

BILL ANALYSIS

Senate Research Center

S.B. 1663
By: Huffman
State Affairs
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Enrolled

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. In order to comply with fiduciary standards, funds held in the TRS trust must be used exclusively for the benefit of members. S.B. 1663 provides for technical and clarifying changes to laws regulating TRS so that TRS can efficiently deliver benefits. (Original Author's / Sponsor's Statement of Intent)

S.B. 1663 amends current law relating to contributions to, benefits from, late fees imposed by, and the administration of systems and programs administered by the Teacher Retirement System of Texas.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of the Teacher Retirement System of Texas in SECTION 3 (Section 842.1012, Government Code) and SECTION 4 (Section 842.1013, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 42.260(b) and (c), Education Code, as follows:

(b) Provides that the amount of additional funds to which each school district or participating charter school is entitled due to the increases in formula funding made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, and any subsequent legislation amending the provisions amended by that Act that increase formula funding under Chapter 41 (Equalized Wealth Level) and this chapter (Foundation School Program) to school districts and charter schools is available for purposes of Subsection (c). Deletes existing text requiring the commissioner of education, for each year, to certify to each school district or participating charter school the amount of additional funds to which the district or school is entitled due to the increase made by H.B. No. 3343, Acts of the 77th Legislature, Regular Session, 2001, to the equalized wealth level under Section 41.002 (Equalized Wealth Level) or the guaranteed level of state and local funds per weighted student per cent of tax effort under Section 42.302 (Allotment).

(c) Authorizes a school district or participating charter school, notwithstanding any other provision of this code, to use the sum of the following amounts of funds only to pay contributions under a group health coverage plan for district or school employees:

(1) the amount determined by multiplying the amount of \$900 or the amount specified in the General Appropriations Act for that year for purposes of the state contribution under Section 1579.251 (State Assistance), rather than Section 9, Article 3.50-7, Insurance Code, by the number of district or school employees who participate in a group health coverage plan provided by or through the district or school; and

(2) the difference between the amount necessary for the district or school to comply with Section 1581.052 (Required Minimum Effort), rather than Section 3, Article 3.50-9, Insurance Code, for the school year and the amount the district or

school is required to use to provide health coverage under Section 1581.051 (Maintenance of Effort for 2000-2001 School Year), Insurance Code, rather than Section 2 of that article, for that year.

Deletes existing text authorizing a school district or participating charter school, notwithstanding any other provision of this code, to use the following amount of funds only to pay contributions under a group health coverage plan for district or school employees: an amount equal to 75 percent of the amount certified for the district or school under Subsection (b), or if a certain amount is less than the amount specified by Subdivision (1), the sum of a certain amount determined by a certain mathematic formula

SECTION 2. Amends Section 822.002, Government Code, as follows:

Sec. 822.002. EXCEPTIONS TO MEMBERSHIP REQUIREMENT. (a) Creates this subsection from existing text. Prohibits an employee of the public school system from being a member of the Teacher Retirement System of Texas (TRS) if the employee:

(1) makes a nonsubstantive change;

(2) redesignates text of existing Subdivision (3) as Subdivision (2) and deletes existing text prohibiting an employee who is solely employed by a public institution of higher education (IHE) that as a condition of employment requires the employee to be enrolled as a student in the IHE from being a member of TRS.

(b) Provides that an employee of a public IHE who is required to be enrolled as a student in the IHE as a condition of employment is not permitted to be a member of TRS based on that student employment, and compensation paid to the employee for work performed as a student employee is not compensation subject to report and deduction for member contributions or to credit in benefit computations under Section 822.201 (Member Compensation).

SECTION 3. Amends Section 824.1012, Government Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that if the beneficiary of the optional annuity was the spouse of the retiree when the retiree designated the spouse as beneficiary of the optional annuity, to change from the optional annuity to a standard retirement annuity under this subsection, the spouse or former spouse, as applicable, who was designated the beneficiary of the optional annuity is required to sign a notarized consent to the change or a court with jurisdiction over the marriage of the retiree and beneficiary is required to approve or order the change, rather than if the beneficiary is the spouse or former spouse of the retiree, the beneficiary is required to sign a notarized consent to the change, or a court in a divorce proceeding involving the retiree and beneficiary is required to approve or order the change in the divorce decree or acceptance of a property settlement. Provides that the change in plan selection takes effect when TRS receives the request to change the plan, provided the signed consent form or court order, as applicable, is subsequently received by TRS, rather than the change in plan selection takes effects when TRS receives it.

