

BILL ANALYSIS

Senate Research Center
83R29220 SGA-D

H.B. 3357
By: Callegari; Murphy (Duncan)
State Affairs
5/15/2013
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Teacher Retirement System of Texas (TRS) delivers retirement and related benefits as authorized by law for TRS members and their beneficiaries. Interested parties contend that to comply with fiduciary standards, funds held in the TRS trust must be used exclusively for the benefit of members. These parties assert that technical and clarifying changes need to be made to the current laws regulating TRS so that TRS can provide for the efficient delivery of benefits.

H.B. 3357 amends current law relating to the administration of and benefits payable by the Teacher Retirement System of Texas.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the board of trustees of the Teacher Retirement System of Texas is rescinded in SECTION 22 (Section 825.212, Government Code) of this bill.

Rulemaking authority is expressly granted to the Teacher Retirement System of Texas in SECTION 9 (Section 825.212, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 551.130(e) and (j), Government Code, as follows:

(e) Requires that the open portions of the telephone conference call meeting by the board of trustees of the Teacher Retirement System of Texas (board) (TRS) be audible to the public at the location where the quorum is present and be recorded, rather than tape-recorded, at that location. Makes a conforming change.

(j) Authorizes a person who is not a member of the board to speak at the meeting from a remote location by telephone conference call, rather than prohibits a person who is not a member of the board except as provided by Section 551.129 (Consultations Between Governmental Body and Its Attorney), from speaking at the meeting from a remote location by telephone conference call.

SECTION 2. Amends the heading to Section 824.1012, Government Code, to read as follows:

Sec. 824.1012. POST-RETIREMENT CHANGE IN RETIREMENT PAYMENT PLAN FOR CERTAIN RETIREMENT BENEFIT OPTIONS.

SECTION 3. Amends Sections 824.1012(a) and (b), Government Code, as follows:

(a) Authorizes a retiree who selected an optional service retirement annuity under Section 824.204(c)(1) (relating to authorizing an eligible member, after the retiree's death, to choose the option of a reduced annuity payable to and throughout the life of designated beneficiary), (c)(2) (relating to authorizing an eligible member, after the retiree's death, to choose the option of one-half of a reduced annuity payable to and throughout the life of designated beneficiary), or (c)(5) (relating to authorizing an eligible member, after the retiree's death, to choose the option of three-fourths of a reduced annuity payable to and throughout the life of designated beneficiary) or an optional

disability retirement annuity under Section 824.308(c)(1) (relating to authorizing a member to choose to make the reduced annuity payable throughout the life of a designated beneficiary after the disability retiree's death), (c)(2) (relating to authorizing a member to choose to make one-half of the reduced annuity payable throughout the life of a designated beneficiary after the disability retiree's death), or (c)(5) (relating to authorizing a member to choose to make three-fourths of the reduced annuity payable throughout the life of a designated beneficiary after the disability retiree's death) and who has received at least one payment under the plan to change the optional annuity selection made by the retiree to a standard service or disability retirement annuity as provided for by this section as an exception to Section 824.101(c) (relating to authorizing only one person to be named a beneficiary of an optional retirement annuity and prohibiting designating, changing, or revoking that beneficiary designation, except in certain circumstances, after the first annuity payment is made or the first payment becomes due). Requires the beneficiary, if the beneficiary is the spouse or former spouse of the retiree, to sign a notarized consent to the change, or requires a court in a divorce proceeding involving the retiree and a beneficiary to approve or order the change in the divorce decree or acceptance of a property settlement. Provides that the change in plan selection, rather than the revocation, takes effect when TRS receives it.

Deletes existing text authorizing a retiree who selected an optional service retirement annuity under Section 824.204(c)(1), (c)(2), or (c)(5) or an optional disability retirement annuity under Section 824.308(c)(1), (c)(2), or (c)(5) to revoke the designation of the beneficiary to receive the annuity on the death of the retiree, if a court in a divorce proceeding involving the retiree and beneficiary approves or orders the revocation in the divorce decree or acceptance of a property settlement or if the beneficiary is the spouse, a former spouse, or an adult child of the retiree and signs a notarized consent to the revocation.

(b) Provides that the change also cancels the designation of beneficiary with respect to the optional annuity benefit but does not cancel a designation with respect to any other benefit payable by TRS on the death of the retiree. Makes conforming changes.

