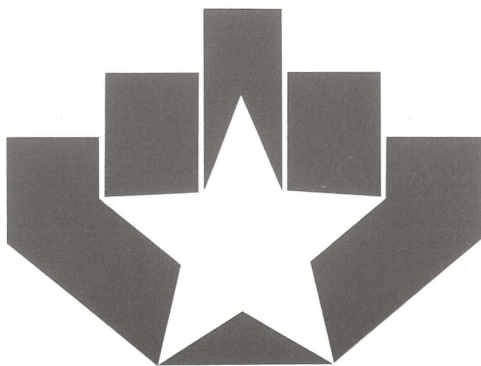
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Proportionate Retirement Laws



CHAPTER 803. PROPORTIONATE RETIREMENT PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

§ 803.001. Definitions

In this chapter:

(1) “Combined service credit” means the total of a person’s service credit in only those statewide retirement systems for which the total satisfies the length-of-service requirements for service retirement at the person’s attained age, and does not include:

(A) any service credit in a retirement system for which the total of a person’s service credit does not satisfy the length-of-service requirements for service retirement at the person’s attained age; or

(B) service credit earned with or allowed by a subdivision or municipality not participating in the program provided by this chapter.

(2) “Service credit” means service that is in a person’s account in a statewide retirement system and that may be used to meet length-of-service requirements for service retirement in that system.

(3) “Statewide retirement system” means the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Texas County and District Retirement System, or the Texas Municipal Retirement System.

§ 803.002. Purpose of Chapter

The purpose of this chapter is to implement the authority granted the legislature by Article XVI, Section 67, of the Texas Constitution to provide a program of proportionate benefits to qualified members of more than one statewide retirement system. It is contrary to the purpose of this chapter for a person or class of persons to receive, because of service in more than one statewide retirement system, proportionately greater benefits from a particular system than a person who has rendered faithful career service under that one system.

§ 803.003. Construction of Chapter

The provisions of this chapter are exceptions to the other laws governing statewide retirement systems and prevail over those laws to the extent of explicit conflict, but this chapter must be construed strictly as against those laws.

Sections 803.004 - 803.100 reserved for expansion.

SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP

§ 803.101. Participation by Retirement Systems

(a) Except as provided by Subsection (b), each statewide retirement system is required to participate in the program of proportionate retirement benefits provided by this chapter.

(b) A subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System is not required to participate in the proportionate retirement program if the subdivision or municipality elected not to participate under the authority of former law and has not revoked the election under Subsection (c).

(c) A subdivision or municipality that elected not to participate in the proportionate retirement program may revoke the election and elect to participate. An election to participate may be made by vote of the governing body of the subdivision or municipality in the manner required for official actions of the governing body. The governing body shall send notice of an election to participate to the board of trustees of the retirement system in which the subdivision or municipality participates.

(d) The effective date of participation in the proportionate retirement program by a subdivision or municipality electing to participate under Subsection (c) is the first day of the month after the month in which the appropriate board of trustees receives notice of an election.

(e) Participation in the proportionate retirement program includes all persons who are members of a statewide retirement system and, in the case of members of the Texas County and District Retirement System or the Texas Municipal Retirement System, who are also employees or former employees of a subdivision or municipality participating in the proportionate retirement program.

§ 803.102. Retirement System Membership

(a) Membership in a statewide retirement system does not terminate because of absence from service covered by that system during a period for which the member earns service credit in another statewide retirement system for service performed for an employer other than a subdivision or municipality not participating in the program provided by this chapter.

(b) A person may continue membership in a statewide retirement system while absent from service with all statewide retirement systems if the person would be eligible, under the laws governing that system, to continue membership if the person's combined service credit had been earned in that system.

(c) In this section, a person's absence from service begins on the day after the last day of service covered by any statewide retirement system.

Sections 803.103 - 803.200 reserved for expansion.

SUBCHAPTER C. CREDITABLE SERVICE

§ 803.201. Retirement Eligibility Based on Combined Service Credit

(a) A person who has membership in two or more statewide retirement systems is subject to the laws governing each of those systems for determination of the person's eligibility for service retirement benefits from each system, except that, for the purpose of determining whether a person meets the length-of-service requirements for service retirement of a system, the person's combined service credit must be considered as if it were all credited in each system.

(b) A person's combined service credit is usable only in determining eligibility for service retirement benefits and may not be used in determining:

(1) eligibility for disability retirement benefits, death benefits, or any type of benefit other than service retirement benefits; nor

(2) the amount of any type of benefit.

(c) A person receiving service retirement or lifetime disability retirement benefits from one or more statewide retirement systems may use the program provided by this chapter to qualify for subsequent service retirement under another statewide retirement system in which the person has service credit, if the person was not eligible to retire under the latter system at the time of previous service retirement, or qualification for lifetime disability retirement benefits from a statewide retirement system, or if the person's previous retirement was not based on combined service credit.

(d) Service credit earned with or allowed by more than one statewide retirement system for the same period of time may be counted only once in determining the amount of a person's combined service credit.

§ 803.202. Service in Certain Retirement Systems

The board of trustees of the Employees Retirement System of Texas by rule may:

(1) consider the classes of service in the Employees Retirement System of Texas as if they were, for purposes of this chapter, classes in separate statewide retirement systems; or

(2) permit a person who is retiring exclusively from retirement systems administered by the board to use the shortest length-of-service requirement provided for retirement in any class in which the person has service credit.

Sections 803.203 - 803.300 reserved for expansion.

SUBCHAPTER D. BENEFITS

§ 803.301. Computation of Benefits Generally

The amount of a benefit payable by a statewide retirement system is determined according to and in the manner prescribed by laws governing that system and is based solely on a person's service credit in that system.

§ 803.302. Computation of Certain Benefits

(a) If payable to or on behalf of a person who has used combined service credit to qualify for benefits from at least one statewide retirement system, each of the following types of benefits must be computed as provided by Subsection (b):

- (1) a base retirement annuity that does not vary in amount directly with the amount of a person's service credit;
- (2) a fixed lump-sum death benefit payable on the death of a retiree;
- (3) any death benefit payable on the death of a retiree who received service retirement benefits; and
- (4) a survivor benefit payable to a beneficiary of a deceased retiree of the Teacher Retirement System of Texas.

(b) The amount of a benefit payable under Subsection (a) by a statewide retirement system is a percentage, but not more than 100 percent, of the benefit that would be or would have been payable if the person retired or had retired on the basis of only the service that is credited in that system. The percentage applied is equal to the amount of service credit in that system, divided by the amount of service credit that would be or would have been required for the benefit if the person retired or had retired on the basis of only the service that is credited in that system.

Sections 803.303 - 803.400 reserved for expansion.

SUBCHAPTER E. ADMINISTRATION

§ 803.401. Administration of Program

(a) The board of trustees of each statewide retirement system may adopt rules it finds necessary to implement the proportionate retirement program provided by this chapter.

(b) Each statewide retirement system, under this chapter and other laws governing the particular system, is responsible for determining:

(1) the eligibility of its members for benefits, including whether sufficient combined service credit exists to qualify members for proportionate retirement benefits from that system; and

(2) the amount and duration of proportionate retirement benefits payable by that system.

(c) Each statewide retirement system shall cooperate with the other statewide retirement systems in the implementation of the proportionate retirement program.

§ 803.402. Records

Records of members and beneficiaries of a statewide retirement system that are in the custody of the system are considered to be personnel records and confidential information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), except that the records or information in the records may be transferred between statewide retirement systems to the extent necessary to administer the proportionate retirement program provided by this chapter.

This section has been effectively amended by Section 11, Chapter 835, Acts of the 71st Legislature, Regular Session, 1989 to read as follows:

Except as provided by Section 35.507 of Subtitle D of this title, [Added as new section to Title 110B Revised Statutes by the 71st Texas Legislature, Regular Session. See page 72.] records of members and beneficiaries of a statewide retirement system that are in the custody of the system are considered to be personnel records and confidential information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The records or information in the records may be transferred between statewide retirement systems to the extent necessary to administer the proportionate retirement program provided by this chapter.

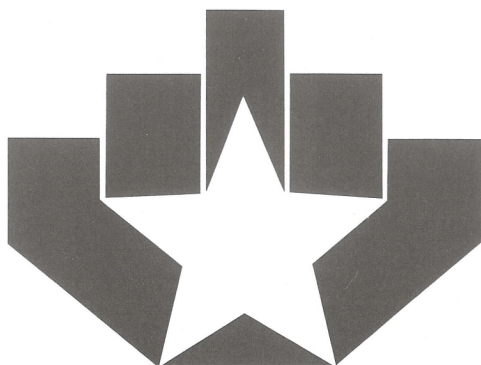
§ 803.403. Employees Retirement System Report

Before December 16 of each even-numbered year, the Employees Retirement System of Texas shall report to the governor and the Legislative Budget Board the current and long-range fiscal and actuarial effects of the

proportionate retirement program on that system and shall include in its biennial budget estimates a reasonable amount for reimbursement of expenses incurred by the system in performing duties required of the system under this chapter.

Chapters 804 - 810 reserved for expansion.

Teacher Retirement Laws



CHAPTER 821. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 821.001. Definitions

In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the member savings account, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Actuarial equivalent" of a benefit means a benefit of equal monetary value computed on the basis of annuity or mortality tables and on an interest or discount rate that is adopted by the board of trustees for the purpose from time to time and that is in force on the effective date of the benefit.

(3) "Actuarially reduced" means reduced to the actuarial equivalent.

(4) "Annual compensation" means the compensation to a member of the retirement system for service during a school year that is reportable and subject to contributions as provided by Section 822.201.

(5) "Board of trustees" means the board appointed under this subtitle to administer the retirement system.

(6) "Employee" means a person who is employed, as determined by the retirement system, on other than a temporary basis by an employer for at least one-half time at a regular rate of pay comparable to that of other persons employed in similar positions.

(7) "Employer" means the state or any of its designated agents or agencies responsible for public education, including the governing board of any school district created under the laws of this state, any county school board, the board of trustees, the State Board of Education, the Central Education Agency, the board of regents of any college or university, or any other legally constituted board or agency of any public school.

(8) "Faculty member" means a person who is employed by an institution of higher education on a full-time basis as:

(A) a member of the faculty whose duties include teaching or research;

(B) an administrator responsible for teaching and research faculty;

(C) a member of the administrative staff of the Texas Higher Education Coordinating Board; or

(D) a professional librarian, a president, a chancellor, a vice-president, a vice-chancellor, or other professional staff person whose national mobility requirements are similar to those of faculty members and who fills a position that is the subject of nationwide searches in the academic community.

(9) “Governing board” means the body responsible for policy direction of an institution of higher education.

(10) “Institution of higher education” has the meaning provided for that term in Section 61.003, Education Code.

(11) “Membership service” means service during a time that a person is both an employee and a member of the retirement system.

(12) “Public school” means an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(13) “Retirement” means the withdrawal from service with a retirement benefit granted under this subtitle.

(14) “Retirement system” means the Teacher Retirement System of Texas.

(15) “School year” means:

(A) a 12-month period beginning approximately September 1 and ending approximately August 31 of the next calendar year; or

(B) for a member whose contract begins after June 30 and continues after August 31 of the same calendar year, a period not to include more than 12 months beginning on the date the contract begins.

(16) “Service” means the time a person is an employee.

(17) “Service credit” means the amount of prior, membership, military, or equivalent membership service credited to a person’s account in the retirement system.

§ 821.002. Purpose of Subtitle

The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for membership in and the management and operation of the retirement system.

§ 821.003. Retirement System

The retirement system is an agency of the state. Except as provided by Section 825.304, the Teacher Retirement System of Texas is the name by which all business of the retirement system shall be transacted, all its funds invested, and all its cash, securities, and other property held.

§ 821.004. Powers and Privileges

The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

§ 821.005. Exemption From Execution

All retirement allowances, annuities, refunded contributions, optional benefits, money in the various retirement system accounts, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and municipal taxation, sale, levy, and any other process, and are unassignable.

§ 821.006. Action Increasing Amortization Period

(a) A rate of member or state contributions to or a rate of interest or the rate of a fee required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an actuarial valuation.

Sections 821.007 - 821.100 reserved for expansion.

SUBCHAPTER B. PENAL PROVISIONS

§ 821.101. Conversion of Funds; Fraud

(a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts funds that represent deductions from a member's salary or that belong to the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes or permits the making of a false record for or statement to the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member intentionally receives as a salary money that should have been deducted as provided by this subtitle from the member's salary.

(d) A person commits an offense if the person knowingly or intentionally violates a requirement of this subtitle other than ones described by Subsection (a), (b), or (c).

§ 821.102. Penalties

(a) An offense under Section 821.101(a) or 821.101(b) is a felony punishable by imprisonment in the Texas Department of Corrections for not less than one nor more than five years.

(b) An offense under Section 821.101(c) is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

(c) An offense under Section 821.101(d) is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

§ 821.103. Cancellation of Teacher Certificate

(a) After receiving notice from the board of trustees of an offense under Section 821.101 and after a hearing, the state commissioner of education may cancel the teacher certificate of a person if the commissioner determines that the person committed the offense.

(b) A person whose teacher certificate is canceled under this section may appeal the commissioner's decision to the State Board of Education.

(c) A criminal prosecution of an offender under Section 821.101 is not a prerequisite to action by the commissioner under this section.

CHAPTER 822. MEMBERSHIP

SUBCHAPTER A. MEMBERSHIP

§ 822.001. Membership Requirement

(a) Membership in the retirement system includes:

(1) all persons who were members of the retirement system on the day before the effective date of this subtitle; and

(2) all employees of the public school system.

(b) Membership in the retirement system is a condition of employment for employees of the public school system unless an employee is excluded from membership under Section 822.002.

§ 822.002. Exceptions to Membership Requirement

(a) An employee of the public school system is not permitted to be a member of the retirement system if the employee:

(1) executed and filed a waiver of membership prior to the effective date of this subtitle and has not elected membership pursuant to Subsection (b);

(2) is eligible and elects to participate in the optional retirement program under Chapter 830;

(3) is solely employed by a public institution of higher education that as a condition of employment requires the employee to be enrolled as a student in the institution;

(4) is solely employed as a noncertified instructor in a program described in Subchapter G, Chapter 13, Education Code; or

(5) has retired under the retirement system and has not been reinstated to membership pursuant to Section 823.502, 824.005, or 824.307.

(b) An employee under Subsection (a)(1) may become a member of the retirement system at the beginning of a school year, but the employee will not be entitled to credit for waived service unless payment for the waived service is made under Section 823.202.

§ 822.003. Termination of Membership

(a) A person terminates membership in the retirement system by:

(1) death;

(2) retirement;

(3) withdrawal of all of the person's contributions while the person is absent from service; or

(4) absence from service for more than five consecutive years within a six-year period.

(b) If a person, regardless of age, has 10 or more years of service credit, absence from service does not terminate membership in the retirement system unless all of the person's contributions are withdrawn.

This subsection has been effectively amended by Section 2, Chapter 835, Acts of the 71st Legislature, Regular Session, 1989 to read as follows:

(b) *If a person, regardless of age, has five or more years of service credit, absence from service does not terminate membership in the retirement system unless all of the person's contributions are withdrawn.*

(c) A person is not absent from service if the person:

- (1) is performing military service creditable in the retirement system; or
- (2) is on leave of absence from employment in a public school.

§ 822.004. Effect of Termination

If a person terminates membership in the retirement system under Section 822.003(a)(3) or (a)(4), the retirement system shall cancel all of the person's service credit in the retirement system.

§ 822.005. Withdrawal of Contributions

(a) A person who is absent from service except by death or retirement may withdraw all of the accumulated contributions credited to the person in the member savings account.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) A person is not entitled to withdraw contributions who has applied for employment, or has received a promise of employment, in a position covered by the retirement system.

§ 822.006. Resumption of Membership After Termination

A person whose membership in the retirement system has been terminated and who resumes membership must enter the retirement system on the same terms as a person entering service for the first time and is not entitled to credit for previous or other terminated service unless it is reinstated under Section 823.501 or 823.502.

Sections 822.007 - 822.200 reserved for expansion.

SUBCHAPTER B. MEMBER COMPENSATION SUBJECT TO CONTRIBUTIONS AND CREDIT

§ 822.201. Member Compensation

(a) Unless otherwise provided by this subtitle, compensation subject to report and deduction for member contributions and to credit in benefit computations is:

(1) beginning with the 1981-82 school year, only a member's salary and wages for service, less any amounts excluded by rules of the board of trustees adopted pursuant to Section 825.110; and

(2) in school years before the 1981-82 school year, all compensation for service that was or should have been reported under laws and rules governing the retirement system when the compensation was paid but excluding compensation greater than \$25,000 for a school year beginning after August 31, 1969, but before September 1, 1979, and compensation greater than \$8,400 for a school year beginning before September 1, 1969.

(b) "Salary and wages" as used in Subsection (a) means:

(1) normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;

(2) career ladder payments of money authorized by Section 16.057, Education Code;

(3) amounts by which the member's salary is reduced under a salary reduction agreement authorized by Article 6252-3d, Revised Statutes; and

(4) amounts that would otherwise qualify as salary and wages under Subdivision (1) or (2) but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986 (26 U.S.C. Section 125), if:

(A) the program or benefit options are made available to all employees of the employer; and

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation, group health and disability insurance, group term life insurance, dependent care assistance programs, or group legal services plans.

(c) Excluded from salary and wages are expense payments, allowances, payments for unused vacation or sick leave, maintenance or other nonmonetary compensation, fringe benefits, deferred compensation other than as provided by Subsection (b)(3), compensation that is not made pursuant to a valid employment agreement, and any compensation not described in Subsection (b).

CHAPTER 823. CREDITABLE SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

§ 823.001. Types of Creditable Service

The types of service creditable in the retirement system are:

- (1) prior service;
- (2) membership service;
- (3) military service; and
- (4) equivalent membership service.

§ 823.002. Service Creditable in a Year

The board of trustees by rule shall determine how much service in any year is equivalent to one year of service credit, but in no case may all of a person's service in one school year be creditable as more than one year of service.

§ 823.003. Benefits Based on Service Credit

Except as otherwise provided under the optional retirement program, years of service on which the amount of a benefit is based consist of the number of years of service credit to which a member is entitled.

Sections 823.004 - 823.100 reserved for expansion.

SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE

§ 823.101. Creditable Prior Service

Prior service creditable in the retirement system is:

- (1) service as an employee performed before:
 - (A) September 1, 1937, for a person who became a member of the retirement system or was eligible to become a member before September 1, 1949; or
 - (B) September 1, 1949, for a person who first became eligible to be a member of the retirement system after August 31, 1949; and
- (2) military service performed during World War I or before the first anniversary of the date that war ended.

§ 823.102. Statement of Prior Service

(a) At the time a person becomes a member of the retirement system for the first time, the person shall file with the retirement system a detailed statement of all prior service claimed.

(b) If a member fails to file a statement as provided by Subsection (a), has at least five years of membership service credit, and has no unpaid waived, withdrawn, or delinquent service, the member is entitled to and may file a statement claiming prior service.

(c) The board of trustees may adopt rules for the filing of statements of prior service.

§ 823.103. Prior Service Credit

(a) As soon as practicable after a member files a statement of prior service as provided by Section 823.102, the board of trustees shall:

- (1) verify the service claimed;
- (2) make necessary adjustments in the application;
- (3) grant one year of prior service credit for each year of prior service approved; and
- (4) notify the member of the amount of prior service credit granted.

(b) The board of trustees may adopt rules for the granting of prior service credit.

§ 823.104. Restoration of Certificate for Prior Service Excluded Because of Late Initial Employment

A person required to become a member of the retirement system because of the repeal of the exception to required membership for persons first employed in public education at age 60 or older may obtain credit for service performed while not a member by depositing the member contributions and membership fees that would otherwise have been deducted from the person's compensation for that service had the person been a member. The deposits must be paid within one year after the date the person first becomes a member of the retirement system. Persons not making payment of these amounts within one year may obtain credit for the service under Section 825.403(h) as if member contributions had been required at the time of the service. The board of trustees may adopt rules to implement this section.

Sections 823.105 - 823.200 reserved for expansion.

SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

§ 823.201. Current Membership Service

(a) Membership service is credited in the retirement system for each year in which a member is an employee and for which the member renders sufficient service for credit under Section 823.002 and makes and maintains with the retirement system the deposits required by this subtitle or prior law.

(b) The board of trustees may adopt rules for the granting of membership service credit.

§ 823.202. Membership Service Previously Waived

(a) An employee who has previously executed and filed a waiver of membership in the retirement system and who, after the waiver, becomes a member may establish membership service credit for service as an employee that would have been creditable as membership service when performed except for the waiver.

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to:

(1) the contributions and membership fees that the person would have paid had the person been a member of the retirement system during that year; plus

(2) interest computed at an annual rate of five percent of the amount of each payment that would have been due had the person been a member, from the hypothetical payment due date to the date of deposit.

(c) The retirement system shall determine in each case the amount of money to be deposited by a member claiming credit under this section. The system may not provide benefits based on the claimed service until the determined amount has been fully paid.

Sections 823.203 - 823.300 reserved for expansion.

SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

§ 823.301. Creditable Military Service

(a) Except as provided by Section 823.101(2), military service creditable in the retirement system is active federal duty in the armed forces of the United States, other than as a student at a service academy, that was performed:

(1) as a direct result of being inducted or of first enlisting for duty on a date when the federal government was actively inducting persons into the armed forces under federal draft laws;

(2) as a reservist or member of the national guard who was ordered to duty under the authority of federal law; or

(3) during a time when the federal government was actively inducting persons into the armed forces under federal draft laws.

(b) A member may not establish more than five years of service credit in the retirement system under this subchapter for military service.

(c) The board of trustees may adopt rules expanding the military service creditable in the retirement system in order to comply with the requirements of federal law.

(d) Military service that is terminated by sentence of a court-martial is not creditable under this section.

§ 823.302. Military Service Credit

(a) An eligible member may establish service credit in the retirement system for military service performed that is creditable as provided by Section 823.301.

(b) A member eligible to establish military service credit is one who has at least 10 years of service credit in the retirement system for actual service in public schools.

(c) A member may establish credit under this section by depositing with the retirement system for each year of military service claimed a contribution in an amount equal to:

(1) the member's contributions to the retirement system during the most recent full year of membership service that preceded the military service, if the military service was performed while the person was a member of the retirement system; or

(2) the member's contributions to the retirement system during the first full year of membership service, if the military service was performed before the person became a member of the retirement system.

(d) In addition to the contribution required by Subsection (c), a member claiming credit for military service must pay a fee of eight percent, compounded annually, of the required contribution from the date of first eligibility to the date of deposit.

(e) After a member makes the deposits required by this section, the retirement system shall grant the member one year of military service credit for each year of military service approved.

§ 823.303. Military Leave Credit

A member who performs military service creditable in the retirement system but who does not establish credit for the service by making the deposits required by Section 823.302 is entitled to credit of a year for each year of military service performed. The credit is usable only in determining eligibility for, but not the amount of, benefits under Section 824.406.

Sections 823.304 - 823.400 reserved for expansion.

SUBCHAPTER E. ESTABLISHMENT OF EQUIVALENT MEMBERSHIP SERVICE

§ 823.401. Out-of-State Service

(a) Except as provided by Subsection (b), an eligible member may establish equivalent membership service credit for employment with a public school system maintained wholly or partly by another state or territory of the United States or by the United States for children of its citizens.

(b) A member may not establish credit under this section for service performed for a public school while a member of the armed forces, for which service the member was compensated by the United States.

(c) A member eligible to establish credit under this section is one who has at least 10 years of service credit in the retirement system for actual service in public schools.

(d) A member may establish credit under this section by depositing with the retirement system for each year of service claimed a contribution computed at the rate of:

(1) 12 percent of the member's annual compensation during the first year of service as a member of the retirement system that is both after the service for which credit is sought and after September 1, 1956; or

(2) 12 percent of the member's annual compensation during the most recent year of service as a member that is after the service for which credit is sought, if the member has performed no service in Texas since September 1, 1956.

(e) In addition to the contribution required by Subsection (d), a member claiming credit under this section must pay a fee of eight percent, compounded annually, of the required contribution from the date of first eligibility to the date of deposit. A deposit for at least one year of credit, including the fee, must be made with an initial application for credit, and all payments for service claimed under this section must be made before retirement.

(f) The amount of service credit a member may establish under this section may not exceed 10 years.

(g) After a member makes the deposits required by this section, the retirement system shall grant the member one year of equivalent membership service credit for each year of service approved. The retirement system may not use service credit granted under this section in computing a member's annual average compensation.

§ 823.402. Developmental Leave

(a) An eligible member may establish equivalent membership service credit for developmental leave that is creditable in the retirement system.

(b) Developmental leave creditable in the retirement system is absence from membership service for a school year that is approved by the member's employer for study, research, travel, or another purpose designed, as determined by the employer, to improve the member's professional competence.

(c) A member eligible to establish credit under this section is one who:

- (1) has at least five years of service credit in the retirement system; and
- (2) is an employee of a public school at the time the credit is sought.

(d) On or before the date a member takes developmental leave, the member shall file with the retirement system a notice of intent to take developmental leave, and the member's employer shall file with the retirement system a certification that the leave meets the requirements of Subsection (b).

(e) A member may establish credit under this section by depositing with the retirement system for each year of developmental leave claimed an amount equal to the sum of:

- (1) the rate of member contributions required during the member's most recent year of service that preceded the developmental leave, times the member's annual rate of compensation during that year; plus
- (2) the amount that the state would have contributed had the member performed membership service during the year of leave at the member's annual rate of compensation during the most recent year of service that preceded the leave; plus
- (3) any membership fees in effect during the year of leave.

(f) A member may not establish more than two years of equivalent membership service credit under this section.

(g) A member may not establish credit under this section after the end of the first creditable school year that begins after the developmental leave has ended. The retirement system may not use credit established under this section in computing service retirement benefits until the member has at least 10 years of service credit for actual service in public schools.

(h) If credit established under this section is not used in determining benefits, all deposits made under this section are refundable to the member or, if applicable, the member's beneficiary.

§ 823.403. University Component Service

(a) A member may establish equivalent membership service credit for employment with the following entities that was performed before the entities became components of The University of Texas System:

(1) the Callier Center for Communication Disorders, now a part of The University of Texas at Dallas; or

(2) the Houston Speech and Hearing Center, now a part of The University of Texas Health Science Center at Houston.

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to the sum of:

(1) 12 percent of the rate of the member's annual compensation during the first full 12 months of service as a member that is after the date the service for which credit is sought was performed; plus

(2) a fee of five percent a year of the amount determined under Subdivision (1) from the date the service for which credit is sought was performed to the date of deposit; plus

(3) any membership fees that would have been paid had the service for which credit is sought been performed as a member of the retirement system.

(c) The retirement system shall use credit established under this section in determining eligibility for all benefits payable by the retirement system.

This section has been effectively repealed by Section 14, Chapter 835, Acts of the 71st Texas Legislature, Regular Session, 1989, effective September 1, 1990.

§ 823.404. Certain Mental Health and Mental Retardation Service

(a) Except as provided by Subsection (i), the retirement system shall grant to each member eligible as provided by this section service credit in the retirement system for all service covered by credit in the Employees Retirement System of Texas for which deposits are maintained in an active member account, immediately before the person became a member of the retirement system.

(b) A member eligible to receive credit under this section is one who:

(1) was a member of the Employees Retirement System of Texas as an employee of the Texas Department of Mental Health and Mental Retardation on August 31, 1985, and on that date and on the date of termination with the department had normal duties requiring the person to provide educational services to school-age residents of state schools;

(2) became a member of this retirement system after August 31, 1985, and before September 2, 1988, as an employee of a school district;

(3) has normal duties requiring the member to provide educational services to school-age students;

(4) is not a retiree of the Employees Retirement System of Texas; and

(5) has no intervening employment between the member's previous employment by the Texas Department of Mental Health and Mental Retardation and the member's employment by a school district.

(c) The Texas Department of Mental Health and Mental Retardation shall certify the employees who may be eligible to receive credit under this section and shall provide copies of the certifications to the retirement system and the Employees Retirement System of Texas.

(d) Except as provided by Subsection (i), as soon as practicable after receipt of a certification of eligibility under Subsection (c), the Teacher Retirement System of Texas shall determine eligibility and notify the Employees Retirement System of Texas. On notification, the Employees Retirement System of Texas shall transfer to the retirement system:

(1) a statement of the certified person's credit in and compensation subject to contributions to the Employees Retirement System of Texas;

(2) the person's accumulated contributions; and

(3) an amount from the state accumulation account determined by the actuary of the Employees Retirement System of Texas to be the amount required neither to increase nor to diminish the period required to amortize the unfunded liability of that system.

(e) A transfer under Subsection (d) cancels the service credit and terminates the membership in the Employees Retirement System of Texas of the person for whom the amounts are transferred.

(f) As soon as practicable after receipt of a transfer under Subsection (d), the retirement system shall grant the member for whom the amounts were transferred the credit authorized by this section.

(g) Service for which credit is established under this section will be considered as if it were performed as a member of this retirement system and credit for the service may not be reestablished in the Employees Retirement System of Texas.

(h) The legislature may appropriate to the Teacher Retirement System of Texas amounts that are determined necessary to finance additional actuarial liabilities created by this section and not financed by the transfers provided by Subsection (d).

(i) The retirement system may not grant the eligible member the credit authorized by this section if:

(1) the actuary for this retirement system determines that an amount proposed to be transferred under Subsection (d), together with any appropriation made available as provided by Subsection (h), is not sufficient to finance the actuarial liabilities that would be created by the transfer; or

(2) the actuary for the Employees Retirement System of Texas makes the determination provided by Section 813.508(i)(1).

This section has been effectively repealed by Section 14, Chapter 835, Acts of the 71st Texas Legislature, Regular Session, 1989, effective September 1, 1989.

Sections 823.405 - 823.500 reserved for expansion.

SUBCHAPTER F. REINSTATEMENT OF SERVICE CREDIT

§ 823.501. Credit Canceled by Membership Termination

(a) An eligible person who has terminated membership in the retirement system by withdrawal of contributions or absence from service may reinstate in the system the service credit canceled by the termination.

(b) A person eligible to reinstate service credit under this section is one who resumes membership in the retirement system and subsequently performs membership service for the shorter of the following periods:

(1) two consecutive years; or

(2) a continuous period equal in duration to the period from the date of termination to the date of resumption of membership.

(c) A member may reinstate credit under this section by depositing with the retirement system:

(1) the amount withdrawn or refunded; plus

(2) membership fees for the period that membership was terminated; plus

(3) a reinstatement fee of six percent compounded annually of the amount withdrawn or refunded from the date of withdrawal or refund to the date of redeposit.

(d) The retirement system shall determine in each case the amount of money to be deposited by a member reinstating service credit under this section. The system may not provide benefits based on the service until the determined amount has been fully paid.

§ 823.502. Credit of Retiree

(a) An eligible person who has terminated membership in the retirement system by service retirement may:

(1) resume membership in the system;

(2) reestablish service credit in effect immediately before the date of retirement; and

(3) establish credit for service performed since the date of retirement that would have been creditable had the person been a member of the retirement system.

(b) A person eligible to resume membership and reestablish and establish credit under this section is one who for two consecutive years after the date of retirement performs service that would be creditable if the person were a member of the retirement system.

(c) A person may resume membership and claim credit under this section by depositing with the retirement system:

(1) an amount equal to service retirement benefits received;

plus

(2) a reinstatement fee of six percent, compounded annually, of the amount determined under Subdivision (1) from the date of the person's return to service to the date of redeposit; plus

(3) an amount equal to the total contributions that would have been deducted from the person's annual compensation each year after the return to service had the person been a member of the retirement system; plus

(4) a reinstatement fee of six percent, compounded annually, of the amount determined under Subdivision (3) from the end of each year of service after the return to service to the date of deposit; plus

(5) membership fees for the years after the return to service.

(d) The retirement system shall determine in each case the amount of money to be deposited by a person claiming credit under this section. On payment in full of the amount required by this section, the person becomes a member of the retirement system, and the system shall grant the member credit for each year of service performed before or after the member's initial retirement.

CHAPTER 824. BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

§ 824.001. Types of Benefits

The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

§ 824.002. Effective Date of Retirement

(a) The effective date of a member's service retirement is the last day of the later of the following months:

- (1) the month in which the member applies for retirement as provided by Section 824.201;
- (2) the month in which the member satisfies age and service requirements for service retirement as provided by Section 824.202; or
- (3) the month in which the member's employment in a position included in the coverage of the retirement system ends.

(b) The effective date of a member's disability retirement is the last day of the later of the following months:

- (1) the month in which the member applies for retirement as provided by Section 824.301; or
- (2) the month in which the member's employment in a position included in the coverage of the retirement system ends.

(c) For the purposes of this section, a member's employment in a position covered by the retirement system does not end if the member is on leave of absence or has a contract for future employment in a public school, other than a contract for employment that would, if the retiring member and the employer were to comply with all procedural requirements, qualify under Section 824.602 for an exception to the loss of monthly benefits required by Section 824.601.

(d) A person who works not later than June 15 of a year in order to complete all work required for the school year may be considered to have ended employment on May 31 of that year for the purposes of Subsection (a)(3).

§ 824.003. When Benefits are Payable

Except as otherwise provided by this chapter, an annuity provided by this chapter is not payable for the month in which the person who receives the annuity dies.

§ 824.004. Waiver of Benefits

(a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. A person may revoke a waiver of benefits in the same manner as the original waiver was made.

(b) A revocable waiver may be revoked only as to benefits payable after the date the revocation is filed. If a waiver is made irrevocable and is filed with the retirement system before the first benefit payment is made to the person executing the waiver, Section 824.103 applies to determine alternative beneficiaries.

(c) The retirement system shall transfer to the state contribution account from the appropriate benefit reserve accounts amounts not used to pay benefits because of a waiver executed under this section.

(d) The board of trustees may provide rules for administration of waivers under this section.

§ 824.005. Revocation of Retirement

(a) A person who has retired under the retirement system may revoke that retirement by filing with the system a written revocation in a form prescribed by the system. For a revocation to be effective, the retirement system must receive the written revocation before the 46th day after the original date of retirement, and the person must return to the system an amount equal to the amount of benefits received under the original retirement. The period for revocation of a disability retirement under this subsection begins on the date the medical board certifies the disability if the date is later than the date of retirement.

(b) A person who has retired under the retirement system revokes that retirement if the person becomes employed in any position in a public school during the first month following that person's effective date of retirement, or during the first two months following an effective date of retirement established by reliance on Section 824.002(d), and must return any retirement benefits received under the original retirement.

(c) A person who revokes a retirement under this section is restored to membership in the retirement system as if that person had never retired.

Sections 824.006 - 824.100 reserved for expansion.

SUBCHAPTER B. BENEFICIARIES

§ 824.101. Designation of Beneficiary

(a) Except as provided by Subsection (c), any member or annuitant may, on a form prescribed by and filed with the retirement system, designate one or more beneficiaries to receive benefits payable by the retirement system on the death of the member or annuitant.

(b) Except as provided by Subsection (c), a member or annuitant may change or revoke a designation of beneficiary in the same manner as the original designation was made.

(c) Only one person may be designated as beneficiary of an optional retirement annuity under Section 824.204(c)(1) or (c)(2), and a designation of beneficiary under either of those options may not be made, changed, or revoked after the date of the member's retirement.

(d) Unless a contrary intention is clearly indicated by a written designation of beneficiary and except as otherwise provided by law, the most recent designation of beneficiary by a member or annuitant applies to all benefits payable on the death of the member or annuitant.

(e) The retirement system by rule may provide for the designation of alternate beneficiaries.

