By: Flynn H.B. No. 2459

Substitute the following for H.B. No. 2459:

By: Paul C.S.H.B. No. 2459

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;

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

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

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

(5) the requirements of:

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

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

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

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

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

SECTION 3. Subchapter B, Chapter 815, Government Code, is amended by adding Section 815.1025 to read as follows:

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

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

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

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

(c) The retirement system shall:

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

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

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

(d) The board of trustees shall ensure that the implementation of this section and the negotiated rulemaking procedures and alternative dispute resolution procedures adopted under this section are consistent with the fiduciary responsibility imposed on the board by law.

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 815.3015. TRACKING AND REPORTING OF PROFIT SHARE. (a) In this section:

(1) "Alternative investment" means an investment in an asset other than a traditional asset. The term includes an investment in a private equity fund, private real estate fund, hedge fund, or infrastructure fund.

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

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

(3) "Traditional asset" means an investment in public equity, public fixed income, public real estate, cash, or cash equivalents or an investment that references any of the preceding assets.

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

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

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

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

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

(b) The executive director, a private professional investment manager, or any other person delegated authority to invest or reinvest retirement system assets under Section 815.202(f) or 815.301 may not invest retirement system assets in a single alternative investment that exceeds one percent of the total market value of the trust fund established by Section 815.310 as reported in the most recent annual financial report required under Section 2101.011 unless the board of trustees votes to approve the investment.

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

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

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

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

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

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

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

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

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

(1) information about the effectiveness and efficiency of:

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

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

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

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

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

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

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

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

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

SECTION 12. Subchapter H, Chapter 1551, Insurance Code, is amended by adding Section 1551.363 to read as follows:

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

(1) must be composed of precedent-establishing determinations made by the board, executive director, or other staff, initially and on appeal, and include examples of previous determinations that are consistent with the identified precedent; and

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

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

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

SECTION 13. Section 814.604, Government Code, is repealed.

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

SECTION 15. The board of trustees of the Employees Retirement System of Texas, and the actuary designated by the board, are not required to complete an actuarial investigation in the period prescribed by Section 815.206(c), Government Code, as amended by this Act, or adopt interest rates or mortality, service, or other tables based on that investigation in the period prescribed by Sections 815.105 and 840.005, Government Code, as amended by this Act, until the later of December 31, 2022, or the fourth anniversary of the date the board of trustees adopts actuarial assumptions and tables under those sections for the first time after the effective date of this Act.

SECTION 16. The Employees Retirement System of Texas shall, in a contract between the retirement system and a private professional investment manager or other person under authority of Sections 815.202(f) and 815.301, Government Code, as amended by this Act, that is entered into or renewed on or after the effective date of this Act, require that the private professional investment manager or other person comply with Section 815.3016, Government Code, as added by this Act.

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