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## PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

#### 34 TAC §302.5

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) proposes amendments to 34 TAC §302.5, relating to the correction of errors and contributions that are past due.

The objective of the proposed amendment is to protect the System benefits earned by volunteer firefighters and ems personnel. The proposed amendment requires departments to correct errors that have affected the enrollment and qualified service of members, regardless of when the errors occurred. The proposed amendment streamlines the process of correcting errors and eliminates §302.6, a redundant rule, regarding the payment of past due contributions and any applicable interest.

Kevin Deiters, Executive Director, has determined that the public benefit in the first five years this amended rule takes effect is the consolidation of agency rules, and increased accuracy of the System's data which includes correct contributions, interest charges, qualified service credit, and membership records.

The adoption of the proposed amendments will not affect small businesses or the general public. The adoption of the proposed amendments does not have foreseeable implications to the cost or revenues of the state. Any costs that are placed upon local governments due to the proposed amendment to §302.5 are a result of past due contributions due to a correction of error that occurred during the enrollment of membership.

Comments on the amendment must be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, TX 78711-2577, submitted electronically to outreach@tesrs.texas.gov, submitted electronically on the System's website www.tesrs.texas.gov, or faxed to (512) 936-3480 no later than October 29, 2017.

The amendment to §302.5 is proposed under the statutory authority of Title 8, Texas Government Code, Subsection H, Texas Emergency Services Retirement System, §863.005, which allows the Board to create System rules to determine the costs of contributions past due and their accrued interest charges.

No other statutes, articles, or codes are affected by this proposal.

#### §302.5. *Correction of Errors and Contributions Past Due.*

(a) The [A] local board shall [may] correct an error in enrollment in membership or computation of qualified service at a meeting of the local board. Using [by completing and submitting to the Executive Director] a form provided by the pension system, [for any error that occurred within] the correction of error shall be certified by the local board chair and provided to the Executive Director in the manner prescribed by the [five-year period prior to the date that the form is submitted to the] pension system. [The completed form must be:

{(1) signed by the chair and secretary of the local board and the administrative head of the department; and]

{(2) accompanied by any applicable past due contributions necessitated by the change, including the applicable interest charge in accordance with Rule §302.6.}

(b) The Executive Director shall review the correction of error and may require the local board to provide additional documentation with respect to the correction of error. The Executive Director [and] may reject any proposed correction if such additional documentation does not support [is not provided. The Executive Director may also permit] the proposed correction of [an] error or if such additional documentation is not provided. The [that occurred more than five years from the date that the correction form is submitted to the pension system if the] Executive Director shall notify the local board if the proposed correction of error is approved or is denied due to lack of documentation provided by the local board does not support the [determines in his or her sole and absolute discretion that such] correction of error [is equitable and justifiable under the given circumstances].

(c) The Executive Director shall determine the applicable past due contributions required by the correction of error, if any, including applicable interest charges in accordance with §863.005 of the Texas Government Code.

(d) In accordance with §865.014(a), Texas Government Code, the governing body of the political subdivision of which the participating department is a part is liable for payment of past due contributions and interest charges, if any, and such payments shall be made in accordance with instructions provided by the pension system.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12,

TRD-201703612

Kevin Deiters  
Executive Director  
Texas Emergency Services Retirement System  
Earliest possible date of adoption: October 29, 2017  
For further information, please call: (512) 936-3372

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### 34 TAC §302.6

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) proposes the repeal of §302.6, regarding charges for past due contributions.

The Board proposes the repeal of §302.6 to streamline the rules regarding the correction of errors and the subsequent past due contributions, including interest charges. The repeal follows a proposed amendment to §302.5 that will incorporate the provisions of rule §302.6.

Kevin Deiters, Executive Director, has determined that every year for the first five years this repeal goes into effect the public benefit will be the repeal of a redundant rule and a clarification of the process to correct errors.

Mr. Deiters has determined that there will be no effect on small businesses or individuals. The proposed repeal does not have foreseeable implications relating to the costs or revenues of state and local governments.

Comments on the proposed repeal of the rule must be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, TX 78711-2577, submitted electronically to outreach@tesrs.texas.gov, submitted electronically on the System's website www.tesrs.texas.gov, or faxed to (512) 936-3480 no later than October 29th, 2017.

The repeal of §302.6 is proposed under the statutory authority of Title 8, Texas Government Code, Subsection H, Texas Emergency Services Retirement System, §863.005, which allows the Board to create System rules to determine the costs of contributions past due and their accrued interest charges.

