

By: Truitt

H.B. No. 2731

A BILL TO BE ENTITLED

AN ACT

relating to contributions to, benefits from, and administration of certain public retirement systems; providing penalties.

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

SECTION 1. Subchapter C, Chapter 801, Government Code, is amended by adding Section 801.208 to read as follows:

Sec. 801.208. INVESTIGATION OF CERTAIN COMPLAINTS; ASSISTANCE OF ATTORNEY GENERAL. (a) The board shall adopt rules and procedures for receiving and investigating a complaint against a person who provides management or investment services to a public retirement system for a complaint alleging that the person:

(1) violated or may have violated Sections 802.004 through 802.007 or a conflict of interest provision applicable under other law; or

(2) has been or may have been involved in criminal conduct relating to the services provided by the person to the system.

(b) The board or the attorney general may initiate an investigation under this section if the board or the attorney general, as applicable, determines an investigation is appropriate.

(c) The attorney general may subpoena witnesses or books, records, or other documents relevant to an investigation under this section.

1 (d) The board may enter into a memorandum of understanding
2 with the attorney general to assist in an investigation under this
3 section. The memorandum must specify the type, scope, and format of
4 the investigative assistance provided by the attorney general.

5 (e) If, as a result of an investigation, the board or the
6 attorney general determines that a criminal offense may have been
7 committed, the board or the attorney general, as applicable, shall
8 refer the case to the appropriate law enforcement agency for
9 prosecution.

10 SECTION 2. Subchapter A, Chapter 802, Government Code, is
11 amended by adding Sections 802.004 through 802.008 to read as
12 follows:

13 Sec. 802.004. DISCLOSURE OF CERTAIN POTENTIAL CONFLICTS OF
14 INTEREST REQUIRED; ANNUAL FILING. (a) This section applies to:

15 (1) a member of the governing body of a public
16 retirement system;

17 (2) an investment manager for a public retirement
18 system appointed by contract under Section 802.204; and

19 (3) any other person, including an investment
20 consultant or advisor, providing services under contract to a
21 public retirement system relating to the management and investment
22 of the system's assets.

23 (b) A person to whom this section applies shall immediately
24 disclose in writing to the public retirement system whether the
25 person or an immediate family member of the person, including the
26 person's spouse, has a business, commercial, or other relationship
27 that a reasonable person would find likely to diminish the person's

1 independence of judgment in the performance of the person's
2 responsibilities with respect to the management or investment of
3 the system's assets, including a relationship in which the person
4 or the person's immediate family member:

5 (1) is employed by or participates in the management
6 of a business entity or other organization receiving funds from the
7 retirement system; or

8 (2) owns or controls, directly or indirectly, an
9 interest in a business entity or other organization receiving funds
10 from the retirement system.

11 (c) If a person described by Subsection (a)(1) fails to
12 disclose a relationship under Subsection (b), it is a ground for
13 removal from the governing body of the public retirement system on
14 which the person serves.

15 (d) If a person described by Subsection (a)(2) or (3) fails
16 to disclose a relationship under Subsection (b):

17 (1) the contract is voidable by the public retirement
18 system; and

19 (2) the governing body of the retirement system may
20 enter an order declaring the person ineligible to contract for
21 business relating to the management or investment of the system's
22 assets.

23 (e) At least annually on a date specified by the public
24 retirement system, a person to whom this section applies shall file
25 a statement with the system stating that the person is aware that
26 the person is required to disclose material conflicts of interest
27 under this section and that the person is in compliance with this

1 section.

2 Sec. 802.005. PROHIBITION AGAINST ACCEPTANCE OF GIFTS AND
3 OTHER THINGS OF VALUE. A person who is a member of the governing
4 body of a public retirement system may not accept a gift, service,
5 or other thing of value, including food, entertainment, and a
6 promised future benefit, from another person doing business with or
7 seeking to do business with the system.

8 Sec. 802.006. PROHIBITED EMPLOYMENT AND CONTRACTS. A
9 public retirement system may not directly or indirectly employ or
10 contract with a former member of the governing body of the system
11 before the second anniversary of the date the individual ceased to
12 be a member of the system's governing body.

13 Sec. 802.007. CIVIL PENALTY. (a) A person who commits a
14 breach of the person's fiduciary duty, fraud, theft, embezzlement,
15 fraudulent conversion, unlawful appropriation, or misapplication
16 of property in relation to a service provided by the person to a
17 public retirement system is liable to this state for a civil penalty
18 in an amount not to exceed \$250,000 for each violation.

19 (b) The attorney general may bring an action to recover the
20 civil penalty imposed under this section.

21 (c) The penalty under this section is in addition to any
22 other remedy provided by law.

