

1-1 By: Truitt (Senate Sponsor - Duncan) H.B. No. 2559
1-2 (In the Senate - Received from the House May 12, 2009;
1-3 May 12, 2009, read first time and referred to Committee on State
1-4 Affairs; May 25, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 1,
1-6 2 present not voting; May 25, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2559 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the powers and duties of and benefits available under
1-11 the Employees Retirement System of Texas.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 615.045, Government Code, is amended by
1-14 amending Subsection (a) and adding Subsections (b-1) and (d) to
1-15 read as follows:

1-16 (a) Records of individuals listed by Section 615.003 and of
1-17 survivors eligible for benefits under this chapter that are in the
1-18 custody of the Employees Retirement System of Texas, ~~or~~ an
1-19 administering firm as defined by Section 1551.003, Insurance Code,
1-20 a carrier as defined by Section 1551.007, Insurance Code, or
1-21 another governmental agency acting with or on behalf of the
1-22 retirement system are confidential and not subject to public
1-23 disclosure, and the retirement system, administering firm,
1-24 carrier, or governmental agency is not required to accept or comply
1-25 with a request for a record or information about a record or to seek
1-26 an opinion from the attorney general, because the records are
1-27 exempt from the ~~public information~~ provisions of Chapter 552,
1-28 except as otherwise provided by this section.

1-29 (b-1) A record released or received by the retirement system
1-30 under this section may be transmitted electronically, including
1-31 through the use of an electronic signature or certification in a
1-32 form acceptable to the retirement system. An unintentional
1-33 disclosure to, or unauthorized access by, a third party related to
1-34 the transmission or receipt of information under this section is
1-35 not a violation by the retirement system of any law, including a law
1-36 or rule relating to the protection of confidential information.

1-37 (d) The retirement system has sole discretion in
1-38 determining whether a record is subject to this section. For
1-39 purposes of this section, a record includes any identifying
1-40 information about any person, living or deceased, who is or was:

1-41 (1) an individual listed in Section 615.003; or
1-42 (2) a survivor, heir, or beneficiary of an individual
1-43 listed in Section 615.003.

1-44 SECTION 2. Subchapter A, Chapter 811, Government Code, is
1-45 amended by adding Sections 811.010 and 811.011 to read as follows:

1-46 Sec. 811.010. VENUE. Subject to and without waiving the
1-47 retirement system's sovereign immunity or the official immunity of
1-48 the trustees, officers, and employees of the retirement system, the
1-49 venue for any action by or against the retirement system, the
1-50 trustees, officers, or employees of the retirement system, or an
1-51 administering firm, carrier, or other governmental agency acting in
1-52 cooperation with or on behalf of the retirement system is in Travis
1-53 County.

1-54 Sec. 811.011. STATUTE OF LIMITATIONS. Subject to and
1-55 without waiving the retirement system's sovereign immunity or the
1-56 official immunity of the trustees, officers, and employees of the
1-57 retirement system, unless specifically provided otherwise by
1-58 another statute, the statute of limitations for a claim against the
1-59 retirement system or a trustee, officer, or employee of the
1-60 retirement system is two years.

1-61 SECTION 3. Section 812.101, Government Code, is amended by
1-62 adding Subsection (c) to read as follows:

1-63 (c) For a law enforcement or custodial officer, the

2-1 withdrawal of accumulated contributions under Subsection (a)
 2-2 includes all of the officer's contributions made under Section
 2-3 815.402(h).

2-4 SECTION 4. Section 812.201(c), Government Code, is amended
 2-5 to read as follows:

2-6 (c) A person who is retired from the elected class of
 2-7 membership and who again holds a position included in that class may
 2-8 elect to become a member again by filing notice with the retirement
 2-9 system. Except as provided by Section 812.203(c) [812.203(e)],
 2-10 when benefit payments are resumed, the retirement system shall
 2-11 recompute the annuity selected at the time of the person's original
 2-12 retirement to include the additional service established during
 2-13 membership under this subsection.

2-14 SECTION 5. Subchapter C, Chapter 812, Government Code, is
 2-15 amended by adding Section 812.205 to read as follows:

2-16 Sec. 812.205. WAITING PERIOD. A member who retires from the
 2-17 employee class on or after May 31, 2009, may not return to work in a
 2-18 position included in the employee class of membership before the
 2-19 90th day after the date of the retiree's original retirement.

2-20 SECTION 6. Subchapter C, Chapter 812, Government Code, is
 2-21 amended by adding Section 812.206 to read as follows:

2-22 Sec. 812.206. RETURN TO WORK SURCHARGE. (a) This section
 2-23 applies only to a person who, on or after September 1, 2009:

2-24 (1) retires from the employee class; and
 2-25 (2) is rehired as a retiree into a position that would
 2-26 otherwise include membership in the employee class.

2-27 (b) For each month that a department or agency of this state
 2-28 employs a person described by Subsection (a), the department or
 2-29 agency shall remit to the retirement system an amount equal to the
 2-30 amount of the state contribution that the department or agency
 2-31 would remit for an active member employed in the person's position.
 2-32 The amount remitted shall be deposited in the trust fund
 2-33 established under Section 815.310.

2-34 SECTION 7. Section 813.509, Government Code, is amended by
 2-35 amending Subsections (d) and (e) and adding Subsection (k) to read
 2-36 as follows:

2-37 (d) An individual who was a [A] member or employee on August
 2-38 31, 2009, and who holds a position included in the employee class
 2-39 may use sick leave creditable under this section to satisfy service
 2-40 requirements for retirement under Section 814.104 or 814.107 if the
 2-41 sick leave attributed to the eligibility requirements remains
 2-42 otherwise unused on the last day of employment.

