

AN ACT

relating to correcting errors in the distribution of benefits by a public retirement system.

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

SECTION 1. Section 802.1024, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Except as provided by Subsection (b), if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the ~~[governing body of the]~~ retirement system shall correct the error and so far as practicable adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the ~~[governing body of the]~~ retirement system may recover the overpayment in any manner that would be permitted for the collection of any other debt.

(a-1) On discovery of an error described by Subsection (a), the public retirement system shall as soon as practicable, but not later than the 90th day after the date of discovery, give written notice of the error to the person receiving an incorrect amount of money. The notice must include:

(1) the amount of the correction in overpayment or underpayment;

- 1 (2) how the amount of the correction was calculated;
2 (3) a brief explanation of the reason for the
3 correction;
4 (4) a statement that the notice recipient may file a
5 written complaint with the retirement system if the recipient does
6 not agree with the correction;
7 (5) instructions for filing a written complaint; and
8 (6) a payment plan option if no future payments are
9 due.

10 (a-2) Except as provided by this subsection and Section
11 802.1025, the public retirement system shall begin to adjust future
12 payments or, if no future payments are due, institute recovery of an
13 overpayment of benefits under Subsection (a) not later than the
14 90th day after the date the notice required by Subsection (a-1) is
15 delivered by certified mail, return receipt requested. If the
16 system does not receive a signed receipt evidencing delivery of the
17 notice on or before the 30th day after the date the notice is
18 mailed, the system shall mail the notice a second time by certified
19 mail, return receipt requested. Except as provided by Section
20 802.1025, not later than the 90th day after the date the second
21 notice is mailed, the system shall begin to adjust future payments
22 or, if no future payments are due, institute recovery of an
23 overpayment of benefits.

24 (b) Except as provided by Subsection (c), a public
25 retirement system:

26 (1) may correct the overpayment of benefits to a
27 person entitled to receive payments from the system by the method

described by Subsection (a) only for an overpayment made during the three years preceding the date the ~~[governing body of the]~~ system discovers or discovered the overpayment; ~~[and]~~

(2) may not recover from the recipient any overpayment made more than three years before the discovery of the overpayment; and

(3) may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the time prescribed by Subsection (a-2) or Section 802.1025.

SECTION 2. Subchapter B, Chapter 802, Government Code, is amended by adding Section 802.1025 to read as follows:

Sec. 802.1025. COMPLAINT PROCEDURE. (a) Not later than the 20th day after the date of receiving notice under Section 802.1024(a-1) or, if applicable, the second notice under Section 802.1024(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.

(b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:

(1) how the modified correction was calculated;

(2) a brief explanation of the reason for the

1 modification; and

2 (3) a payment plan option if no future payments are
3 due.

4 (c) Subject to Subsection (d), if a complaint is filed under
5 this section, the retirement system may not adjust future payments
6 or recover an overpayment under Section 802.1024 until:

7 (1) the 20th day after the date the notice recipient
8 receives the response under Subsection (b), if the recipient does
9 not file an administrative appeal by that date; or

10 (2) the date a final decision by the retirement system
11 is issued, if the recipient files an administrative appeal before
12 the date described by Subdivision (1).

13 (d) If the retirement system has begun the adjustment of
14 future payments or the recovery of an overpayment under Section
15 802.1024(a-2), the system shall discontinue the adjustment of
16 future payments or the recovery of the overpayment beginning with
17 the first pay cycle occurring after the date the complaint is
18 received by the system. The system may not recommence the
19 adjustment of future payments or the recovery of an overpayment
20 until the date described by Subsection (c)(1) or (2), as
21 applicable. If a complaint is resolved in favor of the person
22 filing the complaint, not later than the 30th day after the date of
23 the resolution, the system shall pay the person the appropriate
24 amount.

25 (e) A person whose complaint is not resolved under this
26 section must exhaust all administrative procedures provided by the
27 retirement system. Not later than the 30th day after the date a

1 final administrative decision is issued by the retirement system, a
2 person aggrieved by the decision may appeal the decision to an
3 appropriate district court.

4 SECTION 3. (a) Except as provided by Subsection (b) of this
5 section, the change in law made by this Act applies to an
6 underpayment or overpayment of benefits by a public retirement
7 system regardless of whether the underpayment or overpayment was
8 made before, on, or after the effective date of this Act.

9 (b) The change in law made by this Act does not apply to a
10 correction, adjustment, or recovery of an overpayment that
11 commenced before the effective date of this Act or an overpayment
12 that was resolved by an agreement made before the effective date of
13 this Act between a public retirement system and the recipient of the
14 overpayment. A correction, adjustment, or recovery of an
15 overpayment that commenced before the effective date of this Act is
16 governed by the law as it existed immediately before the effective
17 date of this Act, and the former law is continued in effect for that
18 purpose.

19 SECTION 4. This Act takes effect immediately if it receives
20 a vote of two-thirds of all the members elected to each house, as
21 provided by Section 39, Article III, Texas Constitution. If this
22 Act does not receive the vote necessary for immediate effect, this
23 Act takes effect September 1, 2007.

H.B. No. 155

President of the Senate

Speaker of the House

I certify that H.B. No. 155 was passed by the House on May 1, 2007, by the following vote: Yeas 140, Nays 0, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 155 on May 23, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 155 on May 27, 2007, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

H.B. No. 155

I certify that H.B. No. 155 was passed by the Senate, with amendments, on May 21, 2007, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 155 on May 26, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor