

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) Chapter 73, concerning Benefits, by amending §73.2 (Determination of Date of Hire for Retirement Benefit Eligibility), §73.11 (Supplemental Retirement Program), and §73.21 (Reduction Factor for Age and Retirement Option), and by adding §73.49 (Uniformed Services Employment and Reemployment Rights Act).

ERS is a constitutional trust fund established as set forth in Article XVI, §67, Texas Constitution, and further organized pursuant to Title 8, Tex. Gov't Code, as well as 34 Tex. Admin. Code, §§61.1 *et seq.*

In 2021, the Texas Legislature passed SB 321, a law that created a new cash balance retirement benefit for state employees hired on or after September 1, 2022. Chapter 820 of the Texas Government Code establishes this new benefit. An amendment is proposed for §73.2 in order to clarify the eligibility of employees to participate in certain benefits based on their date of hire. An amendment is proposed for §73.11 to clarify that the section does not apply to the cash balance benefit. An amendment is proposed to §73.21 in order to clarify that the actuarial tables and factors listed in that section do not apply to the new cash balance benefit. Section 73.49 is proposed to clarify how the federal Uniform Services Employment and Reemployment Rights Act (USERRA) will apply to system members who are not cash balance benefit members.

#### GOVERNMENT GROWTH IMPACT STATEMENT

ERS has determined that during the first five-year period the amended rule will be in effect:

- (1) the proposed amendments will not create or eliminate a government program;
- (2) implementation of the proposed amendments will not require the creation of new employee positions or eliminate existing employee positions;
- (3) implementation of the proposed amendments will not require an increase or decrease in future legislative appropriations to the agency;
- (4) the proposed amendments will not require an increase or decrease in fees paid to the agency;
- (5) the proposed amendments will create a new rule or regulation;
- (6) the proposed amendments will not expand, limit, or repeal an existing rule or regulation;
- (7) the proposed amendments will not increase or decrease the number of individuals subject to the rules' applicability; and
- (8) the proposed amendments will not positively or adversely affect the state's economy.

Ms. Robin Hardaway, Director of Customer Benefits, has determined that for the first five-year

period the rule is in effect, there will be no fiscal implication for state or local government or local economies as a result of enforcing or administering the rule; and small businesses, micro-businesses, and rural communities will not be affected.

The proposed amendments align with the eligibility and benefit standards for employees participating in the current plans. The proposed amendments do not constitute a taking. Ms. Hardaway has also determined that, to her knowledge, there are no known anticipated economic effects to persons who are required to comply with the rule as proposed, and the proposed amendments do not impose a cost on regulated persons.

Ms. Hardaway also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting and complying with the rule would be to clarify eligibility and benefits for the new cash balance benefit.

Comments on the proposed amendments may be submitted to Cynthia C. Hamilton, General Counsel, Employees Retirement System of Texas, P. O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Hamilton at *General.Counsel@ers.texas.gov*. The deadline for receiving comments is August 8, 2022, at 10:00 a.m.

The amendments are proposed under Tex. Gov't Code §815.102, which authorizes for the ERS Board of Trustees to adopt rules necessary for the administration of the funds of the retirement system and regarding the transaction of any other business of the board, and Tex. Gov't Code §820.004, which authorizes the board to adopt rules necessary to implement the cash balance benefit.

No other statutes are affected by the proposed amendments.

*§73.2. Determination of Date of Hire for Retirement Benefit Eligibility.*

(a) For purposes of determining eligibility for retirement benefits, a person holding a position in the employee class of membership is considered to be hired before a date specified in a statute or rule if the person:

(1) Is hired and begins working before the specified date in a position included in the employee class;

(2) Establishes membership in the employee class by making a contribution to the system during the first payroll cycle after beginning work as specified in paragraph (1) or immediately after completing any applicable waiting period connected with the employment specified in paragraph (1); and

(3) Complies with subsection (c) of this section.

~~[(a) To be considered hired by the state of Texas on or before August 31, 2009, an employee holding~~

~~a position included in the employee class of membership;]~~

~~[(1) must be a member of the retirement system on or before August 31, 2009, and thereafter; or]~~

~~[(2) must have been continuously employed by the state of Texas since on or before August 31, 2009, and deposited with the Employees Retirement System of Texas at least one contribution immediately upon completion of the membership waiting period provided by Texas Government Code §812.003(d) before being terminated for any reason from state employment.]~~

(b) For purposes of determining eligibility for retirement benefits, a person holding an office in the elected class of membership is considered to have taken office before a date specified in a statute or rule if the person:

(1) Is elected or appointed to the office, qualifies for the office, and assumes the office before the specified date in a position included in the elected class;

(2) Establishes membership in the elected class by making a contribution to the system during the first payroll cycle after satisfying the criteria specified in subsection (1) or immediately after completing any applicable waiting period connected with the office specified in subsection (1); and

(3) Complies with subsection (c) of this section.