2-43 (e) A death benefit beneficiary [designee] under Section
 2-44 814.302 may use the deceased member's sick leave credit under this
 2-45 section to qualify for making a death benefit plan selection under
 2-46 Section 814.302 if the decedent was a member or employee on August
 2-47 31, 2009.

2-48 (k) A member who was not a member on the date hired and was
 2-49 hired on or after September 1, 2009, or a death benefit beneficiary
 2-50 of that member may use sick leave creditable under this section only
 2-51 for purposes of calculating the member's or beneficiary's annuity.

2-52 SECTION 8. Section 813.511, Government Code, is amended by
 2-53 amending Subsections (d) and (e) and adding Subsection (j) to read
 2-54 as follows:

2-55 (d) An individual who was a [A] member or employee on August
 2-56 31, 2009, and who holds a position included in the employee class
 2-57 may use annual leave creditable under this section to satisfy
 2-58 service requirements for retirement under Section 814.104 or
 2-59 814.107 if the annual leave attributed to the eligibility
 2-60 requirements remains otherwise unused on the last day of
 2-61 employment.

2-62 (e) A death benefit beneficiary [designee] under Section
 2-63 814.302 may use the deceased member's annual leave credit under
 2-64 this section to qualify for making a death benefit plan selection
 2-65 under Section 814.302 if the decedent was a member or employee on
 2-66 August 31, 2009.

2-67 (j) A member who was not a member on the date hired and was
 2-68 hired on or after September 1, 2009, or a death benefit beneficiary
 2-69 of that member may use annual leave creditable under this section

3-1 only for purposes of calculating the member's or beneficiary's
 3-2 annuity.

3-3 SECTION 9. Section 814.008(a), Government Code, is amended
 3-4 to read as follows:

3-5 (a) A retiree receiving an optional service or disability
 3-6 retirement annuity approved by the board of trustees or described
 3-7 by Section 814.108(c)(1), ~~or~~ (c)(2), or (c)(5) may change the
 3-8 designated beneficiary as provided by this section for the benefits
 3-9 payable after the retiree's death.

3-10 SECTION 10. Subchapter A, Chapter 814, Government Code, is
 3-11 amended by adding Section 814.012 to read as follows:

3-12 Sec. 814.012. DISPOSITION OF UNCLAIMED BENEFICIARY
 3-13 BENEFITS. If, as of the fourth anniversary of the death of a member
 3-14 or annuitant, the retirement system has not paid benefits and a
 3-15 claim for benefits is not pending with the retirement system based
 3-16 on the death of the member or annuitant, the accumulated
 3-17 contributions of the deceased member or the balance of the reserve
 3-18 for the deceased annuitant reverts to the benefit of the retirement
 3-19 system. The retirement system shall transfer funds reverted under
 3-20 this section to the state accumulation account.

3-21 SECTION 11. Section 814.104, Government Code, is amended by
 3-22 amending Subsection (a) and adding Subsection (d) to read as
 3-23 follows:

3-24 (a) Except as provided by Subsection (d) of this section,
 3-25 Section 814.102, or by rule adopted under Section 813.304(d) or
 3-26 803.202(a)(2), a member who has service credit in the retirement
 3-27 system is eligible to retire and receive a service retirement
 3-28 annuity if the member:

3-29 (1) is at least 60 years old and has at least 5 years of
 3-30 service credit in the employee class; or

3-31 (2) has at least 5 years of service credit in the
 3-32 employee class and the sum of the member's age and amount of service
 3-33 credit in the employee class, including months of age and credit,
 3-34 equals or exceeds the number 80.

3-35 (d) Except as provided by Section 814.102 or by rule adopted
 3-36 under Section 813.304(d) or 803.202(a)(2), a member who was not a
 3-37 member on the date hired, was hired on or after September 1, 2009,
 3-38 and has service credit in the retirement system is eligible to
 3-39 retire and receive a service retirement annuity if the member:

3-40 (1) is at least 65 years old and has at least 10 years
 3-41 of service credit in the employee class; or

3-42 (2) has at least 5 years of service credit in the
 3-43 employee class and the sum of the member's age and amount of service
 3-44 credit in the employee class, including months of age and credit,
 3-45 equals or exceeds the number 80.

3-46 SECTION 12. Section 814.105, Government Code, is amended by
 3-47 adding Subsections (c) and (d) to read as follows:

3-48 (c) The standard service retirement annuity for service
 3-49 credited in the employee class of membership for a member who was
 3-50 not a member on the date hired, was hired on or after September 1,
 3-51 2009, and is eligible to retire is an amount computed as the
 3-52 member's average monthly compensation for service in that class for
 3-53 the 48 highest months of compensation multiplied by 2.3 percent for
 3-54 each year of service credit in that class.

3-55 (d) The standard service retirement annuity computed under
 3-56 Subsection (c) is reduced by five percent for each year the member
 3-57 retires before the member reaches age 60, with a maximum possible
 3-58 reduction of 25 percent.

3-59 SECTION 13. Sections 814.107(c) and (d), Government Code,
 3-60 are amended to read as follows:

3-61 (c) The standard combined service retirement annuity that
 3-62 is payable under this section is based on retirement on or after the
 3-63 attainment of the normal retirement age, which for purposes of this
 3-64 section is the earlier of either the age of 50 or the age at which
 3-65 the sum of the member's age and amount of service credit in the
 3-66 employee class equals the number 80. A law enforcement or custodial
 3-67 officer who retires before attaining the normal retirement age is
 3-68 entitled only to an annuity that is actuarially reduced from the
 3-69 annuity available at the normal retirement age to the law

4-1 enforcement or custodial officer whose service credit annuity
 4-2 amount is based on [available at] the sum of the member's age and
 4-3 amount of law enforcement or custodial officer service credit and
 4-4 employee class service credit, and is not entitled to have the
 4-5 annuity recalculated at normal retirement age. The standard or
 4-6 reduced annuity is payable from the trust fund established by
 4-7 Section 815.310 and the law enforcement and custodial officer
 4-8 supplemental retirement fund in a ratio determined by the
 4-9 retirement system.

