

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 of the Texas Emergency Services Retirement System (System) proposes new §306.3, concerning Qualified Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C. §4301 et seq.) (USERRA).

The new §306.3 will not affect Active Military Service Members' benefits. The new §306.3 updates System policy to conform with provisions in USERRA. The proposed rule requires local boards, as that term is defined in Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §865.012, to verify military service by submitting a letter and the member's commencement date of active military service to the System. The proposed rule sets the maximum years of qualified service credit that a member in active military service may receive, specifies the time frame requirements by which the member must return to the same department to receive such service credit, describes the date upon which a member will be considered to have returned to the department from military service, and sets forth the contributions that local boards are required to make upon a member's return to the department from military service as contemplated by USERRA.

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 that the System will conform to the provisions outlined in USERRA, along with statute listed in Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §863.002 and §865.006, which allow the System to grant credit for qualified military duty in accordance with federal law and to adopt rules necessary for the administration of the fund.

The adoption of the new rule will not affect small businesses or individuals. Administration of new §306.3 does not have foreseeable implications relating to the cost or revenues of the state and does not have such implication on local governments above what is currently required under USERRA.

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@tesrs.texas.gov, or faxed to (512) 936-3480 no later than July 31, 2017.

The new section is proposed under the statutory authority of Title 8, Subsection H, Texas Emergency Services Retirement System, §863.003.

No other statutes, articles, or codes are affected by this proposal. New §306.3 has been reviewed by legal counsel and is within the System's authority to adopt.

§306.3. Qualified Service Credit for Eligible Active Military Duty under the Uniformed Services Employment and Re-Employment Rights Act.

(a) A member may obtain qualified service credit for active military duty if 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 the member is otherwise eligible to obtain such service credit under USERRA.

(b) Under this section and in accordance with USERRA, a member whose active military duty is entitled to coverage under USERRA may be awarded qualified service credit for up to five (5) years of active military duty, subject to any additional period of time as provided in USERRA.

(c) A member who is no longer available to perform as a volunteer or auxiliary employee with a participating department due to active military duty, whether such duty is performed on a voluntary or involuntary basis, will be designated as on military leave by the pension system if the participating department substantiates such active military duty by submitting a letter to the pension system verifying the member's active military status, including the commencement date of active military service, and by providing any relevant documentation that may be requested by the pension system.

(d) Upon return as a volunteer or auxiliary employee to the participating department for which the member was performing services prior to active military duty, the member is eligible to be awarded qualified service credit for the period while on active military duty under this section, not to exceed five (5) years, and in accordance with USERRA if the member:

(1) is discharged or released from active military duty under honorable conditions or as otherwise provided by USERRA; and

(2) returns as a volunteer or as an auxiliary employee to the participating department for which the member was performing services prior to active military duty within ninety (90) days of discharge or release from active military duty or longer period of time as may be required by USERRA, provided that the participating department substantiates such return from active military duty by submitting a letter to the pension system verifying the member's return from military service, including the last date of active military service and date of return to the participating department, and by providing any relevant documentation that may be requested by the pension system. The pension system shall consider the provisions of USERRA or regulations adopted pursuant to USERRA in determining eligibility for qualified service credit of members who return as a volunteer or as an auxiliary employee for a participating department later than 90 days due to illness or injury incurred in, or aggravated during, uniformed service.

(e) In accordance with USERRA, if a member returns as a volunteer or as an auxiliary employee for the participating department for which the member was performing services prior to active military duty within the period of time required by USERRA, the participating department shall make the contributions (including the Part One and Part Two contributions) that would have been made if the member had been a volunteer or auxiliary employee with the participating department during the period of active military duty. Such contributions are due no later than ninety (90) days after the member's date of return as a volunteer or auxiliary employee with the participating department.

(f) Notwithstanding subsection (e) of this section, if a participating department has not previously made the required contributions for periods of active military duty that are reflected as military leave in the records of the pension system and occurred prior to the effective date of this section, the participating department will have ninety (90) days following the receipt of notice from the pension system to make the contributions required under subsection (d) of this section. The notice from the pension system will include identification of the eligible members, the periods of service for which the member is eligible to receive qualified service credit, not to exceed five (5) years, and the amount that the participating department is required to contribute. The period of time to make the contributions under this subsection may be extended at the discretion of the executive director.

(g) For purposes of this section, the member's date of return as a volunteer or auxiliary employee with the participating department for which the member was performing services prior to active military duty is the date the member (1) attends at least one hour of annual training, (2) participates in one of the participating department's emergencies, (3) performs one hour as an auxiliary employee in accordance with §861.001(2), Government Code, or (4) provides support services for one of the participating department's emergencies if the governing body of the participating department includes all persons who provide support services for the department as members of the pension system in accordance with §862.0025, Government Code.

(h) Notwithstanding any provisions of this section to the contrary, contributions, benefits, and qualified service credit with respect to active military duty shall be provided in accordance with the Internal Revenue Code §414(u) and as required by USERRA.

