

By: Watson, et al.
(Flynn)

S.B. No. 301

A BILL TO BE ENTITLED

AN ACT

relating to the operations and functions of the Employees Retirement System of Texas and the sunset review date for, financial management of, and programs administered by the agency.

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

SECTION 1. Section 815.005, Government Code, is amended to read as follows:

Sec. 815.005. SUNSET PROVISION. The board of trustees of the Employees Retirement System of Texas is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. The board shall be reviewed during the period in which state agencies abolished in 2029 [~~2017~~], and every 12th year after that year, are reviewed.

SECTION 2. Subchapter A, Chapter 815, Government Code, is amended by adding Section 815.009 to read as follows:

Sec. 815.009. BOARD MEMBER TRAINING. (a) A person who is appointed to and qualifies for office as a member of the board of trustees may not vote, deliberate, or be counted as a member in attendance at a meeting of the board of trustees until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) the law governing the retirement system's operations;

1 (2) the programs, functions, rules, and budget of the
2 retirement system;

3 (3) the scope of and limitations on the rulemaking
4 authority of the board of trustees;

5 (4) the results of the most recent formal audit of the
6 retirement system;

7 (5) the requirements of:

8 (A) laws relating to open meetings, public
9 information, administrative procedure, and disclosing conflicts of
10 interest; and

11 (B) other laws applicable to members of the board
12 of trustees in performing their duties; and

13 (6) any applicable ethics policies adopted by the
14 retirement system or the Texas Ethics Commission.

15 (c) A person appointed to the board of trustees is entitled
16 to reimbursement, as provided by the General Appropriations Act,
17 for the travel expenses incurred in attending the training program
18 regardless of whether the attendance at the program occurs before
19 or after the person qualifies for office.

20 (d) The executive director shall create a training manual
21 that includes the information required by Subsection (b). The
22 executive director shall distribute a copy of the training manual
23 annually to each member of the board of trustees. On receipt of the
24 training manual, each member of the board of trustees shall sign and
25 submit to the executive director a statement acknowledging receipt
26 of the training manual.

27 SECTION 3. Subchapter B, Chapter 815, Government Code, is

1 amended by adding Section 815.1025 to read as follows:

2 Sec. 815.1025. USE OF ALTERNATIVE RULEMAKING AND DISPUTE
3 RESOLUTION. (a) The board of trustees shall develop a policy to
4 encourage the use of:

5 (1) negotiated rulemaking procedures under Chapter
6 2008 for the adoption of the retirement system's rules; and

7 (2) appropriate alternative dispute resolution
8 procedures under Chapter 2009 to assist in the resolution of
9 internal and external disputes under the retirement system's
10 jurisdiction.

11 (b) The retirement system's procedures relating to
12 alternative dispute resolution must conform, to the extent
13 possible, to any model guidelines issued by the State Office of
14 Administrative Hearings for the use of alternative dispute
15 resolution by state agencies.

16 (c) The retirement system shall:

17 (1) coordinate the implementation of the policy
18 adopted under Subsection (a);

19 (2) provide training as needed to implement the
20 procedures for negotiated rulemaking or alternative dispute
21 resolution; and

22 (3) collect data concerning the effectiveness of those
23 procedures.

24 (d) The board of trustees shall ensure that the
25 implementation of this section and the negotiated rulemaking
26 procedures and alternative dispute resolution procedures adopted
27 under this section are consistent with the fiduciary responsibility

1 imposed on the board by law.

2 SECTION 4. Section 815.105, Government Code, is amended to
3 read as follows:

4 Sec. 815.105. ADOPTING TABLES. At least once every four
5 years, the [The] board of trustees shall adopt mortality, service,
6 and other tables the board considers necessary for the retirement
7 system after considering the results of the actuary's investigation
8 of the mortality, service, and compensation experience of the
9 system's members and beneficiaries under Section 815.206.

10 SECTION 5. Section 815.202(f), Government Code, is amended
11 to read as follows:

12 (f) Subject to Section 815.3016, the [The] board of trustees
13 may specifically delegate any right, power, or duty imposed or
14 conferred on the executive director by law to another employee of
15 the retirement system. If not so specifically delegated and
16 subject to Section 815.3016, the executive director may delegate to
17 another employee of the retirement system any right, power, or duty
18 assigned to the executive director.