4-10 (d) A member who retires under this section retires
 4-11 simultaneously from the employee class of membership. [~~Benefits for~~
 4-12 ~~service in the employee class of membership become payable from the~~
 4-13 ~~trust fund established by Section 815.310 at the normal retirement~~
 4-14 ~~age under the computation provided by Section 814.105.] Optional
 4-15 retirement annuities provided by Section 814.108 are available to a
 4-16 member eligible to receive a service retirement annuity under this
 4-17 section, but the same optional plan and beneficiary [designee] must
 4-18 be selected for the portion of the annuity payable from the law
 4-19 enforcement and custodial officer supplemental retirement fund and
 4-20 the portion payable from the trust fund established by Section
 4-21 815.310.~~

4-22 SECTION 14. Subchapter B, Chapter 814, Government Code, is
 4-23 amended by adding Section 814.1075 to read as follows:

4-24 Sec. 814.1075. ADJUSTED BENEFITS FOR CERTAIN PEACE
 4-25 OFFICERS. (a) This section applies only to a person hired on or
 4-26 after September 1, 2009, who was not a member on the date hired.

4-27 (b) A member who has at least 20 years of service credit as a
 4-28 law enforcement or custodial officer is eligible to retire
 4-29 regardless of age and receive a standard service retirement annuity
 4-30 as provided by this section.

4-31 (c) The standard service retirement annuity payable for at
 4-32 least 20 years of service credit as a law enforcement or custodial
 4-33 officer is an amount computed on the basis of the member's average
 4-34 monthly compensation for the 48 highest months of compensation in
 4-35 the employee class multiplied by the sum of the percentage factor
 4-36 used in the computation of a standard service retirement annuity
 4-37 under Section 814.105(c) plus 0.5 percent.

4-38 (d) The standard combined service retirement annuity that
 4-39 is payable under this section is based on retirement at either the
 4-40 age of 55 or the age at which the sum of the member's age and amount
 4-41 of service credit in the employee class equals or exceeds the number
 4-42 80. The annuity of a law enforcement or custodial officer who
 4-43 retires before reaching the age of 55 under any eligibility
 4-44 criteria is actuarially reduced by five percent for each year the
 4-45 member retires before the member reaches age 55, with a maximum
 4-46 possible reduction of 25 percent.

4-47 (e) An annuity payable under this section:

4-48 (1) is payable from the trust fund established by
 4-49 Section 815.310 and from the law enforcement and custodial officer
 4-50 supplemental retirement fund in a ratio determined by the
 4-51 retirement system; and

4-52 (2) is based on the service credit available to the law
 4-53 enforcement or custodial officer at the time of retirement and the
 4-54 sum of the member's age and amount of law enforcement or custodial
 4-55 officer service credit and employee class service credit.

4-56 (f) A member who retires under this section retires
 4-57 simultaneously from the employee class of membership. Optional
 4-58 retirement annuities provided by Section 814.108 are available to a
 4-59 member eligible to receive a service retirement annuity under this
 4-60 section, but the same optional plan and beneficiary must be
 4-61 selected for the portion of the annuity payable from the law
 4-62 enforcement and custodial officer supplemental retirement fund and
 4-63 the portion payable from the trust fund established by Section
 4-64 815.310.

4-65 (g) The amount payable from the law enforcement and
 4-66 custodial officer supplemental retirement fund is reducible by the
 4-67 amount paid from the trust fund established by Section 815.310 for
 4-68 service as a law enforcement or custodial officer. The total
 4-69 combined amount of an annuity under this section may not be less

5-1 than the authorized benefit under Subsection (c) subtracted by any
 5-2 amount necessary because of the selection of an optional annuity,
 5-3 because of retirement before the age of 55, or as provided by
 5-4 Subsection (h).

5-5 (h) The standard combined service retirement annuity
 5-6 payable for at least 20 years of service credit as a law enforcement
 5-7 or custodial officer may not exceed 100 percent of the average
 5-8 compensation computed under Subsection (c).

5-9 (i) For purposes of this section, service as a law
 5-10 enforcement or custodial officer is creditable as provided by rule
 5-11 of the board of trustees or on a month-to-month basis, whichever is
 5-12 greater.

5-13 SECTION 15. Sections 814.108(c), (g), and (h), Government
 5-14 Code, are amended to read as follows:

5-15 (c) An eligible person may select [~~any optional retirement~~
 5-16 ~~annuity approved by the board of trustees, or may select~~] one of the
 5-17 following options, which provides [~~provide~~] that:

5-18 (1) after the retiree's death, the reduced annuity is
 5-19 payable in the same amount throughout the life of the person
 5-20 designated by the retiree before retirement;

5-21 (2) after the retiree's death, one-half of the reduced
 5-22 annuity is payable throughout the life of the person designated by
 5-23 the retiree before retirement;

5-24 (3) if the retiree dies before 60 monthly annuity
 5-25 payments have been made, the remainder of the 60 payments are
 5-26 payable to one or more beneficiaries [~~designees~~] or, if one does not
 5-27 exist, to the retiree's estate; [~~or~~]

5-28 (4) if the retiree dies before 120 monthly annuity
 5-29 payments have been made, the remainder of the 120 payments are
 5-30 payable to one or more beneficiaries [~~designees~~] or, if one does not
 5-31 exist, to the retiree's estate; or

5-32 (5) after the retiree's death, three-fourths of the
 5-33 reduced annuity is payable throughout the life of the person
 5-34 designated by the retiree before retirement.

