

House Bill 2559
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

No equivalent provision.

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No equivalent provision.

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

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

(b-1) A record released or received by the retirement

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system under this section may be transmitted electronically, including through the use of an electronic signature or certification in a form acceptable to the retirement system. An unintentional disclosure to, or unauthorized access by, a third party related to the transmission or receipt of information under this section is not a violation by the retirement system of any law, including a law or rule relating to the protection of confidential information.

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

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

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

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

Sec. 811.010. **VENUE.** Subject to and without waiving the retirement system's sovereign immunity or the official immunity of the trustees, officers, and employees of the retirement system, the venue for any action by or against the retirement system, the trustees, officers, or employees of the retirement system, or an administering firm, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system is

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other governmental agency acting in cooperation with or on behalf of the retirement system:

(1) venue is in Travis County; and

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

No equivalent provision.

No equivalent provision.

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in Travis County.

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

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

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

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

(c) A person who is retired from the elected class of membership and who again holds a position included in that class may elect to become a member again by filing notice with the retirement system. Except as provided by Section 812.203(c) [812.203(e)], when benefit payments are resumed, the retirement system shall recompute the annuity selected at the time of the person's original

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retirement to include the additional service established during membership under this subsection.

No equivalent provision.

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

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

No equivalent provision.

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

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

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

(b) For each month that a department or agency of this state employs a person described by Subsection (a), the department or agency shall remit to the retirement system an amount equal to the amount of the state contribution that the department or agency would remit for an active member employed in the person's position. The amount remitted shall be deposited as provided by

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Section 815.309.

No equivalent provision.

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

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

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

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

No equivalent provision.

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

(d) An individual who was a [A] member or employee on August 31, 2009, and who holds a position included

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in the employee class may use annual leave creditable under this section to satisfy service requirements for retirement under Section 814.104 or 814.107 if the annual leave attributed to the eligibility requirements remains otherwise unused on the last day of employment.

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

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

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

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

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

SECTION 9. Same as House version.

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

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follows:

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

No equivalent provision.

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follows:

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

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

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

- (1) is at least 60 years old and has at least 5 years of service credit in the employee class; or
- (2) has at least 5 years of service credit in the employee class and the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals or exceeds the number 80.

(d) Except as provided by Section 814.102 or by rule adopted under Section 813.304(d) or 803.202(a)(2), a

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member who was not a member on the date hired, was hired on or after September 1, 2009, and has service credit in the retirement system is eligible to retire and receive a service retirement annuity if the member:
(1) is at least 65 years old and has at least 10 years of service credit in the employee class; or
(2) has at least 5 years of service credit in the employee class and the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals or exceeds the number 80.

No equivalent provision.

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

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

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

No equivalent provision.

SECTION 13. Sections 814.107(c) and (d), Government

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Code, are amended to read as follows:

(c) The standard combined service retirement annuity that is payable under this section is based on retirement on or after the attainment of the normal retirement age, which for purposes of this section is the earlier of either the age of 50 or the age at which the sum of the member's age and amount of service credit in the employee class equals the number 80. A law enforcement or custodial officer who retires before attaining the normal retirement age is entitled only to an annuity that is actuarially reduced from the annuity available at the normal retirement age to the law enforcement or custodial officer whose service credit annuity amount is based on ~~[available at]~~ the sum of the member's age and amount of law enforcement or custodial officer service credit and employee class service credit, and is not entitled to have the annuity recalculated at normal retirement age. The standard or reduced annuity is payable from the trust fund established by Section 815.310 and the law enforcement and custodial officer supplemental retirement fund in a ratio determined by the retirement system.

(d) A member who retires under this section retires simultaneously from the employee class of membership. ~~[Benefits for service in the employee class of membership become payable from the trust fund established by Section 815.310 at the normal retirement age under the computation provided by Section 814.105.]~~ Optional retirement annuities provided by Section 814.108 are available to a member eligible to receive a

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service retirement annuity under this section, but the same optional plan and beneficiary [~~designee~~] must be selected for the portion of the annuity payable from the law enforcement and custodial officer supplemental retirement fund and the portion payable from the trust fund established by Section 815.310.

No equivalent provision.

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

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

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

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

(d) The standard combined service retirement annuity that is payable under this section is based on retirement at either the age of 55 or the age at which the sum of the

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member's age and amount of service credit in the employee class equals or exceeds the number 80. The annuity of a law enforcement or custodial officer who retires before reaching the age of 55 under any eligibility criteria is actuarially reduced by five percent for each year the member retires before the member reaches age 55, with a maximum possible reduction of 25 percent.

