

By: Duncan

S.B. No. 2322

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to plan provisions required for maintaining retirement  
3 plan qualification for the Teacher Retirement System of Texas.

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

5 SECTION 1. Section 822.201, Government Code, is amended to  
6 read as follows:

7 Sec. 822.201. (a) Unless otherwise provided by this  
8 subtitle, compensation subject to report and deduction for member  
9 contributions and to credit in benefit computations is:

10 (1) beginning with the 1981-82 school year, only a  
11 member's salary and wages for service, less any amounts excluded by  
12 rules of the board of trustees adopted pursuant to Section 825.110;  
13 and

14 (2) in school years before the 1981-82 school year,  
15 all compensation for service that was or should have been reported  
16 under laws and rules governing the retirement system when the  
17 compensation was paid but excluding compensation greater than  
18 \$25,000 for a school year beginning after August 31, 1969, but  
19 before September 1, 1979, and compensation greater than \$8,400 for  
20 a school year beginning before September 1, 1969.

21 (b) "Salary and wages" as used in Subsection (a) means:

22 (1) normal periodic payments of money for service the  
23 right to which accrues on a regular basis in proportion to the  
24 service performed;

1           (2) amounts by which the member's salary is reduced  
2 under a salary reduction agreement authorized by Chapter 610;

3           (3) amounts that would otherwise qualify as salary and  
4 wages under Subdivision (1) but are not received directly by the  
5 member pursuant to a good faith, voluntary written salary reduction  
6 agreement in order to finance payments to a deferred compensation  
7 or tax sheltered annuity program specifically authorized by state  
8 law or to finance benefit options under a cafeteria plan qualifying  
9 under Section 125 of the Internal Revenue Code of 1986, if:

10           (A) the program or benefit options are made  
11 available to all employees of the employer; and

12           (B) the benefit options in the cafeteria plan are  
13 limited to one or more options that provide deferred compensation,  
14 group health and disability insurance, group term life insurance,  
15 dependent care assistance programs, or group legal services plans;

16           (4) performance pay awarded to an employee by a school  
17 district as part of a total compensation plan approved by the board  
18 of trustees of the district and meeting the requirements of  
19 Subsection (e);

20           (5) the benefit replacement pay a person earns under  
21 Subchapter H, Chapter 659, except as provided by Subsection (c);

22           (6) stipends paid to teachers in accordance with  
23 Section 21.410, 21.411, 21.412, or 21.413, Education Code;

24           (7) amounts by which the member's salary is reduced or  
25 that are deducted from the member's salary as authorized by  
26 Subchapter J, Chapter 659;

27           (8) a merit salary increase made under Section 51.962,

1 Education Code;

2 (9) amounts received under the relevant parts of the  
3 awards for student achievement program under Subchapter N, Chapter  
4 21, Education Code, the educator excellence awards program under  
5 Subchapter O, Chapter 21, Education Code, or a mentoring program  
6 under Section 21.458, Education Code, that authorized compensation  
7 for service;

8 (10) salary amounts designated as health care  
9 supplementation by an employee under Subchapter D, Chapter 22,  
10 Education Code~~[-]~~; and

11 (11) beginning January 1, 2009, to the extent required  
12 by Sections 3401(h) and 414(u)(2), Internal Revenue Code of 1986,  
13 differential wage payments received by an individual from an  
14 employer while the individual is performing qualified military  
15 service (as defined in chapter 43 of title 38, United State Code).  
16 The individual shall be treated as employed by that employer and the  
17 differential wage payment shall be treated as earned compensation.  
18 The retirement system is authorized to determine how contributions  
19 attributable to such differential wage payments shall be made.  
20 This provision shall be applied to all similarly situated  
21 individuals in a reasonably equivalent manner.

