

19, 2018, issue of the *Texas Register* (43 TexReg 334), and these sections will not be republished. The amendments were approved by the ERS Board of Trustees at its March 7, 2018, meeting.

ERS adopts amendments to Chapter 81 so that the most accurate salary basis might be used for life insurance and disability benefits for elected and appointed officials and members of the Legislature. The rule is also expanded to provide members with an additional choice, the State of Texas Vision Plan, to apply an incentive credit for a reduction in cost of certain GBP benefit plans when health insurance is waived.

Section 81.1, concerning Definitions, is amended to clarify the amount of compensation used for non-salaried elected and appointed officials and members of the Legislature for purposes of determining optional term life insurance and disability income limitations.

Section 81.8, concerning Waiver of Health Coverage, is amended to allow a member receiving an incentive credit to apply that credit toward the State of Texas Vision plan within the Group Benefits Program (GBP).

Section 81.9, concerning Grievance Procedures, is amended to reflect that the State of Texas Vision plan is a self-funded plan, and clarifies that the vision plan's grievance procedures are set forth in the Master Benefit Plan Document for that plan and are subject to applicable federal statutes and rules and §1551.356 of the Texas Employees Group Benefits Act, Insurance Code.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Texas Insurance Code, §1551.052 which provides authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities.

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 March 7, 2018.

TRD-201800979

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Effective date: March 27, 2018

Proposal publication date: January 19, 2018

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PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

CHAPTER 308. BENEFITS FROM THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §308.4

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts amendments to §308.4 regarding Death Benefits as published in the December

29, 2017, issue of the *Texas Register* (42 TexReg 7536), including an additional non-substantive change to the proposed text in subsection (a) due to a grammatical error.

The amended section is adopted to clarify the award of non-service death benefits to the surviving spouses of vested members, both active and inactive, and expands the scope of individuals who are eligible for a death benefit. These amendments make all beneficiary designations null and void once a member is terminated from the participating departments, to ensure the proper and efficient administration of the System.

The Board received no public comment on the proposed amendments to §308.4.

The amendments to §308.4 are adopted under the statutory authority of Title 8, Texas Government Code, Subsection H, Texas Emergency Services Retirement System, §864.007, and §864.009, concerning member nonservice death and retiree death benefits.

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

§308.4. *Death Benefits.*

(a) The surviving spouse and dependents of a member who dies as a result of performing emergency service duties are entitled to the benefit provided under §864.006, Government Code. The beneficiary of an active member who dies as a result of performing emergency service duties is entitled to a lump-sum benefit of \$60,000.

(b) Except as otherwise elected under subsection (c) or (d) of this section, the beneficiary of a deceased active member whose death did not result from the performance of emergency service duties, including a member whose death resulted from the performance of active military duty, is entitled to: the sum of the amount that has been contributed on the decedent's behalf from whatever source at the time of the member's death and the amount that would have been contributed by a department after the member's death, based on the department's contribution rate at the time of the member's death, at the end of the period required for full service retirement benefits, but in no event less than the total amount that has actually been contributed on the member's behalf.

(c) In lieu of the benefit provided by subsection (b) of this section, if the surviving spouse is the designated beneficiary of a deceased member (i) who dies as an active member of a participating department, (ii) whose death did not result from the performance of emergency service duties and (iii) who had attained the minimum age and service requirements under Rule §308.1 for a full or partial service retirement as of the date of death, the surviving spouse may elect to receive two-thirds of the monthly annuity for a full or partial retirement, as applicable, that the decedent would have received if the decedent had retired on the date of death.

(d) In lieu of the benefit provided by subsection (b) of this section, if the surviving spouse is the designated beneficiary of a deceased member (i) who dies as an active member of a participating department, (ii) whose death did not result from the performance of emergency service duties, and (iii) who had attained the minimum service requirements, but had not attained the minimum age requirement under Rule §308.1 for a full or partial service retirement as of the date of death, the surviving spouse may elect to receive a death benefit annuity, beginning on the later of the date on which the decedent would have attained the minimum age requirement or the date the surviving spouse applies for the annuity, equal to two-thirds of the monthly annuity for a full or partial retirement, as applicable, to which the decedent would have been entitled on the date that the member would have attained the minimum age requirement.

