

SENATE AMENDMENTS

2nd Printing

By: Truitt

H.B. No. 2559

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Employees Retirement System of Texas.

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

SECTION 1. Section 659.102(c), Government Code, is amended to read as follows:

(c) The supplemental optional benefits program may include:

(1) a group coverage plan for permanent life insurance, catastrophic illness insurance, or disability insurance;

(2) [] prepaid legal services; [] or

(3) a qualified transportation benefit.

SECTION 2. Subchapter A, Chapter 811, Government Code, is amended by adding Section 811.010 to read as follows:

Sec. 811.010. TRAVIS COUNTY VENUE; TWO-YEAR LIMITATION.

Subject to and without waiving the retirement system's sovereign immunity from suit or liability or the official immunity from liability of the trustees, officers, and employees of the retirement system under Section 811.007, for any action by or against the retirement system, the trustees, officers, or employees of the retirement system, or an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system:

(1) venue is in Travis County; and

1 (2) the statute of limitations is two years unless
2 otherwise specifically provided by law.

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

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

10 SECTION 4. Subchapter A, Chapter 814, Government Code, is
11 amended by adding Section 814.012 to read as follows:

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

21 SECTION 5. Sections 814.108(c), (g), and (h), Government
22 Code, are amended to read as follows:

23 (c) An eligible person may select ~~[any optional retirement~~
24 ~~annuity approved by the board of trustees, or may select]~~ one of the
25 following options, which provides ~~[provide]~~ that:

26 (1) after the retiree's death, the reduced annuity is
27 payable in the same amount throughout the life of the person

1 designated by the retiree before retirement;

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

5 (3) if the retiree dies before 60 monthly annuity
6 payments have been made, the remainder of the 60 payments are
7 payable to one or more designees or, if one does not exist, to the
8 retiree's estate; ~~or~~

9 (4) if the retiree dies before 120 monthly annuity
10 payments have been made, the remainder of the 120 payments are
11 payable to one or more designees or, if one does not exist, to the
12 retiree's estate; or

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

16 (g) Except as provided by Section 814.008 or 814.1081, a
17 person who selected an optional service retirement annuity approved
18 by the board of trustees or an optional service retirement annuity
19 described by Subsection (c)(1), ~~or~~ (c)(2), or (c)(5) may not
20 change or revoke a beneficiary designation after the person's
21 effective date of retirement.

22 (h) A beneficiary designation that names a former spouse as
23 beneficiary for a guaranteed optional annuity described by
24 Subsection (c)(3) or (c)(4) is invalid unless the designation is
25 made after the date of the divorce.

26 SECTION 6. Section 814.1081(a), Government Code, is amended
27 to read as follows:

1 (a) A person who retired and selected an optional service
2 retirement annuity [~~approved by the board of trustees or an~~
3 ~~optional service retirement annuity~~] described by Section
4 814.108(c)(1), ~~[or]~~ (c)(2), or (c)(5) may change the optional
5 annuity selection to the selection of a standard service retirement
6 annuity by filing with the retirement system a request to change the
7 annuity selection, if the retiree designated a person as
8 beneficiary who:

9 (1) was not at the time of designation and is not
10 currently the retiree's spouse or child; or

11 (2) has executed since the designation a transfer and
12 release, approved by a court of competent jurisdiction pursuant to
13 a divorce decree, of the beneficiary's interest in the annuity and
14 is not currently the retiree's spouse or child.

15 SECTION 7. Section 814.202, Government Code, is amended by
16 adding Subsection (g) to read as follows:

17 (g) A member otherwise eligible to receive a disability
18 retirement annuity may not receive the annuity if the member is:

19 (1) still earning a salary or wage from the employment
20 for which the member is claiming disability; or

21 (2) on leave without pay from the employment for which
22 the member is claiming disability.

23 SECTION 8. Section 814.203, Government Code, is amended to
24 read as follows:

25 Sec. 814.203. CERTIFICATION OF DISABILITY. (a) As soon as
26 practicable after an application for disability retirement is
27 filed, the medical board shall evaluate the medical and other

1 pertinent information regarding the member's application. If the
2 medical board finds that the member is mentally or physically
3 incapacitated for the further performance of duty, as supported by
4 substantial, objective, medical evidence, and that the incapacity
5 is likely to be permanent, the medical board shall issue a
6 certification of disability and submit it to the executive
7 director. A certification under this section is admissible in a
8 contested case under Section 815.511 without proving the medical
9 board as experts.

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

18 (c) For the purposes of this section, "comparable pay" means
19 80 percent or more of the member's final state employment base pay
20 before deductions for taxes or deferred compensation under state
21 and federal law, including any longevity or hazardous duty pay, but
22 excluding the monetary value of any insurance or retirement
23 benefits. Comparable pay may be adjusted by the retirement system
24 to account for adjustments in state pay rates.

25 SECTION 9. Subchapter C, Chapter 815, Government Code, is
26 amended by adding Section 815.214 to read as follows:

27 Sec. 815.214. SUBPOENA. Notwithstanding any other law, the

1 executive director or the executive director's designee may issue a
2 subpoena that conforms to Rule 176, Texas Rules of Civil Procedure,
3 including a preappeal investigative subpoena or any subpoena
4 otherwise authorized by the Texas Rules of Civil Procedure, that
5 the executive director or designee determines necessary to protect
6 the interests of a program or system administered by the retirement
7 system.

8 SECTION 10. Section 815.301, Government Code, is amended by
9 adding Subsections (g), (h), and (i) to read as follows:

10 (g) In awarding contracts to private professional
11 investment managers under Subsection (c) or otherwise acquiring
12 private financial services, the board of trustees shall make a good
13 faith effort to award contracts to or acquire services from
14 qualified emerging fund managers.

15 (h) For purposes of Subsection (g):

16 (1) "Emerging fund manager" means a private
17 professional investment manager that manages assets of not more
18 than \$2 billion.

19 (2) "Private financial services" includes pension
20 fund management, consulting, investment advising, brokerage
21 services, hedge fund management, private equity fund management,
22 and real estate investment.

23 (i) The retirement system shall report to the board of
24 trustees on the methods and results of the system's efforts to hire
25 emerging fund managers, including data disaggregated by race,
26 ethnicity, gender, and fund size.

27 SECTION 11. Section 815.307, Government Code, as amended by

1 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
2 Legislature, Regular Session, 2003, is reenacted to read as
3 follows:

4 Sec. 815.307. DUTY OF CARE. The assets of the retirement
5 system shall be invested and reinvested without distinction as to
6 their source in accordance with Section 67, Article XVI, Texas
7 Constitution. A determination of whether the board of trustees has
8 exercised prudence with respect to an investment decision must be
9 made taking into consideration the investment of all assets of the
10 trust or all assets of the collective investment vehicle, as
11 applicable, over which the board has management and control, rather
12 than considering the prudence of a single investment of the trust or
13 the collective investment vehicle, as applicable.

14 SECTION 12. Section 815.512, Government Code, is amended to
15 read as follows:

16 Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY.

17 (a) The executive director may cause an action for interpleader [a
18 suit] concerning a claim to be filed on behalf of the retirement
19 system in a district court in Travis County to protect the system
20 from double or multiple liability if the executive director
21 determines that a claim may expose the retirement system to such
22 liability.

23 (b) A person may not pursue a counterclaim or other cause of
24 action against the retirement system or its trustees, officers,
25 employees, carriers, or administering firms in connection with the
26 transactions and occurrences related to the interpleader action.

27 (c) A person who files suit against the retirement system or

1 its trustees, officers, employees, carriers, or administering
2 firms is liable for the costs and attorney's fees incurred in
3 violation of Subsection (b).

4 SECTION 13. Subchapter F, Chapter 815, Government Code, is
5 amended by adding Section 815.515 to read as follows:

6 Sec. 815.515. DISPOSITION OF UNCLAIMED CONTRIBUTIONS OF
7 FORMER MEMBERS. (a) Subject to Chapters 803 and 805, if the
8 retirement system has not received a demand for a refund of the
9 accumulated contributions of a member in accordance with Subchapter
10 B, Chapter 812, before the seventh anniversary of the member's last
11 day of service, the retirement system may refund the accumulated
12 contributions to the member or the member's heirs. If the member or
13 the member's heirs cannot be found, the member's accumulated
14 contributions revert to the retirement system.

15 (b) The retirement system shall credit any amounts that
16 revert to the retirement system under Subsection (a) to the state
17 contribution account.

18 (c) The board of trustees may adopt rules to implement and
19 administer this section.

20 SECTION 14. Section 837.003, Government Code, is amended by
21 adding Subsection (e) to read as follows:

22 (e) At the time a service retirement, disability
23 retirement, or death benefit annuity becomes payable, the
24 retirement system shall refund any contributions, interest, or
25 membership fees used to establish service credit that is not used in
26 computing the amount of the annuity.

27 SECTION 15. Section 838.106, Government Code, is amended by

1 adding Subsection (c) to read as follows:

2 (c) For the purpose of Subsection (a)(1), the term of a
3 member leaving judicial office ends December 31 regardless of the
4 date on which the member's successor takes the oath of office.

5 SECTION 16. Section 839.103(a), Government Code, is amended
6 to read as follows:

7 (a) Instead of a service retirement annuity payable under
8 Section 839.102, a retiring member may elect to receive [~~an~~
9 ~~optional service retirement annuity provided by the board of~~
10 ~~trustees or~~] one of the following optional service retirement
11 annuities, actuarially reduced to an actuarially equivalent value
12 and consisting of:

13 (1) an annuity payable during the retiring member's
14 life and continuing after death in the same amount, throughout the
15 life of one person designated by the retiring member before
16 retirement;

17 (2) an annuity payable during the retiring member's
18 life and continuing after death in an amount equal to one-half of
19 the amount payable during the retiring member's life, throughout
20 the life of one person designated by the retiring member before
21 retirement;

22 (3) an annuity payable for the greater of the rest of
23 the retiring member's life or 60 months; [~~or~~]

24 (4) an annuity payable for the greater of the rest of
25 the retiring member's life or 120 months; or

26 (5) an annuity payable during the retiring member's
27 life and continuing after death in an amount equal to three-fourths

1 of the amount payable during the retiring member's life, throughout
2 the life of one person designated by the retiring member before
3 retirement.