22 (c) Excluded from salary and wages are:

- 23 (1) expense payments;  
24 (2) allowances;  
25 (3) payments for unused vacation or sick leave;  
26 (4) maintenance or other nonmonetary compensation;  
27 (5) fringe benefits;

1           (6) deferred compensation other than as provided by  
2 Subsection (b)(3);

3           (7) compensation that is not made pursuant to a valid  
4 employment agreement;

5           (8) payments received by an employee in a school year  
6 that exceed \$5,000 for teaching a driver education and traffic  
7 safety course that is conducted outside regular classroom hours;

8           (9) the benefit replacement pay a person earns as a  
9 result of a payment made under Subchapter B or C, Chapter 661;

10          (10) any amount received by an employee under:

11                   (A) former Article 3.50-8, Insurance Code;

12                   (B) former Chapter 1580, Insurance Code;

13                   (C) Subchapter D, Chapter 22, Education Code, as  
14 that subchapter existed January 1, 2006; or

15                   (D) Rider 9, Page III-39, Chapter 1330, Acts of  
16 the 78th Legislature, Regular Session, 2003 (the General  
17 Appropriations Act); and

18          (11) any compensation not described in Subsection (b).

19          (d) For a person who first becomes a member of the  
20 retirement system after August 31, 1996, the person's annual  
21 compensation for purposes of the retirement system may not exceed  
22 the limit imposed by Section 401(a)(17) of the Internal Revenue  
23 Code of 1986 (26 U.S.C. Section 401(a)(17)), as adjusted by the  
24 commissioner of internal revenue for cost-of-living increases in  
25 accordance with that provision. This limit does not apply to a  
26 person who first became a member of the retirement system before  
27 September 1, 1996.

1           (e) For purposes of Subsection (b)(4), a total compensation  
2 plan must:

3                 (1) describe all elements of compensation received by  
4 or available to all employees of the employer;

5                 (2) provide for the availability of at least one type  
6 of performance pay to classroom teachers employed by the employer;

7                 (3) identify each type of performance pay, the  
8 performance criteria for each type of performance pay, and the  
9 classes of employees eligible for each type of performance pay;

10                (4) contain sufficient information concerning the  
11 plan to ascertain the amount of each qualifying employee's pay  
12 under the plan;

13                (5) contain performance criteria for earning  
14 performance pay that preclude the exercise of discretion for  
15 awarding the pay on any basis other than an evaluation of employee  
16 or group performance or availability of funding; and

17                (6) satisfy any other requirements adopted by the  
18 retirement system.

19           SECTION 2. Section 824.403, Government Code, is amended to  
20 read as follows:

21           Sec. 824.403. (a) Except as provided by Section 824.401,  
22 the designated beneficiary of a member who dies while absent from  
23 service is eligible to receive:

24                 (1) the same benefits payable under Section 824.402 or  
25 824.404 if the member's absence from service was:

26                         (A) because of sickness, accident, or other cause  
27 the board of trustees determines involuntary;

1           (B) in furtherance of the objectives or welfare  
2 of the public school system; or

3           (C) during a time when the member was eligible to  
4 retire or would become eligible without further service before the  
5 fifth anniversary of the member's last day of service as a member;  
6 or

7           (2) an amount equal to the accumulated contributions  
8 in the member's individual account in the member savings account,  
9 if the member's absence from service does not satisfy a requirement  
10 of Subdivision (1).

11           (b) Effective with respect to deaths occurring on or after  
12 January 1, 2007, while a member is performing qualified military  
13 service (as defined in chapter 43 of title 38, United State Code),  
14 to the extent required by Section 401(a)(37), Internal Revenue Code  
15 of 1986, the designated beneficiary of a member is eligible to  
16 receive any additional benefits that the retirement system would  
17 provide if the member had resumed employment and then died.

18           SECTION 3. Section 825.509, Government Code, is amended to  
19 read as follows:

20           Sec. 825.509. (a) This section applies to distributions  
21 made on or after January 1, 1993. Notwithstanding any law governing  
22 the retirement system that would otherwise limit a distributee's  
23 election under this section, a distributee may elect, at the time  
24 and in the manner prescribed by the executive director or the  
25 executive director's designee, to have any portion of an eligible  
26 rollover distribution from the retirement system paid directly to  
27 an eligible retirement plan specified by the distributee in a

1 direct rollover.

2 (b) An eligible rollover distribution under this section is  
3 any distribution of all or a portion of the balance to the credit of  
4 the distributee, other than:

5 (1) a distribution that is one of a series of  
6 substantially equal periodic payments made not less frequently than  
7 annually for:

8 (A) the life or life expectancy of the  
9 distributee;

10 (B) the joint lives or joint life expectancies of  
11 the distributee and the distributee's designated beneficiary; or

12 (C) a specified period of 10 years or more;

13 (2) a distribution to the extent the distribution is  
14 required under Section 401(a)(9), Internal Revenue Code of 1986; or

15 (3) the portion of a distribution that is not  
16 includable in gross income for federal income tax purposes.