5-35 (g) Except as provided by Section 814.008 or 814.1081, a
 5-36 person who selected an optional service retirement annuity approved
 5-37 by the board of trustees or an optional service retirement annuity
 5-38 described by Subsection (c)(1), [~~or~~] (c)(2), or (c)(5) may not
 5-39 change or revoke a beneficiary designation after the person's
 5-40 effective date of retirement.

5-41 (h) A beneficiary designation that names a former spouse as
 5-42 beneficiary for a guaranteed optional annuity described by
 5-43 Subsection (c)(3) or (c)(4) is invalid unless the designation is
 5-44 made after the date of the divorce.

5-45 SECTION 16. Section 814.1081(a), Government Code, is
 5-46 amended to read as follows:

5-47 (a) A person who retired and selected an optional service
 5-48 retirement annuity [~~approved by the board of trustees or an~~
 5-49 ~~optional service retirement annuity~~] described by Section
 5-50 814.108(c)(1), [~~or~~] (c)(2), or (c)(5) may change the optional
 5-51 annuity selection to the selection of a standard service retirement
 5-52 annuity by filing with the retirement system a request to change the
 5-53 annuity selection, if the retiree designated a person as
 5-54 beneficiary who:

5-55 (1) was not at the time of designation and is not
 5-56 currently the retiree's spouse or dependent child; or

5-57 (2) has executed since the designation a transfer and
 5-58 release, approved by a court of competent jurisdiction pursuant to
 5-59 a divorce decree, of the beneficiary's interest in the annuity and
 5-60 is not currently the retiree's spouse or dependent child.

5-61 SECTION 17. Section 814.202, Government Code, is amended by
 5-62 adding Subsection (g) to read as follows:

5-63 (g) A member otherwise eligible to receive a disability
 5-64 retirement annuity may not receive the annuity if the member is:

5-65 (1) still earning a salary or wage from the employment
 5-66 for which the member is claiming disability; or

5-67 (2) on leave without pay from the employment for which
 5-68 the member is claiming disability.

5-69 SECTION 18. Section 814.203, Government Code, is amended to

6-1 read as follows:

6-2 Sec. 814.203. CERTIFICATION OF DISABILITY. (a) As soon as
6-3 practicable after an application for disability retirement is
6-4 filed, the medical board shall evaluate the medical and other
6-5 pertinent information regarding the member's application. If the
6-6 medical board finds that the member is mentally or physically
6-7 incapacitated for the further performance of duty, as supported by
6-8 substantial, objective, medical evidence, and that the incapacity
6-9 is likely to be permanent, the medical board shall issue a
6-10 certification of disability and submit it to the executive
6-11 director. A certification under this section is admissible in a
6-12 contested case under Section 815.511 without proving the medical
6-13 board as experts.

6-14 (b) For purposes of this subchapter, a member is
6-15 incapacitated for the further performance of duty if the member has
6-16 demonstrably sought and been denied workplace accommodation of the
6-17 disability in accordance with applicable law, and the member is
6-18 physically or mentally unable to continue to hold the position
6-19 occupied or to hold any other position offering comparable pay. The
6-20 employee's education, training, and experience must be considered
6-21 when making a determination of incapacity under this subchapter.

6-22 (c) For the purposes of this section, "comparable pay" means
6-23 80 percent or more of the member's final state employment base pay
6-24 before deductions for taxes or deferred compensation under state
6-25 and federal law, including any longevity or hazardous duty pay, but
6-26 excluding the monetary value of any insurance or retirement
6-27 benefits. Comparable pay may be adjusted by the retirement system
6-28 to account for adjustments in state pay rates.

6-29 SECTION 19. Subchapter C, Chapter 815, Government Code, is
6-30 amended by adding Section 815.214 to read as follows:

6-31 Sec. 815.214. SUBPOENA. Notwithstanding any other law, the
6-32 retirement system may issue a subpoena that conforms to Rule 176,
6-33 Texas Rules of Civil Procedure, including a preappeal investigative
6-34 subpoena or any subpoena otherwise authorized by the Texas Rules of
6-35 Civil Procedure, that the retirement system determines necessary to
6-36 protect the interests of a program or system administered by the
6-37 retirement system.

6-38 SECTION 20. Section 815.301, Government Code, is amended by
6-39 adding Subsections (g), (h), and (i) to read as follows:

6-40 (g) In awarding contracts to private professional
6-41 investment managers under Subsection (c) or otherwise acquiring
6-42 private financial services, the board of trustees shall make a good
6-43 faith effort to award contracts to or acquire services from
6-44 qualified emerging fund managers.

6-45 (h) For purposes of Subsection (g):

6-46 (1) "Emerging fund manager" means a private
6-47 professional investment manager that manages assets of not more
6-48 than \$2 billion.

6-49 (2) "Private financial services" includes pension
6-50 fund management, consulting, investment advising, brokerage
6-51 services, hedge fund management, private equity fund management,
6-52 and real estate investment.

6-53 (i) The retirement system shall report to the board of
6-54 trustees on the methods and results of the system's efforts to hire
6-55 emerging fund managers, including data disaggregated by race,
6-56 ethnicity, gender, and fund size.

