

By: Sheets

H.B. No. 1974

A BILL TO BE ENTITLED

AN ACT

relating to creating a defined contribution retirement plan for persons eligible to participate in a public statewide retirement system.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. CREATION OF DEFINED CONTRIBUTION PLANS

SECTION 1.01. Section 812.002, Government Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Subject to Subsection (d), membership ~~[Membership]~~ in the elected class is optional.

(d) A person required to participate in the defined contribution plan under Section 816.003 may not become a member of the elected class.

SECTION 1.02. Effective September 1, 2012, Section 812.003(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection ~~[Subsections]~~ (b) ~~[and (d)]~~, membership in the employee class of the retirement system includes all employees and appointed officers of every department, commission, board, agency, or institution of the state except:

(1) independent contractors and their employees performing work for the state; ~~[and]~~

(2) persons disqualified from membership under Section 812.201; and

1 (3) persons who are required to or elect to
2 participate in the defined contribution plan under Chapter 816.

3 SECTION 1.03. Sections 812.201(b) and (c), Government Code,
4 are amended to read as follows:

5 (b) Except as provided by Section 816.003(a)(2)(B), a [A]
6 retiree who takes a position not included in a membership class from
7 which the retiree receives retirement benefit payments:

8 (1) is required to become or remain a member if the
9 position is included in the employee class; or

10 (2) may elect to become or remain a member if the
11 position is included in the elected class.

12 (c) A person who is retired from the elected class of
13 membership and who again holds a position included in that class may
14 elect to become a member again by filing notice with the retirement
15 system unless Section 816.003(a)(2)(B) applies. Except as
16 provided by Section 812.203(c), when benefit payments are resumed,
17 the retirement system shall recompute the annuity selected at the
18 time of the person's original retirement to include the additional
19 service established during membership under this subsection.

20 SECTION 1.04. Sections 815.403(b), (d), and (e), Government
21 Code, are amended to read as follows:

22 (b) Before November 2 of each even-numbered year, the
23 retirement system shall certify to the Legislative Budget Board and
24 to the budget division of the governor's office for review:

25 (1) an estimate of the amount necessary to pay the
26 state's contribution under Subsections (a)(1), (a)(2), (a)(3), and
27 (a)(5) for the following biennium; ~~and~~

1 (2) as a separate item, an estimate of the amount
2 required to administer the law enforcement and custodial officer
3 supplemental retirement fund for the following biennium; and

4 (3) an estimate of the amount necessary to pay the
5 state's contribution under Section 816.009(a).

6 (d) Before September 1 of each year, the retirement system
7 shall certify to the state comptroller of public accounts:

8 (1) an estimate of the amount necessary to pay the
9 state's contribution under Subsection (a)(1) for the following
10 fiscal year;

11 (2) an estimate of the amount necessary to pay
12 membership fees for the following fiscal year, if the legislature
13 has appropriated money for that purpose; ~~and~~

14 (3) an estimate of the amount required to pay lump-sum
15 death benefits for retirees under Section 814.501 for the following
16 fiscal year; and

17 (4) an estimate of the amount necessary to pay the
18 state's contribution under Section 816.009(a) for the following
19 fiscal year.

20 (e) All money allocated and appropriated by the state to the
21 retirement system for benefits provided by the retirement system,
22 except money for the payment of lump-sum death benefits, ~~and~~ for
23 the payment of benefits from the law enforcement and custodial
24 officer supplemental retirement fund, and for the payment of the
25 state's contribution under Section 816.009(a), shall be paid, based
26 on the annual estimate of the retirement system, in monthly
27 installments to the state accumulation fund. The money required

1 for state contributions and membership fees shall be from
2 respective funds appropriated to pay the compensation of the member
3 for whose benefit the contribution or fee is paid. If the total of
4 the estimated required payments is not equal to the total of the
5 actual payments required for a fiscal year, the retirement system
6 shall certify to the state comptroller of public accounts at the end
7 of that year the amount required for necessary adjustments, and the
8 comptroller shall make the required adjustments.

9 SECTION 1.05. Subtitle B, Title 8, Government Code, is
10 amended by adding Chapter 816 to read as follows:

11 CHAPTER 816. DEFINED CONTRIBUTION PLAN

12 Sec. 816.001. DEFINITIONS. In this chapter:

13 (1) "Defined contribution plan" means the defined
14 contribution plan established under this chapter.

15 (2) "Qualified plan" means an employee benefit plan
16 qualified under Section 401(a), Internal Revenue Code of 1986.

17 Sec. 816.002. ESTABLISHMENT AND ADMINISTRATION OF DEFINED
18 CONTRIBUTION PLAN. (a) The retirement system shall establish and
19 administer a defined contribution plan that is a qualified plan and
20 under which a participant pays contributions to the plan for the
21 purchase of investment products selected by the participant from
22 among products that are offered by companies authorized to provide
23 the products in this state and selected by the retirement system
24 under Subsection (b).

25 (b) The retirement system shall adopt rules for the
26 selection of companies to provide investment products under the
27 defined contribution plan. The rules must provide for the

selection of vendors of a wide variety of investment products authorized for a qualified plan. The retirement system shall select vendors every two years.

(c) A provider of investment products is exempt from the payment of franchise or premium taxes on products issued under the defined contribution plan.

Sec. 816.003. MANDATORY PARTICIPATION IN PLAN. (a) Except as provided by Subsection (b), a person must participate in the defined contribution plan if the person:

(1) on or after September 1, 2012:

(A) was hired as an employee or appointed as an officer of a department, commission, board, agency, or institution of this state; or

(B) was elected:

(i) to a state office that is normally filled by statewide election and that is not included in the coverage of the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two;

(ii) as a member of the legislature; or

(iii) as a district or criminal district attorney, to the extent the person receives a salary from the state general revenue fund; and

(2) on the date the person was elected, appointed, or hired, as applicable:

(A) was not a member of the system; or

(B) was a member of the system who was not serving in a position included in the coverage of the system during the 30

1 days preceding the date the person was elected, appointed, or
2 hired.

