

By: Isett

H.B. No. 951

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to an optional defined contribution retirement plan for  
3 persons eligible to participate in the Employees Retirement System  
4 of Texas.

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

6 SECTION 1. Subtitle B, Title 8, Government Code, is amended  
7 by adding Chapter 816 to read as follows:

8 CHAPTER 816. OPTIONAL DEFINED CONTRIBUTION PLAN

9 Sec. 816.001. DEFINITIONS. In this chapter:

10 (1) "Optional defined contribution plan" means the  
11 plan established under this chapter.

12 (2) "Qualified plan" means an employees deferred  
13 compensation plan qualified under Section 401(k) or Section 457,  
14 Internal Revenue Code of 1986, and regulations adopted under those  
15 sections.

16 Sec. 816.002. ESTABLISHMENT OF PLAN. (a) The retirement  
17 system shall establish and administer an optional defined  
18 contribution plan that is a qualified plan and under which a person  
19 eligible for membership in the system may elect to pay  
20 contributions to the optional defined contribution plan for the  
21 purchase of investment products selected by the person from among  
22 products that are authorized to be provided under a qualified plan  
23 and that are offered by companies authorized to provide the  
24 products in this state and selected by the board of trustees under

1 Subsection (b).

2 (b) The board of trustees shall adopt rules for the  
3 selection of companies that may provide investment products under  
4 the optional defined contribution plan. The rules must provide for  
5 the selection of vendors of a variety of investment products  
6 authorized for a qualified plan. The retirement system shall select  
7 vendors every two years.

8 (c) A provider of investment products is exempt from the  
9 payment of franchise or premium taxes on products issued under the  
10 optional defined contribution plan.

11 Sec. 816.003. ELIGIBILITY AND ELECTION TO PARTICIPATE IN  
12 PLAN. (a) A person who holds a position included in the coverage of  
13 the retirement system is eligible to participate in the optional  
14 defined contribution plan unless the person is participating in the  
15 optional retirement program under Chapter 830.

16 (b) Participation in the optional defined contribution plan  
17 is an alternative to participation as a contributing member of the  
18 retirement system for the same period.

19 (c) A person eligible to participate in the optional defined  
20 contribution plan may elect to participate in the plan not later  
21 than the 90th day after the date the person begins service in a  
22 position included in the coverage of the retirement system. The  
23 election must be on a form prescribed by and filed with the board of  
24 trustees. If a person does not make an election as provided by this  
25 subsection, the person is considered to have elected to begin or  
26 continue active membership in the retirement system.

27 (d) An election made under this section is irrevocable

1 except as provided by Section 816.007.

2 Sec. 816.004. EFFECT OF EMPLOYMENT CHANGES. A person  
3 participating in the optional defined contribution plan continues  
4 to participate in the plan when the person changes employment to  
5 another position included in the coverage of the retirement system.

6 Sec. 816.005. WITHDRAWAL OF RETIREMENT SYSTEM  
7 CONTRIBUTIONS. A person who participates in the optional defined  
8 contribution plan may withdraw benefits attributable to  
9 contributions in the manner and with the effect provided by  
10 Subchapter B, Chapter 812.

11 Sec. 816.006. VESTING OF BENEFITS; TERMINATION OF  
12 PARTICIPATION. (a) Benefits in the optional defined contribution  
13 plan that are attributable to a participant's contribution under  
14 Section 816.010(a) vest in the participant immediately.

15 (b) Benefits in the optional defined contribution plan that  
16 are attributable to the state's contribution under Section  
17 816.010(a) vest in a participant as follows:

18 (1) 20 percent on the first anniversary of the person's  
19 participation in the plan;

20 (2) 40 percent on the second anniversary of the  
21 person's participation in the plan;

22 (3) 60 percent on the third anniversary of the person's  
23 participation in the plan;

24 (4) 80 percent on the fourth anniversary of the  
25 person's participation in the plan; and

26 (5) 100 percent on the fifth anniversary of the  
27 person's participation in the plan.