§ 824.102. Trust as Beneficiary

(a) Except as provided by Subsection (b), a member or annuitant may designate a trust as beneficiary for the payment of benefits from the retirement system. If a trust is designated beneficiary, the beneficiary of the trust is considered the designated beneficiary for the purposes of determining eligibility for and the amount and duration of benefits. The trustee is entitled to exercise any rights to elect benefit options and name subsequent beneficiaries.

(b) A trust having more than one beneficiary may not receive benefits to which multiple designated beneficiaries are not entitled under this chapter.

§ 824.103. Absence of Beneficiary

(a) Benefits payable on the death of a member or annuitant, except an optional retirement annuity under Section 824.204(c)(1) or (c)(2), are payable, and rights to elect survivor benefits, if applicable, are available, to one of the classes of persons described in Subsection (b), if:

(1) the member or annuitant fails to designate a beneficiary before death;

(2) a designated beneficiary does not survive the member or annuitant; or

(3) a designated beneficiary, under Section 824.004, waives claims to benefits payable on the death of the member or annuitant.

(b) The following classes of persons, in descending order of precedence, are eligible to receive benefits in a situation described in Subsection (a):

- (1) any surviving joint designated beneficiaries;
- (2) any alternate beneficiaries;
- (3) the surviving spouse of the decedent;
- (4) any children of the decedent or their descendants by representation;
- (5) the parents of the decedent;
- (6) the executor or administrator of the decedent's estate; or
- (7) the persons entitled by law to distribution of the decedent's estate.

§ 824.104. Failure of Beneficiary to Claim Benefits

(a) If, before the first anniversary of the death of a member or annuitant, the retirement system does not receive a claim for payment of benefits from a designated beneficiary or a person entitled to benefits under Section 824.103, the retirement system may pay benefits, except an optional retirement annuity under Section 824.204(c)(1) or (c)(2), under the order of precedence in Section 824.103(b), as if the person failing to claim benefits had predeceased the decedent.

(b) Payment under Subsection (a) bars recovery by any other person of the benefits distributed.

(c) If, before the fourth anniversary of the death of a member or annuitant, payment of benefits based on the death has not been made and no claim for benefits is pending with the retirement system, the accumulated contributions of the deceased member or the balance of the reserve for the deceased annuitant is forfeited to the benefit of the retirement system. The retirement system shall transfer funds forfeited under this subsection to the state contribution account.

§ 824.105. Beneficiary Causing Death of Member or Annuitant

(a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable to a person who would be entitled to the benefit had the convicted person predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to pay benefits under this section unless it receives actual notice of the conviction of a beneficiary. However, the retirement system may delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court of, causing the death of a member or annuitant, regardless of whether sentence is imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

§ 824.106. Simultaneous Death of Member and Beneficiary

When a member or annuitant and the beneficiary of the member or annuitant have died within a period of less than 120 hours, the member or annuitant is considered to have survived the beneficiary for the purpose of determining the rights to amounts payable under this subtitle on the death of the member or annuitant.

Sections 824.107 - 824.200 reserved for expansion.

SUBCHAPTER C. SERVICE RETIREMENT BENEFITS

§ 824.201. Application for Service Retirement Benefits

(a) A member may apply for a service retirement annuity by filing a written application for retirement with the board of trustees.

(b) At any time before the effective date of retirement, a member may, by filing written notice with the board of trustees, revoke the member's application for retirement or make, revoke, or change a selection of an optional service retirement annuity available as provided by Section 824.204.

(c) Except as specifically provided by this subtitle, a retiree may not revoke a retirement nor make, revoke, or change a selection of an optional service retirement annuity.

§ 824.202. Eligibility for Service Retirement

(a) A member is eligible to retire and receive a standard service retirement annuity if the member:

(1) is at least 65 years old and has at least 10 years of service credit in the retirement system; or

(2) is at least 60 years old and has at least 20 years of service credit in the retirement system.

(b) If a member is at least 55 years old and has at least 10 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(1), to a percentage derived from the following table:

Age at Date of Retirement

Years of Service	55	56	57	58	59	60	61	62	63	64	65
At least 10 but less than 20	47%	51%	55%	59%	63%	67%	73%	80%	87%	93%	100%

(c) If a member is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(2), to a percentage derived from the following table:

Years of Service	Age at Date of Retirement					
	55	56	57	58	59	60
at least 20 but less than 25	70%	76%	82%	88%	94%	100%
at least 25 but less than 30	75%	80%	82%	88%	94%	100%
at least 30 but less than 31	80%	82%	84%	88%	94%	100%
at least 31 but less than 32	82%	84%	86%	88%	94%	100%
at least 32 but less than 33	84%	86%	88%	90%	94%	100%
at least 33 but less than 34	86%	88%	90%	92%	94%	100%
at least 34 but less than 35	88%	90%	92%	94%	96%	100%
at least 35 but less than 36	90%	92%	94%	96%	98%	100%
at least 36 but less than 37	92%	94%	96%	98%	100%	100%
at least 37 but less than 38	94%	96%	98%	100%	100%	100%
at least 38 but less than 39	96%	98%	100%	100%	100%	100%
at least 39 but less than 40	98%	100%	100%	100%	100%	100%
40 or more	100%	100%	100%	100%	100%	100%

(d) If a member has at least 30 years of service credit in the retirement system, the member is eligible to retire regardless of age and receive a reduced service retirement annuity consisting of a percentage of the standard service retirement annuity available under Subsection (a)(2), derived from the table in Subsection (c). The board of trustees shall extend the table in Subsection (c) to ages earlier than 55 years by decreasing the percentages by two percent for each year of age under 55 years.

(e) The board of trustees may adopt tables for reduction of benefits for early retirement by each month of age, but the range of percentages in the tables within a year must be limited to the range provided between two years of age by this section.

(f) Except as provided by Section 823.403(c) or the proportionate retirement program in Subtitle A, a member is not eligible to receive service retirement benefits from the retirement system unless the member has at least 10 years of service credit in the retirement system for actual service in public schools.

These subsections have been effectively amended by Section 3, Chapter 835 and Section 1, Chapter 222, Acts of the 71st Legislature, Regular Session, 1989 to read as follows:

(a) *A member is eligible to retire and receive a standard service retirement annuity if the member:*

(1) *is at least 65 years old and has at least five years of service credit in the retirement system; or*

(2) *is at least 60 years old and has at least 20 years of service credit in the retirement system.*

(b) *If a member is at least 55 years old and has at least five years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service*

retirement annuity available under Subsection (a)(1) of this section, to a percentage derived from the following table:

Age at Date of Retirement

Years of Service	55	56	57	58	59	60	61	62	63	64	65
<i>At least 5 but less than 20</i>	47%	51%	55%	59%	63%	67%	73%	80%	87%	93%	100%

(c) If a member is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(2) of this section, to a percentage derived from the following table:

Years of Service

Age at Date of Retirement

	55	56	57	58	59	60
<i>at least 20 but less than 21</i>	90%	92%	94%	96%	98%	100%
<i>at least 21 but less than 22</i>	92%	94%	96%	98%	98%	100%
<i>at least 22 but less than 23</i>	94%	96%	98%	98%	98%	100%
<i>at least 23 but less than 24</i>	96%	98%	98%	98%	98%	100%
<i>at least 24 but less than 30</i>	98%	98%	98%	98%	98%	100%
<i>30 or more</i>	100%	100%	100%	100%	100%	100%

(d) If a member has at least 30 years of service credit in the retirement system, the member is eligible to retire regardless of age and receive a service retirement annuity consisting of a percentage of the standard service retirement annuity available under Subsection (a)(2) of this section, derived from the table in Subsection (c) of this section. The board of trustees shall extend the table in Subsection (c) of this section to ages earlier than 55 years by decreasing the percentages by two percent for each year of age under 55 years.

(f) Except as provided by Section 33.403(c) of this subtitle [Section 823.403(c), Texas Government Code] or the proportionate retirement program in Subtitle B of this title, a member is not eligible to receive service retirement benefits from the retirement system unless the member has at least five years of service credit in the retirement system for actual service in public schools.

§ 824.203. Standard Service Retirement Benefits

(a) Except as provided by Subsections (c) and (d), the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the three years of service, whether or not consecutive, in which the member received the highest annual compensation, times two percent for each year of service credit in the retirement system.

(b) In the case of a person who retired before August 27, 1979, ceilings in the definition of "annual compensation" apply to the computation of average annual compensation under Subsection (a). In the case of a person who retires on or after that date, those ceilings do not apply and the computation shall be based on actual compensation paid or payable for services as an employee to the extent that the computation includes compensation for school years before the 1981-82 school year.

(c) Except as provided by Subsection (d), for benefits payable because of the death or retirement of a member that occurred before September 1, 1982, the standard service retirement annuity is computed in accordance with applicable prior law.

(d) In no case may the standard service retirement annuity be less than \$6.50 a month for each year of service credit or, for a member who is at least 65 years old at the time of retirement, less than the greater of \$6.50 a month for each year of service credit or \$75 a month. The minimum benefits provided by this section are subject to reduction in the same manner as other benefits because of early retirement or selection of an optional retirement annuity.

§ 824.204. Optional Service Retirement Benefits

(a) Instead of the standard service retirement annuity payable under Section 824.203 or an annuity reduced because of age under Section 824.202, a retiring member may elect to receive an optional service retirement annuity, reduced for early retirement if applicable, under this section.

(b) An optional service retirement annuity is an annuity payable throughout the life of the retiree and is actuarially reduced from the annuity otherwise payable under this subtitle to its actuarial equivalent under the option selected under Subsection (c).

(c) An eligible member may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable to and throughout the life of the person nominated by the retiree's written designation filed prior to retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable to and throughout the life of the person nominated by the retiree's written designation filed prior to retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the designated beneficiary; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the designated beneficiary.

§ 824.205. Deductions From Service Retirement Annuity

(a) A person who receives a service retirement annuity under Section 824.202, 824.203, or 824.204 may, on a form satisfactory to and filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment the amount required as a monthly premium for:

(1) hospital insurance benefits provided to uninsured individuals not otherwise eligible for medical insurance for the aged, as provided by Part A of Title XVIII of the federal Social Security Act (42 U.S.C. Section 1395c et seq.); and

(2) supplementary medical insurance benefits for the aged, as provided by Part B of Title XVIII of the federal Social Security Act (42 U.S.C. Section 1395j et seq.).

(b) After making deductions authorized under Subsection (a), the retirement system shall pay the required premiums to the treasury of the United States, subject to applicable laws relating to the time and manner of payment.

Sections 824.206 - 824.300 reserved for expansion.

SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

§ 824.301. Application for Disability Retirement Benefits

- (a) A member may apply for a disability retirement annuity by:
 - (1) filing a written application for retirement with the board of trustees; or
 - (2) having an application filed with the board by the member's legal representative.
- (b) In addition to an application for retirement, a member shall file with the board of trustees the results of a medical examination of the member.
- (c) The board of trustees by rule may require the submission to it of additional information about a disability. The retirement system shall prescribe forms for the information required by this section.

§ 824.302. Eligibility for Disability Retirement

A member is eligible to retire and receive a disability retirement annuity if the member:

- (1) is certified by the medical board as disabled as provided by Section 824.303(b); and
- (2) does not satisfy the age and service requirements under Section 824.202(a) for a service retirement annuity without reduction.

§ 824.303. Certification of Disability

(a) After a member applies for disability retirement, the medical board may require the member to submit additional information about the disability.

(b) If the medical board finds that the member is mentally or physically disabled from the further performance of duty and that the disability is probably permanent, the medical board shall certify disability, and the member shall be retired.

(c) The medical board may rule on an application for disability retirement at a regular or special meeting or by mail, telephone, telegraph, or other suitable means of communication.

§ 824.304. Disability Retirement Benefits

(a) If a member has a total of less than 10 years of service credit in the retirement system on the date of disability retirement, the retirement system shall pay the person a disability retirement annuity of \$50 a month

for the shortest of the following periods:

(1) the duration of the disability;
(2) the number of months of creditable service the person has at retirement; or

(3) the duration of the person's life.

(b) If a member has a total of at least 10 years of service credit in the retirement system on the date of disability retirement but is not eligible for service retirement without reduction of benefits, the retirement system shall pay the person for the duration of the disability a disability retirement annuity in an amount equal to the greater of:

(1) a standard service retirement annuity computed on the basis of the amount of the person's service credit on the date of retirement; or

(2) \$6.50 a month for each year of service credit on the date of retirement.

(c) If a person receives a disability retirement annuity under Subsection (b) and the retirement begins after or continues until the person becomes 60 years old, the disability is conclusively presumed continuous for the rest of the person's life.

(d) Before the 31st day after the date on which the medical board certifies a member's disability, the member may reinstate withdrawn contributions and make deposits for service previously waived, military service, and equivalent membership service and receive service credit as provided by this subtitle.

§ 824.305. Medical Examination of Disability Retiree

(a) Once each year during the first five years after a member retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination by one or more physicians the board designates.

(b) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall discontinue the retiree's annuity payments until the retiree submits to an examination.

§ 824.306. Report of Earnings of Disability Retiree

(a) A disability retiree who is less than 60 years old annually shall submit a report of earnings to the retirement system. The retirement system shall examine each report and may require at any time that a disability retiree undergo a medical examination by one or more physicians the retirement system designates, if the retiree has reported earnings that the board of trustees considers excessive.

(b) The board of trustees may adopt rules establishing limits on the annual earnings of disability retirees and such other rules as are necessary to administer this section.

(c) If a disability retiree refuses to submit an annual report of earnings, the retirement system shall discontinue the retiree's annuity payment until the retiree submits to a medical examination by one or more physicians designated by the retirement system.

§ 824.307. Restoration of Disability Retiree to Membership

(a) If the medical board finds that a disability retiree who is less than 60 years old is no longer mentally or physically incapacitated for the performance of duty, it shall certify its findings and submit them to the board of trustees.

(b) If a disability retiree who is less than 60 years old is restored to active service or refuses for more than one year to submit to a required medical examination, or if the board of trustees concurs in a certification issued under Subsection (a), the board shall discontinue the retiree's annuity payments and the retiree must again become a member of the retirement system.

(c) When a person becomes a member under this section, an amount equal to the sum in the person's individual account in the member savings account at the time of retirement, minus the amount of annuity payments made since retirement, shall be transferred from the retired reserve account to the person's individual account in the member savings account. The member is entitled to service credit for all service credit used to compute the member's disability retirement annuity at the time of retirement.

Sections 824.308 - 824.400 reserved for expansion.

SUBCHAPTER E. MEMBER DEATH BENEFITS

§ 824.401. Availability of Annuity

(a) A death benefit annuity under this chapter is payable only if the decedent had, at the time of death, at least the minimum amount of service credit in the retirement system necessary for a service retirement annuity at an attained age.

(b) Multiple beneficiaries are not eligible to receive a death benefit annuity under Section 824.402(a)(4) or an equivalent annuity under Section 824.403.

§ 824.402. Benefits on Death of Active Member

(a) Except as provided by Section 824.401, the designated beneficiary of a member who dies during a school year in which the member has performed service is eligible to receive at the beneficiary's election the greatest of the following amounts:

(1) an amount equal to twice the member's annual compensation for the school year immediately preceding the school year in which the member dies, or \$60,000, whichever is less;

(2) an amount equal to twice the member's rate of annual compensation for the school year in which the member dies, or \$60,000, whichever is less;

(3) 60 monthly payments of a standard service retirement annuity, computed as provided by Section 824.203(a);

(4) an optional retirement annuity for the designated beneficiary's life in an amount computed as provided by Section 824.204(c)(1) as if the member had retired on the last day of the month immediately preceding the month in which the member dies; or

(5) an amount equal to the amount of accumulated contributions in the member's individual account in the member savings account.

(b) The board of trustees by rule may prescribe the manner of payment of benefits under this section.

§ 824.403. Benefits on Death of Inactive Member

Except as provided by Section 824.401, the designated beneficiary of a member who dies while absent from service is eligible to receive:

(1) the same benefits payable under Section 824.402 or 824.404 if the member's absence from service was:

(A) because of sickness, accident, or other cause the board of trustees determines involuntary;

(B) in furtherance of the objectives or welfare of the public school system; or

(C) during a time when the member was eligible to retire or would become eligible without further service before the fifth anniversary of the member's last day of service as a member; or

(2) an amount equal to the accumulated contributions in the member's individual account in the member savings account, if the member's absence from service does not satisfy a requirement of Subdivision (1).

§ 824.404. Survivor Benefits

(a) The designated beneficiary of a member who dies may, if entitled to a death benefit other than the accumulated contributions of the member, elect to receive, instead of a benefit payable under Section 824.402 or 824.403, a lump-sum payment of \$2,500 plus an applicable monthly benefit described in this section.

(b) If the designated beneficiary is the spouse or a dependent parent of the decedent, the beneficiary may elect to receive for life a monthly benefit of \$100, beginning immediately or on the date the beneficiary becomes 65 years old, whichever is later.

(c) If the designated beneficiary is the spouse of the decedent and has one or more children less than 18 years old or has custody of one or more children of the decedent who are less than 18 years old, the designated beneficiary may elect to receive:

(1) a monthly benefit of \$200 payable until the youngest child becomes 18 years old; and

(2) when the youngest child has attained the age of 18, a monthly benefit for life of \$100, beginning on the date the beneficiary becomes 65 years old.

(d) If the designated beneficiary or beneficiaries are the decedent's dependent children who are less than 18 years old, their guardian may elect to receive for them:

(1) a monthly benefit of \$200, payable as long as two or more children are less than 18 years old; and

(2) a monthly benefit of \$100, payable as long as only one child is less than 18 years old.

(e) If the designated beneficiary is the spouse or a dependent parent of the decedent, benefits under Subsection (d) are payable, if a dependent child less than 18 years old exists, on the death of the beneficiary.

(f) A person who qualifies to receive survivor benefits from more than one deceased member as a spouse or a spouse with a dependent child is entitled to be paid only benefits based on the death of one of the decedents.

§ 824.405. Tables for Determination of Death Benefit Annuity

For the purpose of computing a death benefit annuity under Section 824.402(a)(4) or 824.403, the board of trustees shall extend the tables:

(1) in Section 824.202(b) to ages earlier than 55 years by actuarially reducing the benefit available at the age of 55 years to the actuarial equivalent at the attained age of the beneficiary; and

(2) in Section 824.202(c) to ages earlier than the earliest retirement age by actuarially reducing the benefit available at the earliest retirement age to the actuarial equivalent at the attained age of the beneficiary.

§ 824.406. Benefits for Survivors of Certain Members

(a) Except as provided by Subsection (c), an eligible surviving spouse who is the designated beneficiary of a person who died before April 8, 1957, and who had at the time of death a total of at least 25 years of service credit and military leave credit in the retirement system, is eligible to receive an applicable survivor benefit available under Section 824.404.

(b) A surviving spouse eligible under this section to receive a benefit is one who has not received from the retirement system a benefit based on the member's death, other than a return of the member's accumulated contributions.

(c) A surviving spouse who qualifies under this section for a survivor benefit is not eligible to receive a lump-sum benefit under Section 824.404(a).

(d) A benefit under this section is payable beginning on the last day of the month in which an eligible person applies for the benefit on a form prescribed by and filed with the retirement system.

§ 824.407. Guaranteed Return of Amount Equal to Contributions

If a beneficiary selects a life annuity death benefit under Section 824.402, the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the deceased member's accumulated contributions at the time of death exceeds the amount of annuity payments made to the beneficiary before the beneficiary's death. This lump-sum benefit will be paid to the person designated by the beneficiary of the annuity or, if no person is designated, to the estate of the beneficiary.

Sections 824.408 - 824.500 reserved for expansion.

SUBCHAPTER F. RETIREE DEATH BENEFITS

§ 824.501. Survivor Benefits

(a) The designated beneficiary of a retiree who dies while receiving a retirement benefit is eligible to receive a lump-sum survivor benefit under Section 824.404(a) and any other applicable benefit available under that section.

(b) An eligible person may receive benefits under both this section and Section 824.204.

This subsection has been amended by Section 5, Chapter 835, Acts of the 71st Texas Legislature, Regular Session, 1989 to read as follows:

(a) *The designated beneficiary of a retiree who dies while receiving a retirement benefit may elect to receive:*

(1) a lump-sum payment of \$2,500 plus an applicable monthly benefit under Section 34.404 [Section 824.404, Texas Government Code] of this subtitle; or

(2) a lump sum payment of \$10,000.

§ 824.502. Benefits on Death of Disability Retiree

The designated beneficiary of a disability retiree who dies while receiving a retirement benefit may elect to receive, instead of survivor benefits provided by Section 824.501, a benefit available under Section 824.402, computed as if the decedent had been in service at the time of death.

§ 824.503. Return of Excess Contributions

(a) If a retiree dies while receiving a standard or reduced service retirement annuity as provided by Section 824.202 or an optional service retirement annuity as provided by Section 824.204(c)(1) or (c)(2) and, in the case of a retiree receiving an optional service retirement annuity, if the retiree's designated beneficiary of the annuity has predeceased the retiree, the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the deceased retiree's accumulated contributions at the time of retirement exceeds the amount of annuity payments made before the retiree's death.

(b) A benefit under Subsection (a) is payable to any existing designated beneficiary or, if none exists, in the manner provided by Section 824.103.

(c) If a retiree's designated beneficiary dies while receiving an optional annuity under Section 824.204(c)(1) or (c)(2), the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the

amount of the retiree's accumulated contributions at the time of retirement exceeds the amount of annuity payments made to the retiree and the designated beneficiary before the beneficiary's death.

(d) A benefit under Subsection (c) is payable to the persons entitled to distribution of the deceased beneficiary's estate.

(e) An eligible person may receive benefits under both this section and Section 824.501.

§ 824.504. Benefits for Survivors of Certain Retirees

(a) Except as provided by Subsection (b), a surviving spouse who is the designated beneficiary of a retiree who did not perform a year of service after November 23, 1956, that was credited in the retirement system and who died before August 23, 1963, while receiving a retirement benefit, is eligible to receive an applicable survivor benefit available under Section 824.404.

(b) A surviving spouse who qualifies under this section for a survivor benefit is not eligible to receive a lump-sum benefit under Section 824.404(a).

(c) A benefit under this section is payable beginning on the last day of the month in which an eligible person applies for the benefit on a form prescribed by and filed with the retirement system.

Sections 824.505 - 824.600 reserved for expansion.

SUBCHAPTER G. LOSS OF BENEFITS ON RESUMPTION OF SERVICE

§ 824.601. Loss of Monthly Benefits

Except as provided by Section 824.602, a retiree is not entitled to service or disability retirement benefit payments, as applicable, for any month in which the retiree is employed in any position by a Texas public educational institution. A Texas public educational institution, for the purposes of this subchapter, is any entity included in the definition of “employer” or “public school” in Section 821.001 or any entity in whose employment the retiree has earned credit as a member of the retirement system. Loss of benefits under this section does not extend any period of guaranteed benefits elected pursuant to Section 824.204.

§ 824.602. Exceptions

(a) The retirement system may not, under Section 824.601, withhold a monthly benefit payment if the retiree is employed in a Texas public educational institution:

(1) as a substitute only with pay not more than the daily rate of substitute pay established by the employer, if the employment has not exceeded a total of 120 days in the school year or, for a disability retiree, 90 days in the school year;

(2) in a position, other than as a substitute, on no more than a one-half time basis for the month; or

(3) in one or more positions on as much as a full-time basis, if:

(A) the work occurs in a school year that begins after the retiree’s effective date of retirement;

(B) the work occurs in a period, designated by the retiree, of no more than five consecutive months between September and June of the school year;

(C) the retiree executes on a form prescribed by the retirement system a written election to have this exception apply for the school year in determining whether benefits are to be suspended for employment after retirement;

(D) there is a prospective employer who endorses the retiree’s election with a certification that the contemplated employment after retirement is in the best interests of the employer;

(E) the election form is executed on or before the retiree’s last day of the first month of employment under the election during the school year; and

(F) the retiree has not been previously employed during the school year in a Texas public educational institution in a position described in Subdivision (1) or (2).

(b) Working as a substitute any portion of a day counts as working a full day for the purposes of Subsection (a)(1).

(c) A retiree who has elected to avoid loss of monthly benefits in a school year pursuant to Subsection (a)(3) is not eligible during that school year for any other exceptions to loss of benefits provided in this section.

(d) A retiree working as a substitute in a month is not eligible for an exception to a loss of benefits for that month pursuant to Subsection (a)(2) for that or any other employment in a public educational institution.

(e) The exceptions provided by Subsections (a)(2) and (a)(3) do not apply to disability retirees.

(f) Section 824.005(b), concerning revocation of retirement on certain reemployment, applies to employment described in Subsection (a).

(g) The board of trustees shall adopt rules governing the employment of a substitute and defining "one-half time basis."

(h) The actuary designated by the board of trustees shall, in investigating the experience of the members of the system, note any significant increase in early age retirements and determine the extent to which any increase has been caused by the exception to loss of benefits for employment after retirement provided by Subsection (a)(3). If the actuary certifies in writing to the retirement system that sound actuarial funding of the retirement system's benefits is endangered by continuation of this exception, the board of trustees may determine that no further elections of the exception will be accepted from retirees, other than from those who have previously relied on the exception in retiring under this subtitle. A retiree may be considered to have relied on this exception only if retirement occurred on or after May 31, 1985, but before the date the board of trustees acknowledges receipt of such certification and if the retiree has first elected to receive benefits under the exception not later than two years after the retiree's effective date of retirement.

§ 824.603. Exclusion from Credit

Employment of a retiree described by Section 824.602(a) does not entitle a retiree to additional service credit, and the retiree so employed is not required to make contributions to the system from compensation for that employment. Such employment may not be considered in applying the provisions of Section 823.502.

CHAPTER 825. ADMINISTRATION

SUBCHAPTER A. BOARD OF TRUSTEES

§ 825.001. Composition of Board of Trustees

The board of trustees is composed of nine members.

§ 825.002. Trustees Appointed by Governor

(a) The governor shall appoint, with the advice and consent of the senate and as provided by this section, seven members of the board of trustees.

(b) The governor shall appoint three members of the board to hold office for staggered terms, with the term of one trustee expiring on August 31 of each odd-numbered year. Two of those three members must be persons who have demonstrated financial expertise, who have worked in private business or industry, and who have broad investment experience, preferably in investment of pension funds. None of the members appointed under this subsection may be a member or annuitant of the retirement system.

(c) The governor shall appoint two members of the board from a slate of three members of the retirement system who are currently employed by a public school district and who have been nominated in accordance with Subsection (f) by the members of the retirement system whose most recent credited service was performed for a public school district. The two members hold office for staggered terms.

(d) The governor shall appoint one member of the board from a slate of three former members of the retirement system who have retired and are receiving benefits from the retirement system and who have been nominated in accordance with Subsections (f) and (g) by the persons who have retired and are receiving benefits from the retirement system.

(e) The governor shall appoint one member from a slate of three members of the retirement system who are currently employed by an institution of higher education and who have been nominated in accordance with Subsection (f) by the members of the retirement system whose most recent credited service was performed for an institution of higher education.

(f) Persons considered for nomination under Subsection (c), (d), or (e) must have been nominated by written ballot at an election conducted under rules adopted by the board of trustees.

(g) To provide for the nomination of persons for appointment under Subsection (d), the board shall send to each retiree of the retirement system:

(g) To provide for the nomination of persons for appointment under Subsection (d) of this section, the board shall send to each retiree of the retirement system:

(1) notice of the deadline for filing as a candidate for nomination;

- and
- (2) information on procedures to follow in filing as a candidate;
 - (3) a written ballot.

§ 825.003. Trustees Appointed by Board of Education

The State Board of Education shall appoint two members of the board of trustees subject to confirmation by two-thirds of the senate.

§ 825.004. Terms of Office; Filling Vacancies

- (a) Members of the board of trustees hold office for terms of six years.
- (b) A vacancy in the office of a trustee shall be filled for the unexpired term in the same manner that the office was previously filled.

§ 825.005. Oath of Office

Before taking office as a trustee, a person shall take the constitutional oath prescribed for officers of the state.

§ 825.006. Application of Sunset Act

The board of trustees of the Teacher Retirement System of Texas is subject to the Texas Sunset Act (Chapter 325), but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished September 1, 1993, and every 12th year after that date are reviewed.

§ 825.007. Compensation; Expenses

Trustees serve without compensation but are entitled to reimbursement from the expense account of the retirement system for all necessary expenses that they incur in the performance of official board duties.

§ 825.008. Voting

Each trustee is entitled to one vote.

Sections 825.009 - 825.100 reserved for expansion.

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

§ 825.101. General Administration

The board of trustees is responsible for the general administration and operation of the retirement system.

§ 825.102. Rulemaking

Subject to the limitations of this subtitle, the board of trustees may adopt rules for:

- (1) eligibility for membership;
 - (2) the administration of the funds of the retirement system;
- and
- (3) the transaction of business of the board.

§ 825.103. Administering System Assets

(a) The board of trustees is the trustee of all assets of the retirement system.

(b) The board may invest and reinvest the retirement system's assets as authorized by Article XVI, Section 67, of the Texas Constitution.

§ 825.104. Designation of Authority to Sign Vouchers

(a) The board of trustees shall file with the comptroller of public accounts an attested copy of a board resolution that designates the persons authorized to sign vouchers for payment from accounts of the retirement system.

(b) A filed copy of the resolution required by Subsection (a) evidences the comptroller's authority to issue warrants for payment from funds of the retirement system.

§ 825.105. Adopting Rates and Tables

The board of trustees shall adopt rates and mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

§ 825.106. Interest Rate for Benefit Increase Reserve Account

After reviewing the recommendation of the actuary, the board of trustees

shall approve a rate of interest that represents a reasonable anticipation of earnings from the investments of assets in the benefit increase reserve account.

§ 825.107. Records of Board of Trustees

(a) The board of trustees shall keep, in convenient form, data necessary for:

- (1) actuarial valuation of the accounts of the retirement system; and
- (2) checking the system's expenses.

(b) The board shall keep a record of all of its proceedings.

(c) Except as otherwise provided by this title, records of the board are open to public inspection.

§ 825.108. Report

Annually, the board of trustees shall publish a report containing the following information:

- (1) the retirement system's fiscal transactions for the preceding school year;
- (2) the amount of the system's accumulated cash and securities; and
- (3) the most recent balance sheet showing an actuarial valuation of the assets and liabilities of the system.

This section has been effectively amended by Section 4, Chapter 929, Acts of the 71st Texas Legislature, Regular Session, 1989 to read as follows:

Reports

(a) *No later than December 15 of each year, the board of trustees shall publish a report in the Texas Register containing the following information:*

- (1) *the retirement system's fiscal transactions for the preceding fiscal year;*
 - (2) *the amount of the system's accumulated cash and securities;*
- and*
- (3) *the rate of return on the investment of the system's cash and securities during the preceding fiscal year.*

(b) *No later than March 1 of each year, the board of trustees shall publish a report in the Texas Register containing the balance sheet of the retirement system as of August 31 of the preceding fiscal year. The report must contain an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.*

(c) *A copy of the report required by Subsection (a) of this section must be filed with the governor, the lieutenant governor, the speaker of the house*

of representatives, the State Pension Review Board, the legislative audit committee, and the state auditor no later than December 15 of each year.

(d) A copy of the report required by Subsection (b) of this section must be filed with the governor, the lieutenant governor, the speaker of the house of representatives, the State Pension Review Board, the legislative audit committee, and the state auditor no later than March 1 of each year.

§ 825.109. Correction of Errors

If an error in the records of the retirement system results in a person's receiving more or less money than the person is entitled to receive under this subtitle, the board of trustees shall correct the error and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

§ 825.110. Determination of Annual Compensation

The board of trustees shall adopt rules to exclude from annual compensation that part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages. The board of trustees may adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment.

This section has been effectively amended by Section 7, Chapter 835, Acts of the 71st Texas Legislature, Regular Session, 1989 to read as follows:

Determination of Annual Compensation

The board of trustees may adopt rules to exclude from annual compensation all or part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages. The board of trustees may adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment.

Sections 825.111 - 825.200 reserved for expansion.

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

§ 825.201. Chairman

The board of trustees shall elect a chairman. The chairman must be a member of the board.

§ 825.202. Executive Secretary

(a) The board of trustees, by a majority vote of all members, shall appoint an executive secretary.

(b) The executive secretary may not be a member of the board of trustees.

(c) To be eligible to serve as the executive secretary, a person must have been a citizen of this state for the three years immediately preceding the appointment.

(d) The executive secretary shall recommend to the board actuarial and other services necessary to administer the retirement system.

(e) Annually, the executive secretary shall prepare an itemized expense budget for the following fiscal year and shall submit the budget to the board for review and adoption.

§ 825.203. Legal Adviser

The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

§ 825.204. Medical Board

(a) The board of trustees shall appoint a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in this state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

§ 825.205. Other Physicians

The board of trustees may employ physicians in addition to the medical board to report on special cases.

§ 825.206. Actuary

(a) The board of trustees shall designate an actuary as its technical adviser.

(b) At least once every five years the actuary, on authorization of the board of trustees, shall:

(1) investigate the mortality, service, and compensation experience of the members and beneficiaries of the retirement system;

(2) on the basis of the investigation made under Subdivision (1), recommend to the board of trustees tables and rates that are required; and

(3) on the basis of tables and rates adopted by the board of trustees under Section 825.105, evaluate the assets and liabilities of the retirement system.

§ 825.207. State Treasurer

(a) Except as provided by Section 825.302 or 825.303 or by Subsection (e) of this section, the state treasurer is the custodian of all securities and cash of the retirement system, including securities held in the name of a nominee of the retirement system.

(b) The state treasurer shall pay money from the accounts of the retirement system on warrants drawn by the comptroller of public accounts and authorized by vouchers signed by the executive secretary or other persons designated by the board of trustees.

(c) The state treasurer annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the treasurer's custody.

(d) The state treasurer is not responsible, under either civil or criminal law, for any action or losses with respect to assets of the retirement system while the assets are in the custody of a commercial bank as provided by Section 825.302 or 825.303 or by Subsection (e) of this section.

(e) The board of trustees may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of all or part of the retirement system's assets.

§ 825.208. Compensation of Employees; Payment of Expenses

The board of trustees shall approve the rate of compensation of all persons it employs and the amounts necessary for other expenses for operation of the retirement system. The rates and amounts may not exceed those paid for similar services for the state.

§ 825.209. Surety Bonds

(a) The state treasurer shall give a surety bond in the amount of \$50,000.

(b) The executive secretary shall give a surety bond in the amount of \$25,000.

(c) The board of trustees may require any trustee or employee of the board, other than the executive secretary, to give a surety bond in an amount determined by the board.

(d) All surety bonds must be:

(1) made with a solvent surety company that is authorized to do business in the state;

(2) made payable to the board of trustees;

(3) approved by the board of trustees and the attorney general;

and
(4) conditioned on the bonded person's faithful performance of all of the person's duties.

(e) The board of trustees shall pay from the expense account all expenses for the execution of a bond under this section, including premiums.

§ 825.210. Interest in Investment Profits Prohibited

Except for an interest in the retirement assets as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains from investments made with the system's assets and may not receive any compensation for service other than designated salary and authorized expenses.

Sections 825.211 - 825.300 reserved for expansion.

SUBCHAPTER D. MANAGEMENT OF ASSETS

§ 825.301. Investment of Assets

(a) The board of trustees shall invest assets of the retirement system without distinction as to their source.

(b) The board of trustees may contract with private professional investment managers to assist the board in investing the assets of the retirement system.

(c) The board of trustees shall employ one or more performance measurement services to evaluate and analyze the investment results of those assets of the retirement system for which reliable and appropriate measurement methodology and procedures exist. Each service shall compare investment results with the written investment objectives developed by the board, and shall also compare the investment of the assets being evaluated and analyzed with the investment of other public funds.