3 (b) For purposes of Subsection (a)(1)(A), an office or
4 employment that is included in the coverage of the Teacher
5 Retirement System of Texas, the Judicial Retirement System of Texas
6 Plan One, or the Judicial Retirement System of Texas Plan Two is not
7 a position with a department, commission, board, agency, or
8 institution of the state.

9 Sec. 816.004. OPTIONAL PARTICIPATION IN PLAN. (a) A
10 contributing member of the retirement system may elect to
11 participate in the defined contribution plan. An election to
12 participate in the defined contribution plan under this section
13 must be on a form prescribed by and filed with the retirement
14 system.

15 (b) Participation in the defined contribution plan is an
16 alternative to participation as a contributing member of the
17 retirement system for the same period.

18 (c) An election made under this section is irrevocable.

19 (d) If a person elects to participate in the defined
20 contribution plan under this section, the retirement system shall
21 transfer to the vendors of investment products selected by the
22 participant an amount equal to the actuarial present value of the
23 person's accrued service benefit in the retirement system. The
24 transfer shall be made not later than the 45th day after the date
25 the election is filed with the retirement system.

26 (e) A transfer under Subsection (d) terminates a person's
27 membership in the retirement system and all rights and benefits

1 from the system based on the person's previous service, including
2 the right to withdraw accumulated contributions from the retirement
3 system.

4 Sec. 816.005. EFFECT OF EMPLOYMENT CHANGES. A person
5 participating in the defined contribution plan continues to
6 participate in the plan when the person changes employment to
7 another position included in the coverage of the retirement system.

8 Sec. 816.006. VESTING OF BENEFITS; TERMINATION OF
9 PARTICIPATION. (a) Benefits in the defined contribution plan vest
10 in a participant on the first anniversary of the person's
11 participation in the plan.

12 (b) A person terminates participation in the defined
13 contribution plan, without losing any vested benefits, by:

14 (1) death;

15 (2) retirement; or

16 (3) termination of employment in all positions
17 included in the coverage of the retirement system.

18 (c) The benefits of a product purchased under the defined
19 contribution plan become available under the terms of the annuity
20 but not before the earlier of the date the member:

21 (1) terminates participation as provided by
22 Subsection (b); or

23 (2) attains the age of 70-1/2 years.

24 Sec. 816.007. CREDITABLE SERVICE. A person may not
25 establish in the retirement system credit for service performed
26 during a period the person was participating in the defined
27 contribution plan.

1 Sec. 816.008. INVESTMENT ADVISORY FEES. (a) A participant
2 in the defined contribution plan may authorize the payment of
3 investment advisory fees from the amount in the participant's
4 custodial account or product if:

5 (1) the investment advisory fees for each fiscal year
6 do not exceed two percent of the annual value of the participant's
7 custodial account or product as of the last day of that fiscal year;

8 (2) the fees are paid directly to a registered
9 investment advisor that provides investment advice to the
10 participant;

11 (3) the investment advisor to whom the fees are paid is
12 registered with the Securities and Exchange Commission under the
13 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.)
14 and is engaged full-time in the business of providing investment
15 advice;

16 (4) the participant and the investment advisor enter
17 into a contract, for a term of not more than one year, for services
18 that provides for the payment of fees as provided by this section;
19 and

20 (5) the retirement system has received an official
21 determination from the Internal Revenue Service that payment of
22 investment advisory fees as prescribed by this section is not a
23 distribution of funds that is prohibited or subject to taxation and
24 penalty under the Internal Revenue Code.

25 (b) The executive director of the retirement system shall
26 request an official determination from the Internal Revenue Service
27 concerning whether the payment of investment advisory fees as

1 prescribed by this section is a distribution of funds that is
2 prohibited or subject to taxation and penalty under the Internal
3 Revenue Code. If the executive director receives an official
4 determination from the Internal Revenue Service as specified by
5 this subsection, the executive director shall file the official
6 determination with the secretary of state's office for publication
7 in the Texas Register.

8 Sec. 816.009. CONTRIBUTIONS. (a) A participant in the
9 defined contribution plan shall make contributions to the plan at
10 the same rate that a member of the retirement system is required to
11 make for current service, and the state shall make contributions to
12 the plan for each participant at the same rate as is made for
13 contributing members of the retirement system. Contributions
14 required under this subsection shall be credited to the benefit of
15 the participant.

16 (b) A participant in the defined contribution plan and the
17 participant's employer shall execute an agreement under which the
18 salary of the participant is reduced by the amount of the
19 contribution required by this section. An agreement under this
20 subsection is irrevocable until the participant terminates
21 participation in the plan under Section 816.006.

22 (c) Participant contributions shall be made in the manner
23 provided by Section 815.402, and state contributions shall be made
24 in the manner provided by Section 815.403.

25 Sec. 816.010. EXCESS BENEFIT ARRANGEMENT. The retirement
26 system may establish a governmental excess benefit arrangement as
27 provided by Section 415(m), Internal Revenue Code of 1986, for the

1 purpose of providing to participants in the defined contribution
2 plan any portion of a participant's benefits that would otherwise
3 be payable under the terms of the plan except for the limitation on
4 benefits imposed by Section 415, Internal Revenue Code of 1986.

5 Sec. 816.011. HEALTH BENEFITS AND OTHER COVERAGES. A
6 person who participates or who is eligible to participate in the
7 defined contribution plan established under this chapter is
8 eligible for health benefits and other coverages under Subtitle H,
9 Title 8, Insurance Code, to the same extent as a person who is a
10 member or who is eligible to be a member of the retirement system.

11 Sec. 816.012. RULES. The retirement system may adopt rules
12 necessary to implement this chapter.

13 SECTION 1.06. Section 822.001(a), Government Code, is
14 amended to read as follows:

15 (a) Subject to Subsection (b), membership ~~[Membership]~~ in
16 the retirement system includes:

17 (1) all persons who were members of the retirement
18 system on the day before the effective date of this subtitle; and

19 (2) all employees of the public school system.