17 Effective January 1, 2002, a portion of a distribution will not fail  
18 to be an eligible rollover distribution merely because the portion  
19 consists of after-tax employee contributions that are not  
20 includable in gross income. However, such portion may be  
21 transferred only to an individual retirement account or annuity  
22 described in Section 408(a) or (b), Internal Revenue Code of 1986,  
23 or to a qualified defined contribution plan described in Section  
24 401(a), Internal Revenue Code of 1986, or to a qualified plan  
25 described in Section 403(a), Internal Revenue Code of 1986, or on or  
26 after January 1, 2007, to a qualified defined benefit plan  
27 described in Section 401(a), Internal Revenue Code of 1986, or to an

1 annuity contract described in Section 403(b), Internal Revenue Code  
2 of 1986, that agrees to separately account for amounts so  
3 transferred (and earnings thereon), including separately  
4 accounting for the portion of the distribution that is includable  
5 in gross income and the portion of the distribution that is not so  
6 includable.

7 (c) An eligible retirement plan under this section is:

8 (1) an individual retirement account described by  
9 Section 408(a), Internal Revenue Code of 1986~~[ ]~~;

10 (2) an individual retirement annuity described by  
11 Section 408(b), Internal Revenue Code of 1986~~[ ]~~;

12 (3) an annuity plan described by Section 403(a),  
13 Internal Revenue Code of 1986~~[ ]~~;

14 (4) a qualified trust described by Section 401(a),  
15 Internal Revenue Code of 1986, that accepts the distributee's  
16 eligible rollover distribution~~[ ]~~;

17 (5) effective January 1, 2002, a plan eligible under  
18 Section 457(b), Internal Revenue Code of 1986, that is maintained  
19 by a state, political subdivision of a state, or any agency or  
20 instrumentality of a state or political subdivision of a state that  
21 agrees to separately account for amounts transferred into the plan  
22 from the retirement system;

23 (6) effective January 1, 2002, an annuity contract  
24 described in Section 403(b), Internal Revenue Code of 1986; or

25 (7) effective January 1, 2008, a Roth IRA described in  
26 Section 408A, Internal Revenue Code of 1986. ~~[However, in the case~~  
27 ~~of an eligible rollover distribution to a surviving spouse, an~~



1 ~~eligible retirement plan under this section is an individual~~  
2 ~~retirement account or individual retirement annuity.]~~

3 (d) In this section:

4 (1) "Direct rollover" means a payment by the  
5 retirement system to the eligible retirement plan specified by a  
6 distributee.

7 (2) "Distributee" means a person who receives an  
8 eligible rollover distribution from the retirement system and  
9 includes an employee or former employee and, regarding the interest  
10 of an employee or former employee, the person's surviving spouse or  
11 the person's spouse or former spouse who is the alternate payee[-]  
12 under a qualified domestic relations order, as defined in Section  
13 414(p), Internal Revenue Code of 1986. Effective January 1, 2007, a  
14 distributee further includes a nonspouse beneficiary who is a  
15 designated beneficiary as defined by Section 401(a)(9)(E),  
16 Internal Revenue Code of 1986, of the member or retiree under the  
17 retirement system and who is not the surviving spouse or alternate  
18 payee of the member or retiree. A direct trustee-to-trustee  
19 transfer on behalf of a nonspouse beneficiary shall be treated as an  
20 eligible rollover distribution. However, a nonspouse beneficiary  
21 may rollover the distribution only to an individual retirement  
22 account or individual retirement annuity established for the  
23 purpose of receiving the distribution, the account or annuity will  
24 be treated as an "inherited" individual retirement account or  
25 annuity, and Section 401(a)(9)(B), Internal Revenue Code of 1986,  
26 other than clause (iv) thereof, shall apply to such plan. To the  
27 extent provided in rules provided by the U.S. Secretary of

1 Treasury, a trust maintained for the benefit of one or more  
2 designated beneficiaries shall be treated in the same manner as a  
3 designated beneficiary.

4 SECTION 4. This Act takes effect September 1, 2009.