6-57 SECTION 21. Section 815.307, Government Code, as amended by
6-58 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
6-59 Legislature, Regular Session, 2003, is reenacted to read as
6-60 follows:

6-61 Sec. 815.307. DUTY OF CARE. The assets of the retirement
6-62 system shall be invested and reinvested without distinction as to
6-63 their source in accordance with Section 67, Article XVI, Texas
6-64 Constitution. A determination of whether the board of trustees has
6-65 exercised prudence with respect to an investment decision must be
6-66 made taking into consideration the investment of all assets of the
6-67 trust or all assets of the collective investment vehicle, as
6-68 applicable, over which the board has management and control, rather
6-69 than considering the prudence of a single investment of the trust or

7-1 the collective investment vehicle, as applicable.

7-2 SECTION 22. Section 815.402, Government Code, is amended by
7-3 amending Subsection (a) and adding Subsection (h) to read as
7-4 follows:

7-5 (a) Except as provided by Section 813.201, each payroll
7-6 period, each department or agency of the state shall cause to be
7-7 deducted from each member's compensation a contribution of:

7-8 (1) 6.5 [~~six~~] percent of the compensation if the
7-9 member is not a member of the legislature, provided that if the
7-10 state contribution to the retirement system is computed using a
7-11 percentage less than 6.5 percent, the member's contribution is
7-12 computed using a percentage equal to the percentage used to compute
7-13 the state contribution, which may not be less than six percent; or

7-14 (2) eight percent of the compensation if the member is
7-15 a member of the legislature.

7-16 (h) In addition to the contribution under Subsection
7-17 (a)(1), each department or agency of the state that employs a law
7-18 enforcement or custodial officer shall deduct an additional 0.5
7-19 percent contribution from that member's compensation, to be
7-20 deposited in the law enforcement and custodial officer supplemental
7-21 retirement fund, provided that, if the state contribution to the
7-22 law enforcement and custodial officer supplemental retirement fund
7-23 is computed using a percentage less than 0.5 percent, the member's
7-24 contribution is computed using a percentage equal to the percentage
7-25 used to compute the state contribution.

7-26 SECTION 23. Section 815.503, Government Code, is amended by
7-27 amending Subsections (a) and (b) and adding Subsections (b-1) and
7-28 (e) to read as follows:

7-29 (a) Records of members, annuitants, retirees,
7-30 beneficiaries, and alternate payees under retirement plans
7-31 administered by the retirement system that are in the custody of the
7-32 system or of an administering firm [~~administrator~~], carrier, or
7-33 other governmental agency acting in cooperation with or on behalf
7-34 of the retirement system are confidential and not subject to public
7-35 disclosure, and the retirement system, administering firm,
7-36 carrier, or governmental agency is not required to accept or comply
7-37 with a request for a record or information about a record or to seek
7-38 an opinion from the attorney general, because the records are
7-39 exempt from the [~~public access~~] provisions of Chapter 552, except
7-40 as otherwise provided by this section.

7-41 (b) Records may be released to a member, annuitant, retiree,
7-42 beneficiary, or alternate payee or to an authorized attorney,
7-43 family member, or representative acting on behalf of the member,
7-44 annuitant, retiree, beneficiary, or alternate payee. The
7-45 retirement system may release the records to an administering firm
7-46 [~~administrator~~], carrier, or agent or attorney acting on behalf of
7-47 the retirement system, to another governmental entity having a
7-48 legitimate need for the information to perform the purposes of the
7-49 retirement system, or to a party in response to a subpoena issued
7-50 under applicable law.

7-51 (b-1) A record released or received by the retirement system
7-52 under this section may be transmitted electronically, including
7-53 through the use of an electronic signature or certification in a
7-54 form acceptable to the retirement system. An unintentional
7-55 disclosure to, or unauthorized access by, a third party related to
7-56 the transmission or receipt of information under this section is
7-57 not a violation by the retirement system of any law, including a law
7-58 or rule relating to the protection of confidential information.

7-59 (e) The retirement system has sole discretion in
7-60 determining if a record is subject to this section. For purposes of
7-61 this section, a record includes any identifying information about a
7-62 person, living or deceased, who is or was a member, annuitant,
7-63 retiree, beneficiary, or alternate payee, under any retirement plan
7-64 or program administered by the retirement system.

7-65 SECTION 24. Section 815.512, Government Code, is amended to
7-66 read as follows:

7-67 Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY.

7-68 (a) The executive director may cause an action for interpleader [~~a~~
7-69 ~~suit~~] concerning a claim to be filed on behalf of the retirement

8-1 system in a district court in Travis County to protect the system
 8-2 from double or multiple liability if the executive director
 8-3 determines that a claim may expose the retirement system to such
 8-4 liability.

8-5 (b) A person may not pursue a counterclaim or other cause of
 8-6 action against the retirement system, a trustee, officer, or
 8-7 employee of the retirement system, or a carrier or administering
 8-8 firm for the retirement system in connection with a transaction or
 8-9 occurrence related to the interpleader action.

8-10 (c) A person who violates Subsection (b) is liable for the
 8-11 costs and attorney's fees incurred by the retirement system, a
 8-12 trustee, officer, or employee of the retirement system, or a
 8-13 carrier or administering firm for the retirement system as a result
 8-14 of the violation.

8-15 SECTION 25. Subchapter F, Chapter 815, Government Code, is
 8-16 amended by adding Section 815.515 to read as follows:

8-17 Sec. 815.515. DISPOSITION OF UNCLAIMED CONTRIBUTIONS OF
 8-18 FORMER MEMBERS. (a) Subject to Chapters 803 and 805, if the
 8-19 retirement system has not received a request for a refund of the
 8-20 accumulated contributions of a member in accordance with Subchapter
 8-21 B, Chapter 812, before the seventh anniversary of the member's last
 8-22 day of service, the retirement system may refund the accumulated
 8-23 contributions to the member or the member's heirs. If the member or
 8-24 the member's heirs cannot be found, the member's accumulated
 8-25 contributions revert to the retirement system.