20 SECTION 1.07. Section 822.0015(a), Government Code, is
21 amended to read as follows:

22 (a) In lieu of participating in the Employees Retirement
23 System of Texas, the commissioner of education may elect to
24 participate in the retirement system in the same manner and under
25 the same conditions as ~~[a member who is]~~ an employee of the public
26 school system.

27 SECTION 1.08. Section 822.002, Government Code, is amended

1 to read as follows:

2 Sec. 822.002. EXCEPTIONS TO MEMBERSHIP REQUIREMENT. An
3 employee of the public school system is not permitted to be a member
4 of the retirement system if the employee:

5 (1) is eligible and elects to participate in the
6 optional retirement program under Chapter 830;

7 (2) is solely employed by a public institution of
8 higher education that as a condition of employment requires the
9 employee to be enrolled as a student in the institution; ~~or~~

10 (3) has retired under the retirement system and has
11 not been reinstated to membership pursuant to Section 824.005 or
12 824.307; or

13 (4) is required to or elects to participate in the
14 defined contribution plan established under Chapter 826.

15 SECTION 1.09. Section 822.005(c), Government Code, is
16 amended to read as follows:

17 (c) Except as provided by Section 826.004, a [A] person is
18 not entitled to withdraw contributions who is employed, has applied
19 for employment, or has received a promise of employment, in a
20 position covered by the retirement system.

21 SECTION 1.10. Sections 825.404(b) and (e), Government Code,
22 are amended to read as follows:

23 (b) Before November 2 of each even-numbered year, the board
24 of trustees shall certify to the comptroller of public accounts for
25 review and adoption an estimate of the amount necessary to pay the
26 state's contributions to:

27 (1) the retirement system for the following biennium;

1 and

2 (2) the defined contribution plan under Chapter 826
3 for the following biennium.

4 (e) All money appropriated by the state to the retirement
5 system shall be paid to the state contribution account in equal
6 monthly installments as provided by Section 403.093(c),
7 ~~[Government Code]~~ except money appropriated:

8 (1) under Subsection (d), which remains in the general
9 revenue fund until expenses are approved under Chapter 2103; and

10 (2) for the payment of the state's contributions under
11 Section 826.009(a).

12 SECTION 1.11. Section 825.4041(a), Government Code, is
13 amended to read as follows:

14 (a) For purposes of this section, a new member is a person
15 who:

16 (1) was first employed on or after September 1, 2005,
17 including a former member who withdrew retirement contributions
18 under Section 822.003 and is reemployed on or after September 1,
19 2005; and

20 (2) is not required and has not elected to participate
21 in the defined contribution plan under Chapter 826.

22 SECTION 1.12. Subtitle C, Title 8, Government Code, is
23 amended by adding Chapter 826 to read as follows:

24 CHAPTER 826. DEFINED CONTRIBUTION PLAN

25 Sec. 826.001. DEFINITIONS. In this chapter:

26 (1) "Defined contribution plan" means the defined
27 contribution plan established under this chapter.

1 (2) "Qualified plan" means an employee benefit plan
2 qualified under Section 401(a) or 403(b), Internal Revenue Code of
3 1986.

4 Sec. 826.002. ESTABLISHMENT AND ADMINISTRATION OF DEFINED
5 CONTRIBUTION PLAN. (a) The retirement system shall establish and
6 administer a defined contribution plan that is a qualified plan and
7 under which a participant pays contributions to the plan for the
8 purchase of investment products selected by the participant from
9 among products that are offered by companies authorized to provide
10 the products in this state and selected by the retirement system
11 under Subsection (b).

12 (b) The retirement system shall adopt rules for the
13 selection of companies to provide investment products under the
14 defined contribution plan. The rules must provide for the
15 selection of vendors of a wide variety of investment products
16 authorized for a qualified plan. The retirement system shall select
17 vendors every two years.

18 (c) A provider of investment products is exempt from the
19 payment of franchise or premium taxes on products issued under the
20 defined contribution plan.

21 Sec. 826.003. MANDATORY PARTICIPATION IN PLAN. A person
22 must participate in the defined contribution plan if the person:

23 (1) is an employee who was employed on or after
24 September 1, 2012; and

25 (2) on the date the person began employment:

26 (A) was not a member of the system; or

27 (B) was a member of the system who was not serving

1 in a position included in the coverage of the system during the 30
2 days preceding the date the person was elected, appointed, or
3 hired.

4 Sec. 826.004. OPTIONAL PARTICIPATION IN PLAN. (a) An
5 employee who is a contributing member of the retirement system may
6 elect to participate in the defined contribution plan. An election
7 to participate in the defined contribution plan under this section
8 must be on a form prescribed by and filed with the retirement
9 system.

10 (b) Participation in the defined contribution plan is an
11 alternative to participation as a contributing member of the
12 retirement system for the same period.

13 (c) An election made under this section is irrevocable.

14 (d) If a person elects to participate in the defined
15 contribution plan under this section, the retirement system shall
16 transfer to the vendors of investment products selected by the
17 participant an amount equal to the actuarial present value of the
18 person's accrued service benefit in the retirement system. The
19 transfer shall be made not later than the 45th day after the date
20 the election is filed with the retirement system.

21 (e) A transfer under Subsection (d) terminates a person's
22 membership in the retirement system and all rights and benefits
23 from the system based on the person's previous service, including
24 the right to withdraw accumulated contributions from the retirement
25 system.

26 Sec. 826.005. EFFECT OF EMPLOYMENT CHANGES. A person
27 participating in the defined contribution plan continues to

1 participate in the plan when the person changes employment to
2 another position included in the coverage of the retirement system.

3 Sec. 826.006. VESTING OF BENEFITS; TERMINATION OF
4 PARTICIPATION. (a) Benefits in the defined contribution plan vest
5 in a participant on the first anniversary of the person's
6 participation in the plan.

7 (b) A person terminates participation in the defined
8 contribution plan, without losing any vested benefits, by:

9 (1) death;
10 (2) retirement; or
11 (3) termination of employment in all positions
12 included in the coverage of the retirement system.

13 (c) The benefits of a product purchased under the defined
14 contribution plan become available under the terms of the annuity
15 but not before the earlier of the date the member:

16 (1) terminates participation as provided by
17 Subsection (b); or
18 (2) attains the age of 70-1/2 years.