(d) The board of trustees may invest assets of the retirement system in obligations issued, assumed, or guaranteed by the African Development Bank.

(e) The board of trustees shall develop written investment objectives concerning the investment of the assets of the retirement system. The objectives may address desired rates of return, risks involved, investment time frames, and any other relevant considerations.

§ 825.302. Custody and Investment of Assets Pending Transactions

The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's cash or securities pending completion of an investment transaction and may authorize such custodian to invest the cash so held in such short-term securities as the board of trustees determines.

§ 825.303. Securities Lending

(a) The retirement system may, in the exercise of its constitutional discretion to manage the assets of the retirement system, select one or more commercial banks, depository trust companies, or other entities to serve as custodian or custodians of the system's securities and to lend the securities under rules adopted by the board of trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank or brokerage firm must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from its operation of a securities loan program for the system's securities and;

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the custodian collateral in the form of cash or United States government securities, in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities.

§ 825.304. Nominee to Hold Securities

(a) The assets of the retirement system may be held in the name of agents, nominees, depository trust companies, or other entities designated by the board of trustees.

(b) The records and all relevant reports or accounts of the retirement system must show the ownership interest of the retirement system in these assets and the facts regarding the system's holdings.

(c) A trustee or employee of the retirement system shall have no personal economic interest in any entity listed in Subsection (a), but shall undertake such action and duties with respect to these entities as the board of trustees determines to be in the interest of the retirement system. This subsection does not prohibit:

(1) an interest in the assets as a member of the retirement system;

(2) the right to receive expense reimbursements at the same rate that the board member or employee would have received as a board member or employee; and

(3) such indemnification as is authorized by the board of trustees.

(d) The records of an agent, nominee, or other entity that are maintained by the retirement system are subject to audit by the state auditor.

§ 825.305. Available Cash

The board of trustees may keep on deposit with the state treasurer available cash not exceeding 10 percent of the total assets of the retirement system, to pay annuity and other disbursements.

§ 825.306. Crediting System Assets

The assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following accounts:

(1) member savings account;

- (2) state contribution account;
- (3) retired reserve account;
- (4) benefit increase reserve account;
- (5) interest account; or
- (6) expense account.

§ 825.307. Member Savings Account

(a) The retirement system shall deposit in a member's individual account in the member savings account:

- (1) the amount of contributions to the retirement system that is deducted from the member's compensation;
- (2) the portion of a deposit made on or after resumption of membership that represents the amount of retirement benefits received;
- (3) the portion of a deposit to reinstate service credit previously canceled that represents the amount withdrawn or refunded;
- (4) the portion of a deposit to establish membership service credit previously waived that is required by Section 823.202(b)(1);
- (5) the portion of a deposit to establish membership service credit for service performed after retirement that is required by Section 823.502(c)(3) or (c)(5);
- (6) the portion of a deposit to establish military service credit required by Section 823.302(c);
- (7) the portion of a deposit to establish equivalent membership service credit required by Section 823.401(d), 823.402(e)(1) or (e)(2), or 823.403(b)(1) or (b)(2); and
- (8) interest earned on money in the account as provided by Subsections (b) and (c) and Section 825.313(b)(1).

(b) Interest on a member's contribution is computed at the rate of five percent a year on the average balance in the account during the preceding fiscal year. The retirement system shall credit interest on August 31 of each year.

(c) Accumulated contributions in an individual's account on the date that the individual's membership in the retirement system is terminated do not earn interest after that date.

§ 825.308. State Contribution Account

The retirement system shall deposit in the state contribution account:

- (1) all state contributions to the retirement system required by Section 825.404;
- (2) amounts from the interest account as provided by Section 825.313(b)(5);
- (3) retirement annuities waived or forfeited in accordance with Section 824.601 or 824.004;
- (4) fees collected under Section 825.403(h);

(5) fees and interest for reinstatement of service credit or establishment of membership service credit as provided by Section 823.202, 823.501, or 823.502;

(6) the portion of a deposit required by Section 823.302 to establish military service credit that represents a fee; and

(7) the portion of a deposit required by Section 823.401(e) to establish out-of-state service credit that represents a fee.

§ 825.309. Retired Reserve Account

(a) The retirement system shall transfer to the retired reserve account:

(1) from the member savings account, an amount equal to the accumulated contributions in a member's individual account when the member retires or when the retirement system approves the payment of any benefit authorized under this subtitle on the member's retirement or death;

(2) from the state contribution account, an amount certified by the actuary or determined under actuarial tables adopted by the board of trustees pursuant to Section 825.105 as necessary to provide for the payment of the benefit as it becomes due; and

(3) from the interest account, the amount required by Section 825.313(b)(2).

(b) The retirement system shall use money in the retired reserve account to pay all retirement annuities and all death or survivor benefits except those paid under Section 825.310(b).

§ 825.310. Benefit Increase Reserve Account

(a) The retirement system shall deposit in the benefit increase reserve account:

(1) money appropriated to pay postretirement benefit increases, or other adjustments of initial benefit payments, authorized by the legislature after January 30, 1975; and

(2) interest as required by Section 825.313(b)(4).

(b) The retirement system shall pay from the account postretirement benefit increases, and other adjustments of initial benefit payments, funded by the amounts deposited in the account pursuant to Subsection (a).

§ 825.311. Interest Account

In the interest account the retirement system shall:

(1) deposit all income, interest, and dividends from deposits and investments of assets of the retirement system; and

(2) accumulate net capital gains and losses from the sale, call, maturity, or conversion of securities.

§ 825.312. Expense Account

- (a) The retirement system shall deposit in the expense account:
 - (1) all membership fees required by this subtitle; and
 - (2) money required to be deposited in the account by Section 825.313(b)(3) or 825.313(c).
- (b) The retirement system shall pay from the account all expenses of administration and maintenance of the retirement system.

§ 825.313. Transfers From Interest Account

(a) Annually, the retirement system shall transfer from the interest account to the state contribution account amounts accumulated under Section 825.311(2).

(b) On August 31 of each year, the retirement system shall make the following transfers from the interest account:

- (1) to the member savings account, an amount computed using the rate prescribed by Section 825.307(b);
- (2) to the retired reserve account, an amount equal to 4% percent of the average balance of the retired reserve account for that fiscal year or, if the transfer is authorized by resolution of the board, an amount computed at a greater rate if the actuary recommends the greater rate to adequately fund the retired reserve account;
- (3) to the expense account, an amount designated by the board of trustees in accordance with Subsection (c);
- (4) to the benefit increase reserve account, an amount representing interest on the average annual balance of the benefit increase reserve account at a rate set by the board of trustees in accordance with Section 825.106; and
- (5) to the state contribution account, the amount remaining in the interest account after the other transfers required by this section are made.

(c) The board of trustees, by resolution recorded in its minutes, shall transfer from the interest account to the expense account an amount necessary to cover the expenses of the retirement system for the fiscal year, including the expense of servicing mortgages insured by the Federal Housing Administration under the National Housing Act (12 U.S.C. Section 1701 et seq.).

§ 825.314. Use of State Contributions

The retirement system shall use all assets contributed by the state to pay benefits authorized by this subtitle.

Sections 825.315 - 825.400 reserved for expansion.

SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

§ 825.401. Collection of Membership Fees

(a) Each member of the retirement system, with the first contribution to the member savings account in each fiscal year, shall pay a membership fee of \$10 to the board of trustees. The member shall pay the fee in the same manner as provided by Section 825.403 for the payment of the member's contributions to the member savings account.

(b) If a member does not currently hold a position included in the class of positions eligible for retirement system membership, the member shall pay the membership fee to the retirement system.

(c) If the membership fee is not paid, the board may deduct an amount equal to the fee from the member's first contribution of the year to the member savings account or from the member's accumulated contributions in that account before a refund is made.

(d) The retirement system shall deposit all membership fees in the expense account.

§ 825.402. Rate of Member Contributions

The rate of contributions for each member of the retirement system is:

(1) five percent of the member's annual compensation or \$180, whichever is less, for service rendered after August 31, 1937, and before September 1, 1957;

(2) six percent of the first \$8,400 of the member's annual compensation for service rendered after August 31, 1957, and before September 1, 1969;

(3) six percent of the member's annual compensation for service rendered after August 31, 1969, and before the first day of the 1977-78 school year;

(4) 6.65 percent of the member's annual compensation for service rendered after the last day of the period described by Subdivision (3) and before September 1, 1985; and

(5) 6.4 percent of the member's annual compensation for service rendered after August 31, 1985.

§ 825.403. Collection of Member's Contributions

(a) Each payroll period, each employer shall deduct from the compensation of each member employed by the employer an amount equal to 6.4 percent of the member's compensation for that period.

(b) Each employer or the employer's designated disbursing officer, at a time and in a form prescribed by the retirement system, shall send to the

executive secretary all deductions and a certification of earnings of each member employed by the employer.

(c) The executive secretary shall deposit with the state treasurer all deductions received by the executive secretary.

(d) After the deductions are deposited with the state treasurer, the money shall be used as provided by this subtitle.

(e) The county superintendent or ex officio county superintendent, in accordance with this section, shall collect contributions of members employed in common school or other school districts under the superintendent's jurisdiction.

(f) Employers shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(g) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payment period.

(h) If deductions were previously required but not paid, the member shall pay the amount of those deductions plus a fee computed at a rate of five percent a year on the unpaid amount from the end of the school year in which the deductions first became due or the end of the 1974-75 school year, whichever is later, to the date of payment. The board of trustees shall:

(1) prescribe terms for payments under this subsection;

(2) credit the member for prior service to which the member is entitled under this subtitle; and

(3) deposit the fee required by this subsection in the state contribution account.

(i) Contributions required by Section 825.402 shall be deducted from the funds regularly appropriated by the state for the current maintenance of any educational institution supported in whole or part by the state and not otherwise covered by this section.

§ 825.404. Collection of State Contributions

(a) During each fiscal year, the state shall contribute to the retirement system an amount equal to eight percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

(b) Before November 2 of each even-numbered year, the board of trustees shall certify to the comptroller of public accounts for review and adoption an estimate of the amount necessary to pay the state's contributions to the retirement system for the following biennium.

(c) The amount certified under Subsection (b) shall be included in the state budget that the governor submits to the legislature.

(d) All money appropriated by the state to the retirement system shall be paid to the state contribution account in equal monthly installments as provided by Section 403.093.

§ 825.405. Contributions Based on Compensation Above Statutory Minimum

(a) For members entitled to the minimum salary for certain school personnel under Section 16.056, Education Code, the employing district shall pay the state's contribution on the portion of the member's salary that exceeds the statutory minimum.

(b) For purposes of this section, the statutory minimum salary is the salary provided by Section 16.056, Education Code, multiplied by the price differential index applicable under Section 16.102, Education Code, to the district in which the member is employed, plus any career ladder supplement under Section 16.057, Education Code.

(c) The employer's form showing deductions and certification of earnings must provide the retirement system with information sufficient to administer this section, as determined by the system, including information showing the applicable minimum salary as well as aggregate annual compensation.

(d) The employer must remit the amount required under this section to the executive secretary at the same time that the employer remits the member's contribution.

(e) After the end of each school year, the retirement system shall certify to the commissioner of education:

(1) the names of any employing districts that have failed to remit, within the period required by Section 825.408, all contributions required under this section for the school year; and

(2) the amounts of the unpaid contributions.

(f) If the commissioner of education receives a certification under Subsection (e), the commissioner shall direct the comptroller of public accounts to withhold the amount certified, plus interest computed at the rate and in the manner provided by Section 825.408, from the first state money payable to the school district. The amount withheld shall be deposited to the credit of the appropriate accounts of the retirement system.

(g) The board of trustees shall take this section into consideration in adopting the biennial estimate of the amount necessary to pay the state's contributions to the system.

(h) This section does not apply to state contributions for members employed by a school district in a school year if the district's tax rate for maintenance and operation revenues for the tax year that ended in the preceding school year equals or exceeds 125 percent of the statewide average tax rate for school district maintenance and operation revenues for that tax

year. For a tax year, the statewide average tax rate for school district maintenance and operation revenues is the tax rate that, if applied to the statewide total appraised value of taxable property for every school district in the state according to the appraisal roll certified for each district for the tax year as provided by Section 26.01, Tax Code, would produce an amount equal to the statewide total amount of maintenance and operation taxes imposed in the tax year for every school district in the state.

§ 825.406. Collection of Contributions From Federal or Private Sources; Offense; Penalty

(a) If an employer applies for money provided by the United States, an agency of the United States, or a privately sponsored source, and if any of the money will pay part or all of an employee's salary, the employer shall apply for any legally available money to pay state contributions required by Section 825.404 or 830.201.

(b) When an employer receives money for state contributions from an application made in accordance with Subsection (a), the employer shall immediately send the money to the retirement system for deposit in the general revenue fund of the state treasury.

(c) Monthly, employers shall report to the retirement system in a form prescribed by the system:

- (1) the name of each employee paid in whole or part from a grant;
- (2) the source of the grant;
- (3) the amount of the employee's salary paid from the grant;
- (4) the amount of the money provided by the grant for state contributions for the employee; and
- (5) any other information the retirement system determines is necessary to enforce this section.

(d) The retirement system may:

- (1) require from employers reports of applications for money;
- (2) require evidence that the applications include requests for funds available to pay state contributions to the retirement system for employees paid from the grant; and
- (3) examine the records of any employer to determine compliance with this section and rules promulgated under it.

(e) A person commits an offense if the person is an administrator of an employer and knowingly fails to comply with this section.

(f) An offense under Subsection (e) is a Class C misdemeanor.

(g) An employer who fails to comply with this section may not, after the failure, apply for or spend any money from a federal or private grant. The retirement system shall report alleged noncompliance to the attorney general, the state treasurer, the Legislative Budget Board, the comptroller

of public accounts, and the governor. The attorney general shall bring a writ of mandamus against the employer to compel compliance with this section.

§ 825.407. Collection of Contributions From Noneducational and General Funds

(a) In this section:

(1) "General academic teaching institution" has the meaning assigned by Section 61.003, Education Code.

(2) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.

(3) "Noneducational and general funds" means all funds of an institution of higher education except those funds used as a method of financing for an institutional appropriation in the General Appropriations Act or dedicated by the Constitution of the State of Texas.

(b) The governing board of each general academic teaching institution and the governing board of each medical and dental unit shall reimburse the state, from noneducational and general funds of the institution or unit, for state contributions that are made based on any portion of a member's salary that is paid from the noneducational and general funds.

(c) The designated disbursing officer of each general academic teaching institution and the designated disbursing officer of each medical and dental unit shall submit to the retirement system, at a time and in the manner prescribed by the retirement system, a monthly report containing:

(1) the name of each member employed by the institution or unit who, for the most recent payroll period, was paid wholly or partly from noneducational and general funds;

(2) the amount of the employee's salary for the most recent payroll period that was paid from noneducational and general funds;

(3) a certification of the total amount of employer contributions due under this section for the payroll period; and

(4) any other information the retirement system determines is necessary to administer this section.

(d) A monthly report required under Subsection (c) shall be accompanied by payment of the amount certified under Subdivision (3) of that subsection.

(e) After the end of each fiscal year, the retirement system shall report to the comptroller of public accounts and the State Auditor the name of any general academic teaching institution and any medical and dental unit delinquent in the reimbursement of contributions under this section for the preceding fiscal year and the amount by which each reported institution or unit is delinquent.

(f) Any portion of the reimbursement required under this section to be made for a fiscal year by a general academic teaching institution or a

medical and dental unit that remains unpaid on the first day of the next fiscal year accrues interest, beginning on that day or the due date for the portion, whichever is later, at an annual rate, compounded monthly, equal to the rate established under Section 825.313(b), plus two percent.

(g) The retirement system shall submit all money it receives under this section to the comptroller of public accounts for deposit in the general revenue fund.

§ 825.408. Interest on Contributions and Fees; Deposits in Trust

(a) An employing district that fails to remit, before the 11th day after the last day of a month, all member and employer deposits required by this subchapter to be remitted by the district for the month shall pay to the retirement system, in addition to the deposits, interest on the unpaid amounts at an annual rate compounded monthly. The rate of interest is the rate established under Section 825.313(b)(2), plus two percent. Interest required under this section is creditable to the interest account.

(b) An employing district and its trustees hold amounts due to the retirement system under this subtitle in trust for the retirement system and its members and may not divert the amounts to any other purpose.

§ 825.409. Employer Pickup of Member Contributions

(a) Each employer shall pick up the employee contribution required of each of its employees by Section 825.403 for all compensation earned after December 31, 1987. Employers shall pay to the retirement system the picked-up contributions from the same source of funds that is used in paying earnings to the employees. Such payments shall be in lieu of contributions by the employees. An employer shall pick up these contributions by a corresponding reduction in the cash salary of the employees, by an offset against a future salary increase, or by a combination of a salary reduction and offset against a future salary increase. Employees do not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(b) Contributions picked up as provided by Subsection (a) shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, each employer shall continue to withhold federal income taxes on these picked-up contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to Section 414(h) of the Internal Revenue Code of 1986 (26 U.S.C. Section 414) these picked-up contributions may not be included as gross income of the employee until such time as they are distributed or made available.

(c) Employee contributions picked up as provided by Subsection (a) shall be transmitted to the retirement system in the manner required by Section 825.403. Employee contributions picked up by an employer and credited to the employee's account shall be treated for all other purposes as if the amount were a part of the member's annual compensation and had been deducted pursuant to Section 825.403(a).

Sections 825.410 - 825.500 reserved for expansion.

SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

§ 825.501. Statement of Amount in Individual Accounts

The board of trustees shall furnish, on written request, to a member of the retirement system a statement of the amount credited to the member's individual account. The board is not required to furnish more than one statement a calendar year.

This section has been effectively amended by Section 6, Chapter 929, Acts of the 71st Texas Legislature, Regular Session, 1989 to read as follows:

Statement of Amount in Individual Accounts

(a) *No later than December 1 of each year, the board of trustees shall furnish to each member a statement of the amount credited to the member's individual account as of August 31 of the preceding fiscal year.*

(b) *In addition to the statement required by Subsection (a) of this section, the board of trustees shall furnish, on written request, to a member of the retirement system a statement of the amount credited to the member's individual account. The board is not required to furnish more than four such statements to each member a calendar year.*

§ 825.502. Payment of Contributions to a Member Absent From Service

(a) If a demand for the accumulated contributions of a member with fewer than 10 years of service has not been made in accordance with Section 822.005 before the seventh anniversary of the member's last day of service, the retirement system shall return to the member or to the member's heirs all accumulated contributions of the member.

This subsection has been effectively amended by Section 9, Chapter 835, Acts of the 71st Texas Legislature, Regular Session, 1989 to read as follows:

(a) *If a demand for the accumulated contributions of a member with fewer than five years of service has not been made in accordance with Section 32.005 [Section 822.005, Texas Government Code] of this subtitle before the seventh anniversary of the member's last day of service, the retirement system shall return to the member or to the member's heirs all accumulated contributions of the member.*

(b) If the member or the member's heirs cannot be found, the member's accumulated contributions are forfeited to the retirement system. The

retirement system shall credit the amount forfeited to the retired reserve account.

§ 825.503. Reproduction and Preservation of Records

(a) The retirement system may photograph, microphotograph, or film all records pertaining to a member's individual file, accounting records, district report records, and investment records.

(b) If a record is reproduced under Subsection (a), the retirement system may destroy or dispose of the original record if the system first:

- (1) places the reproduction in conveniently accessible files; and
- (2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(d) The executive secretary or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them.

§ 825.504. Employer Certification to Board

(a) An employer annually shall certify to the board of trustees the beginning date of the contract of each member whose contract year begins after June 30 and continues after August 31 of the same calendar year.

(b) The board of trustees by rule may prescribe the form of and procedures for filing certifications required by this section.

§ 825.505. Audits

For the purpose of determining the propriety of contributions or credits, the records of an employer concerning the employment and compensation of its personnel are subject to examination, in the offices of the employer during regular working hours, by representatives of the retirement system designated to conduct the examination.

§ 825.506. Plan Qualification

(a) It is intended that the provisions of this subtitle be construed and administered in a manner that the retirement system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401). The board of trustees may adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan. Rules adopted by the board of trustees are to be considered a part of the plan.

(b) In determining qualification status under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401), the retirement system's benefit plan shall be considered primary. An employer may not provide employee retirement or deferred benefits to the extent that, when considered together with the benefits authorized by this subtitle as required by federal law, would result in the retirement system's plan failing to meet federal qualification standards as applied to public pension plans.

The following were added as new sections to Title 110B, Revised Statutes by the 71st Texas Legislature, Regular Session, 1989. Since the Teacher Retirement law has been recodified by that same session, these sections should be considered as effective amendments to that law.

§ 33.4021. Certain Developmental Leave

(a) A member is eligible to establish equivalent membership service credit for developmental leave under this section if the person:

(1) before June 10, 1977, requested and received a leave of absence approved by the member's employer for study, research, travel, or another purpose designed, as determined by the employer, to improve the member's professional competence;

(2) returned to the public school district granting the leave of absence immediately following the completion of the approved study;

(3) has at least five years of service credit in the retirement system; and

(4) is an employee of a public school at the time the credit is sought.

(b) The retirement system shall verify whether a person is eligible to establish equivalent membership service credit for developmental leave under this section. No credit may be granted under this section unless the employer certifies that, based on the records of the employer, developmental leave was requested and approved as required by Subsection (a) of this section.

(c) A member may establish credit under this section by depositing with the retirement system for each year of developmental leave claimed:

(1) an amount determined by multiplying the member's annualized earnings for the member's latest year of service or the member's highest credited annual compensation at the time the deposits are made,

whichever is greater, times the combined rate of member and state contributions for the school year in which the deposits are made and further increased by 1 percent for each year that the member's age as of the date the deposit is received exceeds 35 years, plus

(2) any unpaid annual membership fees between the last date of membership service before the leave was taken and the date of resumption of membership service.

(d) A member may not establish more than two years of equivalent membership service credit under this section.

(e) Not later than January 1, 1990, a member must submit an application and any appropriate documents requested by the retirement system to establish equivalent membership service credit for developmental leave under this section.

(f) The retirement system may not use credit established under this section in computing service retirement benefits until the member has at least 10 years of service credit for actual service in public schools.

(g) If credit established under this section is not used in determining benefits, all deposits made under this section are refundable to the member or, if applicable, the member's beneficiary.

(h) This section expires March 1, 1990.

[Section 1, Chapter 420, Acts of the 71st Texas Legislature, Regular Session, 1989]

§ 34.204. Optional Service Retirement Benefits

(d) If a person who is nominated by a retiree in the written designation under Section 34.101 of this subtitle predeceases the retiree, the reduced annuity of a retiree who has elected an optional service retirement annuity under Subsection (c)(1) or (2) of this section shall be increased to the standard service retirement annuity that the retiree would otherwise be entitled to receive if the retiree had not selected that annuity option. The standard service retirement annuity shall be adjusted as appropriate for:

(1) early retirement as provided by Section 34.202 of this subtitle; and

(2) postretirement increases in retirement benefits authorized by law after the date of retirement.

(e) The increase in the annuity under Subsection (d) of this section:

(1) begins with the first monthly payment made to the retiree following the date of death of the person nominated and is payable to the retiree for the remainder of the retiree's life; and

(2) applies only to a member who retires after August 31, 1989.

(f) The board of trustees shall adopt separate tables to be used to reduce an optional service retirement annuity under Subsection (d) of this section to the actuarial equivalent of the standard service retirement annuity.

[Section 4, Chapter 835, Acts of the 71st Texas Legislature, Regular Session, 1989]

§ 34.505. Other Amounts Payable on Death of Retiree

(a) *Amounts payable by the retirement system to an annuitant that are not received by that annuitant, as determined by the retirement system, before the annuitant's death may be paid to the person named to receive benefits in the event of the annuitant's death, in accordance with rules adopted by the board of trustees.*

(b) *The board of trustees may adopt rules necessary to administer this section.*

[Section 6, Chapter 835, Acts of the 71st Texas Legislature, Regular Session, 1989]

SUBCHAPTER H. INCREASES IN ANNUITIES

§ 34.701. Application of Annuity Increases to Certain Annuities

(a) *An increase that is provided by law in the amount of an annuity being paid by the retirement system and that is applicable to retirements occurring before, or not later than, a date specified in the law also applies to an annuity based on the service of a member who, before October 1, 1989:*

(1) *accepted, under Subchapter C of this chapter, service retirement that became effective on a date that is within the period specified for eligibility for the increase;*

(2) *subsequently revoked the person's service retirement as provided by Section 34.005 of this chapter;*

(3) *subsequently applied for disability retirement under Section 34.301 of this chapter to be effective at the end of the month in which the revocation of service retirement occurred;*

(4) *did not receive a disability retirement annuity under Subchapter D of this chapter;*

(5) *subsequently accepted service retirement that became effective at the end of the month in which the earlier revocation of service retirement occurred; and*

(6) *applies to the retirement system in writing for recomputation of the person's annuity.*

(b) *As soon as practicable after a person applies under this section, the retirement system shall verify whether an applicant meets the requirements of this section and is entitled to any increases in annuities provided by existing law.*

(c) *The retirement system shall increase the amount of an annuity payable to a retiree who applies and is verified as eligible for an increase in annuities provided by law, by the amount or rate of the increase. The first payment of an annuity as increased by this section is due on the later of:*

(1) *the end of the month in which the retiree is verified under this section as eligible for the increase; or*

(2) *a date of first payment specified in the law providing for the increase.*

(d) *For the sole purpose of determining eligibility for or the amount of increases in annuities provided by law after the date a retiree has been verified as eligible for an increase under this section, the date of retirement of the person on whose service the annuity is based will be considered the date of original service retirement that was subsequently revoked, if the retiree has not terminated the subsequent service retirement as provided by this subtitle.*

[Section 5, Chapter 222, Acts of the 71st Texas Legislature, Regular Session, 1989]

§ 35.1081. Management Audit

(a) *The legislative audit committee may contract with an independent and internationally recognized accounting firm with substantial experience in auditing retirement or pension plans to conduct a managerial audit of the retirement system.*

(b) *The state auditor shall pay the costs of each management audit under this section from money appropriated to the state auditor and approved for that purpose by the legislative audit committee. Not later than the 30th day after the date the retirement system receives a statement of audit costs paid by the state auditor under this subsection, the retirement system shall reimburse the state auditor for the costs from money in the expense account.*

(c) *The legislative audit committee may determine the frequency of the audits authorized by this section and may determine the programs and operations to be covered by the audits. The accounting firm selected to conduct the audits shall report the results of those audits directly to the committee.*

(d) *No later than 30 days after the legislative audit committee receives an audit report, the committee shall file a copy of the report with the retirement system, the governor, the lieutenant governor, the speaker of the house of representatives, the State Pension Review Board, the state auditor, and the secretary of state for publication in the Texas Register.*

[Section 5, Chapter 929, Acts of the 71st Texas Legislature, Regular Session, 1989]

§ 35.507. Confidentiality of Information About Members, Retirees, Annuitants, or Beneficiaries

(a) *Information contained in records that are in the custody of the retirement system concerning an individual member, retiree, annuitant, or beneficiary is confidential under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), 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 executive secretary 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 executive secretary 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 executive secretary determines that disclosure of the information requested is reasonably necessary to the performance of the duties of the official or employee; or*

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

(2) *the information is disclosed pursuant to a subpoena and the executive secretary determines that the individual will have a reasonable opportunity to contest the subpoena.*

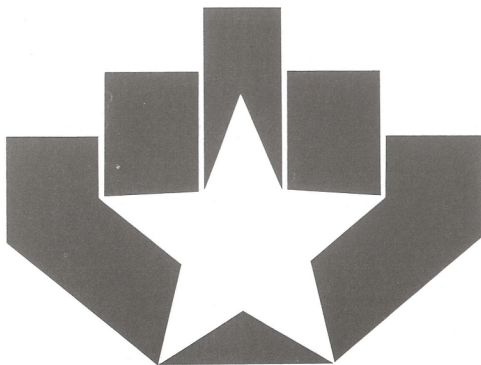
(b) *This section does not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the retirement system.*

(c) *The executive secretary 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, or beneficiary.*

[Section 10, Chapter 835, Acts of the 71st Texas Legislature, Regular Session, 1989]

Optional Retirement Laws



CHAPTER 830. OPTIONAL RETIREMENT PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

§ 830.001. Purpose of Chapter

The purpose of this chapter is to establish a complete retirement program for faculty members employed in state-supported institutions of higher education as an incentive that will attract high quality faculties and thereby improve the level of education at state-supported colleges and universities.

§ 830.002. Optional Retirement Program

(a) The optional retirement program established as provided by this subtitle shall provide for contributions to any type of investment authorized by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403), as it existed on January 1, 1981, and for the purchase of fixed or variable retirement annuities that meet the requirements of that section and Section 401(g) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401).

(b) Participation in the optional retirement program is an alternative to active membership in the retirement system.

§ 830.003. Application

In this chapter, the term "institution of higher education" includes the Texas Higher Education Coordinating Board, the Texas State Technical Institute, and the institutions defined in Section 821.001(10), but excludes the Rodent and Predatory Animal Control Service.

§ 830.004. Administration

(a) A governing board may provide for contributions to any type of investment authorized by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403), as it existed on January 1, 1981, and may arrange the purchase of annuity contracts from any insurance or annuity company that is qualified to do business in this state.

(b) If a governing board has more than one component institution, agency, or unit under its jurisdiction, the governing board may provide a separate optional retirement program for each component or may place two or more components under a single program.

§ 830.005. Exemption From Taxes

If qualified to do business in this state, a life insurance or annuity company is exempt from the payment of franchise or premium taxes on annuity or group insurance policies issued under a benefit program authorized and at least partly paid for by the governing board of an institution of higher education.

Sections 830.006 - 830.100 reserved for expansion.

SUBCHAPTER B. PARTICIPATION

§ 830.101. Eligibility to Participate

(a) The governing board of each institution of higher education shall provide an opportunity to participate in the optional retirement program to all faculty members in the component institutions governed by the board.

(b) Eligibility to participate in the optional retirement program is subject to rules adopted by the Texas Higher Education Coordinating Board.

(c) A person who before September 1, 1987, had chosen to participate in the optional retirement program and who was participating in the program on September 1, 1987, is entitled to continue to participate in the program until the person terminates participation as provided by Section 830.105(a).

§ 830.102. Option to Participate

(a) A member of the retirement system who is eligible to participate in the optional retirement program may elect to continue as a member of the retirement system or to participate in the optional retirement program.

(b) A person eligible to participate in the optional retirement program on the date the program becomes available at the person's place of employment must elect to participate in the program no later than August 1 of the calendar year after the year in which the program becomes available.

(c) A person who becomes eligible to participate in the optional retirement program after the date the program becomes available at the person's place of employment must elect to participate before the 91st day after becoming eligible.

(d) An eligible person who does not elect to participate in the optional retirement program is considered to have chosen to continue membership in the retirement system.

§ 830.103. Effect of Transfers and Changes in Employment Status

(a) An institution of higher education shall accept the transfer of a participant's optional retirement program from another institution of higher education.

(b) If, after participating in the optional retirement program for at least one year, a person becomes employed in an institution of higher education in a position normally covered by the retirement system, the person shall continue participation in the optional retirement program if the person has had no intervening employment in the public schools other than in an institution of higher education.

§ 830.104. Withdrawal of Contributions to the Retirement System

(a) A person who is a participant in the optional retirement program may withdraw accumulated contributions from the retirement system.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) Before the first anniversary of the date an application is received, the retirement system shall pay a withdrawing member the member's accumulated contributions.

(d) A person who withdraws contributions under this section relinquishes all accrued rights in the retirement system.

(e) Nothing in Section 830.105 precludes the election by a participant to withdraw accumulated contributions under this section.

§ 830.105. Termination of Participation

(a) A person terminates participation in the optional retirement program, without losing any accrued benefits, by:

(1) death;

(2) retirement; or

(3) termination of employment in all institutions of higher education.

(b) A change of company providing optional retirement program benefits or a participant's transfer between institutions of higher education is not a termination of employment.

(c) The benefits of an annuity purchased under the optional retirement program are available only if the participant obtains the age of 70½ years or terminates participation in the program as provided by Subsection (a).

§ 830.106. Eligibility for Resumption of Membership

A participant in the optional retirement program is not eligible for membership in the retirement system unless the person:

(1) terminates employment covered by the optional retirement program; and

(2) becomes employed in the public school system in a position that is not eligible for participation in the optional retirement program.

Sections 830.107 - 830.200 reserved for expansion.

SUBCHAPTER C. CONTRIBUTIONS AND BENEFITS

§ 830.201. Contributions

(a) Each fiscal year the state shall contribute to the optional retirement program an amount equal to 8½ percent of the aggregate annual compensation of all participants in the program during that year. A participant in the optional retirement program shall contribute to the program 6.65 percent of the person's annual compensation.

(b) Contributions required by this section shall be credited to the benefit of the participant.

(c) In this section, "annual compensation" has the meaning assigned to that term by Section 821.001(4).

§ 830.202. Collection and Disbursement of Contributions

(a) The contributions of participants in the optional retirement program shall be made by salary reduction pursuant to an agreement made under Section 830.204.

(b) The comptroller of public accounts shall pay the state's contributions to the optional retirement program to the appropriate institutions of higher education.

(c) The disbursing officer of an institution of higher education shall pay the contributions collected under this section to the company providing the optional retirement program for that institution.

(d) An institution of higher education shall certify to the comptroller, in the manner provided for estimate of state contributions to the retirement system, estimates of funds required for the payments by the state under this section.

§ 830.203. Collection of Contributions From Noneducational and General Funds

(a) In this section:

(1) "General academic teaching institution" has the meaning assigned by Section 61.003, Education Code.

(2) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.

(3) "Noneducational and general funds" means all funds of an institution of higher education except those funds used as a method of financing for an institutional appropriation in the General Appropriations Act or dedicated by the Constitution of the State of Texas.

(b) The governing board of each general academic teaching institution and the governing board of each medical and dental unit shall reimburse the state, from noneducational and general funds of the institution or unit, for state contributions that are made based on any portion of an optional retirement program participant's salary that is paid from the noneducational and general funds.

(c) The designated disbursing officer of each general academic teaching institution and the designated disbursing officer of each medical and dental unit shall submit to the retirement system, at a time and in the manner prescribed by the retirement system, a monthly report containing:

(1) the name of each optional retirement program participant employed by the institution or unit who, for the most recent payroll period, was paid wholly or partly from noneducational and general funds;

(2) the amount of the employee's salary for the most recent payroll period that was paid from noneducational and general funds;

(3) a certification of the total amount of employer contributions due under this section for the payroll period; and

(4) any other information the retirement system determines is necessary to administer this section.

(d) A monthly report required under Subsection (c) shall be accompanied by payment of the amount certified under Subdivision (3) of that subsection.

(e) After the end of each fiscal year, the retirement system shall report to the comptroller of public accounts and the State Auditor the name of any general academic teaching institution and any medical and dental unit delinquent in the reimbursement of contributions under this section for the preceding fiscal year and the amount by which each reported institution or unit is delinquent.

(f) Any portion of the reimbursement required under this section to be made for a fiscal year by a general academic teaching institution or a medical and dental unit that remains unpaid on the first day of the next fiscal year accrues interest, beginning on that day or the due date for the portion, whichever is later, at an annual rate, compounded monthly, equal to the rate established under Section 825.313(b), plus two percent.

(g) The retirement system shall submit all money it receives under this section to the comptroller of public accounts for deposit in the general revenue fund.