4 SECTION 17. Section 840.303, Government Code, as amended by
5 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
6 Legislature, Regular Session, 2003, is reenacted to read as
7 follows:

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

18 SECTION 18. Section 1551.102(d), Insurance Code, is amended
19 to read as follows:

20 (d) An individual is eligible to participate in the group
21 benefits program as provided by Subsection (a) if ~~[the individual]~~:

22 (1) the individual retires under the optional
23 retirement program established by Chapter 830, Government Code;

24 (2) the individual has ~~[, with]~~ at least 10 years of
25 eligible service credit; ~~[and]~~

26 (3) the individual actively ~~[(2)]~~ receives ~~[or is~~
27 ~~eligible to receive]~~ an annuity under that program; and

1 (4) the individual:

2 (A) is at least 65 years of age, or would have
3 been eligible to retire and receive a service or disability
4 retirement annuity from the Teacher Retirement System of Texas or
5 the Employees Retirement System of Texas in an amount such that the
6 sum of the person's age and amount of service credit, including
7 months of age and credit, equals or exceeds the number 80 or would
8 have been eligible to retire and receive a disability retirement
9 annuity from the Teacher Retirement System of Texas or the
10 Employees Retirement System of Texas, if the individual had not
11 elected to participate in the optional retirement program; or

12 (B) is disabled as determined by the Employees
13 Retirement System of Texas based on at least 10 years of eligible
14 service credit.

15 SECTION 19. Section 1551.155, Insurance Code, is amended by
16 adding Subsections (c) and (d) to read as follows:

17 (c) A person who is the surviving spouse of an individual
18 may secure group health coverage without evidence of the person's
19 insurability if the individual was eligible to participate in the
20 group benefits program under Section 1551.101 or 1551.102 but was
21 not participating at the time of the individual's death.

22 (d) A surviving spouse seeking group coverage under
23 Subsection (c):

24 (1) must apply for the coverage not later than the 30th
25 day after the date on which the individual who was eligible to
26 participate in the group benefits program dies; and

27 (2) shall pay for the coverage at the group rate as

1 provided by Subsection (b).

2 SECTION 20. The heading to Section 1551.156, Insurance
3 Code, is amended to read as follows:

4 Sec. 1551.156. COVERAGE OPTIONS FOR SURVIVING DEPENDENT
5 [~~WHEN THERE IS NO SURVIVING SPOUSE~~].

6 SECTION 21. Section 1551.156, Insurance Code, is amended by
7 adding Subsections (d) and (e) to read as follows:

8 (d) A person who is a surviving dependent of an annuitant
9 may secure group health coverage after the death of the annuitant
10 without evidence of the person's insurability if the annuitant was
11 eligible to participate in the group benefits program of a
12 retirement system named in this chapter but was not participating
13 at the time of the individual's death.

14 (e) A surviving dependent seeking group coverage under
15 Subsection (d):

16 (1) must apply for the coverage not later than the 30th
17 day after the date on which the individual who was eligible to
18 participate in the group benefits program dies; and

19 (2) shall pay for the coverage at the group rate as
20 provided by Subsection (b).

21 SECTION 22. Section 1551.354, Insurance Code, is amended by
22 amending Subsection (b) and adding Subsections (c) and (d) to read
23 as follows:

24 (b) The executive director may cause the filing of an action
25 for interpleader [~~a suit~~] concerning the claim in a district court
26 in Travis County on behalf of the Employees Retirement System of
27 Texas to protect the group coverage plan from double or multiple

1 liability.

2 (c) A person may not pursue a counterclaim or other cause of
3 action against the retirement system or its trustees, officers,
4 employees, carriers, or administering firms in connection with the
5 transactions and occurrences related to the interpleader action.

6 (d) A person who files suit against the retirement system or
7 its trustees, officers, employees, carriers, or administering
8 firms is liable for the costs and attorney's fees incurred in
9 violation of Subsection (c).

10 SECTION 23. Subchapter H, Chapter 1551, Insurance Code, is
11 amended by adding Section 1551.362 to read as follows:

12 Sec. 1551.362. SUBPOENA. Notwithstanding any other law,
13 the executive director or the executive director's designee may
14 issue a subpoena that conforms to Rule 176, Texas Rules of Civil
15 Procedure, including a preappeal investigative subpoena or any
16 subpoena otherwise authorized by the Texas Rules of Civil
17 Procedure, that the executive director or designee determines
18 necessary to protect the interests of a program or system
19 administered by the retirement system.

20 SECTION 24. Section 1551.401, Insurance Code, is amended by
21 adding Subsection (g) to read as follows:

22 (g) Except as provided by Section 1551.259(d), the
23 retirement system may deposit to the credit of the fund any
24 unclaimed money on a finding that a good faith effort has been made
25 to locate the person entitled to the money.

26 SECTION 25. The following laws are repealed:

27 (1) Section 812.006, Government Code;

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

9 SECTION 26. Sections 811.010 and 815.214, Government Code,
10 and Section 1551.362, Insurance Code, as added by this Act, and
11 Sections 815.512, Government Code, and 1551.354, Insurance Code, as
12 amended by this Act, apply only to an action filed by or against the
13 Employees Retirement System of Texas, the trustees, officers, or
14 employees of the retirement system, or an administrator, carrier,
15 or other governmental agency acting in cooperation with or on
16 behalf of the retirement system on or after the effective date of
17 this Act. An action filed before the effective date of this Act is
18 governed by the law in effect when the action was filed, and that
19 law is continued in effect for that purpose.

20 SECTION 27. Section 814.203(b), Government Code, as added
21 by this Act, applies only to an application for disability
22 retirement filed with the Employees Retirement System of Texas on
23 or after the effective date of this Act. An application filed
24 before the effective date of this Act is subject to the law in
25 effect on the date the application was filed, and that law is
26 continued in effect for that purpose.

27 SECTION 28. Section 837.003(e), Government Code, as added

1 by this Act, applies only to a service retirement, disability
2 retirement, or death benefit annuity that becomes payable by the
3 Judicial Retirement System of Texas Plan Two on or after the
4 effective date of this Act. A service retirement, disability
5 retirement, or death benefit annuity that becomes payable by the
6 Judicial Retirement System of Texas Plan Two before the effective
7 date of this Act is governed by the law in effect on the date the
8 annuity becomes payable, and that law is continued in effect for
9 that purpose.

10 SECTION 29. Section 838.106(c), Government Code, as added
11 by this Act, applies only to the establishment of service credit by
12 a member of the Judicial Retirement System of Texas Plan Two who
13 leaves office on or after the effective date of this Act. The
14 establishment of service credit of a member of the Judicial
15 Retirement System of Texas Plan Two who leaves office before the
16 effective date of this Act is governed by the law in effect when the
17 member leaves office, and that law is continued in effect for that
18 purpose.

19 SECTION 30. This Act takes effect September 1, 2009.

ADOPTED

MAY 26 2009

Atty Gen
Secretary of the Senate

By: Duncan

H.B. No. 2559

Substitute the following for ___B. No. ____:

By: Robert Duncan

C.S. ___B. No. ____

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the powers and duties of and benefits available under
3 the Employees Retirement System of Texas.

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

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

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

21 (b-1) A record released or received by the retirement system
22 under this section may be transmitted electronically, including
23 through the use of an electronic signature or certification in a
24 form acceptable to the retirement system. An unintentional

1 disclosure to, or unauthorized access by, a third party related to
2 the transmission or receipt of information under this section is
3 not a violation by the retirement system of any law, including a law
4 or rule relating to the protection of confidential information.

5 (d) The retirement system has sole discretion in
6 determining whether a record is subject to this section. For
7 purposes of this section, a record includes any identifying
8 information about any person, living or deceased, who is or was:

9 (1) an individual listed in Section 615.003; or

10 (2) a survivor, heir, or beneficiary of an individual
11 listed in Section 615.003.

12 SECTION 2. Subchapter A, Chapter 811, Government Code, is
13 amended by adding Sections 811.010 and 811.011 to read as follows:

14 Sec. 811.010. VENUE. Subject to and without waiving the
15 retirement system's sovereign immunity or the official immunity of
16 the trustees, officers, and employees of the retirement system, the
17 venue for any action by or against the retirement system, the
18 trustees, officers, or employees of the retirement system, or an
19 administering firm, carrier, or other governmental agency acting in
20 cooperation with or on behalf of the retirement system is in Travis
21 County.

22 Sec. 811.011. STATUTE OF LIMITATIONS. Subject to and
23 without waiving the retirement system's sovereign immunity or the
24 official immunity of the trustees, officers, and employees of the
25 retirement system, unless specifically provided otherwise by
26 another statute, the statute of limitations for a claim against the
27 retirement system or a trustee, officer, or employee of the

1 retirement system is two years.

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

4 (c) For a law enforcement or custodial officer, the
5 withdrawal of accumulated contributions under Subsection (a)
6 includes all of the officer's contributions made under Section
7 815.402(h).

8 SECTION 4. Section 812.201(c), Government Code, is amended
9 to read as follows:

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

18 SECTION 5. Subchapter C, Chapter 812, Government Code, is
19 amended by adding Section 812.205 to read as follows:

20 Sec. 812.205. WAITING PERIOD. A member who retires from the
21 employee class on or after May 31, 2009, may not return to work in a
22 position included in the employee class of membership before the
23 90th day after the date of the retiree's original retirement.

24 SECTION 6. Subchapter C, Chapter 812, Government Code, is
25 amended by adding Section 812.206 to read as follows:

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

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

4 (b) For each month that a department or agency of this state
5 employs a person described by Subsection (a), the department or
6 agency shall remit to the retirement system an amount equal to the
7 amount of the state contribution that the department or agency
8 would remit for an active member employed in the person's position.
9 The amount remitted shall be deposited in the trust fund
10 established under Section 815.310.