19 Sec. 826.007. CREDITABLE SERVICE. A person may not
20 establish in the retirement system credit for service performed
21 during a period the person was participating in the defined
22 contribution plan.

23 Sec. 826.008. INVESTMENT ADVISORY FEES. (a) A participant
24 in the defined contribution plan may authorize the payment of
25 investment advisory fees from the amount in the participant's
26 custodial account or product if:

27 (1) the investment advisory fees for each fiscal year

1 do not exceed two percent of the annual value of the participant's
2 custodial account or product as of the last day of that fiscal year;

3 (2) the fees are paid directly to a registered
4 investment advisor that provides investment advice to the
5 participant;

6 (3) the investment advisor to whom the fees are paid is
7 registered with the Securities and Exchange Commission under the
8 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.)
9 and is engaged full-time in the business of providing investment
10 advice;

11 (4) the participant and the investment advisor enter
12 into a contract, for a term of not more than one year, for services
13 that provides for the payment of fees as provided by this section;
14 and

15 (5) the retirement system has received an official
16 determination from the Internal Revenue Service that payment of
17 investment advisory fees as prescribed by this section is not a
18 distribution of funds that is prohibited or subject to taxation and
19 penalty under the Internal Revenue Code.

20 (b) The executive director of the retirement system shall
21 request an official determination from the Internal Revenue Service
22 concerning whether the payment of investment advisory fees as
23 prescribed by this section is a distribution of funds that is
24 prohibited or subject to taxation and penalty under the Internal
25 Revenue Code. If the executive director receives an official
26 determination from the Internal Revenue Service as specified by
27 this subsection, the executive director shall file the official

1 determination with the secretary of state's office for publication
2 in the Texas Register.

3 Sec. 826.009. CONTRIBUTIONS. (a) A participant in the
4 defined contribution plan shall make contributions to the plan at
5 the same rate that a member of the retirement system is required to
6 make for current service, and the state shall make contributions to
7 the plan for each participant at the same rate as is made for
8 contributing members of the retirement system. Contributions
9 required under this subsection shall be credited to the benefit of
10 the participant.

11 (b) A participant in the defined contribution plan and the
12 participant's employer shall execute an agreement under which the
13 salary of the participant is reduced by the amount of the
14 contribution required by this section. An agreement under this
15 subsection is irrevocable until the participant terminates
16 participation in the plan under Section 826.006.

17 (c) Participant contributions shall be made in the manner
18 provided by Subchapter E, Chapter 825, for member contributions to
19 the retirement system.

20 Sec. 826.010. EXCESS BENEFIT ARRANGEMENT. The retirement
21 system may establish a governmental excess benefit arrangement as
22 provided by Section 415(m), Internal Revenue Code of 1986, for the
23 purpose of providing to participants in the defined contribution
24 plan any portion of a participant's benefits that would otherwise
25 be payable under the terms of the plan except for the limitation on
26 benefits imposed by Section 415, Internal Revenue Code of 1986.

27 Sec. 826.011. HEALTH BENEFITS AND OTHER COVERAGES. A

1 person who participates or who is eligible to participate in the
2 defined contribution plan established under this chapter is
3 eligible for health benefits and other coverages under Subchapter
4 D, Chapter 22, Education Code, and Subtitle H, Title 8, Insurance
5 Code, to the same extent as a person who is a member or who is
6 eligible to be a member of the retirement system.

7 Sec. 826.012. RULES. The retirement system may adopt rules
8 necessary to implement this chapter.

9 SECTION 1.13. Section 830.002(b), Government Code, is
10 amended to read as follows:

11 (b) Participation in the optional retirement program is an
12 alternative to active membership in the retirement system or
13 required participation in the defined contribution plan under
14 Chapter 826, as appropriate.

15 SECTION 1.14. Sections 830.102(a) and (d), Government Code,
16 are amended to read as follows:

17 (a) A person included in the coverage ~~[member]~~ of the
18 retirement system who is eligible ~~[to participate in the optional~~
19 ~~retirement program]~~ may elect to ~~[continue as a member of the~~
20 ~~retirement system or to]~~ participate in the optional retirement
21 program.

22 (d) An eligible person who does not elect to participate in
23 the optional retirement program is considered to have chosen to
24 continue membership in the retirement system or to participate in
25 the defined contribution plan established under Chapter 826, as
26 applicable.

27 SECTION 1.15. Section 830.106, Government Code, is amended

1 to read as follows:

2 Sec. 830.106. ELIGIBILITY FOR RESUMPTION OF MEMBERSHIP. A
3 participant in the optional retirement program is not eligible for
4 membership in the retirement system unless, before September 1,
5 2012, the person:

6 (1) terminates employment covered by the optional
7 retirement program; and

8 (2) becomes employed in the public school system or
9 with a state agency in a position that is not eligible for
10 participation in the optional retirement program.

11 SECTION 1.16. Subchapter B, Chapter 842, Government Code,
12 is amended by adding Section 842.102 to read as follows:

13 Sec. 842.102. EXCEPTION TO GENERAL MEMBERSHIP REQUIREMENT.
14 A person who is required to or elects to participate in the defined
15 contribution plan established under Chapter 846 is not required to
16 be a member of the retirement system.

17 SECTION 1.17. Section 845.404(a), Government Code, is
18 amended to read as follows:

19 (a) Before the 16th day of each month, each participating
20 subdivision shall pay or cause to be paid to the retirement system
21 at the system's office:

22 (1) the member contributions, or "picked-up" member
23 contributions, provided for by Sections 845.402 and 845.403, which
24 shall be deposited to the individual accounts of the members; and

25 (2) the contributions that a subdivision is required
26 to make under this subtitle, including contributions in an amount
27 necessary to fund the administration of the defined contribution

1 plan under Chapter 846, which shall be deposited to the account of
2 the subdivision in the subdivision accumulation fund.

