

◆ ◆ ◆

PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

CHAPTER 306. CREDITABLE SERVICE FOR MEMBERS OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §306.3

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopts new §306.3, relating to Qualified Service Credit for Eligible Active Military Duty, without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3349).

New §306.3 is adopted to conform with provisions in the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C. §4301 et seq.) (USERRA) as required by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §863.002. Section 863.002 requires the System to grant qualified services credit for military duty in accordance with §414(u) of the Internal Revenue Code of 1986 (26 U.S.C. §414(u)) and other applicable federal law. The System is required to adopt rules to address credit for military service as contemplated by USERRA. The new rule outlines the policy by which the System will verify military service, set deadlines, and collect payment for creditable service that a System member in active military service may receive.

The Board received no public comment on the proposal.

The new §306.3, relating to Qualified Service Credit for Eligible Active Military Duty is adopted under the authority granted in Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System §863.002, §865.006(b).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2017.

TRD-201703257

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System Effective date:

September 10, 2017

Proposal publication date: June 30, 2017

For further information, please call: (512) 936-3372

◆ ◆ ◆

CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.6

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) published notice of a proposed amendment to §310.6 of Title 34 in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3350). The amended section is adopted with changes to clarify language regarding contributions to the System. The amended section also has the purpose of clarifying how new and existing rules affect payable contributions regarding members who fall under the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C. §4301 et seq.) (USERRA), Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.) (FMLA), and temporary disability.

The Board has received no public comment on the amended section., and adopts amendments to §310.6 as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3350), with an adoption of a correction of error as published in the July 21, 2017, issue of the *Texas Register* (42 TexReg 3665) due to an error in submission by the System. To correct the error, the board omits "during a period of temporary disability or" found in subsection (e) in the June 30th issue of the *Texas Register* (42 TexReg 3350). The correction of error affects no new person, entities, or subjects other than those given notice under the proposed amendment to §310.6.

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopts amendments to §310.6 relating to Local Contributions under authority granted by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.014.

§310.6. *Local Contributions.*

(a) Except as otherwise provided by this section, each participating department shall make a contribution for each month in which a volunteer or auxiliary employee of the participating department is a member of the pension system. The monthly contribution is composed of two parts, as outlined in subsections (b) and (c) of this section. Contributions are payable for each month of service regardless of whether the member receives a year of qualified service. Contributions are payable as provided by §865.014, Government Code, and §310.8 of this title. Contributions required under this section are not considered compensation to the members for whom they are made.

(b) The Part One contribution is the portion of the participating department's contribution that is used for purposes of calculating the benefit of a member as provided in §308.2 of this title. The Part One contribution will be no less than the minimum contribution amount provided in subsection (d) of this section.

(c) The Part Two contribution is the portion of the participating department's contribution that is applied to reduce the unfunded actuarial accrued liability of the pension system as contemplated under §861.001(1) and §864.002(a)(1), Government Code. The Part Two contribution is not used for purposes of calculating the benefit of a member as provided in §308.2 of this title. The state board may establish or modify the Part Two contribution based on the pension system's most recent actuarial valuation approved by the state board, but in no case shall the Part Two contribution exceed 15 percent of the participating department's Part One contribution. Any Part Two contribution established or modified by the state board will be effective beginning on September 1 following the state board's approval of such Part Two contribution. A participating department shall make the Part Two contribution for each month as provided in subsection (a) of this section.

(d) The minimum contribution rate for each participating department is \$36 per member. After August 31, 2015, the minimum contribution rate for each participating department is \$36 per member plus any Part Two contribution that might be charged by the pension system, as provided in subsection (c) of this section. A participating department may elect to make Part One contributions at a rate greater than the minimum contribution amount by notifying the Executive Director in writing of the rate.

(e) Contributions are payable when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.). Contributions are not payable during a period of temporary disability.

(f) Contributions are not immediately payable during a period of military leave while on active military duty if (1) the military duty constitutes qualified military service in uniformed services, as provided under the Uniformed Services Employment and Re-Employment Rights Act, 38 United States Code §4301 et seq. (USERRA) and (2) the member is designated as on military leave by the pension system upon receiving documentation from the participating department that substantiates such active military duty under procedures developed by the pension system pursuant to Rule §306.3(c). Contributions for the period of active military duty shall be paid by the participating department upon the member's return to the participating department in accordance with Rule §306.3(e) and as required by USERRA.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2017.
TRD-201703260
Kevin Deiters
Executive Director
Texas Emergency Services Retirement System Effective date:
September 10, 2017
Proposal publication date: June 30, 2017
For further information, please call: (512) 936-3372

◆ ◆ ◆
34 TAC §310.8

The State Board of Trustees (Board) of Texas Emergency Services Retirement System (System) adopt amendments to §310.8 relating to Billings without changes to the proposed text as published in the June 30, 2017, issue of the *Texas Register* (42 TexReg 3351).

The amended section is adopted to simplify the billing process and require the local board of each Participating Department (Department) to certify System roster reports so that all eligible

persons of the Departments are enrolled into the System as required by Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §862.002.

The Board has received one public comment on the amended section from a representative of a local Board of a Department which questions the need for a meeting of the Local board to complete a System roster report. After considering this comment, the Board will adopt amendments to §310.8 as published in the June 30th, 2017, issue of the *Texas Register* (42 TexReg 3351) without any changes. The Board decided in this fashion by reasoning that members are currently enrolled during an open meeting of the local board, and that requiring an open meeting of the local board to certify a System roster report will ensure that the local board enroll all eligible persons at the Department.

The amendments are adopted under the statutory authority of Title 8, Government Code, Subtitle H, Texas Emergency Services Retirement System, §§863.004, 864.0135, 865.014, and 865.016, which allow the System to collect contributions from Participating Departments for the administration of the fund.

No other statutes, articles, or codes are affected by the adoption.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 21, 2017.
TRD-201703261
Kevin Deiters
Executive Director
Texas Emergency Services Retirement System Effective date:
September 10, 2017
Proposal publication date: June 30, 2017
For further information, please call: (512) 936-3372