11 SECTION 7. Section 813.509, Government Code, is amended by
12 amending Subsections (d) and (e) and adding Subsection (k) to read
13 as follows:

14 (d) An individual who was a [A] member or employee on August
15 31, 2009, and who holds a position included in the employee class
16 may use sick leave creditable under this section to satisfy service
17 requirements for retirement under Section 814.104 or 814.107 if the
18 sick leave attributed to the eligibility requirements remains
19 otherwise unused on the last day of employment.

20 (e) A death benefit beneficiary [~~designee~~] under Section
21 814.302 may use the deceased member's sick leave credit under this
22 section to qualify for making a death benefit plan selection under
23 Section 814.302 if the decedent was a member or employee on August
24 31, 2009.

25 (k) A member who was not a member on the date hired and was
26 hired on or after September 1, 2009, or a death benefit beneficiary
27 of that member may use sick leave creditable under this section only

1 for purposes of calculating the member's or beneficiary's annuity.

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

5 (d) An individual who was a [A] member or employee on August
6 31, 2009, and who holds a position included in the employee class
7 may use annual leave creditable under this section to satisfy
8 service requirements for retirement under Section 814.104 or
9 814.107 if the annual leave attributed to the eligibility
10 requirements remains otherwise unused on the last day of
11 employment.

12 (e) A death benefit beneficiary [~~designee~~] under Section
13 814.302 may use the deceased member's annual leave credit under
14 this section to qualify for making a death benefit plan selection
15 under Section 814.302 if the decedent was a member or employee on
16 August 31, 2009.

17 (j) A member who was not a member on the date hired and was
18 hired on or after September 1, 2009, or a death benefit beneficiary
19 of that member may use annual leave creditable under this section
20 only for purposes of calculating the member's or beneficiary's
21 annuity.

22 SECTION 9. Section 814.008(a), Government Code, is amended
23 to read as follows:

24 (a) A retiree receiving an optional service or disability
25 retirement annuity approved by the board of trustees or described
26 by Section 814.108(c)(1), ~~[or]~~ (c)(2), or (c)(5) may change the
27 designated beneficiary as provided by this section for the benefits

1 payable after the retiree's death.

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

4 Sec. 814.012. DISPOSITION OF UNCLAIMED BENEFICIARY
5 BENEFITS. If, as of the fourth anniversary of the death of a member
6 or annuitant, the retirement system has not paid benefits and a
7 claim for benefits is not pending with the retirement system based
8 on the death of the member or annuitant, the accumulated
9 contributions of the deceased member or the balance of the reserve
10 for the deceased annuitant reverts to the benefit of the retirement
11 system. The retirement system shall transfer funds reverted under
12 this section to the state accumulation account.

13 SECTION 11. Section 814.104, Government Code, is amended by
14 amending Subsection (a) and adding Subsection (d) to read as
15 follows:

16 (a) Except as provided by Subsection (d) of this section,
17 Section 814.102, or by rule adopted under Section 813.304(d) or
18 803.202(a)(2), a member who has service credit in the retirement
19 system is eligible to retire and receive a service retirement
20 annuity if the member:

21 (1) is at least 60 years old and has at least 5 years of
22 service credit in the employee class; or

23 (2) has at least 5 years of service credit in the
24 employee class and the sum of the member's age and amount of service
25 credit in the employee class, including months of age and credit,
26 equals or exceeds the number 80.

27 (d) Except as provided by Section 814.102 or by rule adopted

1 under Section 813.304(d) or 803.202(a)(2), a member who was not a
2 member on the date hired, was hired on or after September 1, 2009,
3 and has service credit in the retirement system is eligible to
4 retire and receive a service retirement annuity if the member:

5 (1) is at least 65 years old and has at least 10 years
6 of service credit in the employee class; or

7 (2) has at least 5 years of service credit in the
8 employee class and the sum of the member's age and amount of service
9 credit in the employee class, including months of age and credit,
10 equals or exceeds the number 80.

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

13 (c) The standard service retirement annuity for service
14 credited in the employee class of membership for a member who was
15 not a member on the date hired, was hired on or after September 1,
16 2009, and is eligible to retire is an amount computed as the
17 member's average monthly compensation for service in that class for
18 the 48 highest months of compensation multiplied by 2.3 percent for
19 each year of service credit in that class.

20 (d) The standard service retirement annuity computed under
21 Subsection (c) is reduced by five percent for each year the member
22 retires before the member reaches age 60, with a maximum possible
23 reduction of 25 percent.

24 SECTION 13. Sections 814.107(c) and (d), Government Code,
25 are amended to read as follows:

26 (c) The standard combined service retirement annuity that
27 is payable under this section is based on retirement on or after the

1 attainment of the normal retirement age, which for purposes of this
2 section is the earlier of either the age of 50 or the age at which
3 the sum of the member's age and amount of service credit in the
4 employee class equals the number 80. A law enforcement or custodial
5 officer who retires before attaining the normal retirement age is
6 entitled only to an annuity that is actuarially reduced from the
7 annuity available at the normal retirement age to the law
8 enforcement or custodial officer whose service credit annuity
9 amount is based on [~~available at~~] the sum of the member's age and
10 amount of law enforcement or custodial officer service credit and
11 employee class service credit, and is not entitled to have the
12 annuity recalculated at normal retirement age. The standard or
13 reduced annuity is payable from the trust fund established by
14 Section 815.310 and the law enforcement and custodial officer
15 supplemental retirement fund in a ratio determined by the
16 retirement system.

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

1 815.310.

2 SECTION 14. Subchapter B, Chapter 814, Government Code, is
3 amended by adding Section 814.1075 to read as follows:

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

7 (b) A member who has at least 20 years of service credit as a
8 law enforcement or custodial officer is eligible to retire
9 regardless of age and receive a standard service retirement annuity
10 as provided by this section.

11 (c) The standard service retirement annuity payable for at
12 least 20 years of service credit as a law enforcement or custodial
13 officer is an amount computed on the basis of the member's average
14 monthly compensation for the 48 highest months of compensation in
15 the employee class multiplied by the sum of the percentage factor
16 used in the computation of a standard service retirement annuity
17 under Section 814.105(c) plus 0.5 percent.

18 (d) The standard combined service retirement annuity that
19 is payable under this section is based on retirement at either the
20 age of 55 or the age at which the sum of the member's age and amount
21 of service credit in the employee class equals or exceeds the number
22 80. The annuity of a law enforcement or custodial officer who
23 retires before reaching the age of 55 under any eligibility
24 criteria is actuarially reduced by five percent for each year the
25 member retires before the member reaches age 55, with a maximum
26 possible reduction of 25 percent.

27 (e) An annuity payable under this section:

1 (1) is payable from the trust fund established by
2 Section 815.310 and from the law enforcement and custodial officer
3 supplemental retirement fund in a ratio determined by the
4 retirement system; and

5 (2) is based on the service credit available to the law
6 enforcement or custodial officer at the time of retirement and the
7 sum of the member's age and amount of law enforcement or custodial
8 officer service credit and employee class service credit.

9 (f) A member who retires under this section retires
10 simultaneously from the employee class of membership. Optional
11 retirement annuities provided by Section 814.108 are available to a
12 member eligible to receive a service retirement annuity under this
13 section, but the same optional plan and beneficiary must be
14 selected for the portion of the annuity payable from the law
15 enforcement and custodial officer supplemental retirement fund and
16 the portion payable from the trust fund established by Section
17 815.310.

18 (g) The amount payable from the law enforcement and
19 custodial officer supplemental retirement fund is reducible by the
20 amount paid from the trust fund established by Section 815.310 for
21 service as a law enforcement or custodial officer. The total
22 combined amount of an annuity under this section may not be less
23 than the authorized benefit under Subsection (c) subtracted by any
24 amount necessary because of the selection of an optional annuity,
25 because of retirement before the age of 55, or as provided by
26 Subsection (h).

27 (h) The standard combined service retirement annuity

1 payable for at least 20 years of service credit as a law enforcement
2 or custodial officer may not exceed 100 percent of the average
3 compensation computed under Subsection (c).

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

8 SECTION 15. Sections 814.108(c), (g), and (h), Government
9 Code, are amended to read as follows:

10 (c) An eligible person may select [~~any optional retirement~~
11 ~~annuity approved by the board of trustees, or may select~~] one of the
12 following options, which provides [~~provide~~] that:

13 (1) after the retiree's death, the reduced annuity is
14 payable in the same amount throughout the life of the person
15 designated by the retiree before retirement;

16 (2) after the retiree's death, one-half of the reduced
17 annuity is payable throughout the life of the person designated by
18 the retiree before retirement;

19 (3) if the retiree dies before 60 monthly annuity
20 payments have been made, the remainder of the 60 payments are
21 payable to one or more beneficiaries [~~designees~~] or, if one does not
22 exist, to the retiree's estate; [~~or~~]

23 (4) if the retiree dies before 120 monthly annuity
24 payments have been made, the remainder of the 120 payments are
25 payable to one or more beneficiaries [~~designees~~] or, if one does not
26 exist, to the retiree's estate; or

27 (5) after the retiree's death, three-fourths of the

1 reduced annuity is payable throughout the life of the person
2 designated by the retiree before retirement.

3 (g) Except as provided by Section 814.008 or 814.1081, a
4 person who selected an optional service retirement annuity approved
5 by the board of trustees or an optional service retirement annuity
6 described by Subsection (c)(1), ~~or~~ (c)(2), or (c)(5) may not
7 change or revoke a beneficiary designation after the person's
8 effective date of retirement.

9 (h) A beneficiary designation that names a former spouse as
10 beneficiary for a guaranteed optional annuity described by
11 Subsection (c)(3) or (c)(4) is invalid unless the designation is
12 made after the date of the divorce.