(e) An annuity payable under this section:

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

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

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

(g) The amount payable from the law enforcement and custodial officer supplemental retirement fund is reducible by the amount paid from the trust fund

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established by Section 815.310 for service as a law enforcement or custodial officer. The total combined amount of an annuity under this section may not be less than the authorized benefit under Subsection (c) subtracted by any amount necessary because of the selection of an optional annuity, because of retirement before the age of 55, or as provided by Subsection (h).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A person who retired and selected an optional service retirement annuity [~~approved by the board of~~

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

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

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

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

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

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

(a) A person who retired and selected an optional service retirement annuity [~~approved by the board of~~

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~~trustees or an optional service retirement annuity]~~
described by Section 814.108(c)(1), ~~[or]~~ (c)(2), or (c)(5)
may change the optional annuity selection to the
selection of a standard service retirement annuity by
filing with the retirement system a request to change the
annuity selection, if the retiree designated a person as
beneficiary who:

- (1) was not at the time of designation and is not currently the retiree's spouse or child; or
- (2) has executed since the designation a transfer and release, approved by a court of competent jurisdiction pursuant to a divorce decree, of the beneficiary's interest in the annuity and is not currently the retiree's spouse or child.

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

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

- (1) still earning a salary or wage from the employment for which the member is claiming disability; or
- (2) on leave without pay from the employment for which the member is claiming disability.

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

Sec. 814.203. CERTIFICATION OF DISABILITY. (a)

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~~trustees or an optional service retirement annuity]~~
described by Section 814.108(c)(1), ~~[or]~~ (c)(2), or (c)(5)
may change the optional annuity selection to the
selection of a standard service retirement annuity by
filing with the retirement system a request to change the
annuity selection, if the retiree designated a person as
beneficiary who:

- (1) was not at the time of designation and is not currently the retiree's spouse or **dependent** child; or
- (2) has executed since the designation a transfer and release, approved by a court of competent jurisdiction pursuant to a divorce decree, of the beneficiary's interest in the annuity and is not currently the retiree's spouse or **dependent** child.

SECTION 17. Same as House version.

SECTION 18. Same as House version.

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As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information regarding the member's application. If the medical board finds that the member is mentally or physically incapacitated for the further performance of duty, as supported by substantial, objective, medical evidence, and that the incapacity is likely to be permanent, the medical board shall issue a certification of disability and submit it to the executive director. A certification under this section is admissible in a contested case under Section 815.511 without proving the medical board as experts.

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

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

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pay rates.

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

Sec. 815.214. SUBPOENA. Notwithstanding any other law, the **executive director or the executive director's designee** may issue a subpoena that conforms to Rule 176, Texas Rules of Civil Procedure, including a preappeal investigative subpoena or any subpoena otherwise authorized by the Texas Rules of Civil Procedure, that the **executive director or designee** determines necessary to protect the interests of a program or system administered by the retirement system.

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

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

(h) For purposes of Subsection (g):

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

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

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

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

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

SECTION 11. Section 815.307, Government Code, as amended by Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th Legislature, Regular Session, 2003, is reenacted to read as follows:

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

No equivalent provision.

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SECTION 21. Same as House version.

SECTION 22. Section 815.402, Government Code, is amended by amending Subsection (a) and adding

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Subsection (h) to read as follows:

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

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

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

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

No equivalent provision.

SECTION 23. Section 815.503, Government Code, is amended by amending Subsections (a) and (b) and

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adding Subsections (b-1) and (e) to read as follows:

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

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

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

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

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

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

Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY. (a) The executive director may cause an action for interpleader [a suit] concerning a claim to be filed on behalf of the retirement system in a district court in Travis County to protect the system from double or multiple liability if the executive director determines that a claim may expose the retirement system to such liability.

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

SECTION 24. Substantially the same as House version.

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

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

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

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

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

SECTION 14. Section 837.003, Government Code, is

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

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

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

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

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amended by adding Subsection (e) to read as follows:

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

SECTION 15. Section 838.106, Government Code, is amended by adding Subsection (c) to read as follows:

(c) For the purpose of Subsection (a)(1), 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.

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

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

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

(2) an annuity payable during the retiring member's life

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

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

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and continuing after death in an amount equal to one-half of the amount payable during the retiring member's life, throughout the life of one person designated by the retiring member before retirement;

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

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

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

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

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

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trust or the collective investment vehicle, as applicable.