§ 830.204. Salary Reduction Agreement

(a) A participant in the optional retirement program and the employing institution of higher education, acting through its governing board, shall execute an agreement under which the salary of the participant is reduced by the amount of the contribution required under Section 830.201 and under which the employer contributes an amount equal to the reduction

for any type of investment authorized in Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403) or toward the purchase of an annuity under the program.

(b) An agreement under this section is irrevocable until the earlier of the time:

(1) the participant ceases participation in the optional retirement program; or

(2) it is determined by the Internal Revenue Service or by legislative enactment that the contributions of participants to the optional retirement program are elective deferrals within the meaning of Section 402 of the Internal Revenue Code of 1986 (26 U.S.C. Section 402).

§ 830.205. Benefits

Benefits in the optional retirement program vest in a participant after one year of participation in one or more optional retirement plans operating in one or more institutions of higher education.

The following was added to Title 110B, Revised Statutes by the 71st Texas Legislature, Regular Session, 1989. Since the Teacher Retirement law has been recodified by that same session, this section should be considered as an effective amendment to that law.

§ 36.107. Investment Advisory Fees

(a) A participant in the optional retirement program may authorize the payment of investment advisory fees from the amount in the participant's custodial account or annuity if:

(1) the investment advisory fees for each fiscal year do not exceed two percent of the annual value of the participant's custodial account or annuity as of the last day of that fiscal year;

(2) the fees are paid directly to a registered investment advisor that provides investment advice to the participant;

(3) the investment advisor to whom the fees are paid is registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.) and is engaged full-time in the business of providing investment advice;

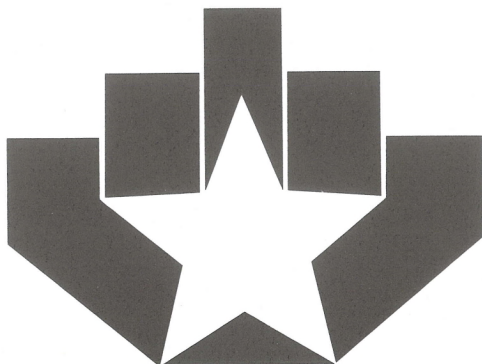
(4) the participant and the investment advisor enter into a contract, for a term of no more than one year, for services that provides for the payment of fees as provided by this section; and

(5) the attorney general has received an official determination from the Internal Revenue Service that payment of investment advisory fees as prescribed by this section is not a distribution of funds that is prohibited or subject to taxation and penalty under the Internal Revenue Code.

(b) *The attorney general shall request an official determination from the Internal Revenue Service concerning whether the payment of investment advisory fees as prescribed by this section is a distribution of funds that is prohibited or subject to taxation and penalty under the Internal Revenue Code. If the attorney general receives an official determination from the Internal Revenue Service as specified by this subsection, the attorney general shall file the official determination with the secretary of state's office for publication in the Texas Register.*

[Section 1, Chapter 1161, Acts of the 71st Texas Legislature, Regular Session, 1989]

Retiree Group Insurance Laws



ART. 3.50-4. TEXAS PUBLIC SCHOOL RETIRED EMPLOYEES GROUP INSURANCE PROGRAM

§ 1. Short Title

This article may be cited as the Texas Public School Retired Employees Group Insurance Act.

§ 2. Definitions

In this article:

(1) "Active employee" means an employee as defined by Subdivision (6), Section 31.001, Title 110B, Revised Statutes, who is a member of the Teacher Retirement System of Texas and who is not entitled to coverage under a plan provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), or under the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code).

(2) "Carrier" means any insurance company or hospital service corporation authorized by the State Board of Insurance to provide any of the insurance coverages, benefits, or services provided by this article under the insurance laws of this state.

(3) "Dependent" means:

(A) a spouse of a retiree;

(B) a retiree's or a deceased active member's unmarried child who is younger than 25 years of age including:

(i) an adopted child;

(ii) a foster child, a stepchild, or other child who is in a regular parent-child relationship; and

(iii) a recognized natural child; and

(C) a retiree's recognized natural child, adopted child, foster child, stepchild, or other child who is in a regular parent-child relationship and who lives with or whose care is provided by the retiree or surviving spouse on a regular basis, regardless of the child's age, if the child is mentally retarded or physically incapacitated to such an extent as to be dependent on the retiree or surviving spouse for care or support, as determined by the trustee, or in the case of a deceased active member, a recognized natural child, adopted child, foster child, stepchild, or other child who was in a regular parent-child relationship and who lived with or whose care was provided by the deceased active member on a regular basis, regardless of the child's age, if the child is mentally retarded or physically incapacitated to such an extent as to have been dependent on the deceased active member or surviving spouse for care or support, as determined by the trustee.

(4) "Fund" means the Texas public school retired employees group insurance fund.

(5) "Health benefit plan" or "plan" means a group insurance policy, contract, or certificate, medical or hospital service agreement, membership or subscription contract, salary continuation plan, or similar group arrangement to provide, pay for, or reimburse expenses for health care services.

(6) "Medicare" means the health insurance program for the aged and disabled that is provided by the United States government.

(7) "Minimum premium contract" means a contract entered into with the carrier by the trustee that provides that:

(A) a minimum premium will be paid to the carrier to cover its cost of direct claims administration, cost of other administration, risk charges with stop loss provisions, and profit; and

(B) the remainder of the premium under the program will be used by the fund to reimburse the carrier to cover claims as they are paid, to pay the administrative expenses of the program, and to provide within the fund the assets to cover all reserves necessary for the trustee to operate on a financially sound basis.

(8) "Policy year" or "year" means the period beginning on September 1 of one year and ending on August 31 of the following year.

(9) "Program" means the group insurance program authorized by this article.

(10) "Retiree" means:

(A) a person who has retired under the Teacher Retirement System of Texas, as provided by Subtitle D, Title 110B, Revised Statutes [Subtitle C of Title 8, Texas Government Code], with 10 or more years of service credit and who is not eligible to be covered by a plan provided under the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), or under the Texas State College and University Employees Uniform Insurance Benefits Act (Article 3.50-3, Vernon's Texas Insurance Code); or

(B) a person who has retired as a disability retiree under Subtitle D, Title 110B, Revised Statutes [Subtitle C of Title 8, Texas Government Code], and is entitled to receive monthly benefits from the retirement system.

(11) "Surviving spouse" means:

(A) the surviving spouse of a deceased retiree;

(B) the surviving spouse of a deceased active member of the Teacher Retirement System of Texas:

* (1) for whom contributions have been made to the Texas Public School Retired Employees Group Insurance Program at the last place of employment of the deceased active member in public education in this state;

* (2) who had 10 or more years of service credit in the Teacher Retirement System of Texas; and

* (3) who died on or after September 1, 1986.

(12) "Trustee" means the Teacher Retirement System of Texas.

(13) "Surviving dependent child" means:

(A) the dependent child of a deceased retiree who has survived the deceased retiree and the deceased retiree's spouse; or

(B) the dependent child of a deceased active member of the Teacher Retirement System of Texas who has survived the deceased active member and the deceased member's spouse if the deceased active member:

(i) had contributions to the Texas Public School Retired Employees Group Insurance Program at his last place of employment within public education;

(ii) had 10 or more years of service credit in the Teacher Retirement System of Texas; and

(iii) died on or after September 1, 1986.

§ 3. Creation and General Authority

(a) The Texas Public School Retired Employees Group Insurance Program is established to provide for an insurance plan or plans under this article.

(b) The trustee shall take the actions it considers necessary to devise, administer, and implement the program.

§ 4. Employees

The trustee may employ persons to assist it in carrying out this article. The trustee shall determine the duties and compensation of these employees.

§ 5. Rules, Plans, Procedures, and Orders

(a) The trustee may adopt rules, plans, procedures, and orders reasonably necessary to implement this article, including:

(1) establishment of minimum benefit and financing standards for group insurance coverage to be provided to all retirees, dependents, surviving spouses, and surviving dependent children;

(2) establishment of basic and optional group coverage to be provided to retirees, dependents, surviving spouses, and surviving dependent children;

(3) establishment of the procedures for contributions and deductions;

(4) establishment of periods for enrollment and selection of optional coverage and procedures for enrolling and exercising options under the plan;

* Statute uses arabic numerals to identify these subparagraphs of Section 2(11)(B).

- (5) determination of methods and procedures for claims administration;
 - (6) study of the operation of all insurance coverage provided under this article;
 - (7) administration of the fund;
 - (8) adoption of a timetable for the development of minimum benefit and financial standards for group insurance coverage, establishment of group insurance plans, and the taking of bids for and awarding of contracts for insurance plans; and
 - (9) contracting with an independent and experienced group insurance consultant or actuary, who does not receive insurance commissions from any insurance company, for advice and counsel in implementing and administering this program.
- (b) The trustee may adopt other rules relating to the program as considered necessary by the trustee.

§ 6. Advisory Committee: Membership, Powers, and Duties

(a) There is created a Retirees Advisory Committee composed of nine members appointed by the trustee. One member shall be an active school administrator. One member shall be a retired school administrator. Two members shall be active teachers. Three members shall be retired teachers. One member shall be an active member of the auxiliary personnel of a school district. One member shall be a retired member of the auxiliary personnel.

(b) Members of the committee serve for staggered terms of four years. Five members' terms, including the active school administrator, one active teacher, two retired teachers, and the retired member of the auxiliary personnel, expire February 1, 1986, and every fourth year after that date. The remaining members' terms expire February 1, 1988, and every fourth year after that date. The trustee shall fill each vacancy on the committee with a person who meets the qualifications of the vacated position.

(c) The committee shall:

- (1) hold public hearings on group insurance benefits;
- (2) recommend to the trustee minimum standards and features of the plan or plans that it considers appropriate; and
- (3) recommend to the trustee desirable changes in rules and legislation affecting the program.

(d) The trustee shall adopt procedural rules for the committee to follow in carrying out its powers and duties under this section.

(e) The advisory committee shall meet at least twice per year, and at the call of the trustee. In the event of an emergency, the advisory committee may meet at the call of a majority of the members of the committee.

(f) A person is not eligible for appointment as a member of the advisory committee if the person is required to register with the secretary of state under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973

(Article 6252-9c, Vernon's Texas Civil Statutes).

(g) A member of the advisory committee is entitled to reimbursement for actual and reasonable expenses incurred in performing functions as a member of the committee.

§ 7. Participation

(a) Each retiree must be enrolled in a basic plan offered in the program unless:

(1) the retiree rejects enrollment in the program in writing on a form provided by the trustee; or

(2) the retiree has been found under Section 18A of this article to have defrauded or attempted to defraud the program.

(b) For each retiree who participates in the program, the state through the trustee shall contribute from money in the fund the total cost of the premium for the basic plan covering the retiree.

§ 8. Purchase of Group Insurance

(a) The trustee shall be designated as the group policyholder for any plan or plans established in this article.

(b) The group insurance coverages provided under the plan or plans may include but are not limited to life insurance, accidental death and dismemberment, hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, eye care, obstetrical benefits, prescribed drugs, medicines, and prosthetic devices, and other supplemental benefits, supplies, and services as provided by this article, protection against loss of salary, and other coverages considered advisable.

(c) The trustee may provide different plans for retirees and surviving spouses covered by Medicare than the plans provided for retirees and surviving spouses who are not covered by Medicare.

(d) Each basic plan must cover preexisting conditions.

(e) The trustee may contract for and make available to all retirees, dependents, surviving spouses, and surviving dependent children optional group health insurance benefit plans in addition to the basic plans. The optional coverage may include a smaller deductible, lower coinsurance, or additional categories of benefits permitted under Subsection (b) of this section to provide additional levels of coverages and benefits. Any additional contributions for these optional plans shall be paid for by the retiree or surviving spouse.

(f) The trustee shall enter into a contract or contracts with a carrier or carriers for the plan or plans that will provide that the method of paying premiums, paying claims, and establishing reserves shall be under the minimum premium approach to financing; and the contract shall be referred to as a minimum premium contract.

(g) New contracts for coverages under this program shall be submitted for competitive bidding at least every six years. Contracts between the trustee and carriers for the group insurance pool may provide for renegotiation.

(h) Each contract shall be based on the terms and conditions agreed on between the trustee and the carrier or carriers selected to provide the insurance coverage and benefits. Any contract for group insurance awarded by the trustee must meet the minimum benefit and financial standards adopted by the trustee.

(i) The coverage provided by the plan or plans may be secondary to all other benefit coverage to which the retiree, surviving spouse, dependent, or surviving dependent child is entitled. In the event the retiree, surviving spouse, dependent, or surviving dependent child is entitled to receive medicare hospital insurance benefits at no charge, then the coverage provided by the plan or plans shall be secondary to medicare hospital and medical insurance to the extent permitted by federal law.

(j) In contracting for any insurance under this article, competitive bidding shall be required under rules adopted by the trustee. The trustee is not required to select the lowest bid but may consider also ability to service contracts, past experiences, financial stability, and other relevant criteria. If the trustee awards a contract to a carrier whose bid deviates from that advertised, the deviation shall be recorded and the reasons for the deviation shall be fully justified in the minutes of the next meeting of the trustee.

§ 9. Benefit Certificates

At such times, or upon such events, as designated by the trustee, each insurance carrier shall issue to each retiree, surviving spouse, or surviving dependent child insured under this article a certificate of insurance that:

- (1) states the benefits to which the retiree, surviving spouse, or surviving dependent child is entitled;
- (2) states to whom the benefits are payable;
- (3) states to whom the claims must be submitted; and
- (4) summarizes the provisions of the policy principally affecting the retiree, surviving spouse, or surviving dependent child.

§ 10. Annual Report and Accounting

(a) Not later than the 180th day after the end of each state fiscal year, the trustee shall make a written report to the State Board of Insurance concerning the insurance coverages provided and the benefits and services being received by retirees, surviving spouses, dependents, and surviving dependent children insured under this article.

(b) Insurance coverage purchased under this article shall provide for an accounting to the trustee by each carrier providing coverage not later

than the 180th day after the end of each policy year. The accounting shall be on a form approved by the trustee. Other reports shall be prepared by each carrier if considered necessary by the trustee. An extra charge may not be assessed by the carrier for the accounting reports.

(c) All reports required by this article shall be made available for public inspection in a form that protects the identity of individual claimants.

§ 11. Exemption From Execution and Taxation

(a) All insurance benefit payments, active employee and state contributions, retiree, surviving spouse, and surviving dependent child contributions, and optional benefits payments and any rights, benefits, or payments accruing to any person under this article, as well as all money in the fund created by this article, are exempt from execution, attachment, garnishment, or any other process and may not be assigned except as specifically provided by this article.

(b) A premium or contribution on a policy, insurance contract, or agreement authorized as provided by this article is not subject to any state tax.

§ 12. Death Claims: Beneficiaries

The amount of group life insurance and group accidental death and dismemberment insurance covering a retiree, surviving spouse, dependent, or surviving dependent child at the date of death shall be paid, on the establishment of a valid claim, only:

(1) to the beneficiary or beneficiaries designated by the retiree, surviving spouse, dependent, or surviving dependent child in a signed and witnessed written document received before death in the trustee's office; or

(2) if no beneficiary is properly designated or in existence, to persons in accordance with the trustee's death benefit provisions in Subsection (b), Section 34.103, Title 110B, Revised Statutes.

§ 13. Automatic Coverage

A retiree who applies during an enrollment period may not be denied any of the group insurance basic coverage provided under this article unless the retiree has been found under Section 18A of this article to have defrauded or attempted to defraud the Texas Public School Retired Employees Group Insurance Program.

§ 14. Payment of Contributions on Optional Plans

Retirees, surviving spouses, and surviving dependent children shall pay monthly contributions to cover the cost of optional plans that they elect to

receive, and the trustee shall adopt rules for the collection of additional contributions from retirees, surviving spouses, and surviving dependent children participating in the optional plans. As a condition of electing this coverage, a retiree, surviving spouse, or surviving dependent child must authorize in writing the trustee to deduct the amount of these contributions from the monthly annuity payments. The person having custody of the surviving dependent child or the guardian of the child's estate may authorize the deduction of the contributions from monthly annuity payments.

§ 15. Retired School Employees Group Insurance Fund

(a) The retired school employees group insurance fund is created. The State Treasurer is the custodian of the fund, and the trustee shall administer the fund. All contributions from active employees, retirees, and the state, contributions for optional coverages, investment income, appropriations for implementation of this program, and other money required or authorized to be paid into the fund shall be paid into the fund. From the fund shall be paid, without state fiscal year limitation, the appropriate premiums to the carrier or carriers providing group coverage under the plan or plans under this article, claims for benefits under the group coverage, and the amounts expended by the trustee for administration of the program. The appropriate portion of the premiums to provide for incurred but unreported claim reserves and contingency reserves, as determined by the trustee, shall be retained in the fund.

(b) The trustee shall transfer the amounts deducted from annuities for contributions into the fund.

(c) Expenses for the development and administration of the program shall be spent as provided by a budget adopted by the trustee. Expenses in any fiscal year may not exceed one percent of the contributions to the program for that year by the state, the active employees, and the covered participants in the program.

(d) The trustee may invest and reinvest the money in the fund as provided by Subchapter D, Chapter 35, Title 110B, Revised Statutes, for assets of the Teacher Retirement System of Texas.

§ 16. Contributions

(a) For the state fiscal year beginning September 1, 1985, and for each subsequent state fiscal year, each active employee, as a condition of employment, shall contribute to the fund an amount equal to .25 percent of the employee's salary. Each month the employer of an active employee shall deduct the contributions from the employee's salary and shall remit the contributions to the trustee as provided by any procedures that the trustee may require. In lieu of deducting the contributions from salaries, an

employer may assume and pay the total contributions due from its active employees for any month.

(b) The state shall contribute as the state's contribution to the fund the following amounts:

(1) for the state fiscal year beginning September 1, 1986, an amount equal to .35 percent of the salary of each active employee;

(2) for the state fiscal year beginning September 1, 1987, an amount equal to .40 percent of the salary of each active employee;

(3) for the state fiscal year beginning September 1, 1988, an amount equal to .45 percent of the salary of each active employee;

(4) for the state fiscal year beginning September 1, 1989, an amount equal to .50 percent of the salary of each active employee; and

(5) for the state fiscal year beginning September 1, 1990, and each subsequent fiscal year, an amount equal to .50 percent of the salary of each active employee.

(c) If after the state fiscal year beginning September 1, 1990, the amount of state and active employee contributions to the fund is raised by the legislature above the percentages provided by Subsections (a) and (b) of this section to provide adequate funding for the program, the ratio between the state's contribution and the active employees' contributions must be maintained at two to one.

(d) Contributions from active employees become the property of the fund on receipt by the trustee and may not be refunded to the active employee under any circumstances, including termination of employment.

(e) Contributions to the fund deducted from the salary of an active employee are included in "annual compensation" for purposes of the Teacher Retirement System of Texas.

(f) Before the first day of November preceding each regular session of the legislature, the trustee shall certify to the Legislative Budget Board and the budget division of the governor's office the amounts necessary to pay the contributions of the state to the fund under this article for information and review. Not later than August 31 of each year, the trustee shall certify to the comptroller of public accounts the estimated amount of state contributions to be received by the fund for the next fiscal year under the appropriations authorized by this article.

(g) Contributions allocated and appropriated under this section shall be paid from the General Revenue Fund in equal monthly installments, based on the annual estimate certified by the trustee to the comptroller of public accounts for that year, and subject to any express limitations specified in the Act making the appropriation. Variations between the certified amount and the actual amount due for the year shall be reconciled at the close of the fiscal year and proper adjustments in the annual contributions to the fund shall be made.

(h) An employing district that fails to remit, before the 11th day after the last day of the month, all member deposits required by this section to be

remitted by the district for the month shall pay to the Texas public school retired employees group insurance fund, in addition to the deposits, interest on the unpaid amounts at the annual rate of six percent compounded monthly.

(i) An employing district and its trustees hold amounts due to the Texas public school retired employees group insurance fund under this article in trust for the fund and its participants and may not divert the amounts for any other purpose.

§ 17. Studies, Reports, and Audits

(a) The trustee shall study the operation and administration of this article, including surveys and reports on financing group insurance coverages and health benefits plans available to retirees, and the experience and projected cost of coverage and benefits. The trustee shall make a report to the legislature at each regular legislative session relating to the operation and administration of this article.

(b) Each contract entered into under this article shall include provisions requiring carriers to:

(1) furnish to the trustee on a timely basis reasonable reports that the trustee determines are necessary to carry out its functions under this article; and

(2) permit the trustee and State Auditor to examine records of the carriers as may be necessary to carry out this article.

§ 18. Coverage for Dependents, Surviving Spouses, and Surviving Dependent Children

(a) Any retiree participating in the program is entitled to secure for his dependents group insurance coverages provided for the retiree under this article, as determined by the trustee. The additional contribution payments for the coverages for dependents shall be deducted from the annuities of the retiree in the manner and form determined by the trustee.

(b) A surviving spouse who is entitled to insurance benefits under this article may elect to retain or obtain the insurance coverage for himself or his dependents, at the applicable rates for retirees, provided the surviving spouse provides payment of applicable contributions in the manner established by Section 14 of this Act and by the trustee.

(c) A surviving dependent child, the guardian of the child's estate, or the person having custody of the child may elect to retain or obtain insurance coverage for the surviving dependent child at rates applicable for dependents if applicable contributions are made in the manner established by Section 14 of this Act and by the trustee.

§ 18A. Expulsion From Program for Fraud

(a) After notice and hearing as provided by this section, the trustee may expel from participation in the Texas Public School Retired Employees Group Insurance Program any retiree, surviving spouse, dependent, or surviving dependent child who submits a fraudulent claim under, or has defrauded or attempted to defraud, any health benefits plan offered under the program.

(b) On its motion or on the receipt of a complaint, the trustee may call and hold a hearing to determine whether a retiree, surviving spouse, dependent, or surviving dependent child has submitted a fraudulent claim under, or has defrauded or attempted to defraud, any health benefits plan offered under the Texas Public School Retired Employees Group Insurance Program.

(c) A proceeding under this section is a contested case under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) If the trustee, at the conclusion of the hearing, issues a decision that finds that the accused retiree, surviving spouse, dependent, or surviving dependent child submitted a fraudulent claim or has defrauded or attempted to defraud any health benefits plan offered under the Texas Public School Retired Employees Group Insurance Program, the trustee shall expel the retiree, surviving spouse, dependent, or surviving dependent child from participation in the program.

(e) The substantial evidence rule shall be used on any appeal of a decision of the trustee under this section.

(f) A retiree, surviving spouse, dependent, or surviving dependent child expelled from the Texas Public School Retired Employees Group Insurance Program may not be insured by any health insurance plan offered by the program for a period, to be determined by the trustee, of up to five years from the date the expulsion takes effect.

§ 18B. Confidentiality of Records

(a) Section 35.507, Title 110B, Revised Statutes, [Added as new Section to Title 110B Revised Statutes by 71st Legislature, Regular Session. See page 72.] concerning the confidentiality of information in records that are in the custody of the Teacher Retirement System of Texas, applies to information in records that are in the custody of the retirement system regarding retirees, annuitants, or beneficiaries under the Texas Public School Retired Employees Group Insurance Program.

(b) The retirement system may disclose to health and benefit providers information in the records of an individual that the retirement system determines to be necessary to administer the program.

§ 19. Assistance

In implementing and administering this article, the State Board of Insurance, as requested by the trustee, shall assist the trustee in carrying out this article.

§ 20. Effective Date of Coverage

Coverage under the plan or plans authorized by this article shall begin September 1, 1986.

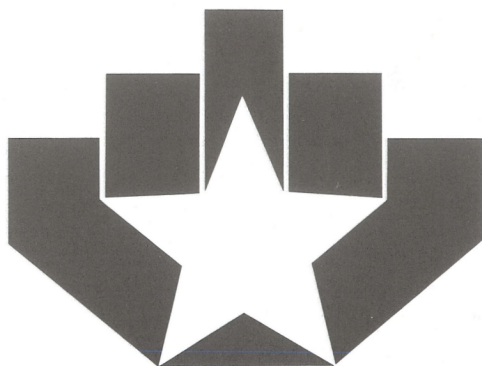
§ 21. Nonapplicability of Article 3.51

Article 3.51, Insurance Code, does not apply to insurance purchased under this article.

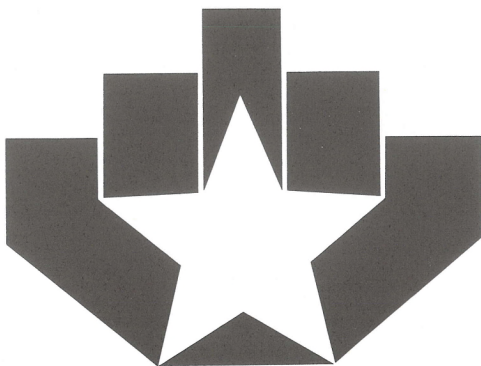
§ 22. Expired

Section 22 of this article, which related to purchase of group insurance, expired by its own terms on September 2, 1986.

RULES OF THE BOARD OF TRUSTEES



Rules



RULES OF THE BOARD OF TRUSTEES

TEXAS ADMINISTRATIVE CODE
TITLE 34, PART III

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CHAPTER 21. PURPOSE AND SCOPE

§ 21.1. Statements of Policy

(a) The statements of policy from the minutes of the Board of Trustees of the Teacher Retirement System of Texas at all of its meetings from the first in 1937, have been compiled and codified through December 14, 1973.

(b) This material has been arranged generally according to subject matter and placed in numbered sections. Many of the regulations are pertinent to and affect more than one of the subjects listed in the section headings. No attempt has been made to include under each heading all of the policies or regulations which might be pertinent to that heading. The fact that a regulation is included under one heading shall not in any manner limit its application to subjects treated under other headings.

(c) These rules and regulations are statements of policies in matters over which the board is given authority by the statutes and of interpretations in matters where the meaning of the law is not readily apparent. They do not include matters in which the board considered the intent of the law to be unmistakably clear. For this reason, these rules and regulations should be used in conjunction with the Teacher Retirement Law (codified as the Texas Government Code, Title 8, Subtitle C).

§ 21.2. Approved and Ratified

This codification of the rules and regulations of the Teacher Retirement System of Texas was approved and ratified by the board of trustees at its meeting December 14, 1973. All previous board actions in conflict with this codification are revoked to the extent of such conflict.

CHAPTER 23. ADMINISTRATIVE PROCEDURES

§ 23.1. Grievances and Complaints

(a) Grievances and complaints are usually settled by correspondence or informal conference between the member or beneficiary and the staff of the Teacher Retirement System. Any person with a grievance which cannot be settled in this manner may appeal the decision of the staff to the Executive Secretary of the Teacher Retirement System. Request for hearing before the executive secretary must be in writing and include a

clear statement of the grievance or complaint and be presented at least 10 days prior to the hearing. The hearing will be limited to the questions stated in the written request. The person complaining may be represented by counsel. Notice will be given of the time and place of the hearing.

(b) The decision of the executive secretary may be appealed to the Board of Trustees of the Teacher Retirement System, subject to the same rules and conditions as a hearing before the executive secretary. The executive secretary may, if he deems it advisable, set the original hearing before the board of trustees.

§ 23.2. Information Requests

(a) From time to time, many professional organizations seek information from the Teacher Retirement System for improving benefits. It is the desire of the board of trustees that the staff work with groups in an advisory capacity or to supply factual data. Requests for technical data that would require the services of the board's consulting actuary are to be made in writing and will be reviewed by the board before appropriate action is taken.

(b) Because there are a large number of professional organizations and affiliate groups which represent various segments of the teacher retirement membership, the board encourages organizations to coordinate their efforts through their parent organizations.

§ 23.3. Adjudicative Hearings [Repealed]

§ 23.4. Public Participation in Adoption of Rules

(a) "Interested person" means any member of the Teacher Retirement System; any beneficiary of a member; any retiree of the Teacher Retirement System; any guardian, administrator, or executor of a member, retiree, or beneficiary; or any public school.

(b) Any interested person may informally request adoption of a rule by correspondence or conference with TRS staff members. If satisfactory results cannot be achieved in this manner, any interested person may petition the Teacher Retirement System to adopt, amend, or repeal a rule by filing a clear, written request to initiate rulemaking procedures with the executive secretary. The petition shall set forth the exact text of the proposed rule and the petitioner's name and address, and the name, business address, and telephone number of petitioner's counsel, if any. The petition may also include written documents in support of the petition.

(c) The executive secretary shall grant or deny the petition within 60 days of its receipt. The executive secretary may consult informally with staff members and the petitioner in reaching a decision. The petition may be amended with consent of the petitioner at any time before a final decision is rendered.

(1) Upon granting the petition in writing, the executive secretary shall initiate rulemaking proceedings pursuant to the Administrative Procedure and Texas Register Act and the rules and regulations of the Teacher Retirement System.

(2) Denial of the petition by the executive secretary, and reasons therefor, shall be in writing. The petitioner may appeal this decision to the board of trustees provided that a written notice of appeal is filed with the executive secretary within 10 days after the decision of the executive secretary is issued. If no such notice of appeal is timely filed, or if the next regularly scheduled meeting of the board of trustees will occur more than 60 days after receipt of the petition by the executive secretary, and the petitioner is unwilling to waive the deadline for a final decision until that meeting, the decision of the executive secretary shall be the final decision of TRS. The final decision of the board shall be based on the written petition and written decision of the executive secretary unless the board orders a hearing on the petition. If the board approves the petition, the executive secretary shall initiate rulemaking proceedings pursuant to the Administrative Procedure and Texas Register Act and the rules and regulations of the Teacher Retirement System.

(d) Oral and written data, views, and arguments on a proposed rule may be submitted informally to the executive secretary by informal conference or correspondence within 20 days after publication of notice of the proposed rule in the Texas Register.

(e) A written request for a public hearing on a proposed substantive rule may be submitted to the executive secretary within 10 days after publication of notice of the proposed substantive rule in the Texas Register, provided that the request is made by 25 persons, a governmental subdivision or agency, or an association having at least 25 members. The request shall contain the name and address of each person requesting the hearing and shall clearly specify the proposed rule for which a hearing is requested.

(f) The executive secretary shall schedule the proposed rule for hearing on a date no earlier than seven days after notice of the hearing date is published and no later than 20 days after receipt of the written request. The executive secretary or the board of trustees may reschedule the hearing in the interest of justice or administrative necessity or for good cause; however, the proposed rule shall not be adopted prior to the requested hearing.

(g) The executive secretary shall designate himself, a TRS employee, or a specially appointed person as hearing officer to take the testimony of any interested person in support of or in opposition to the rule. The hearing officer shall designate the order of taking testimony and may establish reasonable time limits on oral testimony, provided that reasonable opportunity is given to amplify oral testimony in writing. All hearings will be held in the offices of TRS in Austin, Texas, unless for good cause TRS shall designate another place of hearing.

§ 23.5. Nomination for Appointment to the Board of Trustees

(a) During any calendar year in which the term of office of a public school district member, institution of higher education member or retired teacher member expires, the Teacher Retirement System of Texas will conduct an election between September 1 and October 15 to select the nominees to be considered by the Governor for appointment to the position.

(b) Public school district members of the system who are currently employed by a public school district may have their names listed on the official ballot as candidates for nomination to a public school district position by filing an official petition bearing the signature, printed or typed name, and social security number of 500 members of the retirement system whose most recent credited service is or was performed for a public school district. Institution of higher education members of the system who are currently employed by an institution of higher education may have their names listed on the official ballot as candidates for nomination to the institution of higher education position by filing an official petition bearing the signature, printed or typed name, and social security number of 500 members whose most recent credited service is or was performed for an institution of higher education. Retired teachers may have their names listed on the official ballot as candidates for nomination to the retired teacher position by filing an official petition bearing the signature, printed or typed name, and social security number of at least 100 retirees of the system. Official petition forms shall be available from the Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Official petitions must be filed by July 1 of the calendar year in which the election is to be held. A qualified public school district member, institution of higher education member, or retiree may sign more than one candidate's petition as long as they are eligible to vote in the election of the candidate or candidates for whom they are signing.

(c) Upon verification of petitions by the system, the names of qualified candidates shall be printed on the ballot. The ballot shall also provide space for write-in candidates. Ballots shall be mailed on or before September 1 of the year in which the election is held to the last known home address of each active member or retiree. Ballots must be returned to the Teacher Retirement System by October 15 of the year in which the election is held in order to be counted. The executive secretary shall cause the ballots to be counted. Names of the candidates for each position receiving the three highest number of votes shall be certified by the executive secretary to the governor.

(d) When a vacancy of a public school district member, institution of higher education member, or retired member occurs for a reason other than the expiration of a term of office, the Board of Trustees may conduct an election at any time they determine appropriate. The Board of Trustees shall establish deadlines for filing petitions, the date of mailing ballots, the

date for returning ballots, and any other necessary details related to the election process.

(e) When more than one public school district member position on the Board of Trustees is being contested at the same election, each candidate shall specify on his or her petition which position he or she is seeking by indicating expiration date of the term of office sought. Petitions which fail to specify shall be returned to the candidates for completion if time permits. Failure to designate a specific position by the deadline shall disqualify the candidate. When more than one position is contested at the same election, a person may be a candidate for only one of the positions.

CHAPTER 25. MEMBERSHIP CREDIT

SERVICE ELIGIBLE FOR MEMBERSHIP

§ 25.1. Full-time Service

Employment by public, state-supported educational institutions in Texas for ½ or more of the standard work load at a rate comparable to the rate of compensation for other persons employed in similar positions is defined as regular, full-time service eligible for membership.

§ 25.2. Bus Drivers

Persons regularly employed as bus drivers for routes approved by the Transportation Department of the Texas Education Agency are eligible for membership.

§ 25.3. Transport Contractors

Persons contracting with a public school to transport students are not eligible for membership.

§ 25.4. Employee Substitutes

Employees who substitute in a position otherwise eligible for membership may qualify for membership provided that they are employed for at least 90 days in the school year. Such service shall be considered the equivalent of at least 4½ months of service. Members claiming credit for such service will be assessed a fee for delinquent deposits, if applicable, as provided in Sec. 25.43 of this title (relating to Delinquent Deposits).

§ 25.5. Deposits

Deposits must be made for any regular, full-time employment as defined in Sec. 25.1 of this title (relating to Full-Time Service). Probational appointment or temporary appointment for an indefinite period is defined as regular employment.

§ 25.6. Part-time or Temporary Employment

Part-time (less than $\frac{1}{2}$ the standard work load), irregular, seasonal, or temporary employment for a definite period of less than $4\frac{1}{2}$ months during a school year is eligible only if such employment, when combined with other employment in Texas public educational institutions during the same school year, qualifies as service eligible for membership or if such other employment in itself qualifies as service eligible for membership.

§ 25.7. Employees of State Eleemosynary Institutions

Employees of state eleemosynary institutions not under the control of the State Board of Education may continue their membership provided they were members on November 22, 1956, and also provided that they are actively engaged in teaching or in supervision of teaching.

§ 25.8. Scope of Membership

Membership in the Teacher Retirement System of Texas encompasses employees of public educational institutions in this state including employees of independent school districts which have been established within state eleemosynary institutions. When new school districts are being established at eleemosynary institutions and school personnel employed, all employees of the school district shall be reported as members of the Teacher Retirement System even though formal approval and accreditation by the Texas Education Agency may be pending.

§ 25.9. Employees Over 60 [Repealed]

§ 25.10. Student Employment

A person employed in a Texas public college or university is not eligible for membership based upon that employment, will not have deductions made from compensation for that employment, and will not receive service credit for that employment if both the following conditions apply:

- (1) The employment is conditional upon the employee's being enrolled as a student at the same institution.
- (2) The employee has no other employment during the same payroll period which is eligible for membership in TRS.