8-26 (b) The retirement system shall credit any amounts that
 8-27 revert to the retirement system under Subsection (a) to the state
 8-28 accumulation account.

8-29 (c) The board of trustees may adopt rules to implement and
 8-30 administer this section.

8-31 SECTION 26. Section 837.003, Government Code, is amended by
 8-32 adding Subsection (e) to read as follows:

8-33 (e) At the time a service retirement, disability
 8-34 retirement, or death benefit annuity becomes payable, the
 8-35 retirement system shall refund any contributions, interest, or
 8-36 membership fees used to establish service credit that is not used in
 8-37 computing the amount of the annuity.

8-38 SECTION 27. Section 838.106, Government Code, is amended by
 8-39 adding Subsection (c) to read as follows:

8-40 (c) For the purpose of Subsection (a)(1), the term of a
 8-41 member leaving judicial office ends not later than December 31
 8-42 regardless of the date on which the member's successor takes the
 8-43 oath of office.

8-44 SECTION 28. Section 839.103(a), Government Code, is amended
 8-45 to read as follows:

8-46 (a) Instead of a service retirement annuity payable under
 8-47 Section 839.102, a retiring member may elect to receive [an
 8-48 optional service retirement annuity provided by the board of
 8-49 trustees or] one of the following optional service retirement
 8-50 annuities, actuarially reduced to an actuarially equivalent value
 8-51 and consisting of:

8-52 (1) an annuity payable during the retiring member's
 8-53 life and continuing after death in the same amount, throughout the
 8-54 life of one person designated by the retiring member before
 8-55 retirement;

8-56 (2) an annuity payable during the retiring member's
 8-57 life and continuing after death in an amount equal to one-half of
 8-58 the amount payable during the retiring member's life, throughout
 8-59 the life of one person designated by the retiring member before
 8-60 retirement;

8-61 (3) an annuity payable for the greater of the rest of
 8-62 the retiring member's life or 60 months; [or]

8-63 (4) an annuity payable for the greater of the rest of
 8-64 the retiring member's life or 120 months; or

8-65 (5) an annuity payable during the retiring member's
 8-66 life and continuing after death in an amount equal to three-fourths
 8-67 of the amount payable during the retiring member's life, throughout
 8-68 the life of one person designated by the retiring member before
 8-69 retirement.

9-1 SECTION 29. Section 840.303, Government Code, as amended by
9-2 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
9-3 Legislature, Regular Session, 2003, is reenacted to read as
9-4 follows:

9-5 Sec. 840.303. DUTY OF CARE. The assets of the retirement
9-6 system shall be invested and reinvested without distinction as to
9-7 their source in accordance with Section 67, Article XVI, Texas
9-8 Constitution. A determination of whether the board of trustees has
9-9 exercised prudence with respect to an investment decision must be
9-10 made taking into consideration the investment of all assets of the
9-11 trust or all assets of the collective investment vehicle, as
9-12 applicable, over which the board has management and control, rather
9-13 than considering the prudence of a single investment of the trust or
9-14 the collective investment vehicle, as applicable.

9-15 SECTION 30. Section 840.402, Government Code, is amended to
9-16 read as follows:

9-17 Sec. 840.402. RETIREMENT SYSTEM RECORDS. Records of
9-18 members, annuitants, retirees, beneficiaries, and alternate payees
9-19 of the retirement system are confidential and are not subject to
9-20 public disclosure and are exempt from the provisions of Chapter
9-21 552. Records maintained as confidential under this section may be
9-22 released or received in the manner provided by Section 815.503.

9-23 SECTION 31. Section 1551.003, Insurance Code, is amended by
9-24 adding Subdivision (10-a) to read as follows:

9-25 (10-a) "Participant" means an eligible individual who
9-26 participates in the group benefits program.

9-27 SECTION 32. Section 1551.004, Insurance Code, is amended to
9-28 read as follows:

9-29 Sec. 1551.004. DEFINITION OF DEPENDENT. (a) In this
9-30 chapter, "dependent" with respect to an individual eligible to
9-31 participate in the group benefits program under Section 1551.101 or
9-32 1551.102 means the individual's:

- 9-33 (1) spouse;
- 9-34 (2) unmarried child younger than 25 years of age;
- 9-35 (3) child of any age who the board of trustees
9-36 determines lives with or has the child's care provided by the
9-37 individual on a regular basis if:

9-38 (A) the child is mentally retarded or physically
9-39 incapacitated to the extent that the child is dependent on the
9-40 individual for care or support, as determined by the board of
9-41 trustees;

9-42 (B) the child's coverage under this chapter has
9-43 not lapsed; and

9-44 (C) the child is at least 25 years old and was
9-45 enrolled as a participant in the health benefits coverage under the
9-46 group benefits program on the date of the child's 25th birthday;
9-47 ~~and~~

9-48 (4) child of any age who is unmarried, for purposes of
9-49 health benefit coverage under this chapter, on expiration of the
9-50 child's continuation coverage under the Consolidated Omnibus
9-51 Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its
9-52 subsequent amendments; and

9-53 (5) ward, as that term is defined by Section 601, Texas
9-54 Probate Code.