No other statutes, articles, or codes are affected by this proposal.

*§302.6. Charge for Certain Contributions Past Due.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2017.

TRD-201703613

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

Earliest possible date of adoption: October 29, 2017

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

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### 34 TAC §302.8

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) proposes an amendment to §302.8 concerning Qualified Service.

The amendment to §302.8 will correct an error in the reference to statute. The references in the current rule to §864.001(10)(B)(i) and §864.001(10)(B)(ii) are incorrect, as these sections do not exist in the Texas Government Code. The amendment corrects these errors by referencing §861.001(10)(B)(i) and §861.001(10)(B)(ii) of the Texas Government Code which define Qualified Service.

Kevin Deiters, Executive Director, has determined that for each year of the first five-year period that the amended rule is in effect the public benefit will be that the System corrects an error in its rules.

Mr. Deiters has determined that there will be no effect on small businesses or individuals. Administration of the amended §302.8 does not have foreseeable implications relating to the costs or revenues of state and local governments.

Comments on the amendment must be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, TX 78711-2577, submitted electronically to outreach@tesrs.texas.gov, submitted electronically on the System's website www.tesrs.texas.gov, or faxed to (512) 936-3480 no later than October 29, 2017.

The amendment is proposed under the statutory authority of Title 8, Subsection H, Texas Emergency Services Retirement System, §864.001, which requires the Board to create rules regarding qualified service.

No other statutes, articles, or codes are affected by this proposal.

*§302.8. Qualified Service.*

The local board shall be responsible for the policy for its participating department relating to the requirements for percentage of attendance of emergencies defined under §861.001(10)(B)(i) [§864.001(10)(B)(i)], Texas Government Code, or the percentage of providing support services for emergencies defined under §861.001(10)(B)(ii) [§864.001(10)(B)(ii)], Texas Government Code, in connection with the determination of whether a person is performing or has performed qualified service for purposes of the pension system.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2017.

TRD-201703614

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

Earliest possible date of adoption: October 29, 2017

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

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## CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §308.2

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) proposes amendments to 34 TAC §308.2 to conform with Title 8, Texas Government Code,

Subsection H, Texas Emergency Services Retirement System, §864.016(a) regarding Claim and Appeal Procedures.

The objective of the proposed amendments is to reduce delay in the payment of retirement checks to retired firefighters and first responders that occur when local boards fail to meet and decide a retirement claim pursuant to the statutory requirement of 16 days. The proposed amendments conform the rule with statute outlined in Title 8, Texas Government Code, Subsection H, Texas Emergency Services Retirement System, §864.016(a). The language in the current rule does not follow the process provided by the statute which allows the Executive Director to determine the merits of a service retirement claim after the 16th day after a local board receives the claim and fails to hold a hearing to decide the claim. Under the current rule, the determination of a claim remains with a local board after the 16-day period. The proposed amendments to §308.2 will correct this error and conform to the process provided by the statute.

Kevin Deiters, Executive Director, has determined that the public benefit in the first five years this amended rule takes effect is a reduction in the delay of initiating payments to eligible members of the System and that the amended rule conforms to statute.

The adoption of the rule will not affect small businesses or the general public.

The adoption of the proposed amendments does not have foreseeable implications to the cost or revenues of the state.

Comments on the amended rule must be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, TX 78711-2577, submitted electronically to outreach@tesrs.texas.gov, submitted electronically on the System's website www.tesrs.texas.gov, or faxed to (512) 936-3480 no later than October 29, 2017.

The proposed amendment to §308.2 is proposed under the statutory authority of Title 8, Texas Government Code, Subsection H, Texas Emergency Services Retirement System, §864.016(a), which outlines the Claim and Appeal Procedure.

No other statutes, articles, or codes are affected by this proposal. The proposed amendment has been reviewed by legal counsel and is within the System's authority to adopt.

#### §308.2. *Service Retirement Annuity.*

(a) In this section, normal retirement age is the later of the month a member completes 15 years of credited qualified service or attains the age of 55.

(b) A member who has terminated service with all participating departments may apply for a service retirement annuity by filing an application for retirement with the Executive Director. The application may not be filed more than one calendar month before the date the member wishes to retire and must designate a desired retirement date, which may not precede the date of filing or the date of first eligibility to retire. The effective date of a member's retirement is the first day of the calendar month after the later of the following:

- (1) the date on which a member turns 55 years of age;
- (2) the date of termination of service with the department;

or

(3) the date on which the pension system receives an application that meets the requirements of this subsection from a member.