19 SECTION 6. Section 815.206(c), Government Code, is amended
20 to read as follows:

21 (c) At least once every four [~~five~~] years, the actuary,
22 under the direction of the board of trustees, shall:

23 (1) make an actuarial investigation of the mortality,
24 service, and compensation experience of the members and
25 beneficiaries of the retirement system; and

26 (2) make a valuation of the assets and liabilities of
27 the retirement system's funds.

1 SECTION 7. Sections 815.301(b) and (c), Government Code,
2 are amended to read as follows:

3 (b) Except as provided by Section 815.3016, the [The] board
4 of trustees may delegate its authority under Subsection (a) to the
5 executive director. Subject to Section 815.3016, the [The] board
6 of trustees or the executive director may, under the standard of
7 care provided by Section 815.307, invest and reinvest any of the
8 retirement system's assets and may commingle assets of the trust
9 fund and the law enforcement and custodial officer supplemental
10 retirement fund with the assets of the Judicial Retirement System
11 of Texas Plan Two for investment purposes, as long as proportionate
12 ownership records are maintained and credited. Investments may
13 include home office facilities, including land, equipment, and
14 office building, used in administering the retirement system.

15 (c) Subject to Section 815.3016, the [The] board of trustees
16 may contract with private professional investment managers to
17 assist the board in investing the assets of the retirement system.

18 SECTION 8. Subchapter D, Chapter 815, Government Code, is
19 amended by adding Sections 815.3015 and 815.3016 to read as
20 follows:

21 Sec. 815.3015. TRACKING AND REPORTING OF PROFIT SHARE.

22 (a) In this section:

23 (1) "Alternative investment" means an investment in a
24 private equity fund, private real estate fund, hedge fund,
25 infrastructure fund, or another asset as further defined by rule of
26 the board of trustees.

27 (2) "Profit share" means an amount received by a

1 private professional investment manager either in consideration
2 for achieving certain investment returns or as part of the
3 negotiated division of investment returns between the private
4 professional investment manager and an investor. The term includes
5 a performance fee, incentive fee, and carried interest.

6 (b) The board of trustees shall develop a consistent method,
7 guided by best industry practices and standards, to collect or
8 calculate profit share data in connection with alternative
9 investments of the retirement system.

10 (c) The board of trustees shall consistently track profit
11 share data collected or calculated in accordance with Subsection
12 (b) and the amount of realized gains for the retirement system from
13 the associated alternative investments.

14 (d) The board of trustees shall report, at a minimum, the
15 aggregate amount of profit shares received by private professional
16 investment managers in connection with alternative investments of
17 the retirement system, categorized by asset class, in the annual
18 financial report required under Section 2101.011 and in other
19 appropriate investment reports and board presentations.

20 (e) The board of trustees may adopt rules necessary to
21 implement this section.

22 Sec. 815.3016. APPROVAL OF CERTAIN ALTERNATIVE
23 INVESTMENTS. (a) In this section, "alternative investment" has
24 the meaning assigned by Section 815.3015.

25 (b) The executive director, a private professional
26 investment manager, or any other person delegated authority to
27 invest or reinvest retirement system assets under Section

1 815.202(f) or 815.301 may not invest retirement system assets in a
2 single alternative investment that exceeds two percent of the total
3 market value of alternative investments as reported in the most
4 recent annual financial report required under Section 2101.011
5 unless the board of trustees votes to approve the investment.

6 (c) The board of trustees may hold a closed meeting by
7 telephone conference call or video conference call to consider and
8 discuss an alternative investment or a potential alternative
9 investment under this section, regardless of whether a quorum is
10 physically present at one location of the meeting.

11 (d) Chapter 551 does not require the board of trustees to
12 confer with one or more employees, consultants, or legal counsel of
13 the retirement system or with a third party in an open meeting if
14 the only purpose of the conference is to receive information from or
15 question the employees, consultants, or legal counsel of the
16 retirement system or the third party relating to an alternative
17 investment or a potential alternative investment under this
18 section.

19 (e) During a closed meeting held under this section, members
20 of the board of trustees may not deliberate public business or
21 agency policy that affects public business.

22 (f) A final action, decision, or vote on a matter considered
23 or discussed in a closed meeting held under this section may only be
24 made in an open meeting that is held in compliance with the notice
25 provisions of Chapter 551.

26 (g) The board of trustees may adopt rules necessary to
27 implement this section.

1 SECTION 9. Section 840.005, Government Code, is amended to
2 read as follows:

3 Sec. 840.005. ADOPTING TABLES AND RATES. At least once
4 every four years, the [~~The~~] board of trustees by rule shall adopt
5 interest rates and mortality, service, and other tables the board
6 considers necessary for the retirement system after considering the
7 results of the actuary's investigation of the mortality, service,
8 and compensation experience of the system's members and
9 beneficiaries under Section 815.206.