~~[(b) If the employee terminates state employment without having made a contribution to ERS to establish membership as provided by this section, and subsequently attains employment in the employee class of membership, that employee will not be considered to have been hired on or before August 31, 2009, for determination of eligibility for retirement benefits.]~~

(c) Once a person establishes eligibility for retirement benefits under subsection (a) or (b) of this section, in order to sustain such eligibility, the person must maintain membership in either the employee or elected class, or both the employee and elected classes, without interruption until retirement.

~~[(c) To be considered hired by the state of Texas on or after September 1, 2009, an employee holding a position included in the employee class of membership:]~~

~~[(1) must be hired by the state of Texas on or after September 1, 2009, and not meet the requirements in subsection (a) of this section; or]~~

~~[(2) meets the requirements in subsection (b) of this section.]~~

~~[(d) To be considered hired by the state of Texas on or before August 31, 2013, an employee holding a position included in the employee class of membership:]~~

~~[(1) must be a member of the retirement system on or before August 31, 2013, and thereafter; or]~~

~~[(2) must have been continuously employed by the state of Texas since on or before August 31, 2013, and deposited with the Employees Retirement System of Texas at least one contribution immediately upon completion of the membership waiting period provided by Texas Government Code, §812.003(d) before being terminated for any reason from state employment.]~~

~~[(e) If the employee terminates state employment without having made a contribution to ERS to establish membership as provided by this section, and subsequently attains] employment in the employee class of membership, that employee will not be considered to have been hired on or before August 31, 2013, for determination of eligibility for retirement benefits.~~

~~[(f) To be considered hired by the state of Texas on or after September 1, 2013, an employee holding a position included in the employee class of membership:]~~

~~[(1) must be hired by the state of Texas on or after September 1, 2013, and not meet the requirements in subsection (d) of this section; or]~~

~~[(2) meets the requirements in subsection (e) of this section.]~~

*§73.11. Supplemental Retirement Program.*

(a) For purposes ~~[the purpose]~~ of this section:

- (1) "supplemental program" is the program of retirement benefits for commissioned peace officers and custodial officers established by the Tex. Gov't Code ~~[Texas Government Code,]~~ §814.107;
- (2) "regular program" is the retirement program available to members of the employee class generally.
- (3) This section does not apply to a cash balance group member.

(b) An age reduction factor is applied to a supplemental ~~[retirement]~~ program benefit calculation if the member retires before ~~[under]~~ age 50 as follows:

- (1) If the member was hired by the state of Texas prior to September 1, 2009, and retires ~~[then upon retirement from the supplemental retirement program effective]~~ on or after September 30, 2009, the member shall ~~[will]~~ be subject to the age reduction factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For retirements ~~[effective]~~ prior to September 30, 2009, the previously adopted factors apply~~[-~~. Copies of the factors may be obtained from the executive director of the Employees Retirement System of Texas at P.O. Box 13207; Austin, Texas 78711-3207]; or

- (2) If the member ~~[a person]~~ was hired by the state of Texas on or after September 1, 2009, and ~~[he/she]~~ was not already a member of the retirement system on the date hired, then any reduction related to age shall ~~[will]~~ be made in accordance with Tex. Gov't Code §814.1075 ~~[of the Texas Government Code]~~.
- (c) Option factors for annuities, based on a retirement involving the supplemental program, are those applicable to the ages ~~[age]~~ of the retiree and nominee at the time payments under each program are to begin.
- (d) No payment shall be required to establish service credit in the supplemental program unless payment would be required to establish that credit in the regular program.
- (e) Military service credit shall be creditable in the supplemental program only if, within 90 days of termination of covered employment, the member went into the military without intervening employment and the member resumed covered employment within 90 days of termination of military service.
- (f) An occupational disability retirement annuity is subject to increase pursuant to the supplemental program based on ~~[as a result of the individual's submission of]~~ evidence satisfactory to the retirement system that the person's occupational disability ~~[condition]~~ makes the person incapable of substantial gainful activity ~~[occupation]~~ solely because of the disability and is considered a total disability under ~~[the]~~ federal social security law.
- (g) An annuity increase under subsection (f) of this section is not payable before the first month following the month in which the retirement system receives satisfactory evidence under subsection (f) of this section ~~[is received by the retirement system]~~.
- (h) An adjustment under ~~[the provisions of]~~ subsection (f) of this section shall include any reduction option factor applicable to a survivor benefit.