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

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Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

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For further information, please call: (512) 936-3474



CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.6

The State Board of Trustees for Texas Emergency Services Retirement System (System) proposes amendments to 34 TAC §310.6 concerning the clarification of language regarding contributions of participating departments, including "Part One" and "Part Two" contributions.

The proposed amendment clarifies language regarding contributions to the System, including the establishment or modification of the "Part Two" contribution. A new subsection created by the proposed amendments clarifies how the contributions apply to members under the Family Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.) and during periods of temporary disability. The proposed amendments also add a new subsection which addresses how contributions affect members under the newly proposed §306.3 and the Uniformed Services Employment and Re-Employment Rights Act (38 U.S.C §4301 et seq.) (USERRA).

Kevin Deiters, Executive Director, has determined that the public benefit in the first five years this amended rule takes effect is the clarification of the purpose and scope of the "Part Two" contribution by Participating Departments and the Governing Entities in the System. Administration of the proposed amendment does not have foreseeable implications relating to cost or revenues of the state or local governments as the proposed amendment merely clarifies the existing contribution charges to the participating departments.

The adoption of the proposed amendments will not affect small businesses or individuals.

Comments on the proposed amendments 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@tesrs.texas.gov, or faxed to (512) 936-3480 no later than July 31, 2017.

The amended section is proposed under the statutory authority of Title 8, Subsection H, Texas Emergency Services Retirement System, §865.014, which allows the System to adopt rules relating to contributions of local boards.

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

§310.6. *Local Contributions.*

(a) Except as otherwise provided by this section, each participating department shall make a contribution for each month [or a portion of a month a member performs emergency services for] 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 [follows. Part One is the legacy portion of the contribution that directly impacts future retiree annuities; that includes a minimum contribution amount set by the state board. A participating department may elect to make contributions at a greater rate by notifying the Executive Director in writing of the rate. Part Two is the portion of the local contribution that does not impact annuities. Part Two may be adjusted near the end of every even numbered calendar year by the state board based on the most recent actuarial valuation to be effective for the next two state fiscal years, beginning September 1. The Part Two portion of the contribution may be adjusted up or down. The purpose of Part Two is to assist the system in achieving an adequate contribution rate for system obligations. In no case shall the Part Two portion of the contribution, exceed 15 percent of the Part One portion of the contribution]. Contributions are payable for each month [or portion of a 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. [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 rate that might be charged by the system, as outlined in subsection (a) 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.

[Contributions are payable during a period of temporary disability or when leave is taken under the Family and Medical Leave Act of 1993 (29 U.S.C. §2601 et seq.), but are not payable when a member is performing active military duty, although the member receives credit for qualified service when performing active military duty.]

(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. [Contributions required under this section are not considered compensation to the members for whom they are made.]

(e) Contributions are payable during a period of temporary disability or 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 proposal and found it to be within the state agency's legal authority to adopt.

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34 TAC §310.8

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to 34 TAC §310.8, concerning a change from quarterly billings to semi-annual billings.

The proposed amendments to §310.8 simplify the billing process by modifying the billing cycle to a semi-annual process from the current quarterly process and change the deadlines of required material to reflect this change. The proposed amendments to §310.8 state that the Local Board of each Participating Department must certify System roster reports provided semi-annually, and that it is the duty of the Local Board to enroll all eligible members of the Participating Department into the System.

Kevin Deiters, Executive Director, has determined that for the first five years after these proposed amendments take effect the public benefit will be to reduce administrative time and paper-

work, and therefore the costs of the billing process for the Participating Departments and the System. This will decrease the cost of the billing process for local governments. Administration of the proposed amendments does not have foreseeable implications relating to the cost or revenues of the state.

The adoption of the amended rules will not affect small businesses or individuals.

Comments on the proposed amendments 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@tesrs.texas.gov, or faxed to (512) 936-3480 no later than July 31, 2017.

The amendments are proposed 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 proposal.

§310.8. Billing.

(a) The Executive Director shall bill governing bodies of participating departments semi-annually ~~and governing bodies of municipalities for which the Executive Director is administering pensions under the Texas Local Fire Fighters Retirement Act quarterly~~ on the last business day of ~~November,~~ February, ~~May,~~ and August.

(b) Each billing shall include, as appropriate, charges for:

(1) monthly contributions for participating members and any corresponding Part Two contributions, if applicable;

(2) optional annuity increases or supplemental payments;

(3) annuity payments funded by the governing entity or by department contributions;

(4) ~~[(2)]~~ prior service contributions;

(5) ~~[(3)]~~ late-payment interest charges; and

(6) ~~[(4)]~~ unpaid administrative penalties.

(c) At least 30 days before the last business day of February and of August ~~each quarter~~, the Executive Director shall send to the chair of the local board of each participating department a semi-annual pension roster report (Roster) that includes the name of each person who performs emergency services for the department and is identified as a member of the pension system, and the name of each person who is receiving pension payments under a funding arrangement with the plan.