SECTION 4. Amends Section 824.1013(b), Government Code, as follows:

(b) Provides that if the beneficiary designated at the time of the retiree's retirement is the spouse, rather than the spouse or the former spouse, of the retiree at the time of the designation:

- (1) Makes a conforming and a nonsubstantive change;
- (2) the former spouse who was designated beneficiary must give written, notarized consent to the change if the parties divorce after the designation; or
- (3) Redesignates existing Subdivision (2) as Subdivision (3) and makes no further change.

SECTION 5. Amends Sections 825.002(c), (e), and (e-1), Government Code, as follows:

(c) Requires the governor to appoint two members of the board from a slate of three members of TRS who are currently employed by a public school district, charter school, or regional education service center and who have been nominated in accordance with Subsection (f) (relating to requiring that persons considered for nomination under certain subsections to have been nominated at an election conducted under rules adopted by the board) by the members of TRS whose most recent credited service was performed for a public school district, charter school, or regional education service center.

(e) Requires the governor to appoint one member of the board from a slate of three persons who have been nominated in accordance with Subsection (f) by members of the retirement system whose most recent credited service was performed for a public school

district, charter school, or regional education service center, in addition to certain other groups affiliated with TRS.

(e-1) Authorizes a person to be nominated for an appointment to the board under Subsection (e) if the person is a member of TRS who is currently employed by a public school district, charter school, or regional education service center, in addition to certain other individuals affiliated with TRS.

SECTION 6. Amends Section 825.103, Government Code, by adding Subsection (h), to authorize the board to accept on behalf of TRS gifts of money, services, or other property from any public or private source.

SECTION 7. Amends Section 825.115, Government Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes the board or its audit committee to conduct a closed meeting in accordance with Subchapter E (Procedures Relating to Closed Meeting), Chapter 551, with TRS's internal or external auditors to discuss:

(1) governance, risk management or internal control weaknesses, known or suspected compliance violations or fraud, status of regulatory reviews or investigations, or identification of potential fraud risk areas and audits for the annual internal audit plan; or

(2) the auditors' ability to perform duties in accordance with the Internal Audit Charter, relevant auditing standards, and Chapter 2102 (Internal Auditing).

(e) Authorizes the board to conduct a closed meeting in accordance with Subchapter E, Chapter 551, to deliberate or confer with one or more employees, consultants, or legal counsel of TRS or a third party regarding a procurement to be awarded by the board if, before conducting the closed meeting, a majority of the trustees in an open meeting vote that deliberating or conferring in an open meeting would have a detrimental effect on the position of TRS in negotiations with a third person. Requires the board to vote or take final action on the procurement in an open meeting.

SECTION 8. Amends Section 825.204, Government Code, by adding Subsection (d), to provide that the medical board appointed by the board of TRS (medical board) is not subject to subpoena regarding findings it makes in assisting the executive director of the board of TRS (executive director) or the board of TRS under this section, and prohibits its members from being held liable for any opinions, conclusions, or recommendations made under this section.

SECTION 9. Amends Sections 825.212(a), (b), and (c), Government Code, as follows:

(a) Requires the board to adopt a code or codes of ethics, including standards of ethical conduct and disclosure requirements, applicable to trustees, employees, and any contractors or any categories of contractors that the board determines provide advice or opinion to TRS that is the basis for a significant decision or action by or on behalf of TRS, or significant services to TRS that relate to the administration and operation of TRS. Deletes existing text requiring the board, in addition to any other requirements provided by law, to enforce an ethics policy as provided by this section for employees of and consultants and advisors to TRS.

(b) Authorizes the board, in any code of ethics adopted under this section, to:

(1) impose enhanced disclosure requirements on employees that the board determines exercise significant fiduciary authority;

(2) impose disclosure requirements on contractors for expenditures on behalf of TRS trustees or employees in amounts equal to or greater than a minimum amount considered material by the board; or

(3) address topics related to ethical conduct, including prohibited conduct, conflicts of interest, waivers of conflicts of interest, remedies for conflicts of interest, and sanctions.

Deletes existing text requiring each employee of TRS who exercises significant decisionmaking or fiduciary authority, as determined by the board, to file financial disclosure statements with a person designated by the board. Deletes existing text requiring that the content of a financial disclosure statement comply substantially with the requirements of Subchapter B (Personal Financial Statement), Chapter 572. Deletes existing text requiring that a statement be filed not later than the 30th day after the date a person is employed in a significant decisionmaking or fiduciary position and annually after employment not later than April 30. Deletes existing text authorizing the filing deadline to be postponed by the executive director for not more than 60 days on written request or for an additional period for good cause, as determined by the chairman of the board. Deletes existing text requiring TRS to maintain a financial disclosure statement for at least five years after the date of its filing.