1       (c) A person terminates participation in the optional  
2 defined contribution plan, without losing any vested benefits, by:

3           (1) death;

4           (2) retirement; or

5           (3) termination of employment in all positions  
6 included in the coverage of the retirement system.

7       (d) The benefits of a product purchased under the optional  
8 defined benefit plan become available under the terms of the  
9 product but not before the participant terminates participation  
10 under Subsection (c) or attains 70-1/2 years of age.

11       (e) Benefits in the optional defined contribution plan that  
12 are attributable to the state's contribution under Section  
13 816.010(a) that are not vested in a participant who terminates  
14 participation shall be used to offset the amount of the state's  
15 contribution.

16       Sec. 816.007. RESUMPTION OF RETIREMENT SYSTEM MEMBERSHIP.

17 A participant in the optional defined contribution plan is not  
18 eligible to begin or resume active membership in the retirement  
19 system unless the person terminates participation under Section  
20 816.006 and assumes or resumes, after the month following the month  
21 in which the person terminates participation, a position included  
22 in the coverage of the retirement system. A person who assumes or  
23 resumes a position becomes an active member of the retirement  
24 system unless the person elects to resume participation in the  
25 optional defined contribution plan in the manner and within the  
26 time provided for beginning participation under Section 816.003.

27       Sec. 816.008. CREDITABLE SERVICE. A person may not

1 establish in the retirement system credit for service performed  
2 during a period the person was participating in the optional  
3 defined contribution plan.

4 Sec. 816.009. INVESTMENT ADVISORY FEES. (a) A participant  
5 in the optional defined contribution plan may authorize the payment  
6 of investment advisory fees from the amount in the participant's  
7 custodial account or product if:

8 (1) the investment advisory fees for each fiscal year  
9 do not exceed two percent of the annual value of the participant's  
10 custodial account or product as of the last day of that fiscal year;

11 (2) the fees comply with applicable regulations of the  
12 Securities and Exchange Commission;

13 (3) the investment advisor to whom the fees are paid is  
14 registered with the Securities and Exchange Commission under the  
15 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.)  
16 and regulations adopted under that Act and is engaged full-time in  
17 the business of providing investment advice;

18 (4) the participant and the investment advisor enter  
19 into a contract for services that may be terminated by either party  
20 at any time and that provides for the payment of fees as provided by  
21 this section; and

22 (5) the retirement system has received an official  
23 determination from the Internal Revenue Service that payment of  
24 investment advisory fees as prescribed by this section is not a  
25 distribution of funds that is prohibited or subject to taxation and  
26 penalty under the Internal Revenue Code of 1986 and regulations  
27 adopted under that code.

1       (b) The executive director of the retirement system shall  
2 request an official determination from the Internal Revenue Service  
3 concerning whether the payment of investment advisory fees as  
4 prescribed by this section is a distribution of funds that is  
5 prohibited or subject to taxation and penalty under the Internal  
6 Revenue Code of 1986 and regulations adopted under that code. If  
7 the executive director receives an official determination from the  
8 Internal Revenue Service as specified by this subsection, the  
9 executive director shall file the determination with the secretary  
10 of state's office for publication in the Texas Register.

11       Sec. 816.010. CONTRIBUTIONS. (a) A participant in the  
12 optional defined contribution plan shall make contributions to the  
13 plan at the same rate that a member of the retirement system is  
14 required to make for current service, and the state shall make  
15 contributions to the plan for each participant at the same rate as  
16 the state is required to make for contributing members of the  
17 retirement system.

18       (b) A participant in the optional defined contribution plan  
19 and the participant's employer shall execute an agreement under  
20 which the salary of the participant is reduced by the amount of the  
21 contribution required by Subsection (a). An agreement under this  
22 subsection is irrevocable until the participant terminates  
23 participation in the plan under Section 816.006.

24       (c) Participant contributions shall be made in the manner  
25 provided by Section 815.402 for member contributions to the  
26 retirement system, and state contributions shall be made in the  
27 manner provided by Section 815.403 for state contributions to the

1 retirement system.