(d) The ~~chair of the~~ local board ~~or the administrative head of the department~~ shall verify the accuracy of the Roster report, and shall enroll each person who performs service as a volunteer or auxiliary employee as a member of the system as required by Government Code Section 862.002. ~~[make needed changes in the roster, and return the report to the Executive Director not later than the fifth day before the last day of the quarter.]~~

(e) Upon request by the local board chair, the Executive Director will provide the local board chair with an updated roster for certification.

(f) The local board shall meet and certify, by signature of the chairman, the accuracy of the Roster report and return the signed report to the Executive Director no later than the fifth day before the last day of the billing period.

~~(g) [(e)] Based on the certified roster, on the last day of the month of the billing period, an invoice shall be generated by the system and provided to the governing entity. Payments are [under a billing issued under this section become] due within 30 days of the invoice date. Late payments accrue interest at the current actuarially assumed rate of investment return on fund assets.~~

~~(h) [(f)] In this section:~~

~~(1) The term "ACH" (Automated Clearing House) means the legal framework of rules and operational procedures adopted by financial institutions for the electronic transfer of funds.~~

~~(2) The term "ACH Credit" means an ACH transaction initiated by the governing body of a participating department for the electronic transfer of funds from the account of the governing body to the account of the pension system.~~

~~(3) The term "ACH Debit" means an ACH transaction initiated by the pension system for the electronic transfer of funds from the account of the governing body of a participating department to the account of the pension system.~~

~~(4) The term "electronic funds transfer [transfer of funds]" means the transfer of funds, other than by check, draft or similar paper instrument, that is initiated electronically to order, instruct, or authorize a financial institution to debit or to credit an account.~~

~~(5) The term "pre-authorized direct debit" means the method available to the governing body of a participating department for electronically paying required contributions by granting a continuing authorization to the pension system to initiate an ACH Debit [each quarter] for the electronic transfer of funds from the designated bank account of the governing body to the account of the pension system in an amount equal to the contributions required to be paid [based on the quarterly report as filed].~~

~~(6) The term "wire transfer" generally means a single transaction, initiated by the governing body of a participating department, in which funds are electronically transferred to the account of the pension system using the Federal Reserve Banking System rather than the ACH.~~

~~(i) [(g)] Amounts required to be contributed to the pension system in accordance with Chapter 865 of the Texas Government Code may be made by preauthorized direct debits (ACH Debits), electronic funds transfer, or by wire transfer. ~~[ACH Credits and wire transfers may not be used to transfer funds to the pension system except as authorized under subsection (j) of this section.]~~~~

~~(j) [(h)] The governing body of a participating department may elect to use the preauthorized direct debit method of payment by filing a signed authorization agreement with the pension system in which the governing body has designated a single bank account from which all transfers will be made.~~

~~(k) [(i)] The authorization agreement entered into for this purpose constitutes continuing authority for the pension system to initiate a direct debit of the governing body's designated bank account [each quarter and is effective with respect to each quarterly report of the governing body, whether filed by mail or by electronic transmission].~~

~~(l) [(j)] An authorization agreement remains in effect until the pension system receives either a written revocation of the agreement, or a subsequent written agreement, which automatically revokes the existing authorization. A new authorization agreement must be filed if there is any change in the designated bank account. The pension system, in its sole discretion, may terminate the authorization agreement by mailing written notice to the governing body. Thereafter, the governing body must remit all contributions by check, electronic funds~~

transfer, wire transfer, or other monetary means approved by the Executive Director. The alternative method of payment may include a fee to recover the cost of administering this subsection.

(m) On the 30th day after the invoice date, the pension system will initiate an ACH Debit in the amount of the invoice. The actual transfer of funds from the ACH designated account will not occur before the due date of the invoice.

~~[(k) Following receipt of a roster report filed under an unrevoked authorization agreement, the pension system will initiate an ACH Debit in the amount required to be contributed for that period based on the report; however the actual transfer of funds from the governing body's designated account will not occur before the due date of the report invoice.]~~

~~(n) [(4)] [The receipt of a quarterly roster report filed under an unrevoked authorization agreement is considered to be receipt by the pension system of the amount required to be contributed for the period based on that report if there are sufficient funds available for transfer from the governing body's designated account on the later of the due date of the report or the date the report is received.] An ACH Debit that is reversed by a governing body or that fails because sufficient funds are not available for transfer constitutes nonpayment of the required contributions [with respect to that report] and, thereafter, the required contributions will not be considered to have been received until the day the funds are actually transferred to the account of the pension system. Such unpaid funds may be subject to interest charges. [A governing body failing to timely file the required information or remit the required contributions by the due date of the report is subject to a penalty for late reporting in accordance with §310.9 of this title.]~~

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

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