(c) Provides that this section preempts the common law if conflicts of interest as applied to trustees, employees, and contracts of TRS. Deletes existing text requiring an employee who has a business or commercial relationship that could reasonably be expected to diminish the employee's independence of judgment in the performance of the employee's responsibility to TRS to disclose that relationship in writing to a person designated by the board.

SECTION 10. Amends Section 825.312(b), Government Code, as follows:

(b) Requires TRS to pay from the expense account all administrative expenses of TRS that are required to perform the fiduciary duties of the board. Deletes existing text requiring TRS to pay from the expense account all administrative expenses of TRS that exceed amounts appropriated under Section 825.404(d) (relating to requiring the legislature to appropriate from the general revenue fund a specified amount of money to be used to pay operating expenses of TRS).

SECTION 11. Amends the heading to Section 825.313, Government Code, to read as follows:

Sec. 825.313. TRANSFERS FROM INTEREST ACCOUNT.

SECTION 12. Amends Section 825.313(d), Government Code, as follows:

(d) Authorizes the board, by resolution recorded in its minutes, to transfer from the interest account to the expense account an amount necessary to cover the expenses of TRS for the fiscal year that are required to perform the fiduciary duties of the board. Deletes existing text authorizing the board, by resolution recorded in its minutes, to transfer from the interest account to the expense account an amount necessary to cover the expenses of TRS for the fiscal year that exceed the amount of operating expenses appropriated under Section 825.404(d) and that are required to perform the fiduciary duties of the board, including the expense of servicing mortgages insured by the Federal Housing Administration under the National Housing Act (12 U.S.C. Section 1701 et seq.).

SECTION 13. Amends Section 825.314, Government Code, as follows:

Sec. 825.314. New heading: USE OF STATE CONTRIBUTIONS. Requires TRS to use all assets contributed by the state to pay benefits authorized by this subtitle. Deletes existing Subsection (a) designation and existing text requiring TRS to use all assets contributed by the state, other than operating expenses appropriated under Section 825.404(d), to pay benefits authorized by this subtitle. Deletes existing Subsection (b) authorizing the staff of TRS to report to the board at each board meeting the amounts and uses since the preceding board meeting of any money expended by the system from

amounts transferred under Section 825.313(d) and include an explanation of why the amounts were needed to perform the fiduciary duties of the board. Deletes existing text requiring TRS annually to prepare and issue to each contributing member and annuitant and to the governor, lieutenant governor, and speaker of the house of representatives a summary of the reports presented during the preceding year to the board.

SECTION 14. Amends the heading to Section 825.404, Government Code, to read as follows:

Sec. 825.404. COLLECTION OF STATE CONTRIBUTIONS.

SECTION 15. Amends Section 825.404(e), Government Code, as follows:

(e) Requires that all money appropriated by the state to TRS be paid to the state contribution account in equal monthly installments as provided by Section 403.093(c) (relating to requiring the comptroller of public accounts of the State of Texas (comptroller) to transfer to TRS certain amounts monthly). Deletes existing text requiring that all money appropriated by the state to TRS be paid to the state contribution account in equal monthly installments as provided by Section 403.093(c), Government Code, except money appropriated under Subsection (d), which remains in the general revenue fund until expenses are approved under Chapter 2103 (Expenditures by State Agencies).

SECTION 16. Amends Section 825.410(b), Government Code, as follows:

(b) Requires that service credit be established pursuant to the following provisions:

(1) Prohibits credit from being established for service pursuant to Section 823.501 (Credit Canceled by Membership Termination), rather than Section 823.501 or Section 825.403 (Collection of Member's Contributions), until a lump sum has been paid or all payroll deduction or installment payments have been completed.

(2) Prohibits credit from being established for other service when the cost of establishing the service has been determined by using withdrawn service to be reinstated pursuant to Section 823.501, rather than by using withdrawn service to be reinstated pursuant to Section 823.501 or previously unreported service to be established pursuant to Section 825.403, until a lump sum of all payroll deductions or installments for the withdrawn service, rather than withdrawn or previously unreported service, have been reported.

(3) Makes no change to this subdivision.