13 SECTION 16. Section 814.1081(a), Government Code, is
14 amended to read as follows:

15 (a) A person who retired and selected an optional service
16 retirement annuity ~~[approved by the board of trustees or an~~
17 ~~optional service retirement annuity]~~ described by Section
18 814.108(c)(1), ~~or~~ (c)(2), or (c)(5) may change the optional
19 annuity selection to the selection of a standard service retirement
20 annuity by filing with the retirement system a request to change the
21 annuity selection, if the retiree designated a person as
22 beneficiary who:

23 (1) was not at the time of designation and is not
24 currently the retiree's spouse or dependent child; or

25 (2) has executed since the designation a transfer and
26 release, approved by a court of competent jurisdiction pursuant to
27 a divorce decree, of the beneficiary's interest in the annuity and

1 is not currently the retiree's spouse or dependent child.

2 SECTION 17. Section 814.202, Government Code, is amended by
3 adding Subsection (g) to read as follows:

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

6 (1) still earning a salary or wage from the employment
7 for which the member is claiming disability; or

8 (2) on leave without pay from the employment for which
9 the member is claiming disability.

10 SECTION 18. Section 814.203, Government Code, is amended to
11 read as follows:

12 Sec. 814.203. CERTIFICATION OF DISABILITY. (a) As soon as
13 practicable after an application for disability retirement is
14 filed, the medical board shall evaluate the medical and other
15 pertinent information regarding the member's application. If the
16 medical board finds that the member is mentally or physically
17 incapacitated for the further performance of duty, as supported by
18 substantial, objective, medical evidence, and that the incapacity
19 is likely to be permanent, the medical board shall issue a
20 certification of disability and submit it to the executive
21 director. A certification under this section is admissible in a
22 contested case under Section 815.511 without proving the medical
23 board as experts.

24 (b) For purposes of this subchapter, a member is
25 incapacitated for the further performance of duty if the member has
26 demonstrably sought and been denied workplace accommodation of the
27 disability in accordance with applicable law, and the member is

1 physically or mentally unable to continue to hold the position
2 occupied or to hold any other position offering comparable pay. The
3 employee's education, training, and experience must be considered
4 when making a determination of incapacity under this subchapter.

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

12 SECTION 19. Subchapter C, Chapter 815, Government Code, is
13 amended by adding Section 815.214 to read as follows:

14 Sec. 815.214. SUBPOENA. Notwithstanding any other law, the
15 retirement system may issue a subpoena that conforms to Rule 176,
16 Texas Rules of Civil Procedure, including a preappeal investigative
17 subpoena or any subpoena otherwise authorized by the Texas Rules of
18 Civil Procedure, that the retirement system determines necessary to
19 protect the interests of a program or system administered by the
20 retirement system.

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

23 (g) In awarding contracts to private professional
24 investment managers under Subsection (c) or otherwise acquiring
25 private financial services, the board of trustees shall make a good
26 faith effort to award contracts to or acquire services from
27 qualified emerging fund managers.

1 (h) For purposes of Subsection (g):

2 (1) "Emerging fund manager" means a private
3 professional investment manager that manages assets of not more
4 than \$2 billion.

5 (2) "Private financial services" includes pension
6 fund management, consulting, investment advising, brokerage
7 services, hedge fund management, private equity fund management,
8 and real estate investment.

9 (i) The retirement system shall report to the board of
10 trustees on the methods and results of the system's efforts to hire
11 emerging fund managers, including data disaggregated by race,
12 ethnicity, gender, and fund size.

13 SECTION 21. Section 815.307, Government Code, as amended by
14 Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th
15 Legislature, Regular Session, 2003, is reenacted to read as
16 follows:

17 Sec. 815.307. DUTY OF CARE. The assets of the retirement
18 system shall be invested and reinvested without distinction as to
19 their source in accordance with Section 67, Article XVI, Texas
20 Constitution. A determination of whether the board of trustees has
21 exercised prudence with respect to an investment decision must be
22 made taking into consideration the investment of all assets of the
23 trust or all assets of the collective investment vehicle, as
24 applicable, over which the board has management and control, rather
25 than considering the prudence of a single investment of the trust or
26 the collective investment vehicle, as applicable.

27 SECTION 22. Section 815.402, Government Code, is amended by

1 amending Subsection (a) and adding Subsection (h) to read as
2 follows:

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

6 (1) 6.5 [~~six~~] percent of the compensation if the
7 member is not a member of the legislature, provided that if the
8 state contribution to the retirement system is computed using a
9 percentage less than 6.5 percent, the member's contribution is
10 computed using a percentage equal to the percentage used to compute
11 the state contribution, which may not be less than six percent; or

12 (2) eight percent of the compensation if the member is
13 a member of the legislature.

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

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

27 (a) Records of members, annuitants, retirees,

1 beneficiaries, and alternate payees under retirement plans
2 administered by the retirement system that are in the custody of the
3 system or of an administering firm [~~administrator~~], carrier, or
4 other governmental agency acting in cooperation with or on behalf
5 of the retirement system are confidential and not subject to public
6 disclosure, and the retirement system, administering firm,
7 carrier, or governmental agency is not required to accept or comply
8 with a request for a record or information about a record or to seek
9 an opinion from the attorney general, because the records are
10 exempt from the [~~public access~~] provisions of Chapter 552, except
11 as otherwise provided by this section.

12 (b) Records may be released to a member, annuitant, retiree,
13 beneficiary, or alternate payee or to an authorized attorney,
14 family member, or representative acting on behalf of the member,
15 annuitant, retiree, beneficiary, or alternate payee. The
16 retirement system may release the records to an administering firm
17 [~~administrator~~], carrier, or agent or attorney acting on behalf of
18 the retirement system, to another governmental entity having a
19 legitimate need for the information to perform the purposes of the
20 retirement system, or to a party in response to a subpoena issued
21 under applicable law.

22 (b-1) A record released or received by the retirement system
23 under this section may be transmitted electronically, including
24 through the use of an electronic signature or certification in a
25 form acceptable to the retirement system. An unintentional
26 disclosure to, or unauthorized access by, a third party related to
27 the transmission or receipt of information under this section is

1 not a violation by the retirement system of any law, including a law
2 or rule relating to the protection of confidential information.

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

9 SECTION 24. Section 815.512, Government Code, is amended to
10 read as follows:

11 Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY.

12 (a) The executive director may cause an action for interpleader [a
13 ~~suit~~] concerning a claim to be filed on behalf of the retirement
14 system in a district court in Travis County to protect the system
15 from double or multiple liability if the executive director
16 determines that a claim may expose the retirement system to such
17 liability.

18 (b) A person may not pursue a counterclaim or other cause of
19 action against the retirement system, a trustee, officer, or
20 employee of the retirement system, or a carrier or administering
21 firm for the retirement system in connection with a transaction or
22 occurrence related to the interpleader action.

23 (c) A person who violates Subsection (b) is liable for the
24 costs and attorney's fees incurred by the retirement system, a
25 trustee, officer, or employee of the retirement system, or a
26 carrier or administering firm for the retirement system as a result
27 of the violation.

1 SECTION 25. Subchapter F, Chapter 815, Government Code, is
2 amended by adding Section 815.515 to read as follows:

3 Sec. 815.515. DISPOSITION OF UNCLAIMED CONTRIBUTIONS OF
4 FORMER MEMBERS. (a) Subject to Chapters 803 and 805, if the
5 retirement system has not received a request for a refund of the
6 accumulated contributions of a member in accordance with Subchapter
7 B, Chapter 812, before the seventh anniversary of the member's last
8 day of service, the retirement system may refund the accumulated
9 contributions to the member or the member's heirs. If the member or
10 the member's heirs cannot be found, the member's accumulated
11 contributions revert to the retirement system.

12 (b) The retirement system shall credit any amounts that
13 revert to the retirement system under Subsection (a) to the state
14 accumulation account.

15 (c) The board of trustees may adopt rules to implement and
16 administer this section.

17 SECTION 26. Section 837.003, Government Code, is amended by
18 adding Subsection (e) to read as follows:

19 (e) At the time a service retirement, disability
20 retirement, or death benefit annuity becomes payable, the
21 retirement system shall refund any contributions, interest, or
22 membership fees used to establish service credit that is not used in
23 computing the amount of the annuity.

24 SECTION 27. Section 838.106, Government Code, is amended by
25 adding Subsection (c) to read as follows:

26 (c) For the purpose of Subsection (a)(1), the term of a
27 member leaving judicial office ends not later than December 31

1 regardless of the date on which the member's successor takes the
2 oath of office.

3 SECTION 28. Section 839.103(a), Government Code, is amended
4 to read as follows:

5 (a) Instead of a service retirement annuity payable under
6 Section 839.102, a retiring member may elect to receive [~~an~~
7 ~~optional service retirement annuity provided by the board of~~
8 ~~trustees or~~] one of the following optional service retirement
9 annuities, actuarially reduced to an actuarially equivalent value
10 and consisting of:

11 (1) an annuity payable during the retiring member's
12 life and continuing after death in the same amount, throughout the
13 life of one person designated by the retiring member before
14 retirement;

15 (2) an annuity payable during the retiring member's
16 life and continuing after death in an amount equal to one-half of
17 the amount payable during the retiring member's life, throughout
18 the life of one person designated by the retiring member before
19 retirement;

20 (3) an annuity payable for the greater of the rest of
21 the retiring member's life or 60 months; [~~or~~]

22 (4) an annuity payable for the greater of the rest of
23 the retiring member's life or 120 months; or

24 (5) an annuity payable during the retiring member's
25 life and continuing after death in an amount equal to three-fourths
26 of the amount payable during the retiring member's life, throughout
27 the life of one person designated by the retiring member before

1 retirement.