COMPENSATION

§ 25.21. Compensation Subject to Deposit and Credit

(a) The contributions required from a member to the Teacher Retirement System are generally based upon the member's annual compensation. Benefits paid by the retirement system are also generally based in whole or in part upon the annual compensation credited to a member for certain school years. A member's annual compensation for any particular school year has the meaning given by the law and rules applicable for that year. Beginning with the 1981-82 school year and for school years thereafter, annual compensation consists of the salary and wages that are paid or payable to a member for employment which is eligible for membership in the retirement system during that school year.

(b) Some payments made by an employer to a member are not salary or wages, even though the payments may be otherwise considered as compensation under the employment contract or federal tax laws. In general, salary and wages creditable and subject to deposits are those types of monetary compensation which:

(1) are earned or accrue proportionally as the work is performed, so that a member terminating employment between pay periods is entitled to a proportional amount of the compensation based on either length of employment or amount of work performed;

(2) are paid or payable at fixed intervals, generally at the end of each pay period; and

(3) are not specifically excluded under subsection (d) of this section.

(c) The following types of monetary compensation are to be included in annual compensation:

(1) amounts deducted from regular pay for the state-deferred compensation program, for a tax-sheltered annuity, or for a deferred compensation arrangement qualifying under the U.S. Internal Revenue Code, Section 401(k);

(2) normal payroll deductions which are not tax-exempt or tax-deferred;

(3) additional compensation paid for additional duties, for longevity, or for service in a particular location or specialty, provided that these payments clearly meet the requirements of subsection (b) of this section;

(4) career ladder payments of money authorized by the Texas Education Code, Section 16.057;

(5) delayed payments of lump sum amounts which by law or contract should have been paid at fixed intervals and which otherwise meet the requirements of subsection (b) of this section; and

(6) amounts withheld from regular pay under a cafeteria plan as provided by Section 25.22 of this title (relating to Contributions to

Cafeteria Plans and Deferred Compensation).

(d) The following are excluded from annual compensation:

- (1) allowances, including housing, car, and expense allowances;
- (2) reimbursements for expenses;
- (3) payments for accrued sick leave or vacation, except that continued payments of normal compensation when vacation or sick leave is actually taken by an employee will be included in annual compensation to the extent otherwise permitted by this section;
- (4) benefits, except as provided in subsection (c)(1) of this section, which either are not subject to federal income tax or which will be subject to federal income tax in a future year;
- (5) bonuses, except for career ladder payments authorized by the Texas Education Code, Section 16.057;
- (6) employer payments for fringe benefits, including direct cash payments in lieu of fringe benefits, except as provided in Section 25.22 of this title (relating to Contributions to Cafeteria Plans and Deferred Compensation);
- (7) payments except as provided in subsections (c)(1), (c)(2), and (c)(6) of this section, made to third parties for the benefit of a member;
- (8) payments for work as an independent contractor or consultant;
- (9) all nonmonetary compensation; and
- (10) any other fringe benefit.

(e) Annual compensation may be further limited by rule of the retirement system to prevent the conversion of noncreditable compensation to salary and wages in anticipation of retirement. The retirement system will adjust annual compensation under that rule at the time of a member's retirement and make the appropriate revisions of the amount of credit awarded and deposits required.

(f) Annual compensation and a member's best three years' average compensation is limited to the maximum amount permitted by United States Internal Revenue Code, § 401(a)(17), as modified by federal regulations and determinations authorized by that section. These limits on annual compensation apply to calculations of benefits made for any person retiring after August 31, 1989. Member contributions for any year will be made on all compensation otherwise eligible for TRS credit until the applicable limit for that year is reached. No benefit will be reduced by the application of this rule below the amount that the member would have received had the member retired on August 31, 1989.

§ 25.22. Contributions to Cafeteria Plans and Deferred Compensation

(a) In this section:

- (1) "deferred compensation plan" means a plan qualifying

under the United States Internal Revenue Code, Sections 401(k), 403(b), or 457; and

(2) “cafeteria plan” means a compensation plan in which employees are given a choice of cash or fringe benefits in a manner that qualifies under the United States Internal Revenue Code, Section 125.

(b) The contributions to a deferred compensation plan or cafeteria plan that are withheld from the salary and wages of an employee will be included in annual compensation if:

(1) the contributions were originally included in the employee’s salary;

(2) the contributions are withheld from the employee’s salary under a voluntary written salary reduction agreement;

(3) the benefit plan and each option in the plan, if options are offered, are available to all Teacher Retirement System (TRS) members employed; and

(4) with respect to contributions to a cafeteria plan, the benefit options in the plan are limited to one or more of the following:

(A) group health insurance;

(B) disability payments;

(C) health care reimbursements;

(D) group term life insurance;

(E) dependent care assistance;

(F) group legal services;

(G) a deferred compensation arrangement qualifying under Section 401(k).

(c) The following contributions to deferred compensation or cafeteria plans are not includable in annual compensation:

(1) contributions obtained from mandatory deductions or withholdings from employee salaries;

(2) direct employer contributions as described in subsection (f) of this section;

(3) any contributions to a cafeteria plan if the plan contains options in addition to those listed in subsection (b)(4) of this section;

(4) any contribution to a deferred compensation or cafeteria plan if the plan or any options within the plan are not available to all TRS members employed by the employer;

(5) any contributions to a cafeteria plan if the plan offers employees not desiring benefits to receive cash in lieu of the employer’s direct contributions to the plan as described in subsection (f) of this section;

(6) any contributions to a retirement plan in which the contributions are picked up by an employer; or

(7) any employee contributions made by salary reduction to a fringe benefit or deferred compensation plan that does not qualify under the United States Internal Revenue Code, Sections 125, 401(k), 403(b), or 457.

(d) To be considered an acceptable voluntary salary reduction agreement for the purposes of subsection (b)(2) of this section, the

agreement must be in writing and each employee must have a bona fide option whether or not to sign it.

(e) A contribution as used in this section is either a direct contribution to a benefit program made by an employer or a contribution to a benefit program that is made by an employee through a voluntary salary reduction agreement. Nothing in this section should be interpreted to exclude amounts from annual compensation that are simply deductions from an employee's normal salary (without a salary reduction agreement) for payment to a benefit program, such as group insurance.

(f) Direct employer contributions are the payments made by the employer to an employee benefit program that were not obtained as a result of an employee's voluntary salary reduction agreement. The existence of direct employer contributions to deferred compensation or cafeteria plans does not in itself disqualify employee contributions to the same plan from being considered as annual compensation. However, direct employer contributions are not in themselves ever to be included in annual compensation. Further, if employees are given the option in a cafeteria plan of taking the direct employer contribution as cash, then no employee contributions to the plan are includable in annual compensation.

(g) Contributions from voluntary salary reduction agreements to deferred compensation plans that qualify under the United States Internal Revenue Code, Section 401(k), and to cafeteria plans are includable in annual compensation beginning September 1, 1985. Employee contributions to tax sheltered annuities qualifying under the United States Internal Revenue Code, Section 403(b), and to the state deferred compensation program have always been includable in annual compensation.

§ 25.23. [Reserved]

§ 25.24. [Reserved]

§ 25.25. Required Deposits

(a) Members shall deposit with the Teacher Retirement System 6.4% of the compensation received each pay period, including compensation received for part-time, irregular, seasonal, or temporary employment in a school year in which the member rendered service eligible for membership.

(b) Deposits due for pay period must be deducted by the employer from the member's salary for that pay period.

(c) The employer must submit the deposits with each regular payroll report to TRS.

§ 25.26. Annual Compensation Creditable for Benefit Calculation

Unless otherwise provided by law or these rules, a member shall receive

credit only for annual compensation actually received. Compensation from which deductions for an Optional Retirement Program annuity were made shall not be included in annual compensation for benefit calculation purposes.

§ 25.27. Contracts Bought up by Employer [Repealed]

§ 25.28. Payroll Report Dates

(a) The executive secretary shall establish dates on which payroll reports are due and the method to be used in reporting such deposits to the Teacher Retirement System. School officials shall be notified of such regulations.

(b) Each employer must report each month on forms furnished by the Teacher Retirement System those employees eligible to participate in the Teacher Retirement System or Optional Retirement Program who receive part or all of their salary from federal funds and/or private grants. Reporting districts must transmit to the retirement system 8.5% of the monies paid as salary for those employees covered by the Optional Retirement Program and 8% of the monies paid as salary for those employees covered by the Teacher Retirement System in addition to the amount transmitted for member contributions. If the maximum percentage legally provided for retirement purposes from the funds is less than 8.5%, or 8% as the case may be, the employer shall transmit the amount provided and indicate by letter the name of the grant and the rate. Information furnished shall include the employee's tax number, name, salary paid from funds, contributions amount, fund source, and any other information designated by the TRS staff. In addition all colleges and universities shall indicate whether the person is a member of TRS or ORP. When reporting, all independent school districts will use the TEA school district federal grants code sheet or similar code provided by TRS. If employer retirement costs are not legally available for transmission to the retirement system from federal funds or private grants paid to an employee, the name of the employee and such other information which the retirement system requires should be reported only for the first month of employment each fiscal year. A letter should accompany such report explaining why retirement costs are not available.

(c) Members who have a qualified contract shall be reported by each school district on a form provided by TRS.

(1) A qualified contract is an employment agreement which meets the following criteria:

(A) Service under the agreement must begin on or after July 1, but not later than August 31, of the same calendar year.

(B) Service contemplated by the agreement must be for a definite period extending past August 31 of the same calendar year in which service under the agreement began, as evidenced by an enforceable legal

obligation on the part of the public school to employ and to compensate the employee for such period.

(C) Not included are employees who can be terminated by the school district without the school being obligated to pay a fixed amount stated in a contract.

(2) Reports on contracts with a beginning date in July should be submitted to TRS in the July report. Reports on contracts with a beginning date in August should be filed with the August or September report.

(d) Any employer may ask the retirement system for a written statement on whether a particular form of compensation is salary and wages subject to member deposits under the law and rules governing the system. A request for such a statement should be submitted in writing to the retirement system together with any contracts, board minutes, briefs, memoranda, or other material relevant to the request.

§ 25.29. Wrongfully Denied Employment [Repealed]

§ 25.30. Conversion of Noncreditable Compensation to Salary

(a) The Teacher Retirement System will exclude from annual compensation any amounts converted into salary and wages from noncreditable compensation during the last seven creditable school years of employment before retirement. No amounts will be excluded under this section for school years before 1981-82.

(b) "Noncreditable compensation" consists of payments and benefits for service as an employee or consultant with a Texas public educational institution for which no TRS contributions have been made or, for years when a ceiling on creditable compensation was applied, the payments and benefits for which no contributions would have been made if the ceiling had been removed.

(c) When a member applies for retirement, TRS will identify, evaluate, and compare the noncreditable compensation provided to the member in each of the last eight creditable school years of employment before retirement. If a member's noncreditable compensation in any one of these years exceeds that of any other subsequent year, TRS will presume the difference to have been converted into salary and wages in the subsequent year. The amount of the conversion for any year will be the difference in noncreditable compensation for that year and the greatest amount of noncreditable compensation in a previous year of those compared.

(d) In order to overcome the presumption, a member must submit documentary evidence to TRS which clearly and convincingly proves that the difference was not converted to salary and wages.

(e) Employers and members will provide the system, upon request,

with copies of contracts, board minutes, memoranda, payroll records, and other materials which will assist the system in these determinations.

(f) After the effective date of retirement TRS will refund to the member any deposits made on the amounts excluded from annual compensation under this section.

(g) Amounts withheld from employees' salaries before September 1, 1985, under voluntary salary reduction agreements for cafeteria plans or deferred compensation qualifying under the United States Internal Revenue Code, Section 401(k), will be excluded from noncreditable compensation for the purposes of this section only.

(h) This section does not apply to noncreditable compensation that was paid in only one school year.

§ 25.31. Percentage Limits on Compensation Increases

(a) Except as provided in Subsection (c) of this section a member's credited compensation for each of the last five creditable years of service before retirement may not exceed the credited compensation of the immediately preceding creditable year for service in the same or similar positions by more than 20%. When appropriate TRS may convert salary for part-time employment to its full-time equivalent in determining the permissible increases in credited annual compensation.

(b) TRS will adjust a member's annual compensation at the time of retirement to comply with the limits of this rule and will refund excess deposits to the member after the effective date of retirement.

(c) No adjustment in annual compensation will be made

(1) for years before the 1981-82 school year or

(2) for any year if the 20% limit on annual increases in credited compensation, applied to each of the member's last five years of annual compensation, would not affect the calculation of the member's retirement benefit.

§ 25.32. Conversion of Certain Career Ladder Payments

(a) Section 25.30 of this title (relating to Conversion of Noncreditable Compensation to Salary) does not apply to noncreditable lump sum bonuses paid pursuant to a formal written plan, adopted in the 1984-85 school year or thereafter but before January 1, 1988, in which employees received the bonuses based on the application of preexisting objective standards or written performance evaluations if the following requirements are met:

(1) the lump sum bonus payment under the plan is abandoned or changed to a creditable form of compensation no later than September 1, 1988;

(2) if the program includes any of the employer's highly compensated employees, then substantially all of the employer's nonteaching professional employees must be included in the program;

(3) the bonuses did not exceed the amounts which would have

been available had the employee been eligible for the teacher career ladder (Texas Education Code, Sec. 16.057, et seq);

(4) the standards or evaluations were administered consistently and in good faith; and

(5) if the lump sum bonus payment is converted to a creditable form of compensation, the payment plan must be converted for all employees covered under the plan.

(b) This section applies to a person:

(1) who retires or has retired in calendar year 1985 or thereafter; and

(2) who was not employed in a position eligible for the teacher career ladder but was employed by a school district required to provide the teacher career ladder.

(c) The following words and terms, when used in this section shall have the following meanings:

(1) Highly compensated employee - An employee who receives compensation in excess of \$50,000 or who is in the group of the 5.0% highest compensated employees of the employer reporting district.

(2) Professional employee - A person who is paid according to a specified professional pay plan, including but not limited to those employed in the positions enumerated in Texas Education Code, Section 16.056(d).

(d) This section applies strictly to compensation programs established by school districts which were intended to be similar or equivalent to the teacher career ladder but which provide compensation to personnel excluded by the provisions of the teacher career ladder.

(e) It is the responsibility of the employee or retiree to establish that the conditions of this section have been met.

DELINQUENT REPORT OF SERVICE

§ 25.41. Required Deposits

Persons who have been required by law to be members of the Teacher Retirement System but who have not made the required deposits shall start making deposits immediately for current service and shall make deposits as quickly as possible for previous service.

§ 25.42. Payment of Benefits

No benefits will be paid until deposits have been received for all service which was eligible for membership.

§ 25.43. Delinquent Deposits

A fee will be charged on delinquent deposits at the rate of 5.0% per annum of the deposits due from the end of the school year in which the deposits were due or the end of the 1974-75 school year, whichever is later until the date of payment.

§ 25.44. Service Eligibility

The board of trustees has from time to time enlarged the definition of service eligible for membership. Persons who became eligible under such a change in board regulations may not receive any benefits (other than return of deposits) until they have made deposits for all service as teachers since September 1, 1937, and as auxiliary employees since September 1, 1949.

§ 25.45. Verification of Claims

Members who claim unreported payments or maintenance as all or part of annual compensation after the school year in which it was actually received must verify the claim by presenting to the Teacher Retirement System such evidence as the staff of the system may require to provide clear and convincing proof of the existence and amount of such compensation, including but not limited to a certified copy of the minutes of the governing board of his employing institution, certified copies of any written contracts between the member and the employer, a verified statement by the employer of the reasons why such compensation was not reported earlier, and copies of income tax documents showing that such alleged compensation was reported as income for the member. A fee for delinquent deposits as provided in Sec. 25.43 of this title (relating to Delinquent Deposits) will be assessed when applicable on the value of such payments or maintenance.

§ 25.46. Determination of Compensation Subject to Delinquent Deposit and Credit

(a) The amount of delinquent deposits due will be calculated at the member contribution rate in effect for the year in which the service was rendered but for which no deposits or insufficient deposits were made. Contributions will be based on creditable compensation as determined under the law applicable at the time of the service.

(b) Delinquent deposits and credit for maintenance for school years in which maintenance is eligible for credit will be based on a valuation made by the executive secretary or a designee. The valuation may not exceed \$400 per month. Maintenance consists of housing furnished the member in lieu of salary as a part of an employment contract between public school and the member.

WAIVER

§ 25.51. Revocation of Waiver

Any person who has executed a waiver may revoke that waiver after becoming a member of the Teacher Retirement System.

§ 25.52. Effect of Waiver and Revocation

Various statutes have permitted persons to waive their right to become members of the Teacher Retirement System, and other statutes have authorized persons who waived this right to revoke their waiver and make the deposits which otherwise would have been made. Members who have revoked waivers have no greater rights under the retirement law than they would have if membership had not been waived.

§ 25.53. Absence for Five Consecutive Years

Any person absent from service for more than five consecutive years during the time a waiver was in force must thereafter serve two consecutive years in order to receive credit for service before the absence unless his service before the absence would have been sufficient to give him a vested right to retirement benefits at the time of last employment in a position eligible for membership.

§ 25.54. Years of Service Required

In every instance a member who signed a waiver must have rendered at least five consecutive years of service which was eligible for membership in order to be eligible for retirement benefits.

§ 25.55. Deposit After Revocation

A member who has waived his right to membership in the Teacher Retirement System and subsequently revoked his waiver must make deposits for all service eligible for membership during the period the waiver was in effect in order to obtain credit for any of this service.

MILITARY SERVICE

§ 25.61. Service Credit for Eligible Military Duty

(a) A member with 10 years of credit for service in the public schools of Texas may receive additional retirement credit for active military duty in any of the following periods:

(1) School years during which the military draft was in effect (1940-41 through 1972-73).

(2) A period of service directly resulting from the member's being called to active duty as a reservist, National Guard member, or draftee pursuant to federal law.

(3) A member's initial term of volunteer service under an enlistment which occurred while the military draft was in effect (before September 16, 1940, but not later than January 27, 1973).

(b) Credit for military duty is limited to a maximum of five years. Eligible military duty will be evaluated for crediting only in the school year in which it was rendered. A member must have served a minimum of 4½ months of military duty in a school year to be eligible to obtain military service credit for that year. No credit may be given for any school year of military duty which duplicates any other credit already granted or in which a year of creditable service is available for service in the public schools of Texas.

(c) To obtain each school year of military credit, the member must make a deposit based upon the full annual compensation rate for the last school year of membership service preceding the school year of military duty, if the member was a member while the duty was being rendered, or upon the full annual compensation rate for the first school year of membership service occurring after the duty. Membership service does not include service as a substitute. The deposit shall be a percentage of the applicable full annual compensation rate equal to that in effect for deductions from member salaries for the school year in which the military duty was rendered. A member must make deposits simultaneously for all eligible school years of military credit.

§ 25.62. Service During World War I

Service during World War I is prior service for persons who were active members after June 17, 1961. Other military service may be counted as tenure credit in determining eligibility for retirement but will not be used in computing minimums and retirement benefits unless deposits are made for such military service. By making deposits for such service, a member may receive one year of creditable service toward retirement for each year of active military service.

§ 25.63. Required Service in Public Schools

Five years of actual service in the public schools of Texas is required before any member can qualify for service retirement benefits.

§ 25.64. Crediting Fee

A crediting fee of 8% compounded annually shall be charged for the purchase of credit from the end of the year in which the member was first eligible to

purchase the credit until payment for the credit is received. The date of first eligibility to purchase credit shall be the latest of the following:

(1) The date the member obtains 10 years' credit for service in the public schools of Texas.

(2) The date the Teacher Retirement Law made the military service available for credit.

(3) The date the member completed military service to qualify for each year of credit.

§ 25.65. Effective Dates of Laws Extending Military Duty Credit

The board of trustees recognizes the following dates as important in making certain military service eligible for credit:

(1) May 28, 1943 - military duty while a member of TRS except that first made eligible on April 18, 1975, or June 10, 1977.

(2) June 12, 1967 - military duty during World War II rendered prior to becoming a member of TRS.

(3) April 18, 1975 - military duty other than during World War II rendered prior to becoming a member of TRS and military duty while a member of TRS eligible only by virtue of being a draftee or activated reservist.

(4) June 10, 1977 - volunteer duty not otherwise eligible.

§ 25.66. Application for Military Credit

Members desiring to make deposits for military credit should request in writing to be billed for the cost of the credit. Requests should be addressed to Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698. Included with the request should be a certified copy or copies of the member's service record showing the dates and nature of the member's active military duty. The system may require the member to make available to it such other evidence as may be required to establish the member's eligibility for retirement credit and the amount of deposits due. When the system determines the duty eligible for credit, it shall bill members for the total amounts of deposits and fees due for the credit at the last address of the member of which the system has record. The member must sign the statements contained on the bill certifying the accuracy of the information provided on the bill and return the bill to the system with the total amount due for the military duty credit. A member who requests a bill and submits all necessary evidence for crediting his or her military duty before the end of a school year shall have 30 days from the date the bill is transmitted by the system in which to submit the amount due without owing any additional fees otherwise becoming due because of the intervening termination of the school year. Deposits for military duty credit will not be accepted after date of death or date of service retirement of a member.

PURCHASE OF CREDIT FOR OUT-OF-STATE SERVICE

§ 25.81. Out-of-State Service Eligible for Credit

A member may obtain out-of-state service credit for qualified employment in public educational institutions which are maintained in whole or in part by one of the states in the United States of America; by a commonwealth, territory, or possession of the United States of America; or by the United States government. Public educational institutions of the United States government must have been maintained for the primary purpose of educating the children of United States citizens either in foreign countries or in locations within the United States where state and local government have not provided public educational facilities. The service in eligible institutions must satisfy the requirements for membership in the Teacher Retirement System of Texas, except for the requirement that the employment be in Texas. Further, the service must have been for at least 4 ½ months of the school year, or for at least a full semester of more than four calendar months, or for at least 90 days of a school year as a substitute in a position otherwise eligible for out-of-state service. A member may satisfy any of these requirements by combining the out-of-state service with employment in the Texas public schools that occurred in the same school year and for which deposits are maintained in the member's account. A member eligible to establish normal membership service credit for a school year may not obtain out-of-state credit for that year.

§ 25.82. Cost

(a) The cost of establishing out-of-state service is 12% per year of the full annual salary rate for the first year of service in Texas which is both after the out-of-state service and after September 1, 1956. Annual salary is limited to \$8,400 for years prior to September 1, 1969 and \$25,000 for years after September 1969 but before September 1, 1979. No limit exists for years after September 1, 1979. In addition a crediting fee of 8% compounded annually of the amount of deposits due and paid shall be charged from the end of the school year in which the member was first eligible to purchase credit for such service until payment for the credit is received. The date of first eligibility to purchase credit for any year of out-of-state service shall be the latest of the following dates:

(1) The date the member received 10 years' credit for service in the public schools of Texas.

(2) The date the Teacher Retirement Law made the out-of-state service available for credit.

(3) The date in which the member qualified to deposit payment for each year of out-of-state service under the one for two rule in effect until March 20, 1975.

(4) The date the member completed one year of creditable service in the public schools of Texas after relevant out-of-state service.

(b) No deposits for out-of-state service credit may be made before the member accumulates 10 years of credit for service in the public schools of Texas.

§ 25.83. Out-of-State Service Eligible for Credit: Important Dates

The board of trustees recognizes the following dates as important in making certain out-of-state service eligible for credit.

(1) November 6, 1956 - out-of-state teaching service on a 1 for 2 basis became available to teachers.

(2) March 20, 1975 - out-of-state auxiliary service became available to teachers; out-of-state auxiliary and teaching service became available to auxiliaries; all service became available on a 1 for 1 basis.

§ 25.84. Reinstatement Fees

The reinstatement fees for out-of-state service will be credited to the State Contribution Account.

§ 25.85. Amount of Out-of-State Service Which Can Be Purchased

(a) Credit is limited to one year of out-of-state service for each year in Texas.

(b) No out-of-state service can be used to compute any benefit for any person with less than 10 years service in Texas.

(c) Not more than 10 years out-of-state can be purchased.

§ 25.86. Computing Average Compensation

Out-of-state service is not used in computing the best three years average compensation.

§ 25.87. Effective Date of Credit and Time for Payment

(a) If all other conditions and requirements are met, credit for service will be given immediately upon payment.

(b) Payment may be made for whole years. No smaller payment, installment payment, or payment for part of a year can be accepted.

(c) Payment for at least one year must accompany the application to purchase out-of-state service.

(d) Payment for out-of-state service shall be made before retirement.

JOINT SERVICE WITH
EMPLOYEES RETIREMENT SYSTEM

§ 25.101. [Reserved]

§ 25.102. [Reserved]

§ 25.103. State Employee Service

State employee service granted by the Teacher Retirement System shall be considered identical with teaching or auxiliary service or both. Contributions, plus any penalty or fees that may be required, for such service are to be paid into the Teacher Retirement System for the same period of time as required by the laws and rules and regulations governing state employee service.

§ 25.104. Teacher or Auxiliary Employee Service

Teacher or auxiliary employee service or both granted by the State Employees Retirement System shall be considered as identical with state employee service. Contributions, plus any penalty or fees that may be required, for such service shall be paid into the State Employees Retirement System as required by the laws and regulations governing state employee service.

§ 25.105. Reinstatements or Waivers

It is further provided that on or after September 1, 1959, any reinstatement in the Teacher Retirement System for a previous refund or waiver of state employee service with the State Employees Retirement System shall be paid to the Teacher Retirement System under the laws and rules and regulations governing the reinstatement of service as a teacher or auxiliary employee. Likewise, any reinstatement in the State Employees Retirement System for a previous refund or waiver for service as a teacher or auxiliary employee with the Teacher Retirement System shall be paid to the State Employees Retirement System under the laws and rules and regulations governing the reinstatement of service as a state employee. It is further provided that neither system shall grant credit for such service until and unless deposits are made for any and all such refunds or service waived in the other system.

§ 25.106. [Reserved]

§ 25.107. [Reserved]

§ 25.108. [Reserved]

§ 25.109. Auxiliary Employees

Some auxiliary employees in institutions under the jurisdiction of the College and University Coordinating Board and the State Board of Education were taken into the Employees Retirement System before the law permitted them to become members of the Teacher Retirement System. Such members were given the opportunity to elect to stay in the Employees Retirement System or transfer to the Teacher Retirement System provided such election was made on September 1, 1961, or as soon thereafter as possible. Auxiliary members who elected to remain as members of the Employees Retirement System are no longer eligible to transfer to the Teacher Retirement System.

§ 25.110. Required Members

Both teacher and auxiliary employees of institutions under the jurisdiction of the College and University Coordinating Board and the State Board of Education are required to be members of the Teacher Retirement System of Texas as a condition of employment, except as provided in § 25.109 of this title (relating to Auxiliary Employees), and the Texas Government Code, Chapter 830. Teachers under these jurisdictions have never been eligible for membership in the Employees Retirement System.

§ 25.111. Salaries

Salaries earned under ERS (not to exceed limits as provided in the Teacher Retirement Law) may be used to determine the base salary.

§ 25.112. Texas Research Institute of Mental Sciences (TRIMS) Employees

(a) Any person reported to the Employees Retirement System of Texas (ERS) as an employee of the Texas Research Institute of Mental Sciences during the months of May, June, July, or August 1985 will qualify for transfer of ERS credit to the Teacher Retirement System (TRS) under Senate Bill 1295, Acts of the 69th Legislature, 1985, if the person is subsequently employed by the University of Texas System or any of its components during the month of June, July, August or September 1985 in a position eligible for TRS membership, provided they have not retired or withdrawn their membership accounts from ERS by August 31, 1985.

(b) The transfer of ERS credit to TRS for all eligible persons will be effective as of September 1, 1985, or the actual date of employment by the University of Texas in the month of September 1985, whichever is later.

(c) A person employed by the University of Texas in a position ineligible for membership in TRS is not eligible for this transfer of credit. A person who has an election of Optional Retirement Program (ORP) in effect

on the effective date of transfer is in a position ineligible for membership in TRS. Any administrative transfer of credit for those found to be ineligible is void and will be reversed. Persons transferring ERS credit under this section who apply for TRS retirement before January 31, 1986, will be required to provide a separate certification by the University of Texas that the person was employed in a position eligible for TRS membership.

(d) Any other provision of this rule to the contrary notwithstanding, this rule also applies to those persons who are certified on or before August 31, 1985 by the Commissioner of the Texas Department of Mental Health and Mental Retardation as TRIMS employees who will continue to work at TRIMS after September 1, 1985 for the purpose of concluding and winding up TRIMS operations. If such an employee is employed by the University of Texas System or any of its components within 30 days of the employee's last day of work at TRIMS, but in any event no later than January 31, 1986, without being employed in another ERS or TRS covered position during the interim period, then such employee shall have his or her ERS service credit transferred to TRS if TRS determines that the employee is eligible for TRS membership.

VERIFICATION OF SERVICE

§ 25.121. Responsibility

Verification of prior service is the responsibility of the member.

§ 25.122. Affidavit

Each member with prior service must make affidavit of the correctness of the record of that service.

§ 25.123. Certification

The correctness of this affidavit must be certified by an official of the school where the service was rendered. This can be done by the superintendent, business manager, secretary of the school board, or treasurer of the school board at the time the certification is made. The certification must be based upon the existing records maintained by the school and must be notarized.

§ 25.124. Service Record

For teachers who have a complete service record which has been accepted by the Texas Education Agency for minimum foundation salary purposes, a certified copy of the service record may be used to verify prior service.

§ 25.125. Corroborating Evidence

In verifying any service by affidavit, the member must submit corroborating evidence of such service from appropriate school records. If such records have been lost or destroyed, the person who would otherwise be the custodian of such records may submit a statement as to whether such records did exist, explaining the circumstances under which they were lost or destroyed, and submitting names and addresses of persons who may be able to verify the contents of such records from personal knowledge. The executive secretary shall be responsible for evaluating all evidence of such service. No credit may be granted unless clear and convincing proof of eligible service has been provided from a source other than the applicant member. A conclusion that clear and convincing proof has not been provided should in no way be construed as a challenge to the member's or any other affiant's truthfulness and integrity.

CREDITABLE TIME AND SCHOOL YEAR

§ 25.131. Required Service

A member must serve at least 4½ months in an eligible position during the school year to receive credit for a year of service. Exceptions to this requirement are the following:

(1) A member who served the entire school year before 1937 will receive credit for a year of service, even though the school year was less than 4½ months.

(2) A member who served a full semester of more than four calendar months will receive credit for a year of service.

(3) A full year of service credit will be granted either to a substitute who qualifies for membership by virtue of rendering the amount of service specified under Sec. 25.4 of this title (relating to Employee Substitutes) or to an employee who enters into an employment contract for a period which would qualify the employee for a year of service credit under the other provisions of this section but who actually renders only the amount of service specified in Sec. 25.4 of this title (relating to Employee Substitutes), provided that the early termination of service is the result of a justifiable absence as defined in the Teacher Retirement Law.

§ 25.132. Vacation Time

Vacation time for which a member is paid shall be considered as service in determining a creditable year. This ruling does not include summer months between school terms when no service is rendered even though the member may be paid in 12 monthly payments.

§ 25.133. School Year

For the purpose of granting creditable time toward retirement a “school year” shall be one of the following:

(1) A period extending from the beginning of the school term (but not earlier than August 23) through August 31 of the following calendar year for service rendered prior to the 1970-71 school year.

(2) A period extending from the beginning of the school term (but not earlier than August 2) through August 31 of the following calendar year for service rendered for the 1970-71 school year and thereafter; or

(3) A period, not to include more than 12 months, extending from the beginning date of a “qualified contract” year through August 31 of the following calendar year or to the beginning date of a subsequent qualified contract year, whichever is earlier. Use of this “qualified contract year” is optional for school years 1970-71 through 1974-75, but shall be mandatory for all persons under a qualified contract after the 1974-75 school year. A “qualified contract” is any employment agreement in which service each year under the agreement is to begin on or after July 1 and is to extend past August 31 of the same calendar year and which imposes upon the employing school district a legal obligation to employ and compensate the employee for the entire duration of the agreed employment period.

§ 25.134. Credit Limit

No member can receive credit for more than one year of service in any school year.

§ 25.135. Single Fee Per Year

No member shall be required to pay more than one membership fee during a school year as defined in Sec. 25.133 of this title (relating to School Year).

§ 25.136. Date of Service

All credit for service will be based on the date on which service was rendered, without regard to the date of payment for the service, except that credit for service cannot be allowed until the member has been paid for that service.

DEVELOPMENTAL LEAVE

§ 25.151. Developmental Leave, Eligibility, and Cost

(a) A member with five years of membership service may receive retirement credit for developmental leave if the leave has been approved as developmental leave in advance by the member’s employer and notice of

intent to take the leave has been filed with the system on or before the date a member begins the leave.

(b) The member's employer is responsible for determining whether a member's leave meets the definition of "developmental leave" in Sec. 33.402(b), Title 110B, Texas Revised Civil Statutes.

(c) Credit granted for developmental leave may not exceed two school years.

(d) To obtain each school year of credit for developmental leave, the member must for school years prior to 1979-80 make a deposit equal to 14.15% of the member's annual compensation rate during the last school year of creditable service which preceded the developmental leave. For the school years 1979-80 through 1982-83, the member must make a deposit equal to 15.15% of the member's annual compensation rate during the last school year of creditable service which preceded the developmental leave. For the school years 1983-84 and 1984-85 only, the percentage is 13.1% rather than 15.15%. For the school year 1985-86 and years after, the percentage is 14.4%. Persons making deposits for developmental leave credit must be employed in the public schools of Texas at the time of the deposit. A member must make the deposits for developmental leave credit by the end of the first creditable school year of service after taking developmental leave. A member who does not make deposits by the end of that year loses eligibility for purchasing credit for any preceding developmental leave.

§ 25.152. Application and Payment for Developmental Leave Credit

(a) Application for developmental leave credit must be made on a form available from TRS entitled "Notice of Intent to Take Developmental Leave."

(b) A member desiring developmental leave credit should obtain the form in time for it to be completed, certified by the member's employer, and submitted to TRS before the leave begins. The member must sign a statement on the form that he or she intends to take developmental leave for which credit is desired and must indicate the beginning and ending dates of the leave which has been granted. After completing the form, the member must submit it to his or her employer for certification.

(c) The employer must certify in the space provided on the form that the leave satisfies the statutory requirements for developmental leave. The employer must submit the form directly to TRS. The form will not be accepted directly from the member.

(d) The completed and certified form must be received by TRS not later than the date the member's developmental leave begins.

(e) TRS will acknowledge receipt of the form. A cost statement for developmental leave may be obtained on request by the member upon his or her return to employment. The cost statement will contain space for certification by the employer granting the leave that the developmental leave as approved was in fact taken.

(f) Credit will be granted to the member if the cost statement, including the employer's certification, and the full amount of the required deposits are submitted by the end of the first school year of creditable service after the member's return to employment.

§ 25.153. Developmental Leave Requested and Begun Before June 10, 1977

(a) A member is eligible to establish equivalent membership service credit for developmental leave requested and begun before June 10, 1977 if the statutory requirements applicable to such leave are met.

(b) A member who wishes to establish developmental leave credit under this rule must apply on a form available from TRS entitled Application for Credit for Developmental Leave Requested and Begun before June 10, 1977. The member must submit the form for certification to the employer who approved the leave.

(c) The employer must certify in the space provided on the form that, based on the records of the employer, developmental leave was requested and approved as required by the applicable statutory provisions. The employer must submit the form directly to TRS. The form will not be accepted directly from the member.

(d) The completed and certified form must be received by TRS no later than January 1, 1990.