3 SECTION 1.18. Subtitle F, Title 8, Government Code, is
4 amended by adding Chapter 846 to read as follows:

5 CHAPTER 846. DEFINED CONTRIBUTION PLAN

6 Sec. 846.001. DEFINITIONS. In this chapter:

7 (1) "Defined contribution plan" means the defined
8 contribution plan established under this chapter.

9 (2) "Qualified plan" means an employee benefit plan
10 qualified under Section 401(a) or 403(b), Internal Revenue Code of
11 1986.

12 Sec. 846.002. ESTABLISHMENT AND ADMINISTRATION OF DEFINED
13 CONTRIBUTION PLAN. (a) The retirement system shall establish and
14 administer a defined contribution plan that is a qualified plan and
15 under which a participant pays contributions to the plan for the
16 purchase of investment products selected by the participant from
17 among products that are offered by companies authorized to provide
18 the products in this state and selected by the retirement system
19 under Subsection (b).

20 (b) The retirement system shall adopt rules for the
21 selection of companies to provide investment products under the
22 defined contribution plan. The rules must provide for the
23 selection of vendors of a wide variety of investment products
24 authorized for a qualified plan. The retirement system shall select
25 vendors every two years.

26 (c) A provider of investment products is exempt from the
27 payment of franchise or premium taxes on products issued under the

1 defined contribution plan.

2 Sec. 846.003. MANDATORY PARTICIPATION IN PLAN. A person
3 must participate in the defined contribution plan if the person:

4 (1) is an employee who was employed on or after
5 September 1, 2012; and

6 (2) on the date the person began employment:

7 (A) was not a member of the system; or

8 (B) was a member of the system who was not serving
9 in a position included in the coverage of the system during the 30
10 days preceding the date the person was elected, appointed, or
11 hired.

12 Sec. 846.004. OPTIONAL PARTICIPATION IN PLAN. (a) An
13 employee who is a contributing member of the retirement system may
14 elect to participate in the defined contribution plan. An election
15 to participate in the defined contribution plan under this section
16 must be on a form prescribed by and filed with the retirement
17 system.

18 (b) Participation in the defined contribution plan is an
19 alternative to participation as a contributing member of the
20 retirement system for the same period.

21 (c) An election made under this section is irrevocable.

22 (d) If a person elects to participate in the defined
23 contribution plan under this section, the retirement system shall
24 transfer to the vendors of investment products selected by the
25 participant an amount equal to the actuarial present value of the
26 person's accrued service benefit in the retirement system. The
27 transfer shall be made not later than the 45th day after the date

1 the election is filed with the retirement system.

2 (e) A transfer under Subsection (d) terminates a person's
3 membership in the retirement system and all rights and benefits
4 from the system based on the person's previous service, including
5 the right to withdraw accumulated contributions from the retirement
6 system.

7 Sec. 846.005. EFFECT OF EMPLOYMENT CHANGES. A person
8 participating in the defined contribution plan continues to
9 participate in the plan when the person changes employment to
10 another position included in the coverage of the retirement system.

11 Sec. 846.006. VESTING OF BENEFITS; TERMINATION OF
12 PARTICIPATION. (a) Benefits in the defined contribution plan vest
13 in a participant on the first anniversary of the person's
14 participation in the plan.

15 (b) A person terminates participation in the defined
16 contribution plan, without losing any vested benefits, by:

17 (1) death;

18 (2) retirement; or

19 (3) termination of employment in all positions
20 included in the coverage of the retirement system.

21 (c) The benefits of a product purchased under the defined
22 contribution plan become available under the terms of the annuity
23 but not before the earlier of the date the member:

24 (1) terminates participation as provided by
25 Subsection (b); or

26 (2) attains the age of 70-1/2 years.

27 Sec. 846.007. CREDITABLE SERVICE. A person may not

1 establish in the retirement system credit for service performed
2 during a period the person was participating in the defined
3 contribution plan.

4 Sec. 846.008. INVESTMENT ADVISORY FEES. (a) A participant
5 in the defined contribution plan may authorize the payment of
6 investment advisory fees from the amount in the participant's
7 custodial account or product if:

8 (1) the investment advisory fees for each fiscal year
9 do not exceed two percent of the annual value of the participant's
10 custodial account or product as of the last day of that fiscal year;

11 (2) the fees are paid directly to a registered
12 investment advisor that provides investment advice to the
13 participant;

14 (3) the investment advisor to whom the fees are paid is
15 registered with the Securities and Exchange Commission under the
16 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.)
17 and is engaged full-time in the business of providing investment
18 advice;

19 (4) the participant and the investment advisor enter
20 into a contract, for a term of not more than one year, for services
21 that provides for the payment of fees as provided by this section;
22 and

23 (5) the retirement system has received an official
24 determination from the Internal Revenue Service that payment of
25 investment advisory fees as prescribed by this section is not a
26 distribution of funds that is prohibited or subject to taxation and
27 penalty under the Internal Revenue Code.

1 (b) The executive director of the retirement system shall
2 request an official determination from the Internal Revenue Service
3 concerning whether the payment of investment advisory fees as
4 prescribed by this section is a distribution of funds that is
5 prohibited or subject to taxation and penalty under the Internal
6 Revenue Code. If the executive director receives an official
7 determination from the Internal Revenue Service as specified by
8 this subsection, the executive director shall file the official
9 determination with the secretary of state's office for publication
10 in the Texas Register.

11 Sec. 846.009. CONTRIBUTIONS. (a) A participant in the
12 defined contribution plan shall make contributions to the plan at
13 the same rate that a member of the retirement system is required to
14 make for current service, and the state shall make contributions to
15 the plan for each participant at the same rate as is made for
16 contributing members of the retirement system. Contributions
17 required under this subsection shall be credited to the benefit of
18 the participant.

19 (b) A participant in the defined contribution plan and the
20 participant's employer shall execute an agreement under which the
21 salary of the participant is reduced by the amount of the
22 contribution required by this section. An agreement under this
23 subsection is irrevocable until the participant terminates
24 participation in the plan under Section 846.006.

25 (c) Participant contributions shall be made in the manner
26 provided by Subchapter E, Chapter 845, for member contributions to
27 the retirement system.