(a-1) Provides that the executive director of TRS or the executive director's designee has exclusive authority to determine whether the language in a court order described by Subsection (a) is sufficient to indicate that the court has approved or ordered the change in plan selection. Authorizes a determination by the executive director or the executive director's designee under this subsection to be appealed only to the board of trustees of the TRS (board), except that the board is authorized, by rule, to waive the requirement that an appeal be to the board. Provides that an appeal to the board is a contested case under Chapter 2001 (Administrative Procedure) and that the standard of review of an appeal brought under this subsection is by substantial evidence.

SECTION 4. Amends Section 824.1013, Government Code, by amending Subsections (b) and (c-1) and adding Subsection (c-2), as follows:

(b) Provides that if the beneficiary designated at the time of the retiree's retirement is the spouse of the retiree at the time of the designation, a court with jurisdiction over the marriage is required to approve or order, rather than have ordered, the change.

(c-1) Provides that a beneficiary, notwithstanding Subsection (c) (relating to entitling a designated beneficiary on the retiree's death to receive monthly payments for the shorter of certain periods), designated under this section (Change of Beneficiary After Retirement) is entitled on the retiree's death to receive monthly payments of the survivor's portion of the retiree's optional retirement annuity for the remainder of the beneficiary's life if the beneficiary designated at the time of the retiree's retirement is a trust and the beneficiary designated under this section is the sole beneficiary of that trust or an individual who at the time of the retiree's death is the sole beneficiary of that trust. Makes nonsubstantive changes.

(c-2) Provides that the executive director or the executive director's designee has exclusive authority to determine whether the language in a court order described by Subsection (b) is sufficient to indicate that the court has approved or ordered the change in the designated beneficiary. Authorizes a determination by the executive director or the executive director's designee under this subsection to be appealed only to the board, except that the board, by rule, is authorized to waive the requirement that an appeal be to the board. Provides that an appeal to the board is a contested case under Chapter 2001 and that the standard of review of an appeal brought under this subsection is by substantial evidence.

SECTION 5. Amends Section 824.402, Government Code, by adding Subsection (a-1), as follows:

(a-1) Requires TRS, in determining under Subsection (a)(4) (relating to a certain amount that the designated beneficiary of a member who dies during the school year is eligible to receive) whether to reduce the optional retirement annuity amount because of early retirement and in determining the amount of that reduction, if applicable, to make the determination as if the member had retired with an additional five years of service credit on the last day of the month preceding the month in which the member dies. Prohibits the additional five years of service credit used in making a determination under this subsection from being used to determine the amount of the benefit under Section 824.203 (Standard Service Retirement Benefits) or whether the benefit under this subsection is authorized under Section 824.401 (Availability of Annuity).

SECTION 6. Amends Section 824.503(f), Government Code, as follows:

(f) Provides that the designated beneficiary of a disability retiree is eligible to receive the benefits described by this section (Return of Excess Contributions) if the retiree retires on or after a certain date and dies while receiving disability retirement benefits under Section 824.304 (Disability Retirement Benefits), rather than Section 824.304(b) (relating to requiring TRS to pay the person a disability retirement annuity of a certain amount if a member has a total of at least 10 years of service credit in TRS).

SECTION 7. Amends Section 824.601, Government Code, by amending Subsection (b) and adding Subsection (b-2), as follows:

(b) Provides that a retiree, except as provided by Subsection (b-1) (relating to the inapplicability of certain statutes) or Section 824.602 (Exceptions) and subject to Subsection (b-2), is not entitled to service or disability retirement benefit payments, as applicable, for any month in which the retiree is employed in any position by a Texas public educational institution.

