

By: Truitt

H.B. No. 2731

Substitute the following for H.B. No. 2731:

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C.S.H.B. No. 2731

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to contributions to, benefits from, and administration of  
3 certain public retirement systems; providing administrative  
4 penalties.

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

6 SECTION 1. Subchapter C, Chapter 801, Government Code, is  
7 amended by adding Sections 801.208 and 801.209 to read as follows:

8 Sec. 801.208. INVESTIGATION OF CERTAIN COMPLAINTS; ACTION  
9 BY ATTORNEY GENERAL. (a) The board shall adopt rules and  
10 procedures for receiving a complaint against a person who provides  
11 management or investment services to a public retirement system for  
12 a complaint alleging that the person:

13 (1) violated or may have violated Sections 802.004  
14 through 802.007 or a conflict of interest provision applicable  
15 under other law; or

16 (2) has been or may have been involved in criminal  
17 conduct relating to the services provided by the person to the  
18 system.

19 (b) The board may refer a complaint to the attorney general  
20 for investigation.

21 (c) The attorney general may subpoena witnesses or books,  
22 records, or other documents relevant to an investigation under this  
23 section.

24 (d) If, as a result of an investigation under Subsection

1 (b), the attorney general determines that a criminal offense has  
2 been committed, the attorney general may refer the case to the  
3 appropriate law enforcement agency for prosecution.

4 Sec. 801.209. STATEMENT TO BOARD ON PROCUREMENT OF  
5 INVESTMENT MANAGERS AND CERTAIN OTHERS. (a) If a complaint is  
6 filed and the board determines it appropriate, the board may  
7 require a public retirement system to provide the board with a  
8 statement not later than the 30th day after the date the system  
9 receives the request for a statement detailing the system's method  
10 of selecting any person who provides the system with services  
11 relating to the management and investment of the system's assets.

12 (b) The Employees Retirement System of Texas, the Teacher  
13 Retirement System of Texas, the Texas County and District  
14 Retirement System, the Texas Municipal Retirement System, and the  
15 Judicial Retirement System of Texas Plan Two are exempt from this  
16 section.

17 SECTION 2. Section 802.002(a), Government Code, is amended  
18 to read as follows:

19 (a) Except as provided by Subsection (b), the Employees  
20 Retirement System of Texas, the Teacher Retirement System of Texas,  
21 the Texas County and District Retirement System, the Texas  
22 Municipal Retirement System, and the Judicial Retirement System of  
23 Texas Plan Two are exempt from Sections 802.004, 802.101(a),  
24 802.101(b), 802.101(d), 802.1013, 802.102, 802.103(a), 802.103(b),  
25 802.202, 802.203, 802.204, 802.205, 802.206, and 802.207. The  
26 Judicial Retirement System of Texas Plan One is exempt from all of  
27 Subchapters B and C except Sections 802.104 and 802.105. The

1 optional retirement program governed by Chapter 830 is exempt from  
2 all of Subchapters B and C except Section 802.106.

3 SECTION 3. Subchapter A, Chapter 802, Government Code, is  
4 amended by adding Sections 802.004 through 802.007 to read as  
5 follows:

6 Sec. 802.004. DISCLOSURE OF CERTAIN POTENTIAL CONFLICTS OF  
7 INTEREST REQUIRED; ANNUAL FILING. (a) This section applies to:

8 (1) a member of the governing body of a public  
9 retirement system;

10 (2) an investment manager for a public retirement  
11 system appointed by contract under Section 802.204; and

12 (3) any other person, including an investment  
13 consultant or advisor, providing services under contract to a  
14 public retirement system relating to the management and investment  
15 of the system's assets.

16 (b) Not later than the 30th day after the date the person  
17 learns of the relationship, a person to whom this section applies  
18 shall disclose in writing to the public retirement system that the  
19 person or an immediate family member of the person, including the  
20 person's spouse, has a business, commercial, or other relationship  
21 that a reasonable person would find likely to diminish the person's  
22 independence of judgment in the performance of the person's  
23 responsibilities with respect to the management or investment of  
24 the system's assets, including a relationship in which the person  
25 or the person's immediate family member:

26 (1) is employed by or participates in the management  
27 of a business entity or other organization receiving funds from the

1 retirement system; or

2 (2) owns or controls, directly or indirectly, an  
3 interest in a business entity or other organization receiving funds  
4 from the retirement system.

5 (c) If a person described by Subsection (a)(1) fails to  
6 disclose a relationship under Subsection (b), it is a ground for  
7 removal from the governing body of the public retirement system on  
8 which the person serves. If the board determines that a person  
9 described by Subsection (a)(1) should be removed under this  
10 subsection, the board shall notify the appropriate appointing  
11 officer that a ground for removal exists.

12 (d) If a person described by Subsection (a)(2) or (3) fails  
13 to disclose a relationship under Subsection (b):

14 (1) the contract is voidable by the public retirement  
15 system; and

16 (2) the governing body of the retirement system may  
17 enter an order declaring the person ineligible to contract for  
18 business relating to the management or investment of the system's  
19 assets.

20 (e) At least annually on a date specified by the public  
21 retirement system, a person to whom this section applies shall file  
22 a statement with the system stating that the person is aware that  
23 the person is required to disclose material conflicts of interest  
24 under this section and that the person is in compliance with this  
25 section.

26 (f) The board shall adopt rules relating to the types of  
27 relationships that must be disclosed under Subsection (b).

1       Sec. 802.005. PROHIBITION AGAINST ACCEPTANCE OF CERTAIN  
2 BENEFITS. (a) In this section, "benefit" has the meaning assigned  
3 by Section 1.07, Penal Code.

4       (b) Except as provided by Subsection (c), a person to whom  
5 Section 802.004 applies or a member of the immediate family of the  
6 person may not accept any benefit with an aggregate value in any  
7 calendar year of more than \$250 from any individual who enters into  
8 or seeks to enter into a contract with a public retirement system.

9       (c) Food, lodging, and transportation related to attending  
10 a conference in this state that is attended or expected to be  
11 attended by at least 50 individuals representing more than one  
12 public retirement system are exempt from this section.

13       Sec. 802.