1 Sec. 846.010. EXCESS BENEFIT ARRANGEMENT. The retirement
2 system may establish a governmental excess benefit arrangement as
3 provided by Section 415(m), Internal Revenue Code of 1986, for the
4 purpose of providing to participants in the defined contribution
5 plan any portion of a participant's benefits that would otherwise
6 be payable under the terms of the plan except for the limitation on
7 benefits imposed by Section 415, Internal Revenue Code of 1986.

8 Sec. 846.011. HEALTH BENEFITS AND OTHER COVERAGES. A
9 person who participates or who is eligible to participate in the
10 defined contribution plan established under this chapter is
11 eligible for health benefits and other coverages in accordance with
12 the rules or regulations adopted by the participant's subdivision.

13 Sec. 846.012. RULES. The retirement system may adopt rules
14 necessary to implement this chapter.

15 SECTION 1.19. Section 852.102, Government Code, is amended
16 by adding Subsection (a-1) to read as follows:

17 (a-1) A person who is required to or elects to participate
18 in the defined contribution plan established under Chapter 856 is
19 not required to be a member of the retirement system.

20 SECTION 1.20. Section 855.404(b), Government Code, is
21 amended to read as follows:

22 (b) The board of trustees, before January 1 of each year,
23 shall set the rate of the contribution necessary to provide an
24 amount required to pay the difference between:

25 (1) the estimated administrative expenses for the
26 following year, including the expenses related to the
27 administration of the defined contribution plan under Chapter 856;

1 and

2 (2) the anticipated revenue, from sources other than
3 municipality contributions, to be used for the expenses of the year
4 as adjusted for a surplus or deficiency existing on January 1 of
5 that year.

6 SECTION 1.21. Subtitle G, Title 8, Government Code, is
7 amended by adding Chapter 856 to read as follows:

8 CHAPTER 856. DEFINED CONTRIBUTION PLAN

9 Sec. 856.001. DEFINITIONS. In this chapter:

10 (1) "Defined contribution plan" means the defined
11 contribution plan established under this chapter.

12 (2) "Qualified plan" means an employee benefit plan
13 qualified under Section 401(a) or 403(b), Internal Revenue Code of
14 1986.

15 Sec. 856.002. ESTABLISHMENT AND ADMINISTRATION OF DEFINED
16 CONTRIBUTION PLAN. (a) The retirement system shall establish and
17 administer a defined contribution plan that is a qualified plan and
18 under which a participant pays contributions to the plan for the
19 purchase of investment products selected by the participant from
20 among products that are offered by companies authorized to provide
21 the products in this state and selected by the retirement system
22 under Subsection (b).

23 (b) The retirement system shall adopt rules for the
24 selection of companies to provide investment products under the
25 defined contribution plan. The rules must provide for the
26 selection of vendors of a wide variety of investment products
27 authorized for a qualified plan. The retirement system shall select

1 vendors every two years.

2 (c) A provider of investment products is exempt from the
3 payment of franchise or premium taxes on products issued under the
4 defined contribution plan.

5 Sec. 856.003. MANDATORY PARTICIPATION IN PLAN. A person
6 must participate in the defined contribution plan if the person:

7 (1) is an employee who was employed on or after
8 September 1, 2012; and

9 (2) on the date the person began employment:

10 (A) was not a member of the system; or

11 (B) was a member of the system who was not serving
12 in a position included in the coverage of the system during the 30
13 days preceding the date the person was elected, appointed, or
14 hired.

15 Sec. 856.004. OPTIONAL PARTICIPATION IN PLAN. (a) An
16 employee who is a contributing member of the retirement system may
17 elect to participate in the defined contribution plan. An election
18 to participate in the defined contribution plan under this section
19 must be on a form prescribed by and filed with the retirement
20 system.

21 (b) Participation in the defined contribution plan is an
22 alternative to participation as a contributing member of the
23 retirement system for the same period.

24 (c) An election made under this section is irrevocable.

25 (d) If a person elects to participate in the defined
26 contribution plan under this section, the retirement system shall
27 transfer to the vendors of investment products selected by the

1 participant an amount equal to the actuarial present value of the
2 person's accrued service benefit in the retirement system. The
3 transfer shall be made not later than the 45th day after the date
4 the election is filed with the retirement system.

5 (e) A transfer under Subsection (d) terminates a person's
6 membership in the retirement system and all rights and benefits
7 from the system based on the person's previous service, including
8 the right to withdraw accumulated contributions from the retirement
9 system.

10 Sec. 856.005. EFFECT OF EMPLOYMENT CHANGES. A person
11 participating in the defined contribution plan continues to
12 participate in the plan when the person changes employment to
13 another position included in the coverage of the retirement system.

14 Sec. 856.006. VESTING OF BENEFITS; TERMINATION OF
15 PARTICIPATION. (a) Benefits in the defined contribution plan vest
16 in a participant on the first anniversary of the person's
17 participation in the plan.

18 (b) A person terminates participation in the defined
19 contribution plan, without losing any vested benefits, by:

20 (1) death;
21 (2) retirement; or
22 (3) termination of employment in all positions
23 included in the coverage of the retirement system.

24 (c) The benefits of a product purchased under the defined
25 contribution plan become available under the terms of the annuity
26 but not before the earlier of the date the member:

27 (1) terminates participation as provided by

1 Subsection (b); or

2 (2) attains the age of 70-1/2 years.

3 Sec. 856.007. CREDITABLE SERVICE. A person may not
4 establish in the retirement system credit for service performed
5 during a period the person was participating in the defined
6 contribution plan.

7 Sec. 856.008. INVESTMENT ADVISORY FEES. (a) A participant
8 in the defined contribution plan may authorize the payment of
9 investment advisory fees from the amount in the participant's
10 custodial account or product if:

11 (1) the investment advisory fees for each fiscal year
12 do not exceed two percent of the annual value of the participant's
13 custodial account or product as of the last day of that fiscal year;

14 (2) the fees are paid directly to a registered
15 investment advisor that provides investment advice to the
16 participant;

17 (3) the investment advisor to whom the fees are paid is
18 registered with the Securities and Exchange Commission under the
19 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.)
20 and is engaged full-time in the business of providing investment
21 advice;

22 (4) the participant and the investment advisor enter
23 into a contract, for a term of not more than one year, for services
24 that provides for the payment of fees as provided by this section;
25 and

26 (5) the retirement system has received an official
27 determination from the Internal Revenue Service that payment of

1 investment advisory fees as prescribed by this section is not a
2 distribution of funds that is prohibited or subject to taxation and
3 penalty under the Internal Revenue Code.