(b-2) Provides that a retiree is considered to be employed by a Texas public educational institution for purposes of Subsection (b) if the retiree performs duties or provides services for or on behalf of the institution that an employee of the institution would otherwise perform or provide and:

(1) the retiree waives, defers, or forgoes compensation from the institution for the performance of the duties or provision of the services at any time during the 12 consecutive calendar months after the retiree's effective date of retirement, notwithstanding any other law, including certain sections;

(2) the retiree performs the duties or provides the services for or on behalf of the institution as an independent contractor at any time during the 12 consecutive calendar months after the retiree's effective date of retirement; or

(3) the retiree, as a volunteer without compensation, performs the same duties or provides the same services for an institution that the retiree performed or provided immediately before retiring and the retiree has an agreement to perform those duties or provide those services after the 12 consecutive calendar months after the retiree's effective date of retirement.

SECTION 8. SUNSET PROVISION. Amends Section 825.006, Government Code, as follows:

Sec. 825.006. SUNSET PROVISION. Provides that the board is subject to review under Chapter 325 (Texas Sunset Act), but is not abolished under that chapter. Requires the board to be reviewed during the period in which state agencies abolished in 2025, rather than 2019, and every 12th year after that year, are reviewed.

SECTION 9. Amends Section 825.208(b), Government Code, to provide that TRS is exempt from Section 651.002 (Benefits of and Restrictions on State Employees Working Out of State), Chapter 660 (Travel Expenses), and Subchapter K (Promotions, Reclassifications, and Other Adjustments to Salary), Chapter 659 (Compensation), to the extent the board determines an exemption is necessary for the performance of fiduciary duties.

SECTION 10. Amends Section 825.212, Government Code, by adding Subsection (d), to provide that all personal financial disclosures made by employees of TRS under this section (Retirement System Ethics Policy), notwithstanding any other law, including a rule or policy adopted under this section, are confidential and excepted from the requirements of Section 552.021 (Availability of Public Information).

SECTION 11. Amends Section 825.3011(b), Government Code, as follows:

(b) Provides that Chapter 551 (Open Meetings) does not require the board to confer with one or more employees, consultants, or legal counsel of TRS or with a third party, including representatives of an issuer of restricted securities or a private investment fund, 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 TRS or the third party relating to investment transactions or potential investment transactions if, before conducting the closed meeting, a majority of the board 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 third parties or put TRS at a competitive disadvantage in the market, rather than an investment or a potential investment by the board in a private investment fund.

SECTION 12. Amends Section 825.306, Government Code, as follows:

Sec. 825.306. CREDITING SYSTEM ASSETS. (a) Creates this subsection from existing text. Requires that the assets of TRS be maintained and reported in a manner that reflects the source of the assets or the purpose for which the assets are held, using appropriate ledgers and subledgers, in accordance with generally accepted accounting principles prescribed by the Governmental Accounting Standards Board or its successor. Requires

that the maintenance and reporting of the assets, in addition, be in compliance with applicable tax law and consistent with any fiduciary duty owed with respect to the trust. Authorizes the assets, in the alternative, to be credited, according to the purpose for which they are held, to certain accounts.

(b) Provides that a requirement to deposit in or transfer assets from one of the accounts described under Subsection (a), notwithstanding any other law, is satisfied by maintaining and reporting the assets in accordance with that subsection.

SECTION 13. Amends Section 825.408, Government Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Requires an employer that fails to remit, by a certain date, except as provided by Subsection (a-1), all member and employer deposits and documentation of the deposits required by this subchapter (Collection of Membership Fees and Contributions) to be remitted by the employer for the month to pay to TRS, in addition to the deposits, interest on the unpaid amounts, rather than unpaid or undocumented amounts, at an annual rate compounded monthly and a late fee in an amount determined by TRS that is based on the size of the employer and may not exceed \$1,000 for each business day after the deadline imposed by this subsection that the employer fails to submit the documentation of the deposits. Prohibits the cumulative amount of late fees assessed against an employer from exceeding \$25,000 per reporting period and provides that interest and late fees required under this section (Interest on Contributions and Fees; Deposits in Trust) are creditable to the interest account. Authorizes TRS to establish a process for filing an appeal to reduce or waive an imposed late fee and makes a nonsubstantive change.