No equivalent provision.

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

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

No equivalent provision.

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

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

No equivalent provision.

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

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

(1) spouse;

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- (2) unmarried child younger than 25 years of age;
- (3) child of any age who the board of trustees determines lives with or has the child's care provided by the individual on a regular basis if:
 - (A) the child is mentally retarded or physically incapacitated to the extent that the child is dependent on the individual for care or support, as determined by the board of trustees;
 - (B) the child's coverage under this chapter has not lapsed; and
 - (C) the child is at least 25 years old and was enrolled as a participant in the health benefits coverage under the group benefits program on the date of the child's 25th birthday; ~~and~~
- (4) child of any age who is unmarried, for purposes of health benefit coverage under this chapter, on expiration of the child's continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) and its subsequent amendments; and
- (5) ward, as that term is defined by Section 601, Texas Probate Code.
- (b) In this section, "child" includes:
 - (1) a natural child, ~~an~~ adopted child, ~~and a~~ stepchild, or foster child; ~~;~~ or
 - (2) a ~~other~~ child who is related by blood or marriage and was claimed as a dependent on the federal income tax return of ~~[is in a parent-child relationship with]~~ an individual who is eligible to participate in the group benefits program under Section 1551.101 or 1551.102

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for the calendar year preceding the plan year in which the child is first enrolled as a dependent under Subchapter D, and for each subsequent year in which the child is enrolled as a dependent.

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

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

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

No equivalent provision.

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

(a) The records of a participant in the group benefits program in the custody of the Employees Retirement System of Texas [~~board of trustees~~], or of an administering firm, [administrator or] carrier, or another governmental entity acting on behalf of the retirement system [~~board~~], are confidential and not subject to disclosure, and the retirement system, administering firm, carrier, or governmental entity [~~board~~] is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the [~~public access~~] provisions of Chapter 552,

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Government Code, except as provided by this section.

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

- (1) an administering firm ~~administrator~~, carrier, agent, or attorney acting on behalf of the board;
- (2) another governmental entity having a legitimate need for the information to perform a function of the board of trustees;
- (3) an authorized medical provider of the participant; or
- (4) a party in response to a subpoena issued under applicable law.

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

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

SECTION 18. Section 1551.102(d), Insurance Code, is

SECTION 34. Section 1551.102(d), Insurance Code, is

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amended to read as follows:

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

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

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

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

(4) the individual:

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

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

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amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 36. Same as House version.

SECTION 37. Same as House version.

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

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

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

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

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

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

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

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SECTION 38. Substantially the same as House version.

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

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

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

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

(g) Except as provided by Section 1551.259(d), the retirement system may 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.

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

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

SECTION 40. Same as House version.

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SECTION 25. The following laws are repealed:

- (1) **Section 812.006, Government Code;**
- (2) Section 833.1035(c), Government Code;
- (3) Section 833.104, Government Code;
- (4) Section 835.1015(c), Government Code;
- (5) Section 838.1035(c), Government Code;
- (6) Section 838.104, Government Code;
- (7) Section 840.1025(c), Government Code;
- (8) Section 840.1027(c), Government Code; and

- (9) Section 1551.221, Insurance Code.

No equivalent provision.

SECTION 26. Sections 811.010 and **815.214,** Government Code, **and Section 1551.362, Insurance Code,** as added by this Act, and Sections 815.512, Government Code, and 1551.354, Insurance Code, as amended by this Act, apply only to an action filed by or against the Employees Retirement System of Texas, the trustees, officers, or employees of the retirement system, or an **administrator,** carrier, or other governmental

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SECTION 41. The following laws are repealed:

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

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

SECTION 43. Sections 811.010 and **811.011,** Government Code, as added by this Act, and Sections 815.512, Government Code, and 1551.354, Insurance Code, as amended by this Act, apply only to an action filed by or against the Employees Retirement System of Texas, the trustees, officers, or employees of the retirement system, or an **administering firm,** carrier, or other governmental agency acting in cooperation with or

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agency acting in cooperation with or on behalf of the retirement system on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect when the action was filed, and that law is continued in effect for that purpose.

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

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

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on behalf of the retirement system on or after the effective date of this Act. An action filed before the effective date of this Act is governed by the law in effect when the action was filed, and that law is continued in effect for that purpose.

No equivalent provision.

SECTION 44. Same as House version.

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

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

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

SECTION 46. Same as House version.

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