4 (b) The executive director of the retirement system shall
5 request an official determination from the Internal Revenue Service
6 concerning whether the payment of investment advisory fees as
7 prescribed by this section is a distribution of funds that is
8 prohibited or subject to taxation and penalty under the Internal
9 Revenue Code. If the executive director receives an official
10 determination from the Internal Revenue Service as specified by
11 this subsection, the executive director shall file the official
12 determination with the secretary of state's office for publication
13 in the Texas Register.

14 Sec. 856.009. CONTRIBUTIONS. (a) A participant in the
15 defined contribution plan shall make contributions to the plan at
16 the same rate that a member of the retirement system is required to
17 make for current service, and the state shall make contributions to
18 the plan for each participant at the same rate as is made for
19 contributing members of the retirement system. Contributions
20 required under this subsection shall be credited to the benefit of
21 the participant.

22 (b) A participant in the defined contribution plan and the
23 participant's employer shall execute an agreement under which the
24 salary of the participant is reduced by the amount of the
25 contribution required by this section. An agreement under this
26 subsection is irrevocable until the participant terminates
27 participation in the plan under Section 856.006.

1 (c) Participant contributions shall be made in the manner
2 provided by Subchapter E, Chapter 855, for member contributions to
3 the retirement system.

4 Sec. 856.010. EXCESS BENEFIT ARRANGEMENT. The retirement
5 system may establish a governmental excess benefit arrangement as
6 provided by Section 415(m), Internal Revenue Code of 1986, for the
7 purpose of providing to participants in the defined contribution
8 plan any portion of a participant's benefits that would otherwise
9 be payable under the terms of the plan except for the limitation on
10 benefits imposed by Section 415, Internal Revenue Code of 1986.

11 Sec. 856.011. HEALTH BENEFITS AND OTHER COVERAGES. A
12 person who participates or who is eligible to participate in the
13 defined contribution plan established under this chapter is
14 eligible for health benefits and other coverages in accordance with
15 the rules or regulations of the participant's municipality.

16 Sec. 856.012. RULES. The retirement system may adopt rules
17 necessary to implement this chapter.

18 ARTICLE 2. CONFORMING AMENDMENTS

19 SECTION 2.01. Effective September 1, 2012, Section
20 91.003(b), Agriculture Code, is amended to read as follows:

21 (b) An individual appointed as an inspector or to work in
22 another capacity with an inspection service under Subsection (a) of
23 this section is performing work for the state under the supervision
24 of the department and shall participate in the defined contribution
25 plan established under Chapter 816 ~~[is a member of the employee~~
26 ~~class of the Employees Retirement System of Texas under Section~~
27 ~~812.003]~~, Government Code.

SECTION 2.02. Effective September 1, 2012, Section 12.012(b), Education Code, is amended to read as follows:

(b) An employee of a home-rule school district who qualifies for participation in the defined contribution plan administered by ~~[membership in]~~ the Teacher Retirement System of Texas shall be covered under the system in the same manner and to the same extent as a qualified employee employed by an independent school district is covered.

SECTION 2.03. Effective September 1, 2012, Section 12.057(b), Education Code, is amended to read as follows:

(b) An employee of an independent school district who is employed on a campus or program granted a charter under this subchapter and who qualifies for participation in the defined contribution plan administered by ~~[membership in]~~ the Teacher Retirement System of Texas shall be covered under the system in the same manner and to the same extent as a qualified employee of the independent school district who is employed on a regularly operating campus or in a regularly operating program.

SECTION 2.04. Effective September 1, 2012, Section 12.1057(a), Education Code, is amended to read as follows:

(a) An employee of an open-enrollment charter school operating under a charter granted by the State Board of Education who qualifies for participation in the defined contribution plan administered by ~~[membership in]~~ the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

SECTION 2.05. Effective September 1, 2012, Section

19.009(e), Education Code, is amended to read as follows:

(e) Each employee of the district who qualifies for participation in the defined contribution plan administered by ~~membership in~~ the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of any other district is covered.

SECTION 2.06. Section 21.0452(b), Education Code, is amended to read as follows:

(b) The board shall make available at least the following information regarding each educator preparation program:

(1) the information specified in Sections 21.045(a) and (b);

(2) in addition to any other appropriate information indicating the quality of persons admitted to the program, the average academic qualifications possessed by persons admitted to the program, including:

(A) average overall grade point average and average grade point average in specific subject areas; and

(B) average scores on the Scholastic Assessment Test (SAT), the American College Test (ACT), or the Graduate Record Examination (GRE), as applicable;

(3) the degree to which persons who complete the program are successful in obtaining teaching positions;

(4) the extent to which the program prepares teachers, including general education teachers and special education teachers, to effectively teach:

(A) students with disabilities; and

(B) students of limited English proficiency, as defined by Section 29.052;

(5) the activities offered by the program that are designed to prepare teachers to:

(A) integrate technology effectively into curricula and instruction, including activities consistent with the principles of universal design for learning; and

(B) use technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of increasing student academic achievement;

(6) the perseverance of beginning teachers in the profession, as determined on the basis of the number of beginning teachers who maintain status as active contributing participants ~~[members]~~ in the Teacher Retirement System of Texas for at least three years after certification in comparison to similar programs;

(7) the results of exit surveys given to program participants on completion of the program that involve evaluation of the program's effectiveness in preparing participants to succeed in the classroom; and

(8) the results of surveys given to school principals that involve evaluation of the program's effectiveness in preparing participants to succeed in the classroom, based on experience with employed program participants.