(e) TRS will acknowledge receipt of the form and will provide a cost statement for developmental leave credit to the member. The cost for each year of this credit will be calculated by multiplying a combined member and state contribution rate of 14.05% for the 1989-1990 school year times the member's annualized earnings for the member's latest year of service or the member's highest credited annual compensation at the time the deposits are made, whichever is greater. Annualized earnings are the amount a member would have earned if the member had worked the entire school year. The product of the contribution rate and the annualized earnings or the highest credited annual compensation shall then be increased by 1.0% for each year that the member's age as of the date of deposit is received exceeds 35 years. The statement shall also include any unpaid membership fees applicable to the period of time in which the leave was taken.

(f) Credit will be granted if the completed application, certification, and all documents are received by TRS no later than January 1, 1990, and if the full amount of the required deposit is received no later than March 1, 1990.

OTHER SPECIAL SERVICE CREDIT

§ 25.161. Employment for Institutions Subsequently Becoming State Educational Institutions

(a) A member who was employed by the Callier Center for Communications Disorders or the Houston Speech and Hearing Center before such institutions became a part of the University of Texas System may purchase credit with the retirement system for that employment. Eligibility of this employment for credit shall be subject to the rules for crediting regular employment eligible for membership, except for the requirement that the employer be a Texas public educational institution.

(b) Such employment shall be credited by school year. A member may purchase credit in units of one year or more. For purposes of calculating fees, the years of credit purchased shall begin with the earliest eligible year of such employment not yet credited.

(c) The fact of employment, the amount and dates of employment, and such other information as may be necessary to establish employment for these institutions as eligible for credit must be verified by the University of Texas System from records previously maintained by these institutions in its possession. It shall be the responsibility of each member eligible for this credit to make application for this credit and to have the service verified. Members should contact the Teacher Retirement System of Texas, 1000 Red River Street, Austin, Texas 78701-2698, for forms and instructions for establishing this credit.

(d) The cost for each year of credit for this employment shall be a deposit of 12% of the salary received for the first full 12 months of service as a member of the retirement system that occurs after the employment for which credit is sought under this section plus the following fees:

(1) a crediting fee of 5.0% of the amount of the deposit for each year of credit from the end of the year of employment to be credited to the date of deposit, and

(2) membership fees that would be due had the service credited been employment in Texas public educational institutions.

(e) Fees other than membership fees shall be credited to the individual member's account.

(f) Each year of credit under this section shall be granted only upon proper verification and payment in full of all amounts due. Credit when established shall be treated as membership service credit for purposes of determining eligibility for all benefits payable by the retirement system as well as for calculating the member's standard annuity.

OPTIONAL RETIREMENT PROGRAM

§ 25.171. Election of ORP

(a) Members of the retirement system (TRS) may elect to par-

participate in the Optional Retirement Program (ORP) if:

- (1) the member is employed in a position in a Texas public institution of higher education eligible for ORP participation;
- (2) the time limit for electing to participate in ORP has not expired; and
- (3) the person has never exercised an election between TRS and ORP participation.

(b) Persons who elect to participate in ORP must do so in writing on a form provided by the Teacher Retirement System to employing institutions for use by their eligible employees. A copy of the election to participate in ORP must be submitted to the Teacher Retirement System by the employer.

§ 25.172. ORP and TRS

(a) Except as provided in subsection (c) of this section, a person who has elected ORP participation must become a member of TRS if the person later becomes an employee of any Texas public educational institution other than a faculty member of an institution of higher education. The following persons are generally required to become TRS members under this subsection:

- (1) ORP participants who become employed in a public school; and
- (2) ORP participants with less than one year's participation in ORP who become employed in a nonfaculty position in an institution of higher education.

(b) A person who has elected ORP participation but who is later required to become a member of TRS under subsection (a) of this section is ineligible for further active ORP participation even if that person again becomes employed as a faculty member in a Texas public institution of higher education.

(c) Subsection (a) of this section does not apply when:

(1) an ORP participant is simultaneously employed both as a faculty member of a Texas public institution of higher education and in a position in a Texas public educational institution otherwise eligible only for TRS membership, or

(2) a person, after a valid ORP election, becomes employed in an institution of higher education in a nonfaculty position if the person

(A) participated in ORP for one year as a faculty member of a Texas public institution of higher education, and

(B) had no intervening employment that required TRS membership.

(d) A person, including a person described in subsection (c) of this section, will not be eligible for TRS membership or credit for any employment that occurred while the person was an ORP participant, even if the person later returns to TRS membership as required by subsection (a) of

this section. A person described in subsection (c)(1) of this section is not eligible for state ORP retirement contributions for simultaneous employment in institutions covered by TRS that are not institutions of higher education.

(e) A person who elects ORP participation chooses ORP in lieu of TRS membership and benefits. Upon election of ORP, a member of TRS loses all benefit rights in TRS other than a right to the return of annual contributions, even if the member has five or more years of creditable service under TRS. However, a member who returns to TRS membership under the provisions of law is entitled to any TRS benefits which may accrue thereafter in addition to any ORP benefits to which he may have become entitled. ORP participants returning to TRS membership may establish service credit, under applicable rules governing reinstatement of accounts, for all years of service in public educational institutions except for those years when the person participated in ORP.

(f) A person who fails to elect ORP participation during the statutory election eligibility period may not subsequently elect participation.

(g) In this section:

(1) employee means a person whose employment in one or more Texas institutions of public education is, disregarding any ORP election, sufficient to qualify for TRS membership coverage;

(2) faculty member means a person, including a professional librarian, who is employed by an institution of higher education on a full-time basis as a member of the faculty or staff and whose duties include teaching, research, administration, or the performance of professional services, but does not mean a person employed in a position in the institution's classified personnel system or a person employed in a similar type of position if the institution does not have a classified personnel system;

(3) nonfaculty position means employment in a Texas institution of higher education that does not qualify the employee as a faculty member as defined in this subsection and includes a position that would otherwise be considered faculty but for the fact that it is less than full-time;

(4) ORP participant means a person who has elected ORP pursuant to law, without regard to whether the person is currently employed and making deposits to ORP, and who has not been required to return to TRS membership;

(5) participation in ORP for one year or one year's participation in ORP means active ORP participation for a sufficient period to give the person vested ORP benefits;

(6) active ORP participation means participation in ORP by having required ORP deductions and contributions made;

(7) public school means an educational institution covered by TRS membership other than an institution of higher education;

(8) institution of higher education means an institution of higher education as defined in the Texas Education Code, Sec. 61.003, whose faculty members are eligible to elect ORP.

CHAPTER 27. TERMINATION OF MEMBERSHIP AND REFUNDS

§ 27.1. Termination Because of Absence

Membership in the Teacher Retirement System terminates because of absence from creditable service for six consecutive school years unless the member does not withdraw his account and has five or more creditable years of actual service in the public schools of Texas, regardless of age, at the end of his last covered employment.

§ 27.2. Withdrawal by a Noneligible Person

A member who is employed by an agency included in the Teacher Retirement System in a position which is not eligible for membership may terminate his membership and withdraw his deposits. A member who, under Sec. 25.6 of this title (relating to Part-Time or Temporary Employment), continues to be eligible for membership by virtue of previous employment during the school year must continue to make any applicable contributions during the remainder of the school year and may not withdraw his deposits.

§ 27.3. False Affidavit

A member who makes affidavit that he has permanently terminated his employment in state-supported public education in Texas but who is so employed or who contracts for such employment before he receives the refund of his account shall not be entitled to the refund. If the refund is made by error or because the Retirement System is not aware of the continued employment, necessary steps will be taken to secure the redeposit of the withdrawn account. No benefits will be paid until this withdrawn account is returned to the Retirement System.

§ 27.4. Refunds

Refunds to members who are terminating accounts will not be made until the final deposit of the withdrawing member is received and posted to his account and required application forms have been filed.

§ 27.5. Termination of Right to Benefits

Withdrawal of an account terminates the right to benefits for all service prior to the date of withdrawal, unless credit is reinstated by subsequent service and repayment as provided by the retirement law.

§ 27.6. Reinstatement of an Account

Any member who has withdrawn his account may reinstate this account and receive credit for this service by meeting the following requirements:

(1) Return to employment in a covered position and render the lesser of the following amounts of creditable service.

(A) Two consecutive years of creditable service.

(B) Creditable service for a continuous period of time equal to the time from the member's withdrawal to his return to covered employment.

(2) Redeposit the amount withdrawn plus membership fees for the years during which the membership was terminated.

(3) Pay a reinstatement fee of 6% compounded annually of the amount withdrawn computed from the date of withdrawal to the date of redeposit.

(4) Reinstate all withdrawn accounts if more than one account has been withdrawn.

§ 27.7. Retired Members

Any retired member receiving a service retirement annuity may reinstate his membership, which was terminated as a result of retirement, and receive credit for additional membership service as provided in Sec. 31.11 of this title (relating to Requirements to Become an Active Member After Reinstatement).

§ 27.8. Reinstatement of Membership and Service Credit by ORP Participants

(a) Any person participating in the Optional Retirement Program (ORP) on September 1, 1979, is eligible to elect to become a member of the Teacher Retirement System between September 1, 1979, and September 1, 1980, inclusive, by filing a written application in a form prescribed by the retirement system. The form shall be submitted to the employer who shall transmit it to the retirement system with its next report. The election shall be effective on the first day of the month following the month in which the change is received by the employer.

(b) ORP participants who elect to return to membership in the retirement system between September 1, 1979, and September 1, 1980, under subsection (a) of this section, are eligible to reinstate all previously held TRS credit, except student employment credit, under the provisions of this section only. Reinstatement may occur at any time after resumption of membership in the retirement system. All eligible credit must be reinstated at one time. If the member's account was withdrawn, the member must pay the accumulated contributions plus a reinstatement fee of 10% per year of the amount due compounded annually from the date of withdrawal to the

date of repayment. Reinstatement fees will be credited to the State Contribution Account. Persons reinstating accounts under this rule shall pay all membership fees which a person reinstating an account would normally pay except that no membership fees will be charged for whole school years in which the member was an ORP participant. Credit will be reinstated upon application by the member on a form prescribed by the retirement system and the deposit of all required payments. No credit may be established for service in public education while an ORP participant.

(c) Former ORP participants who return or have returned to TRS membership in the retirement system other than by an election under this section must make reinstatement under Sec. 27.6 of this title (relating to Reinstatement of an Account) or Sec. 27.7 of this title (relating to Retired Members), if applicable.

§ 27.9. Reinstatement of Transferred ERS Covered Service

A member with service covered by the Employees Retirement System which has been withdrawn may, after waiving the requirement of five consecutive years of service under TRS, transfer the right to establish the credit under the rules governing reinstatement of service credit in the retirement system. However, the member may not actually reinstate the credit before rendering the required amount of subsequent creditable service required by law for reinstating a withdrawn account.

CHAPTER 29. BENEFITS

SERVICE RETIREMENT

§ 29.1. Eligibility

Members are eligible for service retirement benefits when they have:

- (1) withdrawn from employment in the public education institutions of Texas;
- (2) satisfied the age and service requirements in §29.2 of this title (relating to Age and Service Requirements for Service Retirement); and
- (3) made application as provided in Sec. 29.12 of this title (relating to Date of Retirement and Making Application).

§ 29.2. Age and Service Requirements for Service Retirement

Service retirement benefits are payable according to the following schedule. See §29.3 of this title (relating to Standard Annuity) for computation of standard annuity, §29.7 of this title (relating to Minimum Service Retirement Benefits) for minimum benefits, and §29.8(b) of this title (relating to

Retirement Payment Plans) for optional reduced benefits. All retired members are covered by survivor benefits. The following is a list of length of service, age, and benefits.

(1) Normal age retirement.

(A) 30 years or more - 55: the larger of a standard annuity or a minimum benefit.

(B) 20 years through 29 years - 60: the larger of a standard annuity or a minimum benefit.

(C) five years through 19 years - 65: the larger of a standard annuity or a minimum benefit.

(2) Early age retirement.

(A) five years through 19 years - between 55 and 65: the larger of a standard annuity or a minimum benefit reduced from age 65.

(B) 20 years through 29 years - between 55 and 60: the larger of a standard annuity or a minimum benefit reduced from age 60.

(C) 30 years or more - any age below 55: the larger of a standard annuity or a minimum benefit reduced from age 55.

§ 29.3. Standard Annuity

The standard annuity is an annuity payable monthly based on the following computation:

(1) The average annual salary earned in the best three years of creditable service serves as a base to determine the benefits. The best three years do not have to be consecutive but are the best three individual school years at any time during the Texas teaching service.

(2) Two percent of the base salary is allowed for each year of creditable service.

(3) The total percentage factor is multiplied times the base salary and the sum divided by 12 to determine the monthly standard annuity.

§ 29.4. Actual Compensation

Actual compensation paid to a member is used in computing the best three-years' average compensation. Best three-years' average compensation for members with credit transferred from the Employees Retirement System may not include compensation for any month which was credited or should have been credited by the Employees Retirement System if the member received compensation for service during the same month covered by the Teacher Retirement System.

§ 29.5. Computation of Retirement Benefits

Computation of retirement benefits will be based upon attained age at time of retirement.

§ 29.6. Retirement Under Previous Statutory Formulas

Retirement under the 1953, 1963, and 1969 statutory formulas is no longer permitted by the teacher retirement law.

§ 29.7. Minimum Service Retirement Benefits

Minimum service retirement benefits are payable if benefits as calculated by the standard annuity formula in Sec. 29.3 of this title (relating to Standard Annuity) are below the following amounts: \$6.50 per month multiplied times the member's creditable years of service but, if the member is 65 years of age or older, no less than \$75 per month. Example: 22 years of creditable service times \$6.50 equals \$143 per month.

§ 29.8. Retirement Payment Plans

(a) The maximum standard annuity benefit is payable throughout life with payments ceasing at the death of the retired member. If the retired member did not receive annuity payments equal to his accumulated contributions, there shall be paid to his beneficiary an amount equal to the retired member's accumulated contributions less the total amount of service retirement benefits paid to the retired member.

(b) An option which permits the retiree to reduce his own annuity with monthly benefits continuing to a beneficiary after his death may be selected in lieu of the standard annuity. The options are:

(c) For Option 1 and for Option 2, if the beneficiary predeceases the retiree, the retiree's annuity will be increased (pop-up) to the standard service annuity that the retiree would otherwise be entitled to receive if the retiree had not selected Option 1 or 2 but had selected the standard annuity. The standard annuity shall be adjusted by the early age reduction factor in effect at the time of retirement if the member retired under the early age retirement provisions. The standard annuity shall also be adjusted for any post retirement increases in retirement benefits authorized by law for the standard annuity after the date of retirement.

(1) The increased annuity will begin with the first monthly payment which should have been made to the retiree following the month in which the beneficiary's death occurs.

(2) The retiree shall promptly notify TRS of the death of the beneficiary and submit a certified copy of the beneficiary's death certificate or other adequate proof of death to TRS. In the event that the retiree fails to notify TRS promptly of the death of the beneficiary, TRS shall continue to pay the reduced annuity to the retiree until properly notified of the beneficiary's death. Any payment for past months in which the retiree could have been receiving the standard annuity shall be made in a lump sum with the first monthly payment after the month in which notice is received. No interest shall be paid with any lump sum payment.

(d) Subsection (c) of this section applies:

- (1) to members who retire after August 31, 1989; and
- (2) to members who retired under Option 1 or 2 after April 30, 1989, and who elect in writing no later than September 30, 1989, to receive an annuity reduced as necessary to implement the pop-up feature in accordance with actuarial tables effective September 1, 1989.

§ 29.9. Survivor Benefits

In addition to any of these retirement annuity payments, the designated beneficiary of any retired member is eligible to receive survivor benefits of one of the following:

- (1) a lump sum payment of \$10,000; or
- (2) a lump sum payment of \$2,500 and one of the following:
 - (A) to the widow, widower, or dependent parent, \$100 per month from age 65;
 - (B) to the widow or widower with children under the age of 18, \$200 per month until the youngest child reaches the age of 18, benefits cease until age 65 and then resume at \$100 per month;
 - (C) to the guardian of dependent children under the age of 18, \$200 per month for two or more children and \$100 per month when there is only one;
 - (D) if the widow or widower with children under the age of 18 dies, the guardian of the children may receive benefits for the children;
 - (E) any other beneficiary of retired member, no monthly payments unless provided by one of the optional retirement plans;
 - (F) when multiple beneficiaries are named and two or more are eligible for monthly payments, the monthly payment will be split in equal portions. When only one beneficiary named is eligible for monthly payments, the entire monthly payment will be made to that beneficiary.

§ 29.10. Members Retired Under Options 3 and 4

Members retired under options 3 and 4 who return to teaching and suspend their annuities during the period of teaching do not thereby increase the length of the period for which payments are guaranteed.

§ 29.11. Actuarial Tables

Actuarial tables furnished by The Wyatt Company, Consulting Actuaries, will be used for computation of benefits. Factors for ages or types of annuities not included in the tables will be computed from the same data by the same general formulas. The Teacher Retirement System adopts by reference The Wyatt Company's June 18, 1986, factors for retirement options 3 and 4 and the June 14, 1989, factors for retirement options 1 and 2 and for the early age reduction factors based on 8.0% interest. These actuarial tables shall be effective beginning October 1, 1986, except for the tables containing the factors for retirement options 1 and 2 and for early age

reduction, which shall be effective September 1, 1989. Information regarding and/or copies of these tables may be obtained by contacting Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701, (512) 397-6400.

§ 29.12. Date of Retirement and Making Application

(a) The date of retirement for any eligible member is always the last day of the month with the first annuity payment due at the end of the following month.

(b) The "Application for Service Retirement" form must be filed with the Teacher Retirement System on or before the date of retirement. The application may be revoked or the retirement plan changed on or before the date of retirement. After the retirement date, the application cannot be canceled or the retirement plan changed.

§ 29.13. Changing Primary Beneficiary

A member who selects an Option 1 or Option 2 retirement plan may change his designation of primary beneficiary and have his annuity recalculated provided the change is made on or before the date of retirement. A designation of beneficiary under either of those options may not be made, changed, or revoked after the date of retirement. A retiree may change the designation of beneficiary for survivor benefits at any time. However, only the death of the beneficiary who has been designated to receive benefits under Option 1 or Option 2 but not the death of the beneficiary designated to receive survivor benefits, if a different beneficiary has been designated, shall cause an Option 1 or Option 2 annuity to be increased to the standard annuity.

§ 29.14. Eligibility for Retirement on the End of May

Any member who completes all service required by his or her contract for the full school year by the 15th of June, terminates his or her employment in public education in Texas by the 15th of June, and satisfies all other requirements for retirement before the 31st of May shall be eligible for retirement on the last day of May. In other circumstances, the retirement shall be the last day of the month in which the member is last employed and satisfies all conditions for retirement. No member who has accumulated 12 months of service in the final school year before retirement may use this rule to add compensation for any additional period of service to his annual compensation.

§ 29.15. Withdrawal From Service

A person who has retired may not be employed in any position in a public school during the first month following that person's effective date of

retirement, or during the first two months following an effective date of retirement which uses the Texas Government Code, §824.002(d), (this is the May 31-June 15 rule described in §29.14 of this title (relating to Eligibility for Retirement at the End of May)). Employment in any capacity revokes the retirement and requires a return of any benefits received under the original retirement.

DISABILITY RETIREMENT

§ 29.21. Effective Date for Disability Retirement

The effective date for disability retirements is the later of the following:

- (1) The end of the month in which the Statement of Member (Form TRS 59) is received in this office of the Teacher Retirement System.
- (2) The end of the month in which employment is terminated.

§ 29.22. Approval of Disability Retirements

The executive secretary is authorized to approve disability retirements after they have been approved by a majority of the medical board.

§ 29.23. Less Than 10 Years of Creditable Service

A member with less than 10 years of creditable service who is approved for disability benefits shall be entitled to receive disability payments for a full school year for each year of creditable service plus the exact number of months of employment in any school year in which he did not render a creditable year of service. Full payment will be made for service of $\frac{1}{2}$ month or more and no payment for service of less than a half month.

§ 29.24. Purchase of Credit

Members who are notified of their approval for disability benefits after the effective date of the approval shall have 30 days from the date of the letter notifying them of their approval in which to purchase credit for military, out-of-state service, withdrawn, waiver, or joint service credit, if applicable.

§ 29.25. Reduction of Disability Benefits for Excess Earnings

All persons under 60 years of age who are retired on a teacher retirement system disability must file by February 15 of each year a report of earnings received from gainful employment for the previous calendar year on a form provided by teacher retirement system. Failure to submit a report timely may result in a requirement for a medical re-examination or suspension of benefits until the report is filed. If it is determined that the person is receiving excessive earnings, a medical re-examination may be required to

determine if the person is still qualified for disability retirement.

§ 29.26. Discontinuance of Disability Benefits

A disability retiree under 60 years of age who is restored to active service or who refuses to submit to a required medical examination for more than one year shall immediately have benefits discontinued and the retiree shall again become a member of the retirement system. TRS shall notify the member in writing when benefits are discontinued.

DEATH BEFORE SERVICE RETIREMENT

§ 29.31. Entitlement

A member's beneficiary shall be entitled to one of the death benefit options provided in Sec. 29.32 of this title (relating to Death Benefit Options) if the member dies:

- (1) in service;
- (2) while absent from service for good cause (as defined by the retirement law);
- (3) while absent from service during a period when he was eligible for retirement or would have become eligible for retirement before April 15 of the sixth school year from his last creditable year of service; or
- (4) while receiving a disability retirement allowance.

§ 29.32. Death Benefit Options

A member's beneficiary entitled to death benefits under Sec. 29.31 of this title (relating to Entitlement) shall receive the largest of the following:

- (1) A lump sum payment (not to exceed \$60,000) equal to:
 - (A) twice the rate of annual compensation of the member for the last year of service; or
 - (B) twice the annual compensation of the member for the year before the last year of service.
- (2) Monthly payments:
 - (A) sixty payments equal to the member's monthly standard annuity payment (see Sec. 29.3) of this title (relating to Standard Annuity); or
 - (B) a life annuity equal to that payable under Option 1 (see Sec. 29.8) of this title (relating to Retirement Payment Plans), had the member retired on the last day of the month preceding his death.
- (3) A refund of accumulated deposits.
- (4) Survivor benefits amounting to a \$2500 lump sum payment plus one of the following monthly payment plans if the beneficiary is eligible:
 - (A) To the spouse or dependent parent, \$100 per month from age 65.

(B) To the spouse with children under the age of 18, \$200 per month until the youngest child reaches the age of 18; benefits cease until age 65 and then resume to the spouse at \$100 per month.

(C) To the guardian of dependent children under the age of 18, \$200 per month for two or more children and \$100 when there is only one child.

(D) If the spouse with children under the age of 18 dies, the guardian of the children may receive benefits for the children.

§ 29.33. Absence From Service

If the member is absent from service at the time of death and the absence does not meet the description in Sec. 29.31 of this title (relating to Entitlement), the beneficiary is eligible to receive only the accumulated deposits of the member. For this purpose, absence from service begins September 1 following the last service for which the member received credit for a year of service.

§ 29.34. Limitations

(a) A person who lives any part of a day shall be considered to live throughout the entire day. Subject to this limitation, the effective date for death and survivor benefit annuities is the last day of the month preceding the month in which the death of the member occurs, with the first payment due at the end of the month in which the death occurs.

(b) Final payment of any annuity will be made at the end of the month preceding the month in which there occurs the event which terminates the annuity.

(c) An eligible member who has applied for service or disability retirement and dies on or after the retirement date will be considered to be "retired" for the computation of death or survivor benefits.

(d) Payments of death benefits to multiple beneficiaries named to "share and share alike" will be made according to the recommendations of the consulting actuary retained by the retirement system. The Teacher Retirement Law provides survivor benefits as an alternate to death benefits. Survivor benefits cannot be paid to one beneficiary unless all other joint beneficiaries elect to receive survivor benefits.

(e) An adult beneficiary or guardian of a minor beneficiary is required to make a selection of payment within 60 days after the death of a member. In circumstances of unusual hardship, the executive secretary may extend this period for a reasonable time. A beneficiary may change his selection of payment only during the period allocated for making the original selection and before the issuance of any warrant to him in full or partial payment of death or survivor benefits pursuant to his selection.

POST RETIREMENT INCREASES

§ 29.40. Election of Recalculation of Benefit

Any retiree or beneficiary entitled to elect a recalculation of benefits under legislation enacted by the 67th Texas Legislature will be presumed to have made the election if it will provide a greater benefit than the percentage increases also provided by the same legislation, unless the retiree or beneficiary files or has filed a written waiver in a form satisfactory to the system.

PLAN LIMITATIONS

§ 29.50. Definitions

The following words and terms, when used in the sections under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Annual compensation - Compensation that the Code, Sec. 415, and applicable federal regulations permit to be considered in determining benefit limitations of qualified plans.

Code - The Internal Revenue Code of 1954, as amended.

Defined contribution plan - A plan as defined in the Code, Sec. 414(i).

Employer - The state or any of its designated agents or agencies or political subdivisions responsible for education.

Member contributions - Those mandatory contributions within the meaning of the Code, Sec. 411(c)(2)(C), exclusive of any contributions that are picked up by the employer under the Code, Sec. 414(h).

Plan year - The plan's accounting year beginning on September 1 of each year and ending on the following August 31.

§ 29.51. Plan Limitations on Service Retirement Benefits

(a) In this section, annual benefit means a benefit payable annually in the form of a straight life annuity (ignoring that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity, as defined in the Code, Sec. 417) with no ancillary or incidental benefits or rollover contributions and exclusive of any portion of the benefit derived from member contributions or other contributions that are treated as a separate defined contribution plan under the Code, Sec. 415 (but inclusive of any such contributions that are picked up by the employer under the Code, Sec. 414(h), or that otherwise are not treated as a separate defined contribution plan). If the benefit is payable in any other form, the determination as to whether the limitation described in subsection (b) or (c) of this section has been satisfied shall be made by adjusting such benefit so that it is actuarially equivalent to the annual benefit described in this section in accordance with the regulations issued by the secretary of the

treasury. For determining the annual benefit attributable to member contributions, the factors described in the Code, Sec. 411(c)(2)(B), and the regulations thereunder shall be used, regardless of whether the Code, Sec. 411, applies to the retirement system.

(b) For any plan year, the annual benefit payable to a member cannot exceed the lesser of:

(1) \$90,000 (adjusted for cost of living in accordance with the Internal Revenue Code of 1954, Sec. 415(d), as amended); or

(2) 100% of the member's average annual compensation computed by taking into account only the member's three highest paid consecutive plan years. However, benefits of up to \$10,000 per plan year may be paid without regard to the 100% limitation if the total retirement benefits payable to a member under all defined benefit plans maintained by the employer for the present and any prior plan year do not exceed \$10,000 and the employer has not at any time maintained a defined contribution plan in which the member was a participant.

(c) Notwithstanding the provisions of subsection (b) of this section:

(1) in the case of a member who participated in the retirement system before January 1, 1983, the annual benefit under subsection (b) of this section shall not be less than his or her current accrued benefit within the meaning of the Tax Equity and Fiscal Responsibility Act of 1982, Sec. 235(g)(4); and

(2) in the case of a member who participated in the retirement system before January 1, 1987, the annual benefit in subsection (b) of this section shall not be less than his or her current accrued benefit within the meaning of the Tax Reform Act of 1986, Sec. 1106(i)(3)(B).

(d) If the payment of retirement benefits begins before age 62, the \$90,000 limitation as described in subsection (b) of this section shall be reduced actuarially using an interest rate assumption equal to the greater of 5.0% or the rate used to determine actuarial equivalence for other purposes of the Teacher Retirement System. However, retirement benefits shall not be reduced below \$75,000 if payment of benefits begins at or after age 55 and not below the actuarial equivalent of \$75,000 if the payment of benefits begins before age 55. If retirement benefits begin after age 65, the \$90,000 limitation shall be increased actuarially using an interest assumption equal to the lesser of 5.0% or the rate used to determine actuarial equivalence for other purposes of the Teacher Retirement System.

(e) An increase in a benefit payable that takes effect after the date payment of the benefit has begun, may not result in payment of an annual benefit that exceeds the member's average annual compensation, as computed under subsection (b)(2) of this section, multiplied by a fraction, the numerator of which is the dollar limitation under the Code, Sec. 415(b)(1)(A), as adjusted under the Code, Sec. 415(d), and the denominator of which is \$90,000.

(f) If the member has less than 10 years of service credit in the Teacher Retirement System, the applicable limitation set forth in subsec-

tion (b) of this section shall be reduced by multiplying such limitation by a fraction, the numerator of which is the number of years (or parts thereof) of the person's service credit and the denominator of which is 10.

CHAPTER 31. EMPLOYMENT AFTER RETIREMENT

§ 31.1. Other Employment

Retirees receiving service retirement annuities may be employed in private schools, public schools in other states, and in private business without affecting their annuities. This section applies only to persons retired under the Teacher Retirement System of Texas. It does not relate to persons retired under other retirement or pension systems.

§ 31.2. Forfeiture of Annuities

Retirees receiving service retirement annuities forfeit those annuities in any month in which they are employed by a public educational institution covered by the Teacher Retirement System of Texas, except in the cases set forth in §31.3 of this title (relating to Permissible Substitute Employment), §31.7 of this title (relating to Regular Employment Having No Effect on Annuity) and §31.12 of this title (relating to Employment Up to Five Months On as Much as Full Time). However, the exceptions provided in those sections do not apply to the statutory requirement that a person automatically revokes retirement if employed in any position in Texas public educational institutions in the month immediately following the person's official date of retirement (or in the two months immediately following the person's official date of retirement if the date of retirement has been set on May 31 under §29.14 of this title (relating to Eligibility for Retirement at the End of May)).

§ 31.3. Permissible Substitute Employment

Any person receiving a service retirement annuity may be employed in a month as a substitute in a public educational institution without affecting the annuity payment for that month, provided that the person's total substitute employment in Texas public education in the school year has not exceeded 120 days, that the person does not have other employment in Texas public education during the month, and that the pay for work as a substitute does not exceed the daily rate of substitute pay established by the employer. A person receiving a disability retirement annuity may be employed as a substitute in a month without affecting the annuity for that month subject to the same conditions as apply to service retirees except that the total substitute employment in the school year may not exceed 90 days.

The exception described in this section is not available to persons who have elected the exception described in Section 31.12 of this title (relating to Employment Up to Five Months on as Much as Full Time). The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under Section 29.14 of this title (relating to Eligibility for Retirement at the End of May)).

§ 31.4. Calculation of Amount of Substitute Employment [Repealed]

§ 31.5. Effect of Exceeding Limits on Substitute Employment [Repealed]

§ 31.6. One Day's Work

Any person who reports for duty as a substitute during any day and works any portion of that day shall be considered to have worked one day.

§ 31.7. Regular Employment Having No Effect on Annuity

Any person receiving a service retirement annuity may, without affecting payment of the annuity, be employed during any month in Texas public education on as much as one-half the full-time load for the particular position according to the personnel policies of the employer, provided the person is not also employed as a substitute in that month. The exception described in this section is not available to persons who have elected the exception described in Section 31.12 of this title (relating to Employment Up to Five Months on as Much as Full Time). The exception described in this section does not apply for the first month after the person's effective date of retirement (or the first two months if the person's retirement date has been set on May 31 under Section 29.1 of this title (relating to Eligibility for Retirement at the End of May)).

§ 31.8. One-half Time

"One-half time" employment shall in no case exceed 92 clock hours in any calendar month. Determination of half-time will be made on a monthly basis using calendar months. Actual course instruction in state-supported colleges (including junior colleges), universities, and high schools shall not exceed during any month $\frac{1}{2}$ the normal load for full-time employment at the same teaching level. (This would usually limit employment in instruction in colleges and universities to no more than two three-semester-hour courses during any one semester of the long term, two two-semester-hour courses during a nine-week term, or one three-semester-hour course during a six-week term. Employment in instruction in public high schools would usually be limited to no more than two courses during any one semester of the long

term.) "One-half time" employment for bus drivers shall in no case exceed 12 days. Work by a bus driver for any part of a day shall count as a full day for purposes of this section.

§ 31.9. Public School

The definition of "public educational institution" is any educational institution in the State of Texas supported wholly or partly from public funds.

§ 31.10. Monthly Certified Statement

The employer will furnish the retirement system a monthly certified statement of all employment after retirement containing information necessary for the executive secretary to classify employment as "substitute," "not more than ½ time," or "regular employment exceeding ½ time" within the provisions of this section.

§ 31.11. Requirements to Become an Active Member After Retirement

(a) A person retired under a service retirement annuity may again become an active member, receive additional membership service credit, and re-retire under provisions of the retirement formula then in effect provided the retiree meets the following requirements:

(1) Returns to service in a covered position and renders two consecutive creditable years of service in an eligible position.

(2) Deposits an amount equal to the retirement benefits he has received plus a reinstatement fee of 6% compounded annually from the date of his return to covered employment to the date of redeposit.

(3) Deposits an amount equal to the percentage of each year's annual compensation which would have been deducted had the person been an active member of the retirement system after his or her return to employment plus a reinstatement fee of 6% compounded annually on each year's annual contribution computed from the end of each respective year of service to the date of deposit.

(4) Pays membership fees for each year of service after his return to employment.

(b) Employment after retirement for which benefits were not suspended will not constitute eligible service under this section.

§ 31.12. Employment up to Five Months on as Much as Full Time

(a) Any person receiving a service retirement annuity may, without affecting payment of the annuity, be employed on as much as full time for a

period of no more than five consecutive months in a school year if the work meets the requirements in subsection (b) of this section and the person complies with the requirements of subsection (c) of this section.

(b) The work must occur:

(1) in a period, designated by the employee in advance, of five consecutive months between September and June, inclusive;

(2) in a school year that begins after the retiree's official date of retirement; and

(3) more than one month after the person's effective date of retirement (or two months after a retirement date set on May 31 under Section 29.14 of this title (relating to Eligibility for Retirement at the End of May)).

(c) A person must elect in writing on a form prescribed by TRS to take advantage of the exception described by this section. A person who, during a school year, has already used the exception described in Section 31.3 of this title (relating to Permissible Substitute Employment) for substitute work or in Section 31.7 of this title (relating to Regular Employment Having No Effect on Annuity) for work at more than half time is not eligible to elect this exception during the same school year. A person who has been employed in Texas public education during a school year and has forfeited service retirement benefits because the person did not qualify for one of the exceptions described in Section 31.3 of this title (relating to Permissible Substitute Employment) or Section 31.7 of this title (relating to Regular Employment Having No Effect on Annuity) is eligible to elect this exception during the same school year. The election must be made on or before the last day of the first month that the person begins the work to be subject to the exception described in this section. The person making the election must designate on the form the five-month period during which the exception is to apply. For the election to be effective, the prospective employer of the person must certify on the election form that the contemplated employment after retirement is in the best interests of the employer. A separate election form must be filed for each school year that the person wishes this exception to apply.

(d) A person will forfeit annuity payment for any month in the school year outside the five consecutive month period designated on the person's election form during which the person works in any position in a Texas public educational institution. This applies even if the work would otherwise qualify for an exception under Section 31.3 of this title (relating to Permissible Substitute Employment) for substitute work or Section 31.7 of this title (relating to Regular Employment Having No Effect on Annuity) for no more than half time employment. However, substituting or work at no more than half time during the designated five-month period will be treated as any other employment permitted during that period.

(e) The election of the exception described in this section may not be modified or revoked after the person receives an annuity payment under it. A person may not designate a period of less than five months for the exception to apply unless the remaining time in the school year during

which it can apply requires it.

(f) Employers must submit to TRS the election forms signed by their prospective employees if and when certified by the employer as required by subsection (c) of this section. Employers will report separately to TRS all work in a school year by persons with an election of this exception in effect. Substituting or work at no more than half time by a person with the election in effect will not be reported under those categories, but as work under this exception.