9-55 (b) In this section, "child" includes:

9-56 (1) a natural child, ~~an~~ adopted child, ~~and a~~
9-57 stepchild, or foster child; ~~or~~

9-58 (2) a ~~other~~ child who is related by blood or marriage
9-59 and was claimed as a dependent on the federal income tax return of
9-60 ~~[is in a parent-child relationship with]~~ an individual who is
9-61 eligible to participate in the group benefits program under Section
9-62 1551.101 or 1551.102 for the calendar year preceding the plan year
9-63 in which the child is first enrolled as a dependent under Subchapter
9-64 D, and for each subsequent year in which the child is enrolled as a
9-65 dependent.

9-66 (c) The requirement in Subsection (b)(2) that a child must
9-67 be claimed as a dependent on a federal income tax return in the
9-68 calendar year preceding the child's enrollment does not apply if:

9-69 (1) the child is born in the year in which the child is

10-1 first enrolled; or

10-2 (2) the participant can demonstrate good cause for not
 10-3 claiming the child as a dependent in the preceding calendar year.

10-4 SECTION 33. Section 1551.063, Insurance Code, is amended by
 10-5 amending Subsections (a) and (c) and adding Subsections (d-1) and
 10-6 (f) to read as follows:

10-7 (a) The records of a participant in the group benefits
 10-8 program in the custody of the Employees Retirement System of Texas
 10-9 [board of trustees], or of an administering firm, [administrator
 10-10 or] carrier, or another governmental entity acting on behalf of the
 10-11 retirement system [board], are confidential and not subject to
 10-12 disclosure, and the retirement system, administering firm,
 10-13 carrier, or governmental entity [board] is not required to accept
 10-14 or comply with a request for a record or information about a record
 10-15 or to seek an opinion from the attorney general, because the records
 10-16 are exempt from the [public access] provisions of Chapter 552,
 10-17 Government Code, except as provided by this section.

10-18 (c) To accomplish the purposes of this chapter, the board of
 10-19 trustees may release the records to:

10-20 (1) an administering firm [administrator], carrier,
 10-21 agent, or attorney acting on behalf of the board;

10-22 (2) another governmental entity having a legitimate
 10-23 need for the information to perform a function of the board of
 10-24 trustees;

10-25 (3) an authorized medical provider of the participant;
 10-26 or

10-27 (4) a party in response to a subpoena issued under
 10-28 applicable law.

10-29 (d-1) A record released or received by the Employees
 10-30 Retirement System of Texas under this section may be transmitted
 10-31 electronically, including through the use of an electronic
 10-32 signature or certification in a form acceptable to the retirement
 10-33 system. An unintentional disclosure to, or unauthorized access by,
 10-34 a third party related to the transmission or receipt of information
 10-35 under this section is not a violation by the retirement system of
 10-36 any law, including a law or rule relating to the protection of
 10-37 confidential information.

10-38 (f) The Employees Retirement System of Texas has sole
 10-39 discretion in determining if a record is subject to this section.
 10-40 For purposes of this section, a record includes any identifying
 10-41 information about a person, living or deceased, who is or was an
 10-42 employee, annuitant, dependent, or participant in the group
 10-43 benefits program.

10-44 SECTION 34. Section 1551.102(d), Insurance Code, is amended
 10-45 to read as follows:

10-46 (d) An individual is eligible to participate in the group
 10-47 benefits program as provided by Subsection (a) if [the individual]:

10-48 (1) the individual retires under the optional
 10-49 retirement program established by Chapter 830, Government Code;

10-50 (2) the individual has [with] at least 10 years of
 10-51 eligible service credit; and

10-52 (3) [2) receives or is eligible to receive an
 10-53 annuity under that program and] the individual:

10-54 (A) is at least 65 years of age, or would have
 10-55 been eligible to retire and receive a service or disability
 10-56 retirement annuity from the Teacher Retirement System of Texas or
 10-57 the Employees Retirement System of Texas in an amount such that the
 10-58 sum of the person's age and amount of service credit, including
 10-59 months of age and credit, equals or exceeds the number 80 or would
 10-60 have been eligible to retire and receive a disability retirement
 10-61 annuity from the Teacher Retirement System of Texas or the
 10-62 Employees Retirement System of Texas, if the individual had not
 10-63 elected to participate in the optional retirement program, and is
 10-64 eligible to receive an annuity or periodic distribution of funds
 10-65 from an account under the optional retirement program; or

10-66 (B) is disabled as determined by the Employees
 10-67 Retirement System of Texas based on at least 10 years of eligible
 10-68 service credit, and is receiving an annuity or periodic
 10-69 distribution of funds from an account under the optional retirement

11-1 program.

11-2 SECTION 35. Section 1551.155, Insurance Code, is amended by
 11-3 adding Subsections (c) and (d) to read as follows:

11-4 (c) A person who is the surviving spouse of an individual
 11-5 described by Subsection (a) may secure group health coverage
 11-6 without evidence of the person's insurability if the individual was
 11-7 eligible to participate in the group benefits program under Section
 11-8 1551.101 or 1551.102 but was not participating at the time of the
 11-9 individual's death.

11-10 (d) A surviving spouse seeking group coverage under
 11-11 Subsection (c):

11-12 (1) must apply for the coverage not later than the 30th
 11-13 day after the date on which the individual who was eligible to
 11-14 participate in the group benefits program dies; and

11-15 (2) shall pay for the coverage at the group rate as
 11-16 provided by Subsection (b).

11-17 SECTION 36. The heading to Section 1551.156, Insurance
 11-18 Code, is amended to read as follows:

11-19 Sec. 1551.156. COVERAGE OPTIONS FOR SURVIVING DEPENDENT
 11-20 [~~WHEN THERE IS NO SURVIVING SPOUSE~~].

