

## **BILL ANALYSIS**

Senate Research Center  
85R20483 LED-F

C.S.S.B. 1954  
By: Hughes  
State Affairs  
4/4/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Eligible employees at Texas public institutions of higher education may elect to participate in ORP, the optional retirement plan administered by the Texas Higher Education Coordinating Board, or in TRS, Teacher Retirement System. That employee has a one-time opportunity, 90 days under current law, to choose between TRS and ORP.

In some cases, the employee is not informed properly of the 90-day deadline, or they are incorrectly enrolled in TRS. If the employee was enrolled in ORP at another institution, they are ineligible for TRS under state and federal law. When this occurs, the employee is only able to recover their contributions to TRS during that time, plus interest. They are not allowed to recover the state contribution.

S.B. 1954 addresses these issues first by allowing ORP-eligible employees who are not notified properly additional time (up to 150 days) to elect ORP participation. The bill also creates a correction of error provision for reporting an ORP employee to TRS when the employee is not eligible for TRS. The person would be restored to ORP participation and recover member, state, and employer contributions related to the incorrect reporting plus interest paid to the employee's ORP account. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1954 amends current law relating to participation in and contributions to the optional retirement program for certain employees of institutions of higher education.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 830.102, Government Code, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Requires a person who becomes eligible to participate in the optional retirement program after the date the program becomes available at the person's place of employment to elect to participate before the 91st day after becoming eligible, except as provided by Subsections (c-1) and (c-2).

(c-1) Requires a person who becomes eligible to participate in the optional retirement program and is notified by the person's employer of the opportunity to participate in the program after the first day and before the 91st day after the date the person becomes eligible to elect to participate in the program before the later of the 91st day after the date the person becomes eligible or the 31st day after the date the person receives notice of the opportunity to participate in the program.

(c-2) Requires that a person who becomes eligible to participate in the optional retirement program and is notified of the opportunity to participate in the program by the person's employer on or after the 91st day after the date the person becomes eligible be notified by the employer before the 151st day after the day after the date the person becomes eligible.

Requires the person to elect to participate in the program before the later of the 151st day after the date the person becomes eligible or the 31st day after the date the person receives notice of the opportunity to participate in the program.

SECTION 2. Amends Subchapter B, Chapter 830, Government Code, by adding Section 830.108, as follows:

Sec. 830.108. CORRECTION OF CERTAIN REPORTING ERRORS. (a) Provides that for purposes of this section, an employer submits a member contribution to the retirement system on behalf of a person in error if the person previously elected to participate in the optional retirement program, participated in the program for at least one year, and is or was employed by an institution of higher education (IHE) in a position normally covered by the retirement system and is or was at the time of that employment not eligible for resumption of membership in the retirement system under Section 830.106 (Eligibility for Resumption of Membership).

(b) Provides that if an employer commits an error described by Subsection (a) and the person on whose behalf the member contribution is erroneously made is a participant in the optional retirement program:

(1) the person's participation in the program is required to be immediately restored; and

(2) in accordance with this section and as soon as practicable, funds are required to be deposited in the person's participant account in the program or otherwise remitted to the person.

(c) Requires the retirement system, subject to Subsection (d), on discovery of an error described by this section, on certification by an employer that the employer committed the error:

(1) make a direct trustee-to-trustee transfer to the trustee of the optional retirement program for deposit in the person's participant account in an amount equal to the participant contribution that would have been paid for the benefit of the person to the program under Section 830.201 (Contributions) during the period in which member contributions were submitted to the retirement system in error, plus an amount representing earnings on the member contribution at the assumed rate of return provided by Subsection (g);

(2) credit the employer through the retirement system's employer reporting system an amount equal to the amount of any employer contributions made under Section 825.4041 (Employer Payments), 825.406 (Collection of Contributions From Federal or Private Sources; Offense; Penalty), 825.407 (Collection of Contributions From Noneducational and General Funds), or 825.4071 (Collection of Contributions From Employers That Are Public Junior Colleges or Public Junior College Districts) in error on compensation paid to the person; and

(3) remit certain amounts to the person.

(d) Prohibits a transfer described by Subsection (c) from including the amount of any member contribution made to the retirement system in error that exceeds the amount of the participant contribution that would have been paid for the benefit of the person to the optional retirement program under Section 830.201 or was made on an after-tax basis unless the plan document for each employer program permits the employer program to receive direct trustee-to-trustee transfers of after-tax amounts and provides that the trustee of the employer program agrees to separately account for amounts transferred and earnings on amounts transferred,

including accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not includable in gross income.

(e) Requires the Texas comptroller of public accounts (comptroller), on certification by an employer that the employer committed an error described by this section, to transfer to or credit the employer an amount equal to the state contribution that would have been paid for the benefit of the person under Section 830.201 plus an amount representing earnings on the state contribution at the assumed rate of return provided by Subsection (g).

(f) Requires an employer that commits an error described by this section to deposit in the person's participant account in the program certain amounts.

(g) Provides that the assumed rate of return is earned monthly and computed at the rate of four percent per year. Provides that, except as provided by this subsection, the amount of earnings based on the assumed rate of return is credited annually at the end of each 12-month period. Provides that the first 12-month period begins with the month the first deposit was submitted in error, and that the amount of assumed earnings is prorated to the month of payment.

(h) Provides that the amounts paid, transferred, or credited under this section are reduced by any amount required to be withheld by law or court order.

SECTION 3. Provides that Section 830.108, Government Code, as added by this Act, applies to a member contribution submitted in error as provided by that section regardless of whether the contribution was submitted before, on, or after the effective date of this Act.

SECTION 4. Effective date: September 1, 2017.