CHAPTER 33. LEGAL COMPETENCE

§ 33.1. Approval of Optional Settlement: Minor

Any selection of an optional settlement of a death claim in favor of a minor child who has not had the disabilities of minority removed cannot be accepted by the Teacher Retirement System unless it has been approved by the guardian of the estate of the child or as otherwise provided by the Probate Code.

§ 33.2. Payments for the Account of a Minor Child

Payments for the account of a minor child who has not had the disabilities of minority removed cannot be made except to the guardian of the estate of the child or as otherwise provided by the Probate Code.

§ 33.3. Approval of Optional Settlement: Incompetent

Any selection of an optional settlement of a death claim in favor of a person who is legally incompetent or of unsound mind cannot be accepted by the Teacher Retirement System until it is approved by the guardian of the estate of the incompetent person.

§ 33.4. Approval of Incompetent's Selection

Any selection of a retirement option by a member who is legally incompetent or of unsound mind cannot be accepted by the Teacher Retirement System until it is approved by the guardian of the estate of the incompetent person.

§ 33.5. Approval of Designated Beneficiary

Any designation of beneficiary for any purpose by a member who is legally incompetent or of unsound mind cannot be accepted by the Teacher Retirement System until it is approved by a court of competent jurisdiction.

§ 33.6. Power of Attorney

Persons receiving payments from the Teacher Retirement System may give power of attorney to some person to receive, endorse, and cash their warrants if they are legally competent to give such powers. Such powers of attorney shall be duly notarized and witnessed. A person who is physically unable to sign because of paralysis or injury may be assisted in signing the document, but persons who are not mentally alert, legally competent, and aware of the consequences of their act cannot give such authority. Payments for the benefit of persons who are unconscious or of unsound mind can be made only to the guardian of the estate.

CHAPTER 35. CORRECTION OF ERROR

§ 35.1. Computation Error

Should any error in the records result in any member or beneficiary receiving more or less than he would have been entitled to receive had the records been correct, such error shall be corrected and so far as practicable the payment shall be adjusted in such manner that the actuarial equivalent of the benefit to which the member or beneficiary was correctly entitled will be paid.

CHAPTER 37. CALCULATION OF FEES

§ 37.1. Calculations of Fees and Interest Charges

All calculations of fees and interest charges for credit required by the Teacher Retirement Law shall be made by applying the annual percentage rate for each whole year from the ending date of the school year from which the fee is to be calculated to the date of payment.

CHAPTER 39. PROOF OF AGE

§ 39.1. Establishment of Date of Birth

Date of birth may be established by any one of the following:

(1) An original birth certificate or a legible unaltered copy thereof.

(2) A delayed birth certificate in accordance with Texas Civil Statutes article 4477, Rule 51a, or a legible unaltered copy provided by the Bureau of Vital Statistics. Other copies are not acceptable. If birth occurred in the State of Texas, your application should be made to the county clerk of the county in which birth occurred. It is not necessary that the county now have any record of your birth.

(3) A delayed birth certificate issued by the state in which birth occurred or a legible unaltered copy provided by the registration agency is required.

(4) The original baptismal record or parish record wherein the age of the individual at the time of the baptism is given, or a legible unaltered copy of such record.

(5) The family bible record when properly abstracted or copied and accompanied by the prescribed affidavit forms issued by the Teacher Retirement System.

(6) A report from the Bureau of Census, Pittsburg, Kansas, stating the age of the individual at a census year when the member was less than 20 years old.

(7) In the event none of these is obtainable, such other evidence of age as may be approved by the executive secretary.

(8) If there is any question concerning a copy of the above documents, a certified copy may be required.

CHAPTER 41. INSURANCE

§ 41.1. Enrollment Periods for the Texas Public School Retired Employees Group Insurance Program

(a) The initial enrollment period for eligible Teacher Retirement System retirees or their surviving spouses to elect coverage for themselves or their dependents under the Texas Public School Retired Employees Group Insurance Program (TRS-Care), including any increased level of coverage, shall end on January 31, 1987, if the retiree's effective date of retirement or date of death occurred before January 1, 1987.

(b) Such enrollment period for eligible Teacher Retirement System retirees who retire after December 31, 1986, or surviving spouses of eligible retirees who die after December 31, 1986, will end:

(1) for eligible retirees, 31 days after their effective retirement date; and

(2) for surviving spouses, 31 days after the end of the month in which the eligible retiree died or 31 days following the date of notice of eligibility sent by the Texas Public School Retired Employees Group Insurance Program to the survivor, whichever is later.

(c) The enrollment period for a surviving spouse of a deceased active member, as defined by the Insurance Code, Article 3.50-4, Section 2, Subdivision 11, and for a surviving dependent child, as defined by the Insurance Code, Article 3.50-4, Section 2, Subdivision 13, will end 31 days after the end of the month in which the eligible member or retiree died or 31 days following the date of notice of eligibility sent by the Texas Public School Retired Employees Group Insurance Program to the survivor, whichever is later.

(d) Notwithstanding the provisions of subsections (a), (b) and (c) of this section:

(1) a participant in TRS-Care 1 will have coverage increased to TRS-Care 2 upon becoming eligible for Medicare;

(2) a retiree may elect coverage for a spouse within 31 days of the date on which the retiree is married;

(3) a retiree or surviving spouse may add coverage for children within 31 days after the date on which the retiree or surviving spouse first acquires a child eligible for coverage under TRS Care;

(4) a participant shall be entitled to all applicable rights under the Federal Public Health Service Act (COBRA), Title XXII.

(e) A participant's dependent coverage, if elected, will continue until the end of the month of the participant's death.

§ 41.3. Group Insurance Advisory Committee

(a) The state board of trustees of the Teacher Retirement System of Texas will designate the chairman and vice chairman of the Group Insurance Advisory Committee.

(b) A majority of the committee will constitute a quorum.

(c) The executive secretary of the retirement system will provide a secretary to the committee to prepare minutes of the committee's meetings. The executive secretary shall be custodian of the records of the committee.

(d) The executive secretary may designate the time, dates, and place for the meetings of the committee.

(e) A majority of the committee may call an emergency meeting by notifying the executive secretary in writing of their action.

(f) The executive secretary shall file all meeting notices for the committee as required by the Texas Open Meetings Law.

§ 41.5. Payment of Contributions

(a) Retirees shall pay monthly contributions to cover the cost of optional plans.

(b) Surviving spouses shall pay monthly contributions to cover the cost of insurance for the surviving spouse.

(c) Retirees and surviving spouses shall pay monthly contributions to cover the cost of insuring dependents.

(d) Surviving dependent children, or their representative, shall pay monthly contributions to cover the cost of insurance for the surviving dependent children.

(e) In order to be eligible for optional coverage, a retiree, surviving spouse or surviving dependent child, or his or her representative, must authorize in writing the deduction by the trustee of the amount of the contributions from their annuity check. After such authorization the trustee shall deduct the amount of the contribution each month from the annuity check.

(f) In order to pay for dependent coverage, the retiree or surviving spouse shall authorize in writing the deduction of the contribution payment from their annuity check. After authorization by the retiree or surviving spouse, the trustee shall deduct the amount of the contribution each month from the retiree's or surviving spouse annuity check.

(g) In the event that the amount of the contribution is more than the amount of the annuity check, the participant will be billed directly by the carrier for the entire amount.

(h) Failure to make any required contribution for coverage of a non-retiree will result in termination of coverage at the end of the month for which the last contribution was made.

(i) Failure to make any required contribution for coverage of a retiree under an optional plan will result in a decrease in coverage from the optional plan to the basic plan at the end of the month for which the last contribution was made.

(j) Disability retirees shall be required to pay monthly contributions to cover the cost of coverage during periods when their annuity payments are suspended. Failure to make said contributions will result in a decrease in coverage from the optional plan to the basic plan.

§ 41.7. Effective Date of Coverage

(a) The following words and phrases, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Noncontributory coverage - The coverage provided at no cost to eligible retirees,

(2) Contributory coverage - Coverage for which a contribution is required.

(b) The effective date of noncontributory coverage for a retiree shall be the first day of the month following the effective date of retirement unless the retiree has waived coverage in writing.

(c) The effective date of contributory coverage for the retiree shall be:

(1) the first day of the month following the effective date of retirement if the application for coverage is received by the Texas Public School Retired Employees Group Insurance Program on or before the effective retirement date; or

(2) the first day of the month following the receipt of the application by the Texas Public School Retired Employees Group Insurance Program if the application is received after the effective retirement date but within the 31 day enrollment period.

(d) Retirees who due to their effective retirement date have a choice of beginning contributory coverage in two different months may defer the effective date of coverage to the first day of the latter month if that election is made in writing and is received by the Texas Public School Retired

Employees Group Insurance Program in advance of the beginning of the first month in which the effective date of coverage could have taken place.

(e) The effective date of coverage for a surviving spouse or for a surviving dependent child shall be the first day of their eligibility if the Texas Public School Retired Employee Group Insurance Program receives an application within the enrollment period and the deceased participant had the surviving spouse or the surviving dependent child covered under the program before he or she died.

(f) Where the surviving spouse or the surviving dependent child was not covered under the program immediately preceding his or her becoming eligible for coverage the effective date of coverage will be the first day of the month following receipt of an application during the enrollment period by the Texas Public School Retired Employees Group Insurance Program.

(g) The effective date of coverage for dependents who are eligible to be enrolled and who are enrolled under a retiree's or surviving spouse's coverage will be:

(1) the same date as the retiree or surviving spouse if the enrollment is during the initial enrollment period; or

(2) the first day of the month following receipt of the application by the Texas Public School Retired Employees Group Insurance Program if the enrollment of the dependents is after the initial enrollment period; or

(3) the day on which a child is born, if the participant has coverage for children already in effect under the program.

(h) Except as provided in subsections (l), (m), and (n), effective date of changes in coverage due to the acquisition of Medicare shall be on the first of the month following the date of receipt of a copy of the participant's or dependent's Medicare card by the Texas Public School Retired Employees Group Insurance Program.

(i) Except as provided in subsections (l), (m), (n), effective date of reduction in coverage shall be the first day of the month following receipt of a signed request by the Texas Public School Retired Employees Group Insurance Program for reduced coverage.

(j) A retiree, surviving spouse, or surviving dependent child may cancel any coverage by submitting the appropriate cancellation notice to the Texas Public School Retired Employees Group Insurance Program. Cancellations will be effective at midnight on the last day of the month in which the signed notice is received by the program. This section shall also apply to waivers of non-contributory coverage by retirees.

(k) All participants and dependents shall be entitled to all applicable rights under the Federal Public Health Service Act (COBRA), Title XXII.

(l) Where a participant who has Medicare Part A coverage incorrectly enrolls in an insurance coverage option that provides for coverage without corresponding Medicare Part A coverage and as a result payment is made by Medicare and the insurance program in a manner that violates the provisions of the Insurance Code, Article 3.50-4, Texas Civil Statutes,

which requires the insurance program to be secondary to Medicare, the Teacher Retirement System of Texas (TRS) is authorized to seek the recovery of funds paid in violation of Article 3.50-4 and to make the effective date of the correct coverage retroactive to when the participant was first enrolled in both Medicare and the group insurance program.

(m) Where a participant who has Medicare Part A coverage incorrectly enrolls in an insurance coverage option that provides for coverage without corresponding Medicare Part A and there is no claim made upon the insurance program or the legitimate claim is less than the amount of overpaid contributions or premiums, TRS-Care is authorized to refund or credit the amount due to the participant and to make the effective date of the correct coverage retroactive to when the participant was first enrolled in both Medicare and the group insurance program.

(n) Upon discovery by TRS-Care of a participant who does not have Medicare Part A coverage and who is incorrectly enrolled in an insurance coverage option that provides for corresponding Medicare Part A, TRS-Care will contact the participant and advise them that the cost of coverage and the coverage will be adjusted prospectively effective the first day of the next month unless a copy of a Medicare card showing Part A coverage is received prior to that date. Claims shall be paid based upon the coverage in effect at the time the services were provided. Any claims already paid as if Part A was in effect shall not be adjusted.

CHAPTER 43. ADJUDICATIVE HEARINGS

§ 43.1. Administrative Review of Individual Complaints

The Teacher Retirement System of Texas (TRS) is divided into administrative divisions which are further divided into departments for the efficient implementation of its duties. Any person who desires any action from TRS must consult with the proper department within TRS and comply with all proper requirements for completing forms and providing information to that department. In the event that a person is not satisfied with the determination, decision, or action of department personnel, the person may complain to the appropriate supervisors within the department and division. If not satisfied after consulting with the proper supervisory personnel, the person may consult with the administrative head of the appropriate division who shall mail a written final administrative decision.

§ 43.2. Effect of Invalidity of Rule

If any provisions of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid

provision or application, and to this end the provisions of this section are severable.

§ 43.3. Definitions

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

Board - The Board of Trustees of the Teacher Retirement System of Texas.

Contested case - A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Executive secretary - The executive secretary of the Teacher Retirement System of Texas.

Hearing officer - Any person appointed by the executive secretary to conduct hearing.

Member - A person who is a member, retiree, or beneficiary of the Teacher Retirement System.

Order - The whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the board in a matter other than rulemaking.

Party - Each person named or admitted in a contested case.

Person - Any natural person.

Pleading - A written allegation by the parties or the Teacher Retirement System of Texas of their or its respective claims. Pleadings may take the form of applications, petitions, appeal letters, complaints, briefs, exceptions, replies, motions, notices, or answers.

Presiding hearing officer - The hearing officer appointed to hear the present case may also be referred to as the hearing officer.

Proceeding - Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of an appeal if the matter is a contested case.

TRS - The Teacher Retirement System of Texas.

Trustee - One of the elected or appointed members of the decision making body defined as the board.

With prejudice - Final and binding.

§ 43.4. Decisions Subject to Review by an Adjudicative Hearing

Any interested person shall be entitled to appeal the decision of a division head with regard to the following:

(1) any matter related to a member's service or disability retirement, death or survivor benefits, or request for refund of accumulated contributions;

(2) the eligibility of a person for membership in TRS;

(3) the amount of annual compensation;

- (4) the amount of deposits or fees required of a member;
- (5) any matter involving the granting, purchase, transfer, or establishment of service credit;
- (6) any application for correction of error in the file of a member or beneficiary;
- (7) the cancellation or suspension of benefits; or
- (8) any other matter affecting eligibility for benefits or the amount of benefits payable under the laws governing TRS.

§ 43.5. Request for Adjudicative Hearing

A party may appeal the final decision of a division head by filing a petition for adjudicative hearing with the executive secretary within 90 days from the date the division head's final administrative decision is mailed. The petition should conform to the requirements of Sec. 43.12 of this title (relating to Form of Petitions and Other Pleadings).

§ 43.6. Filing of Documents

All documents relating to any proceeding pending or to be instituted before the board shall be filed with the executive secretary or hearing officer at 1000 Red River Street, Austin, Texas 78701-2698.

§ 43.7. Computation of Time

In computing any period of time prescribed or allowed by this section, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event, or default in question and it shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

§ 43.8. Extensions

Unless otherwise provided by statute, the time for filing any of the documents mentioned in this section may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with its filing. In the case of filings which initiate a proceeding or which are made before a hearing officer has been assigned the matter, the executive secretary will determine whether good cause exists and whether an extension should be granted. In the case of filings made in a proceeding after a hearing officer has been assigned the matter, the hearing officer will

determine whether good cause exists and whether an extension should be granted.

§ 43.9. Docketing of Adjudicative Hearing

(a) The executive secretary shall assign the petition a docket number and shall schedule the case for hearing on a date at least 10 days after the issuance of notice of the hearing date to all parties. The executive secretary, the board of trustees, or the presiding hearing officer may reschedule the hearing in the interests of justice or administrative necessity or for good cause.

(b) The initial notice shall be given not less than 10 days prior to hearing by the hearing officer.

§ 43.10. Authority of Executive Secretary or Hearing Officer to Grant Relief

At any time after the petition is filed and before the hearing is conducted, the executive secretary or hearing officer may grant the relief sought by the petitioner and dismiss the petition, provided that the interests of other individual parties are not adversely affected.

§ 43.11. Classification of Pleadings

Pleadings filed with the executive secretary shall be appeal letters, notices, applications, appeals, claims, answers, exceptions, replies, motions, or briefs. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

§ 43.12. Form of Petitions and Other Pleadings

(a) Petitions, briefs, and other pleadings shall be typewritten or printed on paper not to exceed 8½ inches by 11 inches with an inside margin of at least one inch width. Annexed exhibits shall be folded to the same size. Only one side of the paper shall be used. Reproductions may be used, provided all copies are clear and permanently legible.

(b) The pleadings shall state their object and shall contain a concise statement of the supporting facts. The petition for an adjudicative hearing shall specify the action desired from TRS.

(c) The original of any pleading filed with TRS shall be signed in permanent ink by the party filing it or by his authorized representative. Pleadings shall contain the address and phone number of the party filing the documents or the name, telephone number, and business address of counsel.

(d) The original petition for an adjudicative hearing should also include the name, address, telephone number of appellant, the name, and, if known, the tax number of any member whose interest or whose benefici-

ary's interest may be involved in the case. The petition should further identify all persons who may have a material interest in the outcome of the case, the basis for that interest, and such person's last known address. If such information is not provided on the original petition, the executive secretary, board of trustees, or presiding hearing officer may require submission of such information before proceeding with the hearing.

(e) Pleadings should be styled: "Petition of (Name of Petitioner)."

(f) All pleadings shall contain the following:

(1) the name of the party supporting or opposing the action of the division head;

(2) a concise statement of the facts relied upon by the appellant;

(3) a prayer stating the type of relief, action, or order desired by the pleader;

(4) a certificate of service conforming to subsection (g) of this section; and

(5) any other matter required by statute.

(g) Written pleadings other than the original petition should be served by mail or personal delivery upon all other known parties of record and a certification of such service should be submitted with the original copy of the pleading filed with TRS. Service may be made upon a party by serving his attorney of record in the case. The following form of certification will be sufficient: "I hereby certify that I have this day _____ of _____, 19 _____, served copies of the foregoing pleading upon all other parties to this proceeding, by (state the manner of service). Signature."

(h) The executive secretary or hearing officer may review pleadings filed with TRS to determine their sufficiency under these sections. If the pleadings do not materially comply with these sections, the executive secretary shall return the pleadings to the person filing them, along with reasons for the return. The person shall be given a reasonable time (not to exceed 90 days) to file corrected pleadings. If the pleadings are not corrected to substantially comply with this section, the executive secretary may dismiss the complaint with prejudice.

§ 43.13. Filing of Pleadings and Amendments

(a) Any party to a case may file answers, amendments to pleadings (provided it does not act as a surprise to the opposite party), and motions which conform to the requirements of this section. Any amendment which operates as a surprise to any other party may be granted only upon a written motion showing no harm will result. Failure to file an answer shall in no case result in a default judgment.

(b) The filing of motions, answers, amended pleadings, and corrected pleadings shall not be permitted to delay any hearing unless the executive secretary, board of trustees, or presiding hearing officer determines that such delay is necessary in order to prevent injustice or to protect the public interest and welfare.

§ 43.14. Briefs

Briefs shall conform, where practicable, to the form requirements of pleadings set out in this section. The points involved shall be concisely stated, the allegations in support of each point shall be summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner.

§ 43.15. Motions

A motion, unless made during a hearing, shall be made in writing, set forth the relief or order sought, the specific recourse and grounds for such relief, and be timely filed with the hearing officer. If parties have been designated, a copy shall be furnished by the movant to each applicant, appellant, and other party of record. Any reply to the motion shall be timely filed with the hearing officer with a copy served on the movant and other parties of record. Failure to furnish copies may be grounds for withholding consideration of the motions or replies. Unless otherwise directed by the hearing officer, motions based on matters which do not appear of record must be supported by affidavit. When necessary in the judgment of the hearing officer, a hearing will be held to consider any motion.

§ 43.16. Notice of Hearing and Other Action

(a) Notices of hearing, proposals for decision, and all other rulings, orders, and actions by TRS shall be served upon all parties or their attorneys of record in person or at their last known address by mail. Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid. On motion by any party or on its own motion, TRS may serve notice of a hearing on any person whose interest in the subject matter will be directly affected by the final decision in the case.

(b) All initial notices shall include the following:

- (1) a statement of time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short, plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon written application filed not less than five days before the date set for hearing, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

(c) After service of the initial notice, any party wishing to raise issues or matters not set forth in the initial notice must do so by filing a motion which sets forth such issues or matters not less than 10 days before

the date set for hearing. If granted, the hearing officer shall give notice, not less than three days before the date of hearing, of the additional issues and matters to be decided in the contested case.

(d) All other notices in a contested case shall set forth only the additional issues and matters to be decided.

§ 43.17. Agreements to be in Writing

No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding governed by this chapter, shall be enforced unless it shall have been reduced to writing and signed by the parties or the representatives authorized by this section to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law.

§ 43.18. Motion for Consolidation

A motion for consolidation of two or more appeals, applications, petitions, or other proceedings shall be in writing, signed by the movant, his attorney or representative, and filed with the hearing officer prior to the date set for hearing. No two or more appeals, applications, petitions, or other proceedings shall be consolidated or heard jointly without the consent of all parties to all such proceedings unless the hearing officer shall find that the two or more appeals, applications, petitions or other proceedings involve common questions of law or fact, or both, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice. Special hearings on separate issues may also be allowed.

§ 43.19. Intervention

Any interested person desiring to intervene in any proceeding before the board may appear formally before the board, by filing a written motion to intervene at least 15 days in advance of the hearing date, and it may present any relevant, material, and proper testimony and evidence bearing upon the issues involved in the particular proceeding. In any proceeding involving notice of less than 30 days, this time for filing may be modified.

§ 43.20. Representation by Attorney

Any party may appear and be represented by an attorney authorized to practice law in the court of highest jurisdiction of any state of the United States or the District of Columbia. The attorney of record of any party shall be the attorney who signs the first pleading filed on behalf of the party or

who files with TRS a written notice signed by the party designating the attorney as attorney of record in the case. He or she shall be considered to have continued as attorney of record to the end of the proceeding with TRS unless there is a statement to the contrary appearing in the record. Nothing in this chapter shall be interpreted to require a party to the hearing to be represented by counsel.

§ 43.21. Lead Counsel

A party represented by more than one attorney in a matter before TRS may be required to designate a lead counsel who shall have control in the management of the matter. The hearing officer may limit the number of counsel heard on any matter.

§ 43.22. Hearing Officer

The executive secretary shall designate a presiding hearing officer for any adjudicative hearing or set the hearing before the board of trustees. The presiding hearing officer may be the executive secretary, an employee of TRS, or a specially appointed hearing officer. The executive secretary may designate successive hearing officers in any case who may perform any functions remaining in the case without the necessity of repeating any previous proceedings.

§ 43.23. Powers of the Hearing Officer

The presiding hearing officer shall have the authority to:

- (1) convene the hearing;
- (2) administer oaths to all persons presenting testimony;
- (3) rule on motions;
- (4) rule on the admissibility of evidence;
- (5) establish the order of presentation of evidence;
- (6) examine witnesses;
- (7) set hearing dates;
- (8) set prehearing conferences;
- (9) issue subpoenas when required to compel the attendance of witnesses or the production of papers and documents related to the hearing;
- (10) define the jurisdiction of TRS concerning the matter under consideration;
- (11) limit testimony to matter under TRS's jurisdiction;
- (12) recess or continue any hearing over which he or she is presiding from time to time and from place to place;
- (13) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing any rights of parties to the proceeding;
- (14) exercise any other appropriate powers necessary or conve-

nient to carry out his or her responsibilities; and
(15) to extend the time for the decision date.

§ 43.24. Prehearing Conference

(a) The hearing officer may hold a prehearing conference prior to any adjudicative hearing. The hearing officer shall set the time and location of the conference and give reasonable notice thereof to all parties. At the discretion of the hearing officer, persons other than parties may attend prehearing conferences. At the discretion of the hearing officer, additional prehearing conferences may be scheduled.

(b) The hearing officer may direct that one or more of the following be transmitted by each party to all other parties or their representatives and to the hearing officer by a date established by the hearing officer:

(1) a list of witnesses the party desires to testify with a brief narrative summary of their expected testimony;

(2) a written statement of the disputed issues for consideration at the hearing;

(3) a copy of any written statements to be offered at the hearing; or

(4) a copy of any other written testimony or documentary evidence the party intends to use at the hearing.

(c) Witnesses and proposed written evidence may be added and narrative summaries of expected testimony amended at the hearing only upon a finding of the hearing examiner that good cause existed for failure to exchange the additional or amended material by the established date.

(d) At any prehearing conference, or in the prehearing conference summary, the hearing officer:

(1) may obtain stipulations and admissions, and otherwise identify matters on which there is agreement;

(2) shall identify disputed issues for consideration at the hearing;

(3) may consider and rule prospectively upon objections to the introduction into evidence at the hearing on the merits of any written testimony, documents, papers, exhibits, or other materials;

(4) may identify matters of which official notice may be taken;

(5) may strike issues not material or not relevant; and

(6) may consider any other matter that may expedite the hearing or aid in the disposition of the matter.

(e) A prehearing conference may be held by means of a conference telephone call.

(f) The results of any prehearing conference shall be summarized in writing by the hearing officer and made part of the record.

§ 43.25. Conduct of Hearing

(a) All hearings shall be open to the public except for parts of any proceeding in which confidential information in a member's file may be disclosed. The member may expressly waive his right to maintain confidentiality of the information before the proceedings will be opened to the public.

(b) All hearings will be held in the offices of the Teacher Retirement System of Texas in Austin, unless for good cause the hearing officer shall designate another place of hearing.

(c) The hearing officer shall open the hearing and make a concise statement of its scope and purposes. Once the hearing has begun, parties or their representatives may be off the record only when the hearing officer permits. If a discussion off the record is pertinent, the hearing officer may summarize such discussion for the record. Appearances are to be entered on the record by all parties, their attorneys, or representatives, and any persons who may testify during the proceedings. All persons present who may testify will then be placed under oath. Thereafter, parties may make motions or opening statements.

(d) Following opening statements, if any, by both sides, the petitioner shall be directed to proceed with his or her direct case.

(e) Where the proceeding is initiated at the executive secretary's or the board's own call, or where several proceedings are heard on a consolidated record, the examiner shall designate who shall open and close and at what stage intervenors shall be permitted to offer evidence.

(f) Opportunity for cross-examination and presentation of a direct case shall be afforded all parties of record. After all parties have completed the presentation of their evidence, and been afforded the opportunity to cross-examine the opposition witnesses, closing statements may be allowed. The petitioner shall be entitled to open and close.

(g) The hearing officer may also call upon any party or staff of TRS for further material or relevant evidence upon any issue before the issuance of a proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection, cross-examination, and rebuttal by the other interested parties.

(h) During any part of the direct or cross-examination of a witness, the hearing officer may ask the witness questions.

(i) At the request of a party, the hearing officer shall order the witnesses excluded so that they cannot hear the testimony of other witnesses, and the hearing officer may make the order of its own motion. This section does not authorize exclusion of a party.

§ 43.26. General Admissibility

(a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of Texas shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not

admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by a reasonably prudent person in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law.

(b) When testimony is excluded by ruling of the hearing officer, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing. Such offer of proof shall be sufficient to preserve the point for review. The presiding hearing officer may ask questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as presented in the offer of proof.

§ 43.27. Exhibits

(a) Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of TRS and whenever practicable, shall conform to the requirements set forth in Sec. 43.12 of this title (relating to Forms of Petitions and Other Pleadings). The first page of the exhibit shall contain a statement of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(b) The original of each exhibit offered shall be tendered to the reporter or clerk for identification; one copy shall be furnished to the presiding hearing officer and one copy to each other party of record or his attorney of record.

(c) In the event an exhibit has been identified, objected to, and excluded, the presiding hearing officer shall determine whether the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to that party. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the hearing officer with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) Unless specifically permitted by the hearing officer, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the hearing officer allows an exhibit to be filed after the conclusion of a hearing, copies of the late-filed exhibit shall be served on all parties of record.

§ 43.28. Admissibility of Prepared Testimony

When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in a narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same as a true and accurate record of what his testimony

would be if he were to testify orally. The witness shall be subject to cross-examination and his/her prepared testimony shall be subject to being stricken either in whole or in part.

§ 43.29. Limit on Number of Witnesses

The hearing officer shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§ 43.30. Exceptions

(a) If exceptions to the form or sufficiency of a pleading have been filed in writing at least three days prior to the hearing date, they shall be heard. If exceptions are sustained, the hearing officer shall allow a reasonable time for amendment.

(b) Formal exceptions to rulings of the presiding hearing officer during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have been made known to the presiding hearing officer the action desired.

§ 43.31. Oral Argument

At the conclusion of the hearing, oral argument may be heard upon request or upon directive to the parties. Reasonable time limits may be prescribed.

§ 43.32. Appearance

Any person may appear at a hearing in person or by an attorney. A person appearing as an attorney may be required to prove his authority.

§ 43.33. Failure to Appear

Except for good cause and extenuating circumstances, the appellant or his authorized representative shall appear at the hearing. Failure to so appear may be grounds for withholding consideration of a matter, denial of the matter without prejudice, or dismissal of the appeal.

§ 43.34. Conduct and Decorum at Hearing

Every party, authorized representative, witness, or other participant in the proceedings shall conduct himself with proper dignity, courtesy, and respect for TRS, the parties, witnesses, and all other participants. Disorderly conduct will not be tolerated. Attorneys must conform to the standards of ethical behavior required by the Code of Professional Responsibility of the State Bar of Texas. In a matter heard by a hearing officer, violation of this section shall be sufficient cause for the officer to recess the

hearing and to request that TRS take appropriate action. TRS may deny the offending person the right to participate further in the proceeding for such period of time and under such conditions as may be just and reasonable or may take such other action as it deems just and reasonable.

§ 43.35. Official Notice

Official notice may be taken of all facts judicially cognizable. In addition, official notice may be taken of generally recognizable facts within special knowledge of the agency. All parties shall be notified either before or during the hearing, or by reference in preliminary reports, drafts of orders, or otherwise, of any material officially noticed, including any staff memoranda or data. All parties will be afforded an opportunity to contest the material so noticed.

§ 43.36. Ex Parte Consultations

Unless required for the disposition of ex parte matters authorized by law, the hearing officer or employees of TRS assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. A TRS employee may communicate ex parte with other employees of TRS, and pursuant to the authority provided in the Administrative Procedure and Texas Register Act, Sec. 14(q), employees of TRS assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of TRS who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the agency and its staff in evaluating the evidence.

§ 43.37. Reporters and Transcript

(a) When a party makes a written request that proceedings be transcribed, the party shall state in writing his election to furnish a stenographic reporter or to rely upon a transcript made by TRS from audio tape recordings of the hearing. The cost of the original transcript shall be assessed to the party or parties requesting the original transcript to be made by a stenographic reporter.

(b) A stenographic reporter furnished by a party must agree:

(1) to deliver the original transcript and copies, if any, to TRS not less than 15 working days after the close of the hearing;

(2) to recognize that TRS has the rights to the printing and distribution of additional copies of the transcript; and

(3) to respect the confidentiality of member files.

(c) The executive secretary may exclude any stenographic reporter for late delivery or poor quality of work in previous hearing.

(d) Errors claimed to be in a transcription of a contested hearing shall be noted in writing and suggested corrections may be offered within 10 days after the transcript is filed with the hearing officer, unless the officer shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record and the hearing officer. If not objected to within 12 days after being offered, the hearing officer will direct that such suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the hearing officer, with the aid of argument and testimony from the parties, shall then determine the manner in which the record shall be changed, if at all.

§ 43.38. Dismissal Without Hearing

(a) The hearing officer may entertain motions for dismissal without a hearing for any of the following reasons:

- (1) failure to prosecute a claim;
- (2) unnecessary duplication of proceedings or res judicata;
- (3) withdrawal or voluntary dismissal of appeal;
- (4) moot questions or obsolete petitions;
- (5) lack of jurisdiction; or
- (6) failure to comply with Sec. 43.12 of this title (relating to

Form of Petitions and Other Pleadings).

(b) The hearing examiner shall dismiss the appeal of any person who has filed written notice of the appeal but who has defaulted by:

- (1) failing to personally appear at the hearing if the appellant is not represented by an attorney at law unless such appearance is waived by agreement of all the parties;
- (2) failing to personally appear at the hearing if the appellant is represented by an attorney at law unless the appellant gives notice at least 10 days prior to the date of the hearing that the appellant will not personally appear and such appearance is waived by agreement of all parties; or
- (3) failing to request a hearing or take some other action specified by the hearing officer within 30 days after notice is mailed of intention to dismiss the claim.

(c) For good cause, the executive secretary may permit reinstatement of a dismissed appeal.

§ 43.39. Summary Judgment

(a) A party may move with or without supporting affidavits for a summary judgment any time after a petition has been filed. The motion for summary judgment shall specify the grounds for which the judgment should be rendered. The motion and any supporting affidavits shall be filed and served at least 15 days before the time specified for the hearing which must be arranged with the hearing officer. The judgment sought will be rendered if the pleadings, discovery, affidavits, stipulation of the parties,

and authenticated or certified public records on file at the time of the hearing show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or other response.

(b) A party adversely affected by a summary judgment decision may appeal the decision to the board of trustees provided written notice of appeal is filed with the executive secretary within 10 days after the decision is issued. If no such notice of appeal is timely filed, the decision rendered in the summary judgment proceedings shall be the final decision of TRS.

§ 43.40. The Record

The record in a contested case shall include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) rulings and objections made on questions and offers of proof;
- (5) proposed findings, exceptions and briefs;
- (6) any decision, opinion, or report by the officer presiding at the hearing;
- (7) all staff memoranda or data submitted to or considered by the hearing examiner or trustees of TRS who are involved in making the decision; and
- (8) summaries of the results of any prehearing conferences held in connection with the case.

§ 43.41. Findings of Fact

Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

§ 43.42. Reopening of Hearing

Upon motion of any party or upon the motion of the hearing officer, the hearing may be reopened for good cause at any time before a decision is rendered.

§ 43.43. Subpoenas

(a) The issuance of subpoenas in any proceeding shall be governed by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a, Sec. 14). Upon a written request by a party or upon the motion of the executive secretary, board of trustees, or presiding hearing officer, TRS may issue subpoenas addressed to the sheriff to require that attendance of witnesses and the production of books, records, papers,

or other objects as may be necessary and proper for the purposes of a hearing.

(b) Motions for subpoenas to compel the production of books, papers, accounts, or documents shall be addressed to TRS, shall be verified, and shall state as specifically as possible the books, papers, accounts, or documents desired and the material and relevant facts to be proved by them. If the matter sought is relevant, material, and necessary and will not result in harassment, imposition, or undue inconvenience or expense to the party to be required to produce the same, the executive secretary or the hearing officer may issue a subpoena compelling the production of books, papers, accounts, or documents as deemed necessary.

(c) Subpoenas shall be issued only after a showing of good cause and deposit of sums sufficient to insure payment of expenses incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act.

§ 43.44. Discovery, Entry on Property; Use of Reports and Statements

(a) Upon motion of any party and upon notice to all other parties, and subject to such limitations of the kind provided for discovery under the Rules of Civil Procedure, TRS may order any party:

(1) to produce and permit the inspection and copying or photographing by or on behalf of the moving party any of the following which are in his possession, custody, or control: any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain, or are reasonably calculated to lead to the discovery of, evidence material to any matter involved in the action; and

(2) to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated object or operation thereon which may be material to any matter involved in the action.