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

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

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

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

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

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

1 SECTION 32. Section 1551.004, Insurance Code, is amended to
2 read as follows:

3 Sec. 1551.004. DEFINITION OF DEPENDENT. (a) In this
4 chapter, "dependent" with respect to an individual eligible to
5 participate in the group benefits program under Section 1551.101 or
6 1551.102 means the individual's:

7 (1) spouse;

8 (2) unmarried child younger than 25 years of age;

9 (3) child of any age who the board of trustees
10 determines lives with or has the child's care provided by the
11 individual on a regular basis if:

12 (A) the child is mentally retarded or physically
13 incapacitated to the extent that the child is dependent on the
14 individual for care or support, as determined by the board of
15 trustees;

16 (B) the child's coverage under this chapter has
17 not lapsed; and

18 (C) the child is at least 25 years old and was
19 enrolled as a participant in the health benefits coverage under the
20 group benefits program on the date of the child's 25th birthday;
21 [~~and~~]

22 (4) child of any age who is unmarried, for purposes of
23 health benefit coverage under this chapter, on expiration of the
24 child's continuation coverage under the Consolidated Omnibus
25 Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its
26 subsequent amendments; and

27 (5) ward, as that term is defined by Section 601, Texas

1 Probate Code.

2 (b) In this section, "child" includes:

3 (1) a natural child, [an] adopted child, [and a]
4 stepchild, or foster child; [r] or

5 (2) a [other] child who is related by blood or marriage
6 and was claimed as a dependent on the federal income tax return of
7 [is in a parent-child relationship with] an individual who is
8 eligible to participate in the group benefits program under Section
9 1551.101 or 1551.102 for the calendar year preceding the plan year
10 in which the child is first enrolled as a dependent under Subchapter
11 D, and for each subsequent year in which the child is enrolled as a
12 dependent.

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

16 (1) the child is born in the year in which the child is
17 first enrolled; or

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

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

23 (a) The records of a participant in the group benefits
24 program in the custody of the Employees Retirement System of Texas
25 [board of trustees], or of an administering firm, [administrator
26 or] carrier, or another governmental entity acting on behalf of the
27 retirement system [board], are confidential and not subject to

1 disclosure, and the retirement system, administering firm,
2 carrier, or governmental entity [~~board~~] is not required to accept
3 or comply with a request for a record or information about a record
4 or to seek an opinion from the attorney general, because the records
5 are exempt from the [~~public access~~] provisions of Chapter 552,
6 Government Code, except as provided by this section.

7 (c) To accomplish the purposes of this chapter, the board of
8 trustees may release the records to:

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

11 (2) another governmental entity having a legitimate
12 need for the information to perform a function of the board of
13 trustees;

14 (3) an authorized medical provider of the participant;
15 or

16 (4) a party in response to a subpoena issued under
17 applicable law.

18 (d-1) A record released or received by the Employees
19 Retirement System of Texas under this section may be transmitted
20 electronically, including through the use of an electronic
21 signature or certification in a form acceptable to the retirement
22 system. An unintentional disclosure to, or unauthorized access by,
23 a third party related to the transmission or receipt of information
24 under this section is not a violation by the retirement system of
25 any law, including a law or rule relating to the protection of
26 confidential information.

27 (f) The Employees Retirement System of Texas has sole

1 discretion in determining if a record is subject to this section.
2 For purposes of this section, a record includes any identifying
3 information about a person, living or deceased, who is or was an
4 employee, annuitant, dependent, or participant in the group
5 benefits program.

6 SECTION 34. Section 1551.102(d), Insurance Code, is amended
7 to read as follows:

8 (d) An individual is eligible to participate in the group
9 benefits program as provided by Subsection (a) if ~~[the individual]~~:

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

12 (2) the individual has ~~[, with]~~ at least 10 years of
13 eligible service credit; and

14 (3) ~~[(2) receives or is eligible to receive an~~
15 ~~annuity under that program and]~~ the individual:

16 (A) is at least 65 years of age, or would have
17 been eligible to retire and receive a service or disability
18 retirement annuity from the Teacher Retirement System of Texas or
19 the Employees Retirement System of Texas in an amount such that the
20 sum of the person's age and amount of service credit, including
21 months of age and credit, equals or exceeds the number 80 or would
22 have been eligible to retire and receive a disability retirement
23 annuity from the Teacher Retirement System of Texas or the
24 Employees Retirement System of Texas, if the individual had not
25 elected to participate in the optional retirement program, and is
26 eligible to receive an annuity or periodic distribution of funds
27 from an account under the optional retirement program; or

1 (B) is disabled as determined by the Employees
2 Retirement System of Texas based on at least 10 years of eligible
3 service credit, and is receiving an annuity or periodic
4 distribution of funds from an account under the optional retirement
5 program.

6 SECTION 35. Section 1551.155, Insurance Code, is amended by
7 adding Subsections (c) and (d) to read as follows:

8 (c) A person who is the surviving spouse of an individual
9 described by Subsection (a) may secure group health coverage
10 without evidence of the person's insurability if the individual was
11 eligible to participate in the group benefits program under Section
12 1551.101 or 1551.102 but was not participating at the time of the
13 individual's death.

14 (d) A surviving spouse seeking group coverage under
15 Subsection (c):

16 (1) must apply for the coverage not later than the 30th
17 day after the date on which the individual who was eligible to
18 participate in the group benefits program dies; and

19 (2) shall pay for the coverage at the group rate as
20 provided by Subsection (b).

21 SECTION 36. The heading to Section 1551.156, Insurance
22 Code, is amended to read as follows:

23 Sec. 1551.156. COVERAGE OPTIONS FOR SURVIVING DEPENDENT
24 [~~WHEN THERE IS NO SURVIVING SPOUSE~~].

25 SECTION 37. Section 1551.156, Insurance Code, is amended by
26 adding Subsections (d) and (e) to read as follows:

27 (d) A person who is a surviving dependent of an annuitant

1 may secure group health coverage after the death of the annuitant
2 without evidence of the person's insurability if the annuitant was
3 eligible to participate in the group benefits program of a
4 retirement system named in this chapter but was not participating
5 at the time of the individual's death.

6 (e) A surviving dependent seeking group coverage under
7 Subsection (d):

8 (1) must apply for the coverage not later than the 30th
9 day after the date on which the individual who was eligible to
10 participate in the group benefits program dies; and

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

13 SECTION 38. Section 1551.354, Insurance Code, is amended by
14 amending Subsection (b) and adding Subsections (c) and (d) to read
15 as follows:

16 (b) The executive director may cause the filing of an action
17 for interpleader ~~[a suit]~~ concerning the claim in a district court
18 in Travis County on behalf of the Employees Retirement System of
19 Texas to protect the group coverage plan from double or multiple
20 liability.

21 (c) A person may not pursue a counterclaim or other cause of
22 action against the Employees Retirement System of Texas, a trustee,
23 officer, or employee of the retirement system, or a carrier or
24 administering firm for the retirement system in connection with a
25 transaction or occurrence related to the interpleader action.

26 (d) A person who violates Subsection (c) is liable for the
27 costs and attorney's fees incurred by the Employees Retirement

1 System of Texas, a trustee, officer, or employee of the retirement
2 system, or a carrier or administering firm for the retirement
3 system as a result of the violation.

4 SECTION 39. Subchapter H, Chapter 1551, Insurance Code, is
5 amended by adding Section 1551.362 to read as follows:

6 Sec. 1551.362. SUBPOENA. Notwithstanding any other law,
7 the Employees Retirement System of Texas may issue a subpoena that
8 conforms to Rule 176, Texas Rules of Civil Procedure, including a
9 preappeal investigative subpoena or any subpoena otherwise
10 authorized by the Texas Rules of Civil Procedure, that the
11 retirement system determines necessary to protect the interests of
12 a program or system administered by the retirement system.

13 SECTION 40. Section 1551.401, Insurance Code, is amended by
14 adding Subsection (g) to read as follows:

15 (g) Except as provided by Section 1551.259(d), the
16 retirement system may deposit to the credit of the fund any
17 unclaimed money on a finding that a good faith effort has been made
18 to locate the person entitled to the money.

19 SECTION 41. The following laws are repealed:

- 20 (1) Section 833.1035(c), Government Code;
- 21 (2) Section 833.104, Government Code;
- 22 (3) Section 835.1015(c), Government Code;
- 23 (4) Section 838.1035(c), Government Code;
- 24 (5) Section 838.104, Government Code;
- 25 (6) Section 840.1025(c), Government Code;
- 26 (7) Section 840.1027(c), Government Code;
- 27 (8) Section 1551.218(c), Insurance Code; and

1 (9) Section 1551.221, Insurance Code.

2 SECTION 42. Under Section 67, Article XVI, Texas
3 Constitution, the Employees Retirement System of Texas may
4 distribute a supplemental annuity payment on behalf of the State of
5 Texas using money appropriated from the general revenue fund to the
6 retirement system by an Act of the 81st Legislature, Regular
7 Session, 2009, that is enacted and becomes law.

8 SECTION 43. Sections 811.010 and 811.011, Government Code,
9 as added by this Act, and Sections 815.512, Government Code, and
10 1551.354, Insurance Code, as amended by this Act, apply only to an
11 action filed by or against the Employees Retirement System of
12 Texas, the trustees, officers, or employees of the retirement
13 system, or an administering firm, carrier, or other governmental
14 agency acting in cooperation with or on behalf of the retirement
15 system on or after the effective date of this Act. An action filed
16 before the effective date of this Act is governed by the law in
17 effect when the action was filed, and that law is continued in
18 effect for that purpose.

19 SECTION 44. Section 837.003(e), Government Code, as added
20 by this Act, applies only to a service retirement, disability
21 retirement, or death benefit annuity that becomes payable by the
22 Judicial Retirement System of Texas Plan Two on or after the
23 effective date of this Act. A service retirement, disability
24 retirement, or death benefit annuity that becomes payable by the
25 Judicial Retirement System of Texas Plan Two before the effective
26 date of this Act is governed by the law in effect on the date the
27 annuity becomes payable, and that law is continued in effect for

1 that purpose.

2 SECTION 45. Section 1551.004, Insurance Code, as amended by
3 this Act, applies only to an individual claimed as a dependent for a
4 plan year beginning on or after September 1, 2010. An individual
5 claimed as a dependent for a plan year that began before September
6 1, 2010, is governed by the law in effect when the individual was
7 claimed as a dependent, and that law is continued in effect for that
8 purpose.