2 Sec. 816.011. EXCESS BENEFIT ARRANGEMENT. The retirement  
3 system may establish a governmental excess benefit arrangement as  
4 provided by Section 415(m), Internal Revenue Code of 1986, and  
5 regulations adopted under that section, for the purpose of  
6 providing to participants in the optional defined contribution plan  
7 any portion of a participant's benefits that would otherwise be  
8 payable under the terms of the plan except for the limitation on  
9 benefits imposed by Section 415, Internal Revenue Code of 1986, and  
10 regulations adopted under that section.

11 Sec. 816.012. RULES. The board of trustees may adopt any  
12 rules necessary to administer this chapter.

13 SECTION 2. Section 812.101(a), Government Code, is amended  
14 to read as follows:

15 (a) A member of the retirement system may withdraw all of  
16 the member's accumulated contributions for service credited in the  
17 employee class of membership if:

18 (1) the member does not hold a position included in  
19 that class or is participating in the optional defined contribution  
20 plan under Chapter 816;

21 (2) the member does not assume or resume, during the 30  
22 days after the date on which the member terminates employment, a  
23 position included in that class; and

24 (3) the member's application for withdrawal is filed  
25 before the member assumes or resumes a position included in that  
26 class.

27 SECTION 3. Sections 815.403(b), (d), and (e), Government

1 Code, are amended to read as follows:

2 (b) Before November 2 of each even-numbered year, the  
3 retirement system shall certify to the Legislative Budget Board and  
4 to the budget division of the governor's office for review:

5 (1) an estimate of the amount necessary to pay the  
6 state's contribution under Subsections (a)(1), (a)(2), (a)(3), and  
7 (a)(5) for the following biennium; ~~and~~

8 (2) as a separate item, an estimate of the amount  
9 required to administer the law enforcement and custodial officer  
10 supplemental retirement fund for the following biennium; and

11 (3) an estimate of the amount necessary to pay the  
12 state's contribution under Section 816.010(a) for the following  
13 biennium.

14 (d) Before September 1 of each year, the retirement system  
15 shall certify to the state comptroller of public accounts:

16 (1) an estimate of the amount necessary to pay the  
17 state's contribution under Subsection (a)(1) for the following  
18 fiscal year;

19 (2) an estimate of the amount necessary to pay  
20 membership fees for the following fiscal year, if the legislature  
21 has appropriated money for that purpose; ~~and~~

22 (3) an estimate of the amount required to pay lump-sum  
23 death benefits for retirees under Section 814.501 for the following  
24 fiscal year; and

25 (4) an estimate of the amount necessary to pay the  
26 state's contribution under Section 816.010(a) for the following  
27 fiscal year.



1           (e) All money allocated and appropriated by the state to the  
2 retirement system for benefits provided by the retirement system,  
3 except money for the payment of lump-sum death benefits, ~~and~~ for  
4 the payment of benefits from the law enforcement and custodial  
5 officer supplemental retirement fund, and for the payment of the  
6 state's contribution under Section 816.010(a), shall be paid, based  
7 on the annual estimate of the retirement system, in monthly  
8 installments to the state accumulation fund. The money required  
9 for state contributions and membership fees shall be from  
10 respective funds appropriated to pay the compensation of the member  
11 for whose benefit the contribution or fee is paid. If the total of  
12 the estimated required payments is not equal to the total of the  
13 actual payments required for a fiscal year, the retirement system  
14 shall certify to the state comptroller of public accounts at the end  
15 of that year the amount required for necessary adjustments, and the  
16 comptroller shall make the required adjustments.

17           SECTION 4. (a) The Employees Retirement System of Texas  
18 shall offer participation in the optional defined contribution plan  
19 described by Chapter 816, Government Code, as added by this Act,  
20 beginning September 1, 2004.

21           (b) The change in law made by this Act applies only to a  
22 period of service described by Section 816.003(c), Government Code,  
23 as added by this Act, that begins on or after September 1, 2004.

24           SECTION 5. This Act takes effect immediately if it receives  
25 a vote of two-thirds of all the members elected to each house, as  
26 provided by Section 39, Article III, Texas Constitution. If this  
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2003.