SECTION 17. Amends Sections 825.507(a), (b), (c), (f), and (g), Government Code, as follows:

(a) Provides that records of a participant and information about the records of a participant that are in the custody of TRS or of an administrator, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in cooperation with or on behalf of TRS are confidential and not subject to public disclosure, rather than not subject to public disclosure in a form that would identify an individual and are exempt from the public access provisions of Chapter 552 (Public Information), except as otherwise provided by this section. Provides that TRS or an administering firm, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in cooperation with or on behalf of TRS is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, except as otherwise provided by this section because the records and information described by this section, rather than subsection, are exempt from the public access provisions of Chapter 552.

(b) Authorizes TRS to release records of a participant, or information about the records of a participant, including a participant to which Chapter 803 (Proportionate Retirement Program) applies, to certain individuals and entities.

(c) Provides that the records of a participant and information about the records remain confidential after release to a person as authorized by this section. Provides that this section does not prevent TRS or an administering firm or a carrier acting in cooperation with or on behalf of TRS from disclosing or confirming, on an individual basis, the status or identity of a participant as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of TRS. Makes nonsubstantive changes.

(f) Provides that this section does not authorize TRS to compile or disclose a list of participants' names, addresses, including e-mail addresses, or social security numbers unless the executive director determines that a compilation or disclosure is necessary to administer TRS.

(g) Redefines "participant" in this section.

SECTION 18. Amends Section 825.515(a), Government Code, as follows:

(a) Requires TRS, at least annually, to acquire and maintain records identifying members and specifying the types of positions they hold as members. Requires employers to provide to TRS information specifying the type of position held by each member as Administrative/Professional, Teacher/Full-Time Librarian, Support, Bus Driver, or Peace Officer, rather than requiring that the type of position be identified as Administrative/Professional, Teacher/Full-Time Librarian, Support, Bus Driver, or Peace Officer. Requires employers to also provide to TRS the work e-mail address for each member.

SECTION 19. Amends Section 1575.003(1), Insurance Code, to redefine "dependent."

SECTION 20. Amends Section 1575.205(c), Insurance Code, to authorize TRS to spend a part of the money received for the group program to offset a part of the costs for optional coverage paid by retirees if the group program is projected to remain financially solvent during the currently funded biennium, rather than if the expenditure does not reduce the period the group program is projected to remain financially solvent by more than one year in a biennium.

SECTION 21. Amends Section 1579.004, Insurance Code, to redefine "dependent" in this chapter.

SECTION 22. (1) Repealer: Section 825.211 (Certain Interests In Loans, Investments, or Contracts Prohibited), Government Code;

(2) Repealers: Sections 825.212(d) (relating to prohibiting a person who files a disclosure statement from giving advice or making decisions about matters affected by the conflict of interest unless the board waives the prohibition, the requirement that TRS maintain a written record of each waiver, and authorizing the board to delegate the authority to waive a prohibition from giving advice or making decisions about matters affected by the conflict of interest), (e) (relating to requiring the board by rule to adopt standards of conduct applicable to consultants and advisors to TRS who may be expected to receive more than \$10,000 compensation from TRS for a fiscal year or who render important investment advice to TRS), (f) (relating to requiring certain consultants or advisors to disclose, in writing, a relationship that could diminish the person's independence of judgment in the person's responsibilities, to the executive director), (g) (relating to requiring the board by rule to require consultants and advisors to TRS and brokers to file regularly with TRS a report detailing any expenditure of more than \$50 made on behalf of a trustee or employee of the system), and (h) (relating to requiring the board to prescribe forms for certain statements and waivers, providing that the forms and waivers are open records, and designating an employee to be custodian of the records), Government Code;

(3) Repealers: Sections 825.402(b) (relating to authorizing the board to raise the rate of contributions for each member of TRS to not more than 6.58 percent under certain circumstances), (c) (relating to prohibiting the board from making certain payments or

increases in the rate of contributions if the board finds that the resulting amortization period for the unfunded actuarial liabilities would exceed 30 years), and (d) (relating to authorizing of the board to delay making a supplemental payment required or authorized by the legislature by law as necessary to make certain determinations), Government Code;

(4) Repealer: Section 825.404(d) (relating to requiring the legislature to appropriate from the general revenue fund a specified amount of money to be used to pay operating expenses of TRS for each fiscal year), Government Code; and

(5) Repealer: Section 825.411 (Payroll Deductions for Service Credit), Government Code.

SECTION 23. Effective date: September 1, 2013.

SUMMARY OF COMMITTEE CHANGES

Committee Amendment #1:

(1) Amends SECTION 6 of the bill to strike added Section 825.103(h), Government Code.