(c) The local board of trustees shall hold a hearing on an application for service retirement within 15 days of the date of notice by the Executive Director of the filing of the application. If the local board

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of trustees does not hold a hearing on or before the 16th day after the date the local board receives the claim, the executive director may determine the merits of the claim. [If the local board of trustees does not hold a hearing on or before 32 days following the date that the Executive Director provides notice, the application will be deemed approved by the local board and benefit payments may commence.]

(d) A monthly service retirement annuity is payable for the period beginning on the effective date of retirement through the month in which the retiree dies but is not payable for any month for which the retiree was eligible to retire but did not. Amounts payable for periods following the effective date of retirement but prior to the commencement of benefit payments will be paid in a lump sum with the first benefit payment.

(e) A service retirement annuity is payable in equal monthly installments.

(f) Except as otherwise provided by this section, the full service retirement monthly annuity is equal to six times the governing body's average monthly Part One contribution as described in Rule §310.6 during the retiring member's term of qualified service.

(g) For credited qualified service in excess of 15 years, a retiring member is entitled to receive an additional 6.2 percent of the annuity compounded annually and adjusted for months of credited qualified service that constitute less than a year.

(h) Notwithstanding subsection (g) of this section, a person who had more than 15 years of qualified service as of December 31, 2006, is entitled to a service retirement annuity computed as the greater of the amount that existed on that date or the amount computed under the formula in effect on the date the person terminates service with all participating departments.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2017.

TRD-201703615

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

Earliest possible date of adoption: October 29, 2017

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



## CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

### 34 TAC §310.12

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) proposes new §310.12 concerning Access to Information about Members, Annuitants, and Beneficiaries.

The Board is proposing a new rule that establishes specific requirements that the System and local pension boards must meet before individuals are provided access to confidential information. The rule will require the System to develop a security policy (Policy) that outlines appropriate security management practices and controls, including the assurance that appropriate steps are

taken by the System and local pension boards to protect confidential information from unauthorized access.

The new rule will require each local pension board to review the Policy each year and to implement processes to protect confidential information. The new rule also establishes a process for local pension boards to follow when designating authorized users and requires each authorized user to submit a confidentiality agreement with the System before the Executive Director may authorize access to confidential information.

Kevin Deiters, Executive Director, has determined that for each year of the first five-year period that the rule is in effect the public benefit is enhanced security of confidential information.

The adopted rule will not affect small businesses or individuals. Administration of new §310.12 does not have foreseeable implications related to the cost or revenues of state or local governments.

Comments on the new rule must be submitted in writing to Kevin Deiters, Executive Director, Texas Emergency Services Retirement System, P.O. Box 12577, Austin, Texas 78711-2577, submitted electronically to outreach@terss.texas.gov, submitted electronically on the System's website www.terss.texas.gov, or faxed to (512) 936-3480 no later than October 30th, 2017.

The new §310.12 is proposed under the statutory authority of Title 8, Texas Government Code, Subsection H, Texas Emergency Services Retirement System, §865.019, regarding Confidentiality of Information about Members, Annuitants, and Beneficiaries.

No other statutes, articles, or codes are affected by this proposal.

§310.12. Access to Information about Members, Annuitants, and Beneficiaries.

(a) The Executive Director shall develop a pension system security policy to protect member information, including electronic data.

(b) The local board annually shall review the pension system security policy and implement processes which protect member information, including electronic data.

(c) At a meeting of the local board, the local board shall designate primary and secondary users who are approved by the local board to have access to the participating department's information in the pension system's online database. Using forms provided by the pension system and certified by signature of the local board chair, the local board shall report to the Executive Director the required information for each of the local board's approved users. At a meeting of the local board no later than January 31st of each calendar year, the local board shall designate and approve the primary and secondary users and report user information to the Executive Director in the manner prescribed by the Executive Director.

(d) The Executive Director shall authorize access to the pension system's online database only to users who complete a confidentiality agreement.

(e) Authorized users' confidentiality agreements under this section remain in effect until January 31st of each calendar year or until the local board chair provides the Executive Director a written revocation of an authorized user's local board approval to maintain member records through access to the pension system's online database.

(f) If an authorized user's local board approval is revoked, the local board shall fill the vacancy for the remainder of the calendar year by the procedure in which the user was originally approved.

(g) All user access to the pension system's online database is subject to the Executive Director's approval and may be terminated at any time.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on September 12, 2017.

TRD-201703616

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

Earliest possible date of adoption: October 29, 2017

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