*§73.21. Reduction Factor for Age and Retirement Option.*

(a) Actuarial assumptions, mortality tables, and reduction factors used for calculation of benefits first payable on or after September 1, 2018, but prior to September 1, 2022, are those adopted by the board, as adjusted from time to time as required by Tex. Gov't Code §815.105, ~~[Texas Government Code,]~~ and apply to forms and effective dates of annuities specified by the board. ~~[Such assumptions, tables, and factors are incorporated in this rule by reference and are a part of this rule for all purposes. Copies of the tables are available from the executive director of the Employees Retirement System of Texas at 200 E. 18th Street, P.O. Box 13207, Austin, Texas 78711-3207.]~~

- (b) The 1999 reduction factors for optional forms of retirement annuities apply to retirements effective

on or after September 30, 1999, ~~but [and]~~ prior to September 30, 2009, and are those factors adopted by the board on December 8, 1999, based on assumptions adopted by the board on December 9, 1998. The 1999 reduction factors apply to annuities first payable between January 1, 2000, and [through] August 31, 2009. The 2009 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 30, 2009, but prior to September 1, 2014, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. ~~[The 2009 reduction factors apply to retirements first effective on or after September 30, 2009, and before September 1, 2014.]~~ The 2014 reduction factors for optional forms of retirement annuities apply to retirements effective on or after September 1, 2014, but prior to [before] September 1, 2018, and are those factors [tables] adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and further based on legislative changes to the retirement plan effective September 1, 2013. ~~[For retirements prior to September 1, 2014, the previously adopted factors apply.]~~

(c) The actuaries have developed reduction factors for early retirement or death in accordance with the mortality tables adopted by the board. The 2009 reduction factors for early retirement or death apply to retirements effective on or after September 30, 2009, but prior to September 1, 2010, and apply to deaths first reported to ERS on or after September 1, 2009, but prior to September 1, 2010, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 reduction factors for early retirement or death apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2~~[(c)]~~ of this chapter ~~[(relating to Determination of Date of Hire for Retirement Benefit Eligibility)]~~. The 2010 reduction factors apply to retirements effective on or after September 30, 2010, but prior to September 1, 2014, and apply to deaths first reported to ERS on or after September 1, 2010, but prior to September 1, 2014, and are those factors adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 reduction factors for early retirement or death apply to retirements effective on or after September 1, 2014, but prior to [before] September 1, 2018, and deaths first reported to ERS on or after September 1, 2014, but prior to September 1, 2018, and are those tables adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. ~~[For retirements prior to September 1, 2014 and deaths first reported to ERS prior to September 1, 2014, the previously adopted factors apply.]~~

(d) The 2000 reduction factors for the partial lump sum option apply to retirements effective on or after January 1, 2000, but prior to September 1 [through August 31], 2009, and are those factors adopted by the board on December 8, 1999, based on assumptions adopted by the board on December 9, 1998. The 2009 reduction factors for the partial lump sum option apply to retirements effective on or after September 30, 2009, but prior to September 1, 2014, and deaths first reported to ERS on or after September 1, 2009, but prior to September 1, 2014, and are those factors adopted by the board on

February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2014 reduction factors for the partial lump sum option apply to retirements [a retirement] effective on or after September 1, 2014, but prior to [before] September 1, 2018, and are those factors [tables] adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. ~~[For retirements occurring prior to September 1, 2014 and deaths first reported to ERS prior to September 1, 2014, the previously adopted factors apply.]~~

(e) The 2005 reduction factors for [a] standard nonoccupational disability retirements [retirement annuity] apply to [a] disability retirement applications [application] received by the system [System] on or after September 1, 2005, for retirements effective prior to September 30, 2009, and are those factors adopted by the board on August 24, 2005, based on assumptions adopted by the board on December 10, 2003. The 2009 reduction factors for [a] standard nonoccupational disability retirements [retirement annuity] apply to retirements [a disability retirement based on the effective date of a retirement that is] effective on or after September 30, 2009, but prior to September 30, 2010, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. The 2010 reduction factors for [a] standard nonoccupational disability retirements [retirement annuity] apply only to those employees hired by the state of Texas on or after September 1, 2009, as defined in §73.2~~(e)~~ of this chapter. The 2010 reduction factors for standard nonoccupational disability retirements apply to retirements [a disability retirement based on the effective date of a retirement that is] effective on or after September 30, 2010, but prior to September 1, 2014, and are those factors adopted by the board on February 23, 2010, based on legislative changes to the retirement plan effective September 1, 2009. The 2014 reduction factors for [a] standard nonoccupational disability retirements [retirement annuity] apply to retirements [a disability retirement based on the] effective [date of a retirement that is] on or after September 1, 2014, but prior to [before] September 1, 2018, and are those factors [tables] adopted by the board on February 25, 2014, based on assumptions adopted by the board on February 26, 2013, and on legislative changes to the retirement plan effective September 1, 2013. ~~[For disability retirements based on an effective date of retirement that is effective prior to September 1, 2014, the previously adopted factors apply.]~~

§73.49. Uniformed Services Employment and Reemployment Rights Act.

To the extent that the Uniformed Services Employment and Reemployment Rights Act (USERRA) applies to system members, a member:

(1) Shall be entitled to contributions, benefits, and credited service for the period of qualified military service to the extent required by USERRA; Internal Revenue Code §414(u); and effective January 1, 2007, Internal Revenue Code §401(a)(37); and

(2) May claim service credit for military service not previously established by paying a contribution

for each month of service credit in an amount equal to the greater of:

(a) The amount that the member contributed for the first full month of membership service that is after the member's date of release from active military duty and that is credited in the retirement system; or

(b) \$18.