(2) Amends SECTION 9 of the bill to strike amended Section 825.212(c), Government Code, and substitute the following:

(c) Provides that this chapter modifies the common law of conflict of interests as applied to trustees, employees, and contracts of TRS to the extent that violations of the common law of conflict of interests do not void TRS contracts. Requires TRS to, by rule or policy, adopt procedures for disclosing and curing violations of the common law of conflict of interests and authorizes any such rule or policy to specify time periods in which disclosures and cures are required to be completed. Deletes existing text requiring an employee who has a business or commercial relationship that could reasonably be expected to diminish the employee's independence of judgment in the performance of the employee's responsibilities to TRS to disclose that relationship in writing to a person designated by the board.

(3) Amends the bill to strike SECTION 22, repealing certain provisions of the Government Code, and substitutes the following:

SECTION 22. (1) Repealer: Section 825.211(Certain Interests In Loans, Investments, or Contracts Prohibited), Government Code.

(2) Repealers: Sections 825.212(d) (relating to prohibiting a person who files a disclosure statement from giving advice or making decisions about matters affected by the conflict of interest unless the board waives the prohibition, the requirement that TRS maintain a written record of each waiver, and authorizing the board to delegate the authority to waive a prohibition from giving advice or making decisions about matters affected by the conflict of interest), (e) (relating to requiring the board by rule to adopt standards of conduct applicable to consultants and advisors to TRS who may be expected to receive more than \$10,000 compensation from TRS for a fiscal year or who render important investment advice to TRS), (f) (relating to requiring certain consultants or advisors to disclose, in writing, a relationship that could diminish the person's independence of judgment in the person's responsibilities, to the executive director), (g) (relating to requiring the board by rule to require consultants and advisors to TRS and brokers to file regularly with TRS a report detailing any expenditure of more than \$50 made on behalf of a trustee or employee of the system), and (h) (relating to requiring the board to prescribe forms for certain

statements and waivers, providing that the forms and waivers are open records, and designating an employee to be custodian of the records), Government Code;

(3) Repealers: Sections 825.402(b) (relating to authorizing the board to raise the rate of contributions for each member of TRS to not more than 6.58 percent under certain circumstances), (c) (relating to prohibiting the board from making certain payments or increases in the rate of contributions if the board finds that the resulting amortization period for the unfunded actuarial liabilities would exceed 30 years), and (d) (relating to authorizing of the board to delay making a supplemental payment required or authorized by the legislature by law as necessary to make certain determinations), Government Code;

(4) Repealer: Section 825.404(d) (relating to requiring the legislature to appropriate from the general revenue fund a specified amount of money to be used to pay operating expenses of TRS for each fiscal year), Government Code;

(5) Repealer: Section 825.411 (Payroll Deductions for Service Credit), Government Code; and

(6) Repealer: Section 1579.103 (Primary Care Coverage Plan), Insurance Code.

(4) Amends the bill to strike SECTION 23, providing an effective date for the Act, and substitutes the following:

SECTION 23. EFFECTIVE DATE. Effective date, except as provided by Subsection (b) of this section: upon passage or September 1, 2013.

(b) Effective date: Sections 824.1012 and 824.1013, Government Code, as amended by this Act: September 1, 2013.

(5) Renumbers the bill SECTIONS appropriately.

Committee Amendment #2:

Amends H.B. 3357 (engrossed version) by inserting new SECTIONS, as follows:

SECTION _____. Amends Section 12.055, Education Code, as follows:

Sec. 12.055. APPLICABILITY OF LAWS AND RULES TO CAMPUS OR PROGRAM GRANTED CHARTER. (a) Creates this subsection from existing text and makes no further change.

(b) Authorizes a school district to contract with another district or an open-enrollment charter holder for services at a campus charter. Provides that an employee of the district or open-enrollment charter holder providing contracted services to a campus charter is eligible for membership in and benefits from TRS if the employee would be eligible for membership and benefits if holding the same position at the employing district or open-enrollment charter school operated by the charter holder.

SECTION _____. Amends Section 12.057, Education Code, by adding Subsection (b-1), as follows:

(b-1) Requires an employee of a charter holder, as defined by Section 12.1012 (Definitions), who is employed on a campus or in a program granted a charter under this subchapter and who qualifies for membership in TRS to be covered under TRS in the same manner and to the same extent as qualified employee of an independent school district who is employed on a regularly operating campus or in a regularly operating program.