(e) All beneficiary designations of a member will become null and void upon such member's termination from service with all participating departments. No designated beneficiary is entitled to a death benefit under this section following a member's termination of service from all participating departments.

(f) The surviving spouse of a deceased member who dies after terminating service, but before commencing a service retirement annuity from the pension system under Rule §308.2, is entitled to receive upon application to the pension system (i) the death benefit annuity described in subsection (c) of this section if the deceased member had attained the minimum age and service requirements under Rule §308.1 for a full or partial service retirement as of the date of death or (ii) the death benefit annuity described in subsection (d) of this section if the deceased member had attained the minimum service requirements, but had not attained the minimum age requirement under Rule §308.1 for a full or partial service retirement as of the date of death, beginning on the dates described in subsection (d) of this section. The surviving spouse of a deceased member is entitled to the benefit under this subsection even if the surviving spouse was not the designated beneficiary of the deceased member upon termination of active service from all participating departments.

(g) The surviving spouse of a person who dies after commencing a service retirement annuity from the pension system under Rule §308.2 is entitled to the benefit provided by §864.009, Government Code.

(h) For beneficiary designations made after September 1, 2015, a member who is married and designates a beneficiary other than his or her spouse must obtain written spousal consent for such beneficiary designation in a manner as determined by the pension system.

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 March 9, 2018.

TRD-201801051

Kevin Deiters

Executive Director

Texas Emergency Services Retirement System

Effective date: March 29, 2018

Proposal publication date: December 29, 2017

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CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.9

The State Board of Trustees (Board) of the Texas Emergency Services Retirement System (System) adopts amendments to §310.9, regarding Periodic Reports; Administrative Penalties without changes to the proposed text as published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7537).

The amended section is adopted to correct an error in the existing rule that may be construed to limit the due process rights provided by the Administrative Procedures Act, Texas Government Code Chapter 2001. The Board takes the position that it

does not have the authority to limit the appeal rights and access to judicial review for persons subject to §310.9 so it has deleted subsection (f) from the rule.

The Board received no public comment on the amended section.

The amendment to §310.9 is adopted under the statutory authority of Title 8, Texas Government Code, Subsection H, Texas Emergency Services Retirement System, §865.006, which authorizes the Board to make rules necessary for the administration of the System fund, and §865.016, which authorizes the Board to impose an administrative penalty on a local board that fails to file a required report.

No other statutes, articles or codes are affected by this 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 March 9, 2018.

TRD-201801054

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Texas Emergency Services Retirement System

Effective date: March 29, 2018

Proposal publication date: December 29, 2017

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 211. ADMINISTRATION

37 TAC §211.1

The Texas Commission on Law Enforcement (Commission) adopts the amended §211.1, concerning Definitions, without changes to the proposed text as published in the December 29, 2017, issue of the *Texas Register* (42 TexReg 7549).

Subsection (a)(56) was amended to encompass additional entities that may have school marshals pursuant to SB 386 (84R) and HB 867 (85R). Subsection (b) was amended to reflect the effective date of the changes.

No comments were received regarding adoption of this amendment.

The amendment as adopted is in compliance with Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, Code of Criminal Procedure §2.127, Texas Education Code §37.0811; School Marshals--Public Schools Texas Education Code §37.0813, School Marshals--Private Schools Texas Education Code §51.220, Public Junior College School Marshals Texas Occupations Code §1701.001, Definitions Texas Occupations Code §1701.260, Training for Holders of License to Carry a Handgun; Certification of Eligibility for Appointment as School Marshal.

No other code, article, or statute is affected by this adoption.