(a-1) Provides that this subsection applies only to an employer who reports the employment of a retiree to TRS. Requires an employer that fails to remit, subject to Subsection (a-2), before a certain date, the employer deposits required by Section 825.4092(b) (relating to requiring an employer to make certain contributions to TRS each employment period), documentation of those deposits as required by this section, and the certified statement of employment required by Section 824.6022 (Required Reports; Offense) to pay to TRS, in addition to the deposits, interest on the unpaid amounts at the annual rate established under Subsection (a), compounded monthly, and a late fee in an amount determined by TRS for each business day after the deadline imposed by this subsection that the employer fails to file the documentation of the deposits and the certified statement of employment.

(a-2) Requires the employer, if a retiree described by Subsection (a-1) performs work in the month of August, to remit the employer deposits, documentation of those deposits, and the certified statement of employment before the seventh day of September.

SECTION 14. Amends Section 825.410(a), Government Code, as follows:

(a) Deletes existing text providing that the member, if TRS refunds payments pursuant to this subsection, is not permitted to use the installment method of payment or the payroll deduction method, as applicable, for the same service for three years after the date of the refund. Deletes existing text providing that a member who requests and receives a refund of installment or payroll deduction payments also is not permitted to use the same method of payment for the same service for three years after the date of the refund.

SECTION 15. Amends Section 825.519, Government Code, as follows:

Sec. 825.519. ELECTRONIC INFORMATION. (a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Authorizes TRS to provide to a member or retiree any information that is required to be provided, distributed, or furnished under Section 802.106(a) (relating to certain summaries the system is required to provide to a member of

the public retirement system), (b) (relating to requiring a public retirement system to distribute a summary of any significant change to relevant statutes or ordinances), (d) (relating to requiring a system to provide a summary of the financial condition of the system), or (e) (relating to authorizing certain members not currently contributing to receive copies of certain documents) by sending the information to an e-mail address of the member or retiree furnished to TRS by an employer covered by TRS, or directing the member or retiree through a written notice or e-mail to an Internet website address to access the information.

(c) Authorizes TRS to provide to an active member of TRS the information that is required to be provided under Section 802.106(c) (relating to requiring a system to provide an annual statement containing certain amounts to each active member) by sending the information to an e-mail address specified by the member for the purpose of receiving confidential information.

SECTION 16. Amends Section 1575.402(a), Insurance Code, as follows:

(a) Provides that the Retirees Advisory Committee is composed of the following seven, rather than nine, members appointed by TRS:

(1) and (2) makes no changes to these subdivisions;

(3) and (4) makes nonsubstantive changes.

Deletes existing Subdivisions (5) and (6) relating to active and retired members of the auxiliary personnel of a school district.

SECTION 17. Amends Section 1575.403(b), Insurance Code, to provide that the terms of the active school administrator, one active teacher, and two retired teachers, rather than the five members' terms, including the terms of the active school administrator, one active teacher, two retired teachers, and the retired member of the auxiliary personnel, expire February 1, 2002, and every fourth year after that date.

SECTION 18. Provides that Section 824.402, Government Code, as amended by this Act, applies only to benefits payable on the death of a member of TRS who dies on or after the effective date of this Act, or before the effective date of this Act if the benefits payable on the death of the member have not commenced on the effective date of this Act.

SECTION 19. Provides that Section 824.601, Government Code, as amended by this Act, applies to a retiree of TRS regardless of whether the person retired from employment before, on, or after the effective date of this Act.

SECTION 20. Provides that the changes in law made by this Act to Sections 1575.402 (Appointment of Committee Members) and 1575.403 (Terms), Insurance Code, regarding the composition and terms of the Retirees Advisory Committee, do not affect the entitlement of a member serving on the committee immediately before the effective date of this Act to continue to serve as a member of the committee for the remainder of the member's term. Requires TRS, as the terms of committee members expire or as vacancies occur on the board, to appoint members to the committee as necessary to comply with Sections 1575.402 and 1575.403, Insurance Code, as amended by this Act.

SECTION 21. Effective date: September 1, 2017, except that Section 852.212, Government Code, as amended by this Act, is effective upon passage or September 1, 2017.