(b) The order shall specify the time, place, and manner of making the inspection, measurement, or survey and taking the copies and photographs and may prescribe such terms and conditions as are just.

(c) The identity and location of any potential party or witness may be obtained from any communication or other paper in the possession, custody, or control of a party, and any party may be required to produce and permit the inspection and copying of the reports, including factual observations and opinions, of an expert who will be called as a witness. Provided, that the rights herein granted shall not extend to other written statements of witnesses or other written communications passing between agents or representatives or the employees of any party to the suit or to other communications between any party and his agents, representatives, or

other employees, where made subsequent to the occurrence or transaction upon which the suit is based, and made in connection with the prosecution, investigation, or defense of such claim or the circumstances out of which same has arisen.

(d) Any person, whether or not a party, shall be entitled to obtain, upon request, a copy of any statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party. If the request is refused, the person may move for an agency order under this section. For the purpose of this paragraph, a statement previously made is a written statement signed or otherwise adopted or approved by the person making it, or a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

§ 43.45. Final Decisions and Appeals to the Board of Trustees

(a) The final decision in a matter subject to an adjudicative hearing will be rendered within 120 days of the date the hearing is finally closed, unless the hearing officer or executive secretary states a shorter period at the time the hearing is closed or unless another decision date is required by law.

(b) Within 75 days of the completion of the hearing, the hearing officer shall forward his report, proposal for decision, and the record to the executive secretary. Upon review of the record, the executive secretary may reverse or affirm the decision being appealed. The executive secretary shall then render a decision in each case or shall submit the case to the board of trustees for consideration with a proposal for decision.

(c) Any party adversely affected by a decision of the executive secretary, other than TRS, may appeal the decision to the board of trustees, provided that a written notice of appeal is filed with the executive secretary within 10 days after the decision of the executive secretary is issued. If no such notice of appeal is timely filed, or if the next regularly scheduled meeting of the board of trustees will occur after the deadline for a final decision established under this section, and the parties, other than TRS, are unwilling to waive the deadline for a final decision until that meeting, the decision of the executive secretary shall be the final decision of TRS. If notice of appeal is timely filed, the decision of the executive secretary shall serve as a proposal for decision. The final decision by the board of trustees in an appeal or in a case originally set before the board of trustees shall be based upon the existing record in the case, unless the board of trustees orders the hearing to be reopened.

§ 43.46. Rehearings

A party adversely affected by a final decision in a case must file a motion for rehearing within 15 days after the date such decision is rendered. If substantially new or amended evidence is presented in the motion which, in the judgment of the executive secretary, may cause the board of trustees to reverse the previous decision, the motion shall be granted. A grant or denial of the motion shall be issued within 45 days after the date the final decision is rendered.

§ 43.47. Procedures Not Otherwise Provided

If, in connection with any hearing, the executive secretary and the hearing officer determine that there are no statutes or other applicable rules resolving particular procedural questions then before the agency, the executive secretary will direct the parties to follow procedures consistent with the purpose of these sections.

CHAPTER 45. FRANCHISE TAX

§ 45.01. Certification of Payment

Every corporation subject to Texas franchise taxes which contracts with TRS must certify in writing that its Texas franchise taxes are current and paid. Those corporations which are exempt from the payment of franchise taxes must certify in writing that they are exempt from the payment of Texas franchise taxes or that they are not subject to the Texas franchise taxes.

§ 45.02. False Statements

If a corporation makes a false statement in its certification regarding its status on the Texas franchise tax, TRS will treat the statement as a material breach of the contract and may at its own option cancel the contract.

CHAPTER 47. QUALIFIED DOMESTIC RELATIONS ORDERS

§ 47.1. Payments by TRS

The Teacher Retirement System of Texas will make payment of retirement or survivor benefits or of refunded contributions only as directed by statute

or by a qualified domestic relations order (QDRO).

§ 47.2. Submission of Orders

A person who wishes to have TRS review a domestic relations order to determine whether it is a qualified domestic relations order for the purpose of receiving TRS benefits or payments shall submit a copy of a signed domestic relations order to TRS. The copy shall be certified by the clerk of the district court that entered the order. TRS shall not make a determination for orders not yet entered by the court.

§ 47.3 Review of Orders

The executive secretary of TRS or the executive secretary's designee shall review the order for compliance with the requirements imposed by statute or rule. Upon completion of the review, the executive secretary or the designee shall notify the member or retiree and each alternate payee in writing of the determination.

§ 47.4. Payment Pursuant to Qualified Orders

If the order is determined to be a qualified domestic relations order, TRS shall, subject to the limitations of this chapter, pay benefits in accordance with the order at the time of distribution of benefits or withdrawn contributions to a member. Any determination that an order is a qualified domestic relations order is voidable or subject to modification if TRS determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.

§ 47.5. Orders Not Qualified

The executive secretary or the executive secretary's designee shall provide a written notice of any determination that an order is not a qualified domestic relations order. The notice shall identify the provisions of the order that do not meet the requirements of applicable statutes or rules and shall explain how the provisions do not meet applicable requirements.

§ 47.6. Appeal of Notice that Order is Not Qualified

A determination by the executive secretary or the executive secretary's designee that an order is not a qualified domestic relations order may be appealed directly to a district court of Travis County. No appeal to the Board of Trustees of TRS is required prior to appeal to a district court. However, a party adversely affected by a determination of the executive secretary or the designee must file a motion for reconsideration with the executive secretary no later than 15 days after the date such determination is rendered as a prerequisite to an appeal to a district court.

§ 47.7. Submission of Amended Order

If a court amends an order so that it may be a qualified domestic relations order, the member or retiree or alternate payee should submit a certified copy of the amended order to TRS. TRS shall review any amended order that it receives according to the same rules applicable to all other orders.

§ 47.8. Orders Affecting Optional Retirement Program

A member or retiree or any alternate payee should submit an order affecting benefits payable under the Optional Retirement Program (ORP) to the applicable carrier and not to TRS, unless the order also affects benefits payable by TRS, in which case a copy of the order should be submitted both to the applicable carrier and to TRS.

§ 47.9. Orders Affecting Benefits from More than One Public Retirement System

If an order affects benefits payable under more than one public retirement system, the member or retiree or any alternate payee should submit the order to each public retirement system for review. Each system's determination of whether the order is a qualified domestic relations order shall affect only benefits payable by that system. If TRS determines that an order is a qualified domestic relations order, but another system determines that an order is not a qualified domestic relations order and the order is subsequently modified by a court, the amended order should be submitted to TRS for review.

§ 47.10. Determination of Whether an Order is a Qualified Domestic Relations Order

TRS shall apply the statutory criteria to determine whether an order is a qualified domestic relations order. The following provisions shall also be used in making the determination:

(1) The order must provide for each possible distribution by the retirement system for the member or retiree. This requirement may be met by a provision that:

(A) awards a specified or clearly determinable percentage, rather than an amount, of each distribution by TRS based on the participant's account; or

(B) awards all benefits not specified to the participant to be paid in accordance with plan provisions.

(2) The order must provide for reducing the amount awarded in the event of reduction of the benefit based on the age of the participant, each reduction to be in proportion to the factors used to reduce the standard annuity on the basis of the participant's age below normal retirement age.

This requirement shall not apply if:

(A) the order awards a percentage of whatever monthly benefit is payable after all elections have been made by the member, or in the event of death benefits, by the designated beneficiary;

(B) the member or retiree has reached normal retirement age and, if a retiree, has retired without any reduction for early age retirement at the time of the determination as to whether the order is a qualified domestic relations order; or

(C) the order reflects that the retiree is or will be receiving retirement benefits reduced for early age retirement and the award to the alternate payee has considered the reduced amount of the retiree's annuity payments.

(3) The order may not:

(A) purport to require the designation by the participant of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(B) purport to require the selection of a particular benefit payment plan or benefit option;

(C) require any action on the part of the retirement system contrary to its governing statutes or plan provisions other than the direct payment of the benefit awarded to an alternate payee; or

(D) award any interest in distributions by the retirement system contingent on any condition other than those conditions resulting in the liability of the retirement system for payment under its plan provision.

(4) A qualified domestic relations order may not provide for the award of a specific amount of a benefit, rather than a percentage of this benefit, to an alternate payee unless the order also provides for a reduction of the amount awarded in the event that the benefits available to the retiree or member are reduced by law. This requirement shall not apply to benefit waivers executed by the participant.

(5) If the order intends to award the participant the full amount of any future benefit increases that are provided or required by the legislature, the order must explicitly state such. TRS, its board of trustees, and its officers and employees shall not be liable for making payment of part of any future benefit increases to any person if the order so requires or if the order awards a percentage of benefits payable and does not explicitly state that future benefit increases are awarded solely and completely to the plan participant.

(6) An order that purports to give to someone other than a member the right to designate a beneficiary or choose any retirement plan available from TRS is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(7) An order that attaches a lien to any part of amounts payable with respect to a member or retiree is one that requires an action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(8) An order that awards an alternate payee a portion of the benefits payable with respect to a member or retiree under TRS and that purports to require TRS to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum is one that requires action contrary to TRS' governing statute and plan provisions and therefore is not a qualified domestic relations order.

(9) An order shall specify the date of the marriage.

(10) An order that allocates the participant's investment in contract in a manner not in compliance with any requirements of the Internal Revenue Code and applicable regulations, is not a qualified domestic relations order. An order that does not allocate a participant's investment in contract may be determined to be a qualified domestic relations order if it provides sufficient information for TRS to make the allocation in accordance with applicable laws and regulations.

(11) An order that purports to require a member to terminate employment, to withdraw contributions, or to apply for retirement, is not a qualified domestic relations order.

§§ 47.11 - 47.12. Not adopted

§ 47.13. Benefits Resulting from Resumption of Membership and Reinstatement of Service Credit

If a member terminates membership in TRS by withdrawal of contributions, TRS shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a qualified domestic relations order. If the former member later resumes membership in TRS, then TRS shall pay to an alternate payee no portion of any benefits payable to the member or retiree which result from the resumption of membership, even if those benefits result in part from reinstatement of service credit initially credited during the marriage.

§ 47.14. Reinstatement of Service Credit

A member who is reinstating service credit by depositing amounts previously withdrawn or refunded shall deposit the entire amount withdrawn or refunded, regardless of whether a portion or all of the amount was paid to an alternate payee. The reinstatement fee shall be based on the total amount withdrawn, regardless of whether a portion or all of the amount was paid to an alternate payee.

§ 47.15. Death of an Alternate Payee

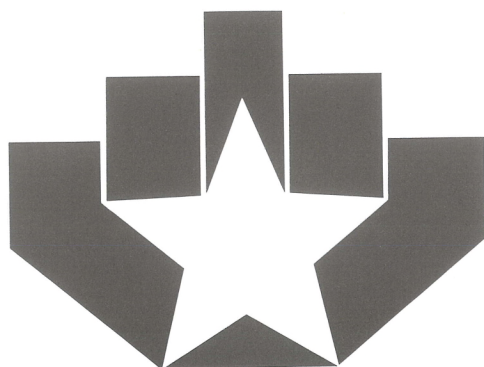
The death of an alternate payee shall terminate the interest of that payee in TRS. Upon proof of death of the alternate payee, the member, retiree, or beneficiary shall be entitled to receive the full amount of benefits payable in

the future to the member, retiree, or beneficiary without reduction for the amount previously being paid to the alternate payee. This section does not affect the manner of payment of benefits to the member, retiree, or beneficiary.

§ 47.16. Effective Date of TRS Review of Orders

TRS will review orders received on or after September 1, 1989, to determine whether they are qualified domestic relations orders. Any orders received before September 1, 1989, will be reviewed only upon application for a distribution of benefits through withdrawal, retirement, or death of the member, unless there is good cause for earlier review. For orders received prior to September 1, 1989, for retirees who are already receiving retirement benefits or for beneficiaries who are receiving annuity payments, TRS will not review the order for possible direct payment to an alternate payee in the future unless the retiree, beneficiary, or any alternate payee submits a request for review after September 1, 1989.

Appendix



EARLY AGE AND OPTION RETIREMENT FACTORS

STANDARD RETIREMENT ANNUITY FORMULA

Example:

\$31,413		
Average of Highest 3 Annual Salaries		
31	x 2% =	62%
Total Years of Creditable Service		Total %
.62	x	\$31,413
Total %		Avg. Salary
	=	\$19,476.06
		Annual Annuity
\$19,476.06	÷ 12 =	\$1,623.01
Annual Annuity		Monthly Standard Annuity

DETERMINING EARLY AGE RETIREMENT BENEFITS

From tables on rules pages 79 through 81, find the table with your number of years of service. The factor shown for your exact age (years and months) is then multiplied by your monthly Standard Annuity to determine your early age retirement annuity.

Example:

A member, age 55 years and 3 months, with 22 years of service would find the early age retirement factor of 94.5% on the table on rules page 80. With a monthly Standard Annuity of \$1,623.01 as in the example above, the member's monthly annuity reduced for early age retirement would be 94.5% of that amount, or \$1,533.74. (.945 x \$1,623.01 = \$1,533.74)

See rules page 33 for explanation of early age retirement.

DETERMINING RETIREMENT OPTIONS

At retirement, you may select the Standard Annuity payment plan or one of four retirement options. (See rules page 35 for explanation of the retirement options.) Option 1 and Option 2 factors are determined by your age and your beneficiary's age at the date of your retirement. Option 3 and Option 4 factors are based on your age only. The amount of your annuity is determined by multiplying the factor by your Standard Annuity.

Example:

A 63-year-old member who has a 65-year-old beneficiary and who chooses Option 1 (rules page 83) would receive 87.48% of the Standard Annuity of \$1,623.01 for an annuity of \$1,419.81 per month for life. Upon the member's death, the same payment would continue to the beneficiary for life.

If the same member selected Option 2 (rules page 85) a 93.32% factor would be applied to the Standard Annuity to provide \$1,514.59 per month to the member for life. Upon the member's death, one-half of that amount, \$757.30, would continue to the beneficiary for life.

If the primary beneficiary named at the time of retirement dies before the retiree, the retiree's annuity will pop-up to the amount of the Standard Annuity (\$1,623.01) as if the Standard Annuity had been selected at the time of retirement.

Option 3 (rules page 86), with a factor of 99.05%, would provide \$1,607.59 per month for life of the member with the benefit guaranteed payable to the member or the beneficiary for 60 months after the retirement date.

Option 4 (rules page 86), with a factor of 96.52%, would provide \$1,566.53 per month for life of the member with the benefit guaranteed payable to the member or the beneficiary for 120 months after the retirement date.

Samples of reduction tables for early age retirement and retirement options are shown on the following pages. Complete tables are available from the Teacher Retirement System.

REDUCTION TABLES FOR EARLY AGE RETIREMENT

*Percentages To Be Applied To Amount Of Standard Service Retirement Benefit
To Obtain Amount Of Service Retirement Allowance Payable At Early Retirement*

5 - 19 YEARS OF SERVICE REDUCTION BASED ON RETIREMENT AGE 65

Age of Member	Months											
Years	0	1	2	3	4	5	6	7	8	9	10	11
55	47.00	47.33	47.67	48.00	48.33	48.67	49.00	49.33	49.67	50.00	50.33	50.67
56	51.00	51.33	51.67	52.00	52.33	52.67	53.00	53.33	53.67	54.00	54.33	54.67
57	55.00	55.33	55.67	56.00	56.33	56.67	57.00	57.33	57.67	58.00	58.33	58.67
58	59.00	59.33	59.67	60.00	60.33	60.67	61.00	61.33	61.67	62.00	62.33	62.67
59	63.00	63.33	63.67	64.00	64.33	64.67	65.00	65.33	65.67	66.00	66.33	66.67
60	67.00	67.50	68.00	68.50	69.00	69.50	70.00	70.50	71.00	71.50	72.00	72.50
61	73.00	73.58	74.17	74.75	75.33	75.92	76.50	77.08	77.67	78.25	78.83	79.42
62	80.00	80.58	81.17	81.75	82.33	82.92	83.50	84.08	84.67	85.25	85.83	86.42
63	87.00	87.50	88.00	88.50	89.00	89.50	90.00	90.50	91.00	91.50	92.00	92.50
64	93.00	93.58	94.17	94.75	95.33	95.92	96.50	97.08	97.67	98.25	98.83	99.42

20 YEARS OF SERVICE REDUCTION BASED ON RETIREMENT AGE 60 OR AGE 55 WITH 30 YEARS OF SERVICE IF EARLIER

Age of Member	Months											
Years	0	1	2	3	4	5	6	7	8	9	10	11
55	90.00	90.17	90.33	90.50	90.67	90.83	91.00	91.17	91.33	91.50	91.67	91.83
56	92.00	92.17	92.33	92.50	92.67	92.83	93.00	93.17	93.33	93.50	93.67	93.83
57	94.00	94.17	94.33	94.50	94.67	94.83	95.00	95.17	95.33	95.50	95.67	95.83
58	96.00	96.17	96.33	96.50	96.67	96.83	97.00	97.17	97.33	97.50	97.67	97.83
59	98.00	98.17	98.33	98.50	98.67	98.83	99.00	99.17	99.33	99.50	99.67	99.83

**21 YEARS OF SERVICE
REDUCTION BASED ON RETIREMENT AGE 60 OR
AGE 55 WITH 30 YEARS OF SERVICE IF EARLIER**

Age of member	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
Years												
55	92.00	92.17	92.33	92.50	92.67	92.83	93.00	93.17	93.33	93.50	93.67	93.83
56	94.00	94.17	94.33	94.50	94.67	94.83	95.00	95.17	95.33	95.50	95.67	95.83
57	96.00	96.17	96.33	96.50	96.67	96.83	97.00	97.17	97.33	97.50	97.67	97.83
58	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
59	98.00	98.17	98.33	98.50	98.67	98.83	99.00	99.17	99.33	99.50	99.67	99.83

**22 YEARS OF SERVICE
REDUCTION BASED ON RETIREMENT AGE 60 OR
AGE 55 WITH 30 YEARS OF SERVICE IF EARLIER**

Age of member	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
Years												
55	94.00	94.17	94.33	94.50	94.67	94.83	95.00	95.17	95.33	95.50	95.67	95.83
56	96.00	96.17	96.33	96.50	96.67	96.83	97.00	97.17	97.33	97.50	97.67	97.83
57	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
58	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
59	98.00	98.17	98.33	98.50	98.67	98.83	99.00	99.17	99.33	99.50	99.67	99.83

**23 YEARS OF SERVICE
REDUCTION BASED ON RETIREMENT AGE 60 OR
AGE 55 WITH 30 YEARS OF SERVICE IF EARLIER**

Age of member	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
Years												
55	96.00	96.17	96.33	96.50	96.67	96.83	97.00	97.17	97.33	97.50	97.67	97.83
56	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
57	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
58	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
59	98.00	98.17	98.33	98.50	98.67	98.83	99.00	99.17	99.33	99.50	99.67	99.83

**24 - 29 YEARS OF SERVICE
REDUCTION BASED ON RETIREMENT AGE 60 OR
AGE 55 WITH 30 YEARS OF SERVICE IF EARLIER**

Age of
Member

Years	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
55	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
56	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
57	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
58	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00	98.00
59	98.00	98.17	98.33	98.50	98.67	98.83	99.00	99.17	99.33	99.50	99.67	99.83

**30 + YEARS OF SERVICE
REDUCTION BASED ON RETIREMENT AGE 60 OR
AGE 55 WITH 30 YEARS OF SERVICE IF EARLIER**

Age of
Member

Years	Months											
	0	1	2	3	4	5	6	7	8	9	10	11
45	80.00	80.17	80.33	80.50	80.67	80.83	81.00	81.17	81.33	81.50	81.67	81.83
46	82.00	82.17	82.33	82.50	82.67	82.83	83.00	83.17	83.33	83.50	83.67	83.83
47	84.00	84.17	84.33	84.50	84.67	84.83	85.00	85.17	85.33	85.50	85.67	85.83
48	86.00	86.17	86.33	86.50	86.67	86.83	87.00	87.17	87.33	87.50	87.67	87.83
49	88.00	88.17	88.33	88.50	88.67	88.83	89.00	89.17	89.33	89.50	89.67	89.83
50	90.00	90.17	90.33	90.50	90.67	90.83	91.00	91.17	91.33	91.50	91.67	91.83
51	92.00	92.17	92.33	92.50	92.67	92.83	93.00	93.17	93.33	93.50	93.67	93.83
52	94.00	94.17	94.33	94.50	94.67	94.83	95.00	95.17	95.33	95.50	95.67	95.83
53	96.00	96.17	96.33	96.50	96.67	96.83	97.00	97.17	97.33	97.50	97.67	97.83
54	98.00	98.17	98.33	98.50	98.67	98.83	99.00	99.17	99.33	99.50	99.67	99.83

REDUCTION TABLES FOR RETIREMENT OPTIONS

OPTION 1

Age of Beneficiary	Age of Member at Date of Retirement												
	47	48	49	50	51	52	53	54	55	56	57	58	59
45	93.93	93.39	92.82	92.20	91.54	90.83	90.08	89.27	88.40	87.48	86.49	85.44	84.33
46	94.10	93.57	93.01	92.40	91.75	91.06	90.31	89.51	88.65	87.74	86.76	85.72	84.62
47	94.27	93.76	93.20	92.61	91.97	91.28	90.55	89.76	88.91	88.01	87.04	86.01	84.91
48	94.45	93.94	93.40	92.82	92.19	91.51	90.79	90.01	89.18	88.28	87.33	86.30	85.22
49	94.62	94.13	93.60	93.03	92.41	91.75	91.04	90.27	89.45	88.56	87.62	86.61	85.53
50	94.80	94.31	93.80	93.24	92.64	91.99	91.29	90.53	89.72	88.85	87.92	86.92	85.85
51	94.97	94.50	94.00	93.45	92.86	92.23	91.54	90.80	90.00	89.15	88.23	87.24	86.19
52	95.14	94.69	94.19	93.66	93.09	92.47	91.80	91.07	90.29	89.45	88.54	87.57	86.53
53	95.31	94.87	94.39	93.88	93.32	92.71	92.05	91.34	90.58	89.75	88.86	87.90	86.88
54	95.48	95.06	94.59	94.09	93.54	92.95	92.31	91.62	90.87	90.06	89.18	88.24	87.23
55	95.65	95.24	94.79	94.30	93.77	93.19	92.57	91.89	91.16	90.37	89.51	88.59	87.59
56	95.82	95.42	94.98	94.51	93.99	93.44	92.83	92.17	91.46	90.68	89.84	88.94	87.96
57	95.98	95.59	95.17	94.72	94.22	93.68	93.09	92.45	91.75	91.00	90.18	89.29	88.33
58	96.14	95.77	95.36	94.92	94.44	93.92	93.34	92.72	92.05	91.31	90.51	89.64	88.70
59	96.30	95.94	95.55	95.12	94.66	94.15	93.60	93.00	92.34	91.62	90.84	90.00	89.08
60	96.45	96.11	95.73	95.32	94.87	94.38	93.85	93.27	92.63	91.94	91.18	90.35	89.46
61	96.60	96.27	95.91	95.51	95.08	94.61	94.10	93.54	92.92	92.25	91.51	90.71	89.84
62	96.75	96.43	96.08	95.71	95.29	94.84	94.34	93.80	93.20	92.55	91.84	91.06	90.21
63	96.89	96.59	96.25	95.89	95.49	95.06	94.58	94.06	93.49	92.86	92.17	91.41	90.59
64	97.03	96.74	96.42	96.07	95.69	95.28	94.82	94.32	93.76	93.16	92.49	91.76	90.96
65	97.16	96.88	96.58	96.25	95.88	95.49	95.05	94.56	94.03	93.45	92.81	92.10	91.33
66	97.29	97.03	96.74	96.42	96.07	95.69	95.27	94.81	94.30	93.74	93.12	92.44	91.69
67	97.42	97.16	96.89	96.58	96.25	95.89	95.49	95.05	94.56	94.02	93.43	92.77	92.05
68	97.54	97.30	97.03	96.75	96.43	96.08	95.70	95.28	94.81	94.29	93.73	93.10	92.40
69	97.66	97.43	97.17	96.90	96.60	96.27	95.90	95.50	95.05	94.56	94.02	93.41	92.75

OPTION 1

Age of Beneficiary	Age of Member at Date of Retirement													
	60	61	62	63	64	65	66	67	68	69	70	71	72	
45	83.15	81.90	80.58	79.20	77.74	76.22	74.64	72.99	71.29	69.53	67.73	65.89	64.02	
46	83.44	82.20	80.89	79.50	78.05	76.54	74.95	73.31	71.60	69.85	68.05	66.20	64.33	
47	83.74	82.51	81.20	79.83	78.38	76.86	75.28	73.64	71.94	70.18	68.38	66.53	64.65	
48	84.06	82.83	81.53	80.16	78.72	77.21	75.63	73.99	72.29	70.53	68.73	66.88	64.99	
49	84.38	83.16	81.87	80.51	79.07	77.57	75.99	74.35	72.65	70.90	69.09	67.24	65.36	
50	84.72	83.51	82.22	80.87	79.44	77.94	76.37	74.73	73.04	71.28	69.48	67.63	65.74	
51	85.06	83.86	82.59	81.24	79.82	78.33	76.76	75.13	73.44	71.69	69.88	68.03	66.14	
52	85.41	84.23	82.97	81.63	80.22	78.73	77.17	75.55	73.86	72.11	70.31	68.46	66.56	
53	85.78	84.60	83.35	82.03	80.63	79.15	77.60	75.98	74.30	72.55	70.75	68.90	67.01	
54	86.15	84.99	83.75	82.44	81.05	79.58	78.04	76.43	74.75	73.01	71.22	69.37	67.48	
55	86.52	85.38	84.16	82.86	81.48	80.03	78.50	76.90	75.22	73.49	71.70	69.86	67.96	
56	86.91	85.78	84.58	83.29	81.93	80.49	78.97	77.38	75.72	73.99	72.20	70.36	68.48	
57	87.30	86.19	85.00	83.73	82.39	80.96	79.46	77.88	76.22	74.51	72.73	70.89	69.01	
58	87.69	86.60	85.43	84.19	82.86	81.45	79.96	78.39	76.75	75.04	73.27	71.44	69.56	
59	88.09	87.02	85.87	84.64	83.33	81.94	80.47	78.91	77.29	75.59	73.83	72.01	70.14	
60	88.49	87.44	86.32	85.11	83.82	82.45	80.99	79.45	77.84	76.16	74.41	72.60	70.74	
61	88.89	87.87	86.76	85.58	84.31	82.96	81.52	80.01	78.41	76.74	75.01	73.21	71.36	
62	89.29	88.29	87.21	86.05	84.81	83.48	82.06	80.57	78.99	77.34	75.62	73.84	71.99	
63	89.69	88.72	87.67	86.53	85.31	84.00	82.61	81.14	79.58	77.95	76.25	74.48	72.65	
64	90.09	89.14	88.12	87.01	85.81	84.53	83.17	81.71	80.18	78.57	76.89	75.14	73.32	
65	90.49	89.57	88.57	87.48	86.32	85.06	83.72	82.30	80.79	79.20	77.54	75.81	74.01	
66	90.88	89.99	89.01	87.96	86.82	85.60	84.28	82.89	81.40	79.84	78.20	76.49	74.71	
67	91.26	90.40	89.46	88.43	87.32	86.13	84.85	83.48	82.02	80.48	78.87	77.18	75.42	
68	91.64	90.81	89.89	88.90	87.82	86.66	85.41	84.07	82.64	81.13	79.55	77.88	76.15	
69	92.01	91.21	90.33	89.36	88.32	87.18	85.96	84.66	83.26	81.78	80.22	78.59	76.88	

OPTION 2

Age of Beneficiary	Age of Member at Date of Retirement												
	47	48	49	50	51	52	53	54	55	56	57	58	59
45	96.87	96.58	96.27	95.94	95.58	95.20	94.78	94.33	93.84	93.32	92.76	92.15	91.50
46	96.96	96.68	96.38	96.05	95.70	95.32	94.91	94.46	93.98	93.47	92.91	92.31	91.67
47	97.05	96.78	96.48	96.16	95.82	95.44	95.04	94.60	94.13	93.62	93.07	92.48	91.84
48	97.14	96.88	96.59	96.27	95.94	95.57	95.17	94.74	94.28	93.78	93.23	92.65	92.02
49	97.24	96.98	96.69	96.39	96.06	95.70	95.31	94.89	94.43	93.94	93.40	92.82	92.20
50	97.33	97.07	96.80	96.50	96.18	95.83	95.44	95.03	94.58	94.10	93.57	93.00	92.39
51	97.42	97.17	96.90	96.61	96.30	95.96	95.58	95.18	94.74	94.26	93.75	93.19	92.58
52	97.51	97.27	97.01	96.73	96.42	96.09	95.72	95.33	94.90	94.43	93.92	93.37	92.78
53	97.60	97.37	97.12	96.84	96.54	96.22	95.86	95.48	95.06	94.60	94.10	93.56	92.98
54	97.69	97.46	97.22	96.95	96.66	96.35	96.00	95.63	95.22	94.77	94.28	93.75	93.18
55	97.78	97.56	97.32	97.07	96.78	96.48	96.14	95.78	95.38	94.94	94.47	93.95	93.39
56	97.86	97.65	97.43	97.18	96.90	96.61	96.28	95.93	95.54	95.11	94.65	94.14	93.59
57	97.95	97.75	97.53	97.29	97.02	96.74	96.42	96.08	95.70	95.29	94.83	94.34	93.80
58	98.03	97.84	97.63	97.39	97.14	96.86	96.56	96.22	95.86	95.46	95.02	94.54	94.01
59	98.11	97.93	97.72	97.50	97.26	96.99	96.69	96.37	96.02	95.63	95.20	94.74	94.23
60	98.19	98.01	97.82	97.60	97.37	97.11	96.83	96.52	96.17	95.80	95.39	94.93	94.44
61	98.27	98.10	97.91	97.71	97.48	97.23	96.96	96.66	96.33	95.97	95.57	95.13	94.65
62	98.35	98.18	98.00	97.81	97.59	97.35	97.09	96.80	96.48	96.13	95.75	95.32	94.86
63	98.42	98.26	98.09	97.90	97.70	97.47	97.22	96.94	96.63	96.30	95.92	95.51	95.06
64	98.49	98.34	98.18	98.00	97.80	97.58	97.34	97.07	96.78	96.46	96.10	95.70	95.27
65	98.56	98.42	98.26	98.09	97.90	97.69	97.46	97.21	96.93	96.61	96.27	95.89	95.47
66	98.63	98.49	98.34	98.18	98.00	97.80	97.58	97.34	97.07	96.77	96.44	96.07	95.67
67	98.69	98.56	98.42	98.26	98.09	97.90	97.69	97.46	97.20	96.92	96.60	96.25	95.86
68	98.75	98.63	98.49	98.35	98.18	98.00	97.80	97.58	97.34	97.06	96.76	96.42	96.05
69	98.81	98.70	98.57	98.43	98.27	98.10	97.91	97.70	97.46	97.20	96.92	96.59	96.24

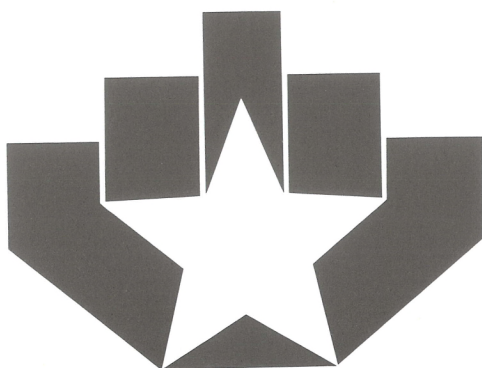
OPTION 2

Age of Beneficiary	Age of Member at Date of Retirement													
	60	61	62	63	64	65	66	67	68	69	70	71	72	
45	90.80	90.05	89.25	88.39	87.48	86.51	85.48	84.39	83.24	82.03	80.76	79.44	78.06	
46	90.97	90.23	89.43	88.58	87.67	86.71	85.68	84.60	83.45	82.25	80.99	79.67	78.29	
47	91.15	90.42	89.63	88.78	87.88	86.92	85.90	84.82	83.68	82.48	81.22	79.90	78.53	
48	91.34	90.61	89.83	88.99	88.09	87.14	86.12	85.05	83.91	82.72	81.46	80.15	78.78	
49	91.53	90.81	90.03	89.20	88.31	87.37	86.36	85.29	84.16	82.97	81.72	80.41	79.05	
50	91.73	91.01	90.24	89.42	88.54	87.60	86.60	85.54	84.42	83.23	81.99	80.69	79.33	
51	91.93	91.22	90.46	89.65	88.78	87.85	86.85	85.80	84.68	83.51	82.27	80.98	79.62	
52	92.13	91.44	90.69	89.88	89.02	88.10	87.12	86.07	84.96	83.79	82.56	81.28	79.93	
53	92.34	91.66	90.92	90.13	89.27	88.36	87.39	86.35	85.25	84.09	82.87	81.59	80.25	
54	92.56	91.88	91.16	90.37	89.53	88.63	87.67	86.64	85.55	84.40	83.19	81.91	80.58	
55	92.78	92.11	91.40	90.63	89.80	88.91	87.95	86.94	85.86	84.72	83.52	82.25	80.93	
56	93.00	92.35	91.64	90.88	90.07	89.19	88.25	87.25	86.18	85.05	83.86	82.60	81.29	
57	93.22	92.58	91.89	91.15	90.34	89.48	88.55	87.56	86.51	85.39	84.21	82.97	81.66	
58	93.44	92.82	92.15	91.41	90.62	89.77	88.86	87.89	86.85	85.74	84.57	83.34	82.05	
59	93.67	93.06	92.40	91.68	90.91	90.07	89.18	88.22	87.19	86.10	84.95	83.73	82.45	
60	93.89	93.30	92.66	91.96	91.20	90.38	89.50	88.55	87.54	86.47	85.33	84.13	82.86	
61	94.12	93.54	92.91	92.23	91.49	90.69	89.82	88.89	87.90	86.84	85.72	84.53	83.28	
62	94.34	93.78	93.17	92.50	91.78	90.99	90.15	89.24	88.26	87.22	86.12	84.95	83.72	
63	94.57	94.02	93.43	92.78	92.07	91.31	90.48	89.59	88.63	87.61	86.52	85.37	84.16	
64	94.79	94.26	93.68	93.05	92.36	91.62	90.81	89.94	89.00	88.00	86.93	85.80	84.61	
65	95.01	94.50	93.94	93.32	92.66	91.93	91.14	90.29	89.37	88.39	87.35	86.24	85.06	
66	95.22	94.73	94.19	93.59	92.95	92.24	91.47	90.64	89.75	88.79	87.77	86.68	85.52	
67	95.43	94.96	94.44	93.86	93.23	92.55	91.80	90.99	90.12	89.19	88.19	87.12	85.99	
68	95.64	95.18	94.68	94.12	93.52	92.85	92.13	91.34	90.50	89.58	88.61	87.57	86.46	
69	95.84	95.40	94.92	94.38	93.80	93.15	92.45	91.69	90.87	89.98	89.03	88.01	86.93	

OPTIONS 3 AND 4

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45	99.88	99.51
46	99.86	99.45
47	99.84	99.38
48	99.82	99.32
49	99.80	99.24
50	99.77	99.16
51	99.75	99.07
52	99.72	98.98
53	99.69	98.87
54	99.66	98.75
55	99.62	98.61
56	99.58	98.46
57	99.53	98.28
58	99.48	98.08
59	99.41	97.85
60	99.34	97.58
61	99.26	97.28
62	99.16	96.93
63	99.05	96.52
64	98.92	96.06
65	98.76	95.53
66	98.58	94.93
67	98.37	94.25
68	98.13	93.47
69	97.86	92.61

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