9 SECTION 46. This Act takes effect September 1, 2009.

ADOPTED

MAY 26 2009

FLOOR AMENDMENT NO. 1

Leta Grew
Secretary of the Senate

BY:

Robert Duncan

1 Amend C.S.H.B. No. 2559 (senate committee printing), in
2 SECTION 5 of the bill, in added Section 812.205(b), Government
3 Code (page 2, lines 32-33), by striking "in the trust fund
4 established under Section 815.310" and substituting "as provided
5 by Section 815.309".

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2559** by Truitt (Relating to the powers and duties of and benefits available under the Employees Retirement System of Texas.), **As Passed 2nd House**

The provisions of the bill would have a significant impact on improving the actuarial soundness of the ERS and LECOS retirement funds.

The bill would amend various sections of the Government Code and Insurance Code to clarify various definitions and modify other administrative processes of the Employees Retirement System (ERS). The bill would take effect September 1, 2009. Some of the major provisions of the bill include the following:

- (1) allow surviving spouses and dependents to enroll in group health plans on the death of a member;
- (2) establish a 90-day waiting period for members who retire on or after May 31, 2009 and seek re-employment in the employee class, as well as a surcharge payable by the state agency that rehires a retiree equal to the amount the agency would remit for a normal active member;
- (3) allow sick leave and annual leave to be used only in determining the member's or beneficiary's annuity for those members that are hired on or after September 1, 2009;
- (4) require that members of the employee class hired on or after September 1, 2009 to be at least 65 years old and have at least 10 years of service or have at least five years of service and the sum of age and service exceed 80 to be eligible to retire and receive a service retirement annuity;
- (5) calculate the service retirement annuity using an average compensation based on the 48 highest months of compensation for members hired on or after September 1, 2009;
- (6) reduce the standard service retirement annuity by five percent for each year the member retires before age 60, with a maximum possible reduction of 25 percent, for members hired on or after September 1, 2009;
- (7) calculate the standard service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer using an average compensation based on the 48 highest months of compensation for members hired on or after September 1, 2009;
- (8) reduce the standard service retirement annuity for law enforcement or custodial officers by five percent for each year the member retires before age 55, with a maximum possible reduction of 25 percent; and
- (9) increase the required employee contribution to ERS from 6.0 percent to 6.45 percent of payroll, with an additional 0.5 percent of payroll for law enforcement or custodial officers.

The bill would make changes to the Judicial Retirement System Plan II (JRS II) which would increase the costs of the plan. It would repeal Government Code 838.1035(c), which effectively limits the maximum retirement benefit to 80 percent of salary, and would thereby allow the maximum benefit to be 90 percent of salary. The ERS actuary certifies JRS II is actuarially sound, however this is based on a smoothed actuarial value of assets (AVA) which is 50 percent greater than the market value of assets (MVA). JRS II is arguably actuarially unsound; even using an AVA only 40 percent greater than MVA would leave it actuarially unsound with an infinite funding period.

Government Code 840.106 limits increases in allowable creditable service if JRS II is actuarially unsound. However, in this case the increase will not lead to a material increase in long-term JRS

costs, and the actuarial valuation already assumes members can acquire the additional service. Hence the increase is not limited by Government Code 840.106.

The provisions of the bill would reduce the normal cost of the ERS retirement plan from 13.37 percent to 12.28 percent, and the annually required contribution rate from 19.28 percent to 18.69 percent. This reduction, along with the 0.45 percent increase in member contributions, would have a significant impact in moving the fund toward actuarial soundness. Additionally, ERS reports that the normal cost of the Law Enforcement and Custodial Officers Supplemental (LECOS) retirement plan would be reduced from 2.18 percent to 2.08 percent, and the annually required contribution rate from 3.12 percent to 3.09 percent as a result of the bill's provisions. Again, this reduction, coupled with a member contribution of 0.5 percent, will also have a significant impact in moving the LECOS fund toward actuarial soundness. Finally, it is assumed that there would be some costs associated with the return-to-work surcharge contribution requirements, but it is expected that they would not have a significant fiscal impact to the state.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 327 Employees Retirement System

LBB Staff: JOB, KJG, DEH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 23, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2559** by Truitt (Relating to the powers and duties of the Employees Retirement System of Texas.), **Committee Report 2nd House, Substituted**

<p>The provisions of the bill would have a significant impact on improving the actuarial soundness of the ERS and LECOS retirement funds.</p>
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The bill would amend various sections of the Government Code and Insurance Code to clarify various definitions and modify other administrative processes of the Employees Retirement System (ERS). The bill would take effect September 1, 2009. Some of the major provisions of the bill include the following:

- (1) allow surviving spouses and dependents to enroll in group health plans on the death of a member;
- (2) establish a 90-day waiting period for members who retire on or after May 31, 2009 and seek re-employment in the employee class, as well as a surcharge payable by the state agency that rehires a retiree equal to the amount the agency would remit for a normal active member;
- (3) allow sick leave and annual leave to be used only in determining the member's or beneficiary's annuity for those members that are hired on or after September 1, 2009;
- (4) require that members of the employee class hired on or after September 1, 2009 to be at least 65 years old and have at least 10 years of service or have at least five years of service and the sum of age and service exceed 80 to be eligible to retire and receive a service retirement annuity;
- (5) calculate the service retirement annuity using an average compensation based on the 48 highest months of compensation for members hired on or after September 1, 2009;
- (6) reduce the standard service retirement annuity by five percent for each year the member retires before age 60, with a maximum possible reduction of 25 percent, for members hired on or after September 1, 2009;
- (7) calculate the standard service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer using an average compensation based on the 48 highest months of compensation for members hired on or after September 1, 2009;
- (8) reduce the standard service retirement annuity for law enforcement or custodial officers by five percent for each year the member retires before age 55, with a maximum possible reduction of 25 percent; and
- (9) increase the required employee contribution to ERS from 6.0 percent to 6.45 percent of payroll, with an additional 0.5 percent of payroll for law enforcement or custodial officers.

The bill would make changes to the Judicial Retirement System Plan II (JRS II) which would increase the costs of the plan. It would repeal Government Code 838.1035(c), which effectively limits the maximum retirement benefit to 80 percent of salary, and would thereby allow the maximum benefit to be 90 percent of salary. The ERS actuary certifies JRS II is actuarially sound, however this is based on a smoothed actuarial value of assets (AVA) which is 50 percent greater than the market value of assets (MVA). JRS II is arguably actuarially unsound; even using an AVA only 40 percent greater than MVA would leave it actuarially unsound with an infinite funding period.

Government Code 840.106 limits increases in allowable creditable service if JRS II is actuarially unsound. However, in this case the increase will not lead to a material increase in long-term JRS costs, and the actuarial valuation already assumes members can acquire the additional service. Hence the

increase is not limited by Government Code 840.106.

The provisions of the bill would reduce the normal cost of the ERS retirement plan from 13.37 percent to 12.28 percent, and the annually required contribution rate from 19.28 percent to 18.69 percent. This reduction, along with the 0.45 percent increase in member contributions, would have a significant impact in moving the fund toward actuarial soundness. Additionally, ERS reports that the normal cost of the Law Enforcement and Custodial Officers Supplemental (LECOS) retirement plan would be reduced from 2.18 percent to 2.08 percent, and the annually required contribution rate from 3.12 percent to 3.09 percent as a result of the bill's provisions. Again, this reduction, coupled with a member contribution of 0.5 percent, will also have a significant impact in moving the LECOS fund toward actuarial soundness. Finally, it is assumed that there would be some costs associated with the return-to-work surcharge contribution requirements, but it is expected that they would not have a significant fiscal impact to the state.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 327 Employees Retirement System

LBB Staff: JOB, KJG, DEH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2559 by Truitt (Relating to the powers and duties of the Employees Retirement System of Texas.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend various sections of the Government Code and Insurance Code to clarify various definitions and modify other administrative processes. The bill would take effect September 1, 2009.

Changes include the following: (1) clarify that any insurance coverage provided under the supplemental optional benefits program is group coverage; (2) establish Travis County as the venue for any litigation and the general statute of limitations applicable to ERS claims as two years; (3) allow ERS to return unclaimed benefits to the contribution account if no claim is made in four years; (4) with regard to optional annuities, add an option to receive a 75 percent annuity to statute (as currently in rule); (5) clarify a person can not be employed by the state, or on leave without pay, and qualify for disability retirement; (6) clarify the definitions of "incapacitated" and "comparable pay" with regard to disability eligibility; (7) clarify ERS' subpoena authority to include investigative subpoenas, and allow ERS to recover legal fees from third parties for improper claims; (8) clear up duplicate code provisions; (9) allow ERS to return unclaimed contributions to a member or the member's heirs after seven years of inactive status, or otherwise allow the trust fund to retain the contributions; (10) direct ERS to refund any monetary contributions used to add service credit if the credit is not used to calculate an annuity; (11) clarify that the term of a judge leaving office ends December 31; (12) clarify insurance eligibility under the optional retirement program; (13) allow surviving spouses and dependents to enroll in group health plans on the death of a member; (15) clarify that unclaimed benefits may be deposited to the insurance trust fund; and (16) direct the board to make a good faith effort to award contracts to or acquire services from qualified emerging fund managers, and to report to the board of trustees on the methods and results of the system's efforts.

ERS reports that some of its administrative processes would be streamlined, but the bill would have no significant fiscal impact on the retirement system.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 327 Employees Retirement System

LBB Staff: JOB, KJG, JRO, MS, DEH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 17, 2009

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2559 by Truitt (Relating to the powers and duties of the Employees Retirement System of Texas.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend various sections of the Government Code and Insurance Code to clarify various definitions and modify other administrative processes. The bill would take effect September 1, 2009.

