

By: Moreno of El Paso

H.B. No. 280

A BILL TO BE ENTITLED

AN ACT

relating to the overpayment of benefits by a public retirement system in reliance on an audit.

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

SECTION 1. Subchapter B, Chapter 802, Government Code, is amended by adding Section 802.1025 to read as follows:

Sec. 802.1025. LIABILITY OF AUDITOR FOR OVERPAYMENTS (a)
If a public retirement system makes an overpayment of benefits to a person entitled to receive payments from the system and the overpayment was made by the system in reliance on an audit, the system:

(1) may not take action against the recipient of the overpayment for reimbursement; and

(2) is entitled to reimbursement for the overpayment from the auditor whose audit was relied on in making the overpayment.

(b) In addition to any other remedy provided by law, a public retirement system may bring an action to recover against the bond of the auditor whose audit was relied on in making the overpayment. The system is entitled to recover against the bond in an amount equal to the total amount of benefits overpaid by the system after the date of the audit.

SECTION 2. Section 802.002(a), Government Code, is amended to read as follows:

1 (a) Except as provided by Subsection (b), the Employees
2 Retirement System of Texas, the Teacher Retirement System of Texas,
3 the Texas County and District Retirement System, the Texas
4 Municipal Retirement System, and the Judicial Retirement System of
5 Texas Plan Two are exempt from Sections 802.101(a), 802.101(b),
6 802.101(d), 802.102, 802.103(a), 802.103(b), 802.202, 802.203,
7 802.204, 802.205, 802.206, and 802.207. The Judicial Retirement
8 System of Texas Plan One is exempt from all of Subchapters B and C
9 except Sections 802.1025, 802.104, and 802.105. The optional
10 retirement program governed by Chapter 830 is exempt from all of
11 Subchapters B and C except Sections 802.1025 and ~~[Section]~~ 802.106.

12 SECTION 3. Section 815.109, Government Code, is amended to
13 read as follows:

14 Sec. 815.109. CORRECTION OF ERRORS. If an error in the
15 records of the retirement system results in a person receiving more
16 or less money than the person is entitled to receive under this
17 subtitle, the retirement system shall correct the error. Except as
18 provided by Section 802.1025, the retirement system shall, ~~[and]~~ so
19 far as practicable, [shall] ~~[shall]~~ adjust future payments so that the
20 actuarial equivalent of the benefit to which the person is entitled
21 is paid.

22 SECTION 4. Section 825.109, Government Code, is amended to
23 read as follows:

24 Sec. 825.109. CORRECTION OF ERRORS. If an error in the
25 records of the retirement system results in a person's receiving
26 more or less money than the person is entitled to receive under this
27 subtitle, the board of trustees shall correct the error. Except as

1 provided by Section 802.1025, the retirement system shall, ~~and~~ so
2 far as practicable, ~~shall~~ adjust future payments so that the
3 actuarial equivalent of the benefit to which the person is entitled
4 is paid.

5 SECTION 5. Section 840.008, Government Code, is amended to
6 read as follows:

7 Sec. 840.008. CORRECTION OF ERRORS. If an error in the
8 records of the retirement system results in a person receiving more
9 or less money than the person is entitled to receive under this
10 subtitle, the retirement system shall correct the error. Except as
11 provided by Section 802.1025, the retirement system shall, ~~and~~ so
12 far as practicable, ~~shall~~ adjust future payments so that the
13 actuarial equivalent of the benefit to which the person is entitled
14 is paid.

15 SECTION 6. Section 854.408(d), Government Code, is amended
16 to read as follows:

17 (d) Except as provided by Section 802.1025, if ~~if~~ a
18 retiree is paid an occupational disability retirement annuity for
19 any month or series of months in amounts exceeding the sum allowable
20 under Subsection (b), the retirement system shall reduce subsequent
21 monthly payments successively until the amounts of the overpayments
22 have been offset.

23 SECTION 7. Section 12(b), Chapter 451, Acts of the 72nd
24 Legislature, Regular Session, 1991 (Article 6243n, Vernon's Texas
25 Civil Statutes), is amended to read as follows:

26 (b) If any change or error in the records of the retirement
27 system is discovered or results in any member, surviving spouse, or

1 beneficiary receiving from the retirement system more or less than
2 the member, surviving spouse, or beneficiary would have been
3 entitled to receive had the records been correct, the retirement
4 board shall have the power to correct such error. Except as
5 provided by Section 802.1025, Government Code, the retirement
6 system shall, ~~and~~ as far as possible, ~~to~~ adjust the payments in
7 such a manner that the actuarial equivalent of the benefits to which
8 the member, surviving spouse, or beneficiary was correctly entitled
9 shall be paid.

10 SECTION 8. Section 10.02, Chapter 452, Acts of the 72nd
11 Legislature, Regular Session, 1991 (Article 6243n-1, Vernon's
12 Texas Civil Statutes), is amended to read as follows:

13 Sec. 10.02. CORRECTION OF ERRORS. If any change or error
14 in the records of the police retirement system should be discovered
15 or should result in any member, retired member, surviving spouse,
16 or beneficiary receiving from the police retirement system more or
17 less than such member, retired member, surviving spouse, or
18 beneficiary would have been entitled to receive had the records
19 been correct, the police retirement board shall have the power to
20 correct such error. Except as provided by Section 802.1025,
21 Government Code, the retirement system shall, ~~and~~ as far as
22 possible, ~~to~~ adjust the payments so that the actuarial equivalent
23 of the benefits to which the member, retired member, surviving
24 spouse, or beneficiary was correctly entitled shall be paid.

25 SECTION 9. Section 3.03(d), Chapter 824, Acts of the 73rd
26 Legislature, Regular Session, 1993 (Article 6243o, Vernon's Texas
27 Civil Statutes), is amended to read as follows:

1 (d) Except as provided by Section 802.1025, Government
2 Code, the [The] board may reduce the amount of a benefit to which a
3 retiree or beneficiary is otherwise entitled in order to reimburse
4 the fund for an overpayment or incorrect payment of benefits to the
5 retiree or beneficiary.

6 SECTION 10. (a) This Act applies only to an overpayment of
7 benefits made by a public retirement system in reliance on an audit
8 that is conducted on or after the effective date of this Act. An
9 overpayment made in reliance on an audit conducted before the
10 effective date of this Act is governed by the law as it existed
11 immediately before the effective date of this Act, and the former
12 law is continued in effect for that purpose.

13 (b) The change in law made by this Act with respect to an
14 action against a bond applies only to a claim against a bond that is
15 delivered, issued for delivery, or renewed on or after the
16 effective date of this Act. A bond that is delivered, issued for
17 delivery, or renewed before the effective date of this Act is
18 governed by the law as it existed immediately before the effective
19 date of this Act, and the former law is continued in effect for that
20 purpose.

21 SECTION 11. This Act takes effect immediately if it
22 receives a vote of two-thirds of all the members elected to each
23 house, as provided by Section 39, Article III, Texas
24 Constitution. If this Act does not receive the vote necessary for
25 immediate effect, this Act takes effect September 1, 2003.