

By: Eiland

H.B. No. 3125

A BILL TO BE ENTITLED

AN ACT

relating to a retired employee's eligibility for participation in the optional retirement program and the regulation of investment advisors in that program.

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

SECTION 1. Section 830.102, Government Code, is amended by adding Subsection (e) to read as follows:

(e) An employee who retires and subsequently returns to an employment status that is otherwise eligible for participation in the optional retirement program may have contributions remitted on the employee's behalf by the institution at the discretion of the institution in accordance with rules adopted by the Texas Higher Education Coordinating Board.

SECTION 2. Section 830.107, Government Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A participant in the optional retirement program may authorize the payment of investment advisory fees from the amount in the participant's custodial account or annuity if:

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

(2) the fees are paid directly to a registered investment advisor that provides investment advice to the

1 participant;

2 (3) the investment advisor to whom the fees are paid is
3 registered with the Securities and Exchange Commission under the
4 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.),
5 ~~and~~ is engaged full-time in the business of providing investment
6 advice, and is registered with one or more of the optional
7 retirement program vendors currently authorized by the
8 participant's employing institution of higher education;

9 (4) the participant and the investment advisor enter
10 into a contract, for a term of no more than one year, for services
11 that provides for the payment of fees as provided by this section;
12 and

13 (5) the attorney general has received an official
14 determination from the Internal Revenue Service that payment of
15 investment advisory fees as prescribed by this section is not a
16 distribution of funds that is prohibited or subject to taxation and
17 penalty under the Internal Revenue Code.

18 (c) Each institution:

19 (1) may require each currently authorized vendor to
20 certify on at least an annual basis that each investment advisor to
21 whom optional retirement program funds are remitted as payment for
22 investment advisor services meets all requirements of this section;

23 (2) may:

24 (A) require that any investment advisor to whom a
25 vendor remits optional retirement program funds be registered with
26 the institution as a service provider; and

27 (B) subject the investment advisor to all

1 policies and procedures adopted by the institution;

2 (3) may prohibit the payment of investment advisory
3 fees to an investment advisor by deduction from a participant's
4 optional retirement program account if the investment advisor fails
5 to register or comply with the institution's policies and
6 procedures; and

7 (4) shall prohibit a vendor from paying investment
8 advisor fees to any investment advisor that does not or ceases to
9 meet the requirements of this section.

10 (d) An investment advisor registered with an institution
11 under this section must comply with all policies and procedures
12 adopted by the institution and, at the discretion of the
13 institution, may be prohibited from providing investment advisory
14 services to the institution's participants for failure to comply.

15 SECTION 3. Section 830.107, Government Code, as amended by
16 this Act applies only to a contract for investment advisory
17 services entered into under the optional retirement program on or
18 after September 1, 2005. A contract entered into before September
19 1, 2005, is governed by the law in effect on the date the contract
20 was executed, and that law is continued in effect for that purpose.

21 SECTION 4. This Act takes effect September 1, 2005.