Changes include the following: (1) Clarify that any insurance coverage provided under the supplemental optional benefits program is group coverage; (2) Establish Travis County as the venue for any litigation and the general statute of limitations applicable to ERS claims as two years; (3) Allow ERS to return unclaimed benefits to the contribution account if no claim is made in four years; (4) With regard to optional annuities, add an option to receive a 75 percent annuity to statute (as currently in rule); (5) Clarify a person can not be employed by the state, or on leave without pay, and qualify for disability retirement; (6) Clarify the definitions of "incapacitated" and "comparable pay" with regard to disability eligibility; (7) Clarify ERS' subpoena authority to include investigative subpoenas, and allow ERS to recover legal fees from third parties for improper claims; (8) Clear up duplicate code provisions; (9) Allow ERS to return unclaimed contributions to a member or the member's heirs after seven years of inactive status, or otherwise allow the trust fund to retain the contributions; (10) Direct ERS to refund any monetary contributions used to add service credit if the credit is not used to calculate an annuity; (11) Clarify that the term of a judge leaving office ends December 31; (12) Clarify insurance eligibility under the optional retirement program; (13) Allow surviving spouses and dependents to enroll in group health plans on the death of a member; and (14) Clarify that unclaimed benefits may be deposited to the insurance trust fund.

ERS reports that some of its administrative processes would be streamlined, but the bill would have no significant fiscal impact on the retirement system.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 327 Employees Retirement System

LBB Staff: JOB, JRO, MS, DEH

LEGISLATIVE BUDGET BOARD

Austin, Texas

ACTUARIAL IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 23, 2009

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB2559** by Truitt (Relating to the powers and duties of the Employees Retirement System of Texas.), **Committee Report 2nd House, Substituted**

Projected for Fiscal Year 2010 – Dollar Amounts in Millions

Employees Retirement System of Texas	Current	Proposed	Difference
State Contribution	6.45%	6.45%	0.00%
Employee Contribution	6.00%	6.45%	+0.45%
Total Contribution*	12.45%	12.90%	+0.45%
31-year Funding Contribution Required	19.38%	18.69%	-0.69%
Normal Cost (% of payroll)	13.37%	12.28%	-1.09%
Unfunded Actuarial Accrued Liability (millions)	\$3,957.0	\$4,405.5	+\$448.5
Amortization Period (years)	Infinite	Infinite	N/A

**The current total contribution rate of 12.45% is insufficient to pay the normal cost of the plan and amortize the unfunded liabilities in less than 31 years. It is projected that a total contribution rate of 19.38% of payroll is needed for fiscal year 2010 to achieve a 31-year funding for ERS under the requirements of Section 811.006 of Texas Government Code. Under the proposal, the required 31-year amortization rate would decrease by 0.69% of payroll to 18.69% of payroll.*

Projected for Fiscal Year 2010 – Dollar Amounts in Millions

Law Enforcement and Custodial Officer Supplemental Retirement Fund	Current	Proposed	Difference
State Contribution	1.59 %	1.59 %	0.00%
Employee Contribution	0.00 %	0.50 %	+0.50%
Total Contribution	1.59 %	2.09 %	+0.50%
31-year Funding Contribution Required*	3.12%	3.09%	-0.03%
Normal Cost (% of payroll)	2.18 %	2.08 %	-0.10%
Unfunded Actuarial Accrued Liability (millions)	\$142.3	\$164.2	+\$21.9
Amortization Period (years)	Infinite	Infinite	N/A

**The current contribution rate is insufficient to amortize the unfunded liability over a 31-year period. Currently, the total contribution rate necessary to maintain a 31-year funding period is 3.12% of payroll. Under the proposal, the required 31-year amortization rate would decrease by 0.03% of payroll to 3.09% of payroll*

A Glossary of Actuarial Terms is provided at the end of this impact statement.

ACTUARIAL EFFECTS:

Employees Retirement System of Texas (ERS): CSHB 2559 would decrease, by 1.09% of payroll, the normal cost of ERS, from 13.37% of payroll to 12.28% of payroll. The proposal would increase the unfunded actuarial accrued liability (UAAL) from \$3,957.0 million to \$4,405.5 million, a total increase of \$448.5 million. The proposal would not change the amortization period, which will remain infinite. The current total contribution rate for ERS is 12.45% of payroll, which is comprised of 6.00% employee contributions and 6.45% employer contributions. The proposal would increase the employee contribution rate by 0.45% to 6.45% (Under the proposal, the required employee contribution rate to ERS would increase from 6.00% to 6.50%, provided that if the state contribution rate is less than 6.50% of payroll, the employee contribution rate would be set at the same rate as the state contribution rate. The current state contribution rate is 6.45% of payroll and as such, the analysis assumes the employee contribution rate to be 6.45% of payroll). Based on the February 28, 2009 update of the August 31, 2008 actuarial valuation, the actuary has projected that the actuarially sound 31-year rate for fiscal years 2010 and 2011 is 19.38% of payroll. Under the proposal, the actuarially sound 31-year rate would decrease by 0.69% of payroll to 18.69% of payroll.

Law Enforcement and Custodial Officer Supplemental Retirement Fund (LECOSRF): CSHB 2559 would decrease, by 0.10% of payroll, the normal cost of LECOSRF, from 2.18% of payroll to 2.08% of payroll. The proposal would increase the unfunded actuarial accrued liability (UAAL) from \$142.3 million to \$164.2 million, a total increase of \$21.9 million. The proposal would not change the amortization period, which would remain infinite. The current total contribution rate for LECOSRF is 1.59% of payroll, which is comprised of 0.00% employee contributions and 1.59% employer contributions. The proposal would increase the employee contribution rate by 0.50% of payroll to 0.50% of payroll. Based on the February 28, 2009 update of the August 31, 2008 actuarial valuation, the actuary has projected that the actuarially sound 31-year rate for fiscal years 2010 and 2011 is 3.12% of payroll. Under the proposal, the actuarially sound 31-year rate would decrease by 0.03% of payroll to 3.09% of payroll.

SYNOPSIS OF PROVISIONS:

CSHB 2559 would, effective September 1, 2009, provide the following changes:

- L Establish a 90-day waiting period for members in the employee class who retire on or after May 31, 2009 and seek re-employment in the employee class, as well as add a surcharge payable by the state agency that rehires a retiree that equals the retirement contribution the agency would remit for a normal active member.
- L Allow sick leave and annual leave to be used only in determining the member's or beneficiary's annuity but not retirement eligibility, for those members that are hired on or after September 1, 2009.
- L Require that members of the employee class hired on or after September 1, 2009 to be at least 65 years old and have at least 10 years of service or have at least five years of service and the sum of age and service exceed 80 to be eligible to retire and receive a service retirement annuity.
- L Calculate the service retirement annuity using an average compensation based on the 48 highest months of compensation for members hired on or after September 1, 2009.
- L Reduce the standard service retirement annuity by five percent for each year the member retires before age 60, with a maximum possible reduction of 25 percent, for members hired on or after September 1, 2009.
- L Calculate the standard service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer using an average compensation based on the 48 highest months of compensation for members hired on or after September 1, 2009.
- L Reduce the standard service retirement annuity for law enforcement or custodial officers by five percent for each year the member retires before age 55, with a maximum possible reduction of 25 percent.
- L Increase the required employee contribution to ERS from 6.00% to 6.50% of payroll, provided that if the state contribution rate to ERS is less than 6.50% of payroll, the employee contribution rate is set equal to the state contribution rate.
- L Increase the employee contribution rate to LECOSRF from 0.00% to 0.50% of payroll for law enforcement or custodial officers, provided that if the state contribution rate to LECOSRF is less than 0.50% of payroll, the employee contribution rate is set equal to the state contribution rate.
- L Repeal several sections of the Texas Government Code, including 812.006 (Optional Membership), 833.1035 (Service in Excess of 20 Years), 833.104 (Service on Domestic Relations or Special Juvenile Court), 835.1015 (Contributions after 20 Years of Service Credit), 838.1035 (Service in Excess of 20 Years), 838.104 (Service on Domestic Relations or Special Juvenile Court), 840.1025 (Contributions after 20 Years of Service Credit), 840.1027 (Contributions after Attaining Rule of 70)
- L Provide for the disposition of unclaimed beneficiary benefits and unclaimed contributions of former members.
- L Specify two instances in which a member who is otherwise eligible to receive a disability retirement annuity may not receive the annuity.
- L Amend several other portions of the Texas Government Code and the Texas Insurance Code relative to ERS.

FINDINGS AND CONCLUSIONS:

CSHB 2559 proposes to add or amend several sections of the Texas Government Code related to ERS and LECOSRF. Under the proposal, the required employee contribution rate to ERS would increase from 6.00% to 6.50%, provided that if the state contribution rate is less than 6.50% of payroll, the employee contribution rate would be set at the same rate as the state contribution rate. The current state contribution rate is 6.45% of payroll and as such, the analysis assumes the employee contribution rate to be 6.45% of payroll. Also, the employee contribution rate to LECOSRF would be 0.50% of payroll, provided that if the state contribution rate to LECOSRF is less than 0.50% of payroll, the employee contribution rate is set equal to the state contribution rate. Currently the employee contribution rate to LECOSRF is 0.00% of payroll. Additionally, the proposal would establish a 90-day waiting period for members in the employee class who retire on or after May 31, 2009 and seek re-employment in the employee class, as well as add a surcharge payable by the state agency that rehires a retiree that equals the retirement contribution the agency would remit for a normal active member. Other proposed changes that would effect only members hired on or after September 1, 2009 include requiring members of the employee class hired on or after September 1, 2009 to be at least 65 years old and have at least 10 years of service or have at least five years of service and the sum of age and service exceed 80 to be eligible to retire and receive a service retirement annuity; allowing sick leave and annual leave to be used only in determining the member's or beneficiary's annuity; calculating the service retirement annuity using an average compensation based on the 48 highest months of compensation; reducing the standard service retirement annuity for law enforcement or custodial officers by five percent for each year the member retires before age 55, with a maximum possible reduction of 25 percent; and reducing the standard service retirement annuity for regular employee class members by five percent for each year the member retires before age 60, with a maximum possible reduction of 25 percent.