SECTION 2.07. Effective September 1, 2012, Section 21.452(c), Education Code, is amended to read as follows:

(c) An employee on developmental leave continues to be a participant in ~~[member of]~~ the Teacher Retirement System of Texas

1 and is entitled to participate in programs, hold memberships, and
2 receive benefits afforded by employment in the school district.

3 SECTION 2.08. Sections 51.107(a) and (b), Education Code,
4 are amended to read as follows:

5 (a) A faculty member on faculty development leave shall
6 continue to be a member of the Teacher Retirement System of Texas or
7 a participant in the defined contribution plan established under
8 Chapter 826, Government Code, or ~~[of]~~ the Optional Retirement
9 Program of the institution of higher education, or to be a member of
10 or participant in more than one program ~~[both]~~, just as any other
11 member of the faculty on full-time duty.

12 (b) The institution of higher education shall cause to be
13 deducted from the compensation paid to a member of the faculty on
14 faculty development leave the deposit and ~~[membership]~~ dues
15 required to be paid by him to the Teacher Retirement System of Texas
16 or to the Optional Retirement Program, or both, the contribution
17 for Old Age and Survivors Insurance, and any other amounts required
18 or authorized to be deducted from the compensation paid any faculty
19 member.

20 SECTION 2.09. Effective September 1, 2012, Section
21 51.926(b), Education Code, is amended to read as follows:

22 (b) A person who participates in a qualified football
23 coaches plan may also participate in another retirement plan ~~[or be~~
24 ~~a member of a retirement system]~~ established by law for employees of
25 institutions of higher education.

26 SECTION 2.10. Section 606.061(4), Government Code, is
27 amended to read as follows:

(4) "State employee" includes an elected or appointed state officer but does not include an individual who:

(A) is compensated by fees; or

(B) is in a position eligible for membership in the Teacher Retirement System of Texas or participation in the defined contribution plan administered by that system under Chapter 826 unless the person is employed by a state department, agency, or institution.

SECTION 2.11. The heading to Subchapter D, Chapter 661, Government Code, is amended to read as follows:

SUBCHAPTER D. PAYMENTS FOR VACATION TIME TO CONTRIBUTING PARTICIPANTS IN ~~[MEMBERS OF]~~ EMPLOYEES RETIREMENT SYSTEM WHO RETIRE

SECTION 2.12. Section 661.091(a), Government Code, is amended to read as follows:

(a) A contributing member of the Employees Retirement System of Texas or participant in the defined contribution plan administered by that system under Chapter 816 who retires is entitled to be paid in a lump sum, from funds of the agency or department from which the member retires, for the member's accrued vacation time as of the date of retirement.

SECTION 2.13. Section 2252.901(d)(2), Government Code, is amended to read as follows:

(2) "Retired agency employee" means a person:

(A) whose last state service before retirement was for the state agency with which the retiree contracts to perform services; and

(B) who is a retiree ~~[of]~~:

(i) of the employee class of membership of the Employees Retirement System of Texas; ~~[or]~~

(ii) of the Teacher Retirement System of Texas, the majority of whose service was credited in that system in a position with a state agency;

(iii) receiving benefits under the defined contribution plan administered by the Employees Retirement System of Texas under Chapter 816; or

(iv) receiving benefits under the defined contribution plan administered by the Teacher Retirement System of Texas under Chapter 826.

SECTION 2.14. Section 62.1015(b), Health and Safety Code, is amended to read as follows:

(b) A child of an employee of a charter school, school district, other educational district whose employees are members of the Teacher Retirement System of Texas or participants in the defined contribution plan administered by that system under Chapter 826, Government Code, or regional education service center may be enrolled in health benefits coverage under the child health plan. A child enrolled in the child health plan under this section:

(1) participates in the same manner as any other child enrolled in the child health plan; and

(2) is subject to the same requirements and restrictions relating to income eligibility, continuous coverage, and enrollment, including applicable waiting periods, as any other child enrolled in the child health plan.

SECTION 2.15. The heading to Section 132.007, Natural

1 Resources Code, is amended to read as follows:

2 Sec. 132.007. PARTICIPATION [~~MEMBERSHIP~~] IN EMPLOYEES
3 RETIREMENT SYSTEM.

4 SECTION 2.16. Section 17, Self-Directed Semi-Independent
5 Agency Project Act (Article 8930, Revised Statutes), is amended to
6 read as follows:

7 Sec. 17. PARTICIPATION [~~MEMBERSHIP~~] IN EMPLOYEE RETIREMENT
8 SYSTEM. Employees of the project agencies are members of the
9 Employees Retirement System of Texas under Chapter 812, Government
10 Code, or participants in the defined contribution plan administered
11 by that system under Chapter 816, Government Code, as applicable,
12 and transition to independent status shall have no effect on their
13 membership or participation.

14 ARTICLE 3. REPEAL AND TRANSITION PROVISIONS; EFFECTIVE DATE

15 SECTION 3.01. Effective September 1, 2012, Sections
16 812.003(c), (d), (e), and (f), Government Code, are repealed.

17 SECTION 3.02. The Employees Retirement System of Texas
18 shall offer participation in the defined contribution plan
19 described by Chapter 816, Government Code, as added by this Act,
20 beginning September 1, 2012.

21 SECTION 3.03. The Teacher Retirement System of Texas shall
22 offer participation in the defined contribution plan described by
23 Chapter 826, Government Code, as added by this Act, beginning
24 September 1, 2012.

25 SECTION 3.04. The Texas County and District Retirement
26 System shall offer participation in the defined contribution plan
27 described by Chapter 846, Government Code, as added by this Act,

1 beginning September 1, 2012.

2 SECTION 3.05. The Texas Municipal Retirement System shall
3 offer participation in the defined contribution plan described by
4 Chapter 856, Government Code, as added by this Act, beginning
5 September 1, 2012.

6 SECTION 3.06. The changes in law made by this Act requiring
7 a person to participate in a defined contribution plan established
8 under Chapter 816, 826, 846, or 856, Government Code, as added by
9 this Act, do not apply to a person elected, appointed, or hired to
10 the position requiring participation in the plan before the
11 effective date of this Act.

12 SECTION 3.07. This Act takes effect September 1, 2011.