11-21 SECTION 37. Section 1551.156, Insurance Code, is amended by
 11-22 adding Subsections (d) and (e) to read as follows:

11-23 (d) A person who is a surviving dependent of an annuitant
 11-24 may secure group health coverage after the death of the annuitant
 11-25 without evidence of the person's insurability if the annuitant was
 11-26 eligible to participate in the group benefits program of a
 11-27 retirement system named in this chapter but was not participating
 11-28 at the time of the individual's death.

11-29 (e) A surviving dependent seeking group coverage under
 11-30 Subsection (d):

11-31 (1) must apply for the coverage not later than the 30th
 11-32 day after the date on which the individual who was eligible to
 11-33 participate in the group benefits program dies; and

11-34 (2) shall pay for the coverage at the group rate as
 11-35 provided by Subsection (b).

11-36 SECTION 38. Section 1551.354, Insurance Code, is amended by
 11-37 amending Subsection (b) and adding Subsections (c) and (d) to read
 11-38 as follows:

11-39 (b) The executive director may cause the filing of an action
 11-40 for interpleader [~~a suit~~] concerning the claim in a district court
 11-41 in Travis County on behalf of the Employees Retirement System of
 11-42 Texas to protect the group coverage plan from double or multiple
 11-43 liability.

11-44 (c) A person may not pursue a counterclaim or other cause of
 11-45 action against the Employees Retirement System of Texas, a trustee,
 11-46 officer, or employee of the retirement system, or a carrier or
 11-47 administering firm for the retirement system in connection with a
 11-48 transaction or occurrence related to the interpleader action.

11-49 (d) A person who violates Subsection (c) is liable for the
 11-50 costs and attorney's fees incurred by the Employees Retirement
 11-51 System of Texas, a trustee, officer, or employee of the retirement
 11-52 system, or a carrier or administering firm for the retirement
 11-53 system as a result of the violation.

11-54 SECTION 39. Subchapter H, Chapter 1551, Insurance Code, is
 11-55 amended by adding Section 1551.362 to read as follows:

11-56 Sec. 1551.362. SUBPOENA. Notwithstanding any other law,
 11-57 the Employees Retirement System of Texas may issue a subpoena that
 11-58 conforms to Rule 176, Texas Rules of Civil Procedure, including a
 11-59 preappeal investigative subpoena or any subpoena otherwise
 11-60 authorized by the Texas Rules of Civil Procedure, that the
 11-61 retirement system determines necessary to protect the interests of
 11-62 a program or system administered by the retirement system.

11-63 SECTION 40. Section 1551.401, Insurance Code, is amended by
 11-64 adding Subsection (g) to read as follows:

11-65 (g) Except as provided by Section 1551.259(d), the
 11-66 retirement system may deposit to the credit of the fund any
 11-67 unclaimed money on a finding that a good faith effort has been made
 11-68 to locate the person entitled to the money.

11-69 SECTION 41. The following laws are repealed:

- 12-1 (1) Section 833.1035(c), Government Code;
- 12-2 (2) Section 833.104, Government Code;
- 12-3 (3) Section 835.1015(c), Government Code;
- 12-4 (4) Section 838.1035(c), Government Code;
- 12-5 (5) Section 838.104, Government Code;
- 12-6 (6) Section 840.1025(c), Government Code;
- 12-7 (7) Section 840.1027(c), Government Code;
- 12-8 (8) Section 1551.218(c), Insurance Code; and
- 12-9 (9) Section 1551.221, Insurance Code.

12-10 SECTION 42. Under Section 67, Article XVI, Texas
 12-11 Constitution, the Employees Retirement System of Texas may
 12-12 distribute a supplemental annuity payment on behalf of the State of
 12-13 Texas using money appropriated from the general revenue fund to the
 12-14 retirement system by an Act of the 81st Legislature, Regular
 12-15 Session, 2009, that is enacted and becomes law.

12-16 SECTION 43. Sections 811.010 and 811.011, Government Code,
 12-17 as added by this Act, and Sections 815.512, Government Code, and
 12-18 1551.354, Insurance Code, as amended by this Act, apply only to an
 12-19 action filed by or against the Employees Retirement System of
 12-20 Texas, the trustees, officers, or employees of the retirement
 12-21 system, or an administering firm, carrier, or other governmental
 12-22 agency acting in cooperation with or on behalf of the retirement
 12-23 system on or after the effective date of this Act. An action filed
 12-24 before the effective date of this Act is governed by the law in
 12-25 effect when the action was filed, and that law is continued in
 12-26 effect for that purpose.

12-27 SECTION 44. Section 837.003(e), Government Code, as added
 12-28 by this Act, applies only to a service retirement, disability
 12-29 retirement, or death benefit annuity that becomes payable by the
 12-30 Judicial Retirement System of Texas Plan Two on or after the
 12-31 effective date of this Act. A service retirement, disability
 12-32 retirement, or death benefit annuity that becomes payable by the
 12-33 Judicial Retirement System of Texas Plan Two before the effective
 12-34 date of this Act is governed by the law in effect on the date the
 12-35 annuity becomes payable, and that law is continued in effect for
 12-36 that purpose.

12-37 SECTION 45. Section 1551.004, Insurance Code, as amended by
 12-38 this Act, applies only to an individual claimed as a dependent for a
 12-39 plan year beginning on or after September 1, 2010. An individual
 12-40 claimed as a dependent for a plan year that began before September
 12-41 1, 2010, is governed by the law in effect when the individual was
 12-42 claimed as a dependent, and that law is continued in effect for that
 12-43 purpose.

12-44 SECTION 46. This Act takes effect September 1, 2009.

12-45 * * * * *