The bill would make changes to the Judicial Retirement System Plan II (JRS II) which would increase the costs of the plan. It would repeal Government Code 838.1035(c), which effectively limits the maximum retirement benefit to 80% of salary, and would thereby allow the maximum benefit to be 90% of salary. The ERS actuary certifies JRS II is actuarially sound, however this is based on an smoothed actuarial value of assets (AVA) which is 50% greater than the market

value of assets (MVA). JRS II is arguably actuarially unsound; even using an AVA only 40% greater than MVA would leave it actuarially unsound with an infinite funding period.

Government Code 840.106 limits increases in allowable creditable service if JRS II is actuarially unsound. However, in this case the increase would not lead to a material increase in long-term JRS costs, and the actuarial valuation already assumes members can acquire the additional service. Hence the increase would not be limited by Government Code 840.106.

CSHB 2559 would decrease, by 1.09% of payroll, the normal cost of ERS, from 13.37% of payroll to 12.28% of payroll. The proposal would increase the unfunded actuarial accrued liability (UAAL) from \$3,957.0 million to \$4,405.5 million, a total increase of \$448.5 million. The proposal would not change the amortization period, which will remain infinite. The current total contribution rate for ERS is 12.45% of payroll, which is comprised of 6.00% employee contributions and 6.45% employer contributions. The proposal would increase the employee contribution rate by 0.45% to 6.45% (Under the proposal, the required employee contribution rate to ERS would increase from 6.00% to 6.50%, provided that if the state contribution rate is less than 6.50% of payroll, the employee contribution rate would be set at the same rate as the state contribution rate. The current state contribution rate is 6.45% of payroll and as such, the analysis assumes the employee contribution rate to be 6.45% of payroll). Based on the February 28, 2009 update of the August 31, 2008 actuarial valuation, the actuary has projected that the actuarially sound 31-year rate for fiscal years 2010 and 2011 is 19.38% of payroll. Under the proposal, the actuarially sound 31-year rate would decrease by 0.69% of payroll to 18.69% of payroll.

CSHB 2559 would decrease, by 0.10% of payroll, the normal cost of LECOSRF, from 2.18% of payroll to 2.08% of payroll. The proposal would increase the unfunded actuarial accrued liability (UAAL) from \$142.3 million to \$164.2 million, a total increase of \$21.9 million. The proposal would not change the amortization period, which will remain infinite. The current total contribution rate for LECOSRF is 1.59% of payroll, which is comprised of 0.00% employee contributions and 1.59% employer contributions. The proposal would increase the employee contribution rate by 0.50% of payroll to 0.50% of payroll. Based on the February 28, 2009 update of the August 31, 2008 actuarial valuation, the actuary has projected that the actuarially sound 31-year rate for fiscal years 2010 and 2011 is 3.12% of payroll. Under the proposal, the actuarially sound 31-year rate would decrease by 0.03% of payroll to 3.09% of payroll.

Under CSHB 2559, both ERS and LECOS would have increased liabilities and lower normal costs from the benefit reductions for new members. The easiest way to see that the net impact is actuarially positive for both systems is that the 30 year funding rates decrease. Combined with the member contribution increases, the bill will make a significant improvement towards actuarial soundness for both systems.

METHODOLOGY AND STANDARDS:

The assumptions and methods used are the same as used in the ERS and LECOSRF actuarial valuations for August 31, 2008 and mid-year valuations as of February 28, 2009, except for the variation of the Entry Age Normal (EAN) cost method that was used to consider the benefit reductions for the new tier of benefits. The lower normal cost for new entrants in the new tier of benefits was considered in calculating liabilities for the current members. The result was a lower normal cost for current members and an increased liability for new members, even though benefits for current members were not changed. According to the PRB actuary, the actuarial assumptions, methods and procedures appear to be reasonable. All actuarial projections have a degree of uncertainty because they are based on the probability of occurrence of future contingent events. Accordingly, actual results will be different from the results contained in the analysis to the extent actual future experience varies from the experience implied by the assumptions. The analysis assumes no further changes are made to ERS and LECOSRF and cautions that the combined economic impact of several proposals can exceed the effect of each proposal considered individually.

SOURCES:

Actuarial Analysis by Richard A. Mackesey and R. Ryan Falls, Actuaries, Buck Consultants, May 22, 2009.
Actuarial Review by Martin McCaulay, Deputy Executive Director/Actuary, Pension Review Board, May 22, 2009.
Letter from R. Ryan Falls, Buck Consultants, to Mr. William Nail, ERS, May 7, 2009.

GLOSSARY OF ACTUARIAL TERMS:

Normal Cost— the current cost as a percentage of payroll that is necessary to pre-fund pension benefits adequately during the course of an employee's career.

Unfunded Liability— the amount of total liabilities that are not covered by the total assets of a retirement system. Both liabilities and assets are measured on an actuarial basis using certain assumptions including average annual salary increases, the investment return of the retirement fund, and the demographics of retirement system members.

Amortization Period— the number of years required to pay-off the unfunded liability. Public retirement systems have found that amortization periods ranging from 20 to 40 years are acceptable. State law prohibits changes in TRS, ERS, or JRS II benefits or state contribution rates if the result is an amortization period exceeding 30.9 years.

Source Agencies: 338 Pension Review Board

LBB Staff: JOB, WM

LEGISLATIVE BUDGET BOARD
Austin, Texas

ACTUARIAL IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

March 17, 2009

TO: Honorable Vicki Truitt, Chair, House Committee on Pensions, Investments & Financial Services

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2559 by Truitt (Relating to the powers and duties of the Employees Retirement System of Texas.), **As Introduced**

HB 2559 amends the Government Code and Insurance Code and provides for several changes to the Employees Retirement System (ERS), Judicial Retirement Plan I (JRS I), and Judicial Retirement Plan II (JRS II).

The changes to the Employee Retirement System would generally have no actuarial impact, or produce small actuarial gains. However, certain changes to the Judicial Retirement Plans would have an actuarial impact. Currently judges in either JRS I or JRS II get a basic full retirement benefit of 50 percent of pay for 20 years of service. They can earn extra retirement benefits by paying 6% of their salary for each additional year of service after 20 years. Currently the extra service that they could earn is limited to 10 years. However, the bill would remove this limit on the extra service they can receive. So a judge who works for say 35 years could now earn an extra service credit of 5 years; at a 2.3 multiplier that works out to an increase in retirement benefits of 11.5 percent of pay in addition to the 73 percent of pay from the first 30 years. The increase in benefits could be fairly significant on an individual basis, and fairly significant for the plan as a whole if many judges took advantage of this provision.

ERS did not provide an actuarial analysis of the impact to the JRS I and JRS II plans. The JRS II plan does not have anyone with 25 or more years of service, however it has only been in existence for 23 years. The JRS I plan had a dozen active members who have between 25 and 29 years of service at their last actuarial valuation. A very rough estimate of the cost to a plan for each year of service purchased is the difference between member contributions and the plan's normal cost. For JRS II, that would mean there would be a cost to the plan of approximately 13% of pay for each additional year of service purchased. A full actuarial analysis would have to come up with new assumptions about whether judges with 30 or more years of service would retire, but would be able to provide full details as to the costs of allowing extra service purchase credits.

Based on the results of the last actuarial valuation based on August 31, 2008, JRS II is funded on an actuarially sound basis. However, ERS has estimated a loss of approximately 30% on their assets since that valuation was performed. Consideration should be given to Government Code 840.106, which states a limit on the maximum permissible amount of a type of creditable service may not be removed if the amortization period for the unfunded actuarial liabilities of the retirement system (JRS II) is 31 or more years.

Provisions of the bill, to be effective September 1, 2009, include the following:

Government Code Revisions

- Sets Travis County as the venue and provides for a two year statute of limitations unless otherwise specifically provided by law for any action by or against the retirement system, the trustees, officers, or employees of the retirement system, or an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system.
- Provides for the disposition of unclaimed beneficiary benefits and unclaimed contributions of former members.
- Provides a fifth retirement benefit option that may be selected by an eligible person.
- Specifies two instances in which a member who is otherwise eligible to receive a disability retirement annuity may

not receive the annuity.

- Provides guidelines for determining whether a member is incapacitated for the further performance of duty and a definition of "comparable pay."
- Provides subpoena power to the executive director or the executive director's designee in the event it is deemed necessary to protect the interests of a program or system administered by the retirement system.
- Provides for the rewording of the text of the Duty of Care clauses in regards to whether the board of trustees has exercised prudence with respect to an investment decision.
- Allows the executive director to file an action for interpleader (replaces suit) when two or more parties seek ownership of benefits held by the retirement system.
- Provides for a refund of any contributions, interest, or membership fees used to establish service credit that is not used in computing the amount of the annuity at the time a service retirement, disability retirement, or death benefit annuity become payable.
- Specifies the term of a member leaving judicial office ends December 31 regardless of the date on which the member's successor takes the oath of office.

Insurance Code Revisions

- Defines surviving spouse and surviving dependent insurance eligibility and states the deadlines for applying for coverage and the payment of coverage.
- Allows the executive director to file an action for interpleader (replaces suit) when two or more parties seek ownership of benefits held by the retirement system.
- Provides subpoena power to the executive director or the executive director's designee in the event it is deemed necessary to protect the interests of a program or system administered by the retirement system.
- Allows the retirement system to deposit to the credit of the fund any unclaimed money on a finding that a good faith effort has been made to locate the person entitled to the money.

Repeals the following laws:

Government Code

812.006 Optional Membership
833.1035 Service in Excess of 20 Years
833.104 Service on Domestic Relations or Special Juvenile Court
835.1015 Contributions after 20 Years of Service Credit
838.1035 Service in Excess of 20 Years
838.104 Service on Domestic Relations or Special Juvenile Court
840.1025 Contributions after 20 Years of Service Credit
840.1027 Contributions after Attaining Rule of 70

Insurance Code

1551.221 Voluntary Supplemental Health Coverage for Individuals Eligible Under Tricare Military Health System

According to ERS, the provisions and recommendations in the bill should not have an actuarial impact on ERS retirement funds.

SOURCES:

Email correspondence to PRB from Martha Wall of ERS, March 12, 2009.

Source Agencies: 338 Pension Review Board

LBB Staff: JOB, WM