10 SECTION 10. Section 1551.061, Insurance Code, is amended to
11 read as follows:

12 Sec. 1551.061. ANNUAL REPORT. The board of trustees shall
13 submit a written report not later than February [~~January~~] 1 of each
14 year to the governor, lieutenant governor, speaker of the house of
15 representatives, and Legislative Budget Board concerning the
16 coverages provided and the benefits and services being received by
17 all participants under this chapter. The report must include:

18 (1) information about the effectiveness and
19 efficiency of:

20 (A) [~~(1)~~] managed care cost containment
21 practices; and

22 (B) [~~(2)~~] fraud detection and prevention
23 procedures;

24 (2) basic information about each group coverage plan
25 provided under this chapter, including the number of participants
26 in each plan and the claims amounts and administrative expenses
27 incurred under each plan;

1 (3) a summary of recent changes to the benefits
2 provided under this chapter that highlights any key benefits the
3 board of trustees evaluated but did not implement;

4 (4) a discussion of trends in claims under group
5 coverage plans as well as other areas of interest identified by the
6 board of trustees;

7 (5) recommendations for any statutory changes the
8 board of trustees determines necessary to achieve its goals for the
9 group benefits program; and

10 (6) any other information the board of trustees
11 determines appropriate.

12 SECTION 11. Section [1551.355](#), Insurance Code, is amended by
13 adding Subsection (d) to read as follows:

14 (d) The board of trustees shall develop and implement a
15 process to allow an employee, participant, annuitant, or covered
16 dependent affected by a determination described by Section [1551.352](#)
17 to participate directly in the process of appealing the
18 determination.

19 SECTION 12. Subchapter H, Chapter [1551](#), Insurance Code, is
20 amended by adding Section 1551.363 to read as follows:

21 Sec. 1551.363. PRECEDENT MANUAL. (a) The board of
22 trustees shall develop and maintain a precedent manual relating to
23 the enrollment and claims determinations under Section [1551.352](#) and
24 appeals of those determinations. The precedent manual:

25 (1) must be composed of precedent-establishing
26 determinations made by the board, executive director, or other
27 staff, initially and on appeal, and include examples of previous

1 determinations that are consistent with the identified precedent;
2 and

3 (2) may include other information identified by the
4 board.

5 (b) The board of trustees shall make the precedent manual
6 available to appropriate staff and to employees, participants,
7 annuitants, and covered dependents.

8 (c) The board of trustees and staff involved in the claims
9 appeal process are not bound by a decision in the manual.

10 SECTION 13. Notwithstanding Section 815.009(a), Government
11 Code, as added by this Act, a member of the board of trustees of the
12 Employees Retirement System of Texas who has not completed the
13 training required by Section 815.009, Government Code, as added by
14 this Act, may vote, deliberate, and be counted as a member in
15 attendance at a meeting of the board of trustees until December 31,
16 2017.

17 SECTION 14. The board of trustees of the Employees
18 Retirement System of Texas, and the actuary designated by the
19 board, are not required to complete an actuarial investigation in
20 the period prescribed by Section 815.206(c), Government Code, as
21 amended by this Act, or adopt interest rates or mortality, service,
22 or other tables based on that investigation in the period
23 prescribed by Sections 815.105 and 840.005, Government Code, as
24 amended by this Act, until the later of December 31, 2022, or the
25 fourth anniversary of the date the board of trustees adopts
26 actuarial assumptions and tables under those sections for the first
27 time after the effective date of this Act.

1 SECTION 15. The Employees Retirement System of Texas shall,
2 in a contract between the retirement system and a private
3 professional investment manager or other person under authority of
4 Sections 815.202(f) and 815.301, Government Code, as amended by
5 this Act, that is entered into or renewed on or after the effective
6 date of this Act, require that the private professional investment
7 manager or other person comply with Section 815.3016, Government
8 Code, as added by this Act.

9 SECTION 16. Notwithstanding Section 815.3015, Government
10 Code, as added by this Act, the board of trustees of the Employees
11 Retirement System of Texas is not required to include in a report
12 the aggregate amount of profit share data collected or calculated
13 under that section until the first annual financial report by the
14 board of trustees issued after September 1, 2018.

15 SECTION 17. This Act takes effect September 1, 2017.