23 Sec. 802.008. COMPUTATION OF RETIREMENT BENEFITS.
24 Notwithstanding any other law, if the retirement benefit of a
25 member of a public retirement system is based on the amount of
26 compensation received by the member during a specific period of
27 service, in computing the amount of the member's retirement

1 benefit, the compensation amount with respect to that specific
2 period of service may not exceed 125 percent of the amount of the
3 member's compensation for the same period occurring five years
4 earlier.

5 SECTION 3. Section 802.101(a), Government Code, is amended
6 to read as follows:

7 (a) The governing body of a public retirement system shall
8 employ an actuary, as a full-time or part-time employee or as a
9 consultant, to make a valuation at least once every three years of
10 the assets and liabilities of the system on the basis of assumptions
11 and methods:

12 (1) that are reasonable in the aggregate, considering
13 the experience of the program and reasonable expectations, and
14 that, in combination, offer the actuary's best estimate of
15 anticipated experience under the program; and

16 (2) prescribed by the United States secretary of the
17 treasury based on a corporate bond yield curve as the funding yield
18 curve third segment rate applicable to the month in which the
19 valuation is made.

20 SECTION 4. Section 802.1012(b), Government Code, is amended
21 to read as follows:

22 (b) Except as provided by Subsection (k), this section
23 applies only to a public retirement system with total assets the
24 book value of which, as of the last day of the preceding fiscal
25 year, is at least \$10 [~~\$100~~] million.

26 SECTION 5. Subchapter B, Chapter 802, Government Code, is
27 amended by adding Section 802.1013 to read as follows:

1 Sec. 802.1013. REQUIREMENT FOR CHANGE IN CONTRIBUTION RATES
2 AND BENEFIT INCREASES. (a) Notwithstanding any other law, a public
3 retirement system that is subject to Section 802.101 may not reduce
4 the rate of member or employer contributions to the system, provide
5 a cost-of-living adjustment, or otherwise increase retiree
6 benefits, unless:

7 (1) a valuation is conducted in accordance with
8 Section 802.101(a)(2) that takes into account the proposed action;
9 and

10 (2) the results of the valuation indicate that the
11 retirement system is at least 80 percent actuarially funded.

12 (b) For purposes of performing the valuation under
13 Subsection (a) to provide a cost-of-living adjustment, a public
14 retirement system must assume the cost-of-living adjustment is
15 recurring.

16 SECTION 6. Section 802.103, Government Code, is amended by
17 adding Subsections (b-1) and (d) to read as follows:

18 (b-1) If the governing body of a public retirement system
19 fails to file the annual financial report with the board within the
20 time prescribed by Subsection (b), the board may impose an
21 administrative penalty in the amount of \$50 against each member of
22 the governing body and the executive director or other person
23 appointed or otherwise selected by the board of trustees to manage
24 or administer the system.

25 (d) The governing body of a public retirement system shall
26 require that all records, including the work papers involved in the
27 preparation of the annual financial report required under this

1 section, be:

2 (1) retained for at least six years after the date the
3 report is filed with the board; and

4 (2) made available to the board on request.

5 SECTION 7. Subchapter C, Chapter 802, Government Code, is
6 amended by adding Sections 802.2041 and 802.2042 to read as
7 follows:

8 Sec. 802.2041. PROCUREMENT OF INVESTMENT MANAGERS AND
9 CERTAIN OTHERS. (a) The board shall by rule adopt guidelines and
10 procedures for the procurement of investment managers and other
11 persons, including an investment consultant or advisor, who provide
12 a public retirement system with services relating to the management
13 and investment of the system's assets.

14 (b) The board may require a public retirement system to
15 provide the board with a statement, not later than the 30th day
16 after the date of the procurement, detailing the system's method of
17 selecting any person described by Subsection (a).

18 Sec. 802.2042. CONTRACTS WITH INVESTMENT MANAGERS AND
19 CERTAIN OTHERS. (a) A contract with an investment manager or other
20 person to provide services to a public retirement system relating
21 to the management and investment of the system's assets is subject
22 to review by the board regarding the fees charged and paid by the
23 system and the services rendered to the system in consideration for
24 the fees.

25 (b) If, in performing a review under this section, the board
26 requests information from an investment manager or other person,
27 the investment manager or other person, as appropriate, shall

1 immediately submit a written response to the board's request.

2 SECTION 8. Section 802.008, Government Code, as added by
3 this Act, applies only to the computation of retirement benefits
4 for a member of a public retirement system who retires on or after
5 the effective date of this Act. The computation of retirement
6 benefits for a member of a public retirement system who retires
7 before the effective date of this Act is subject to the law in
8 effect on the date of the retirement, and that law is continued in
9 effect for that purpose.

10 SECTION 9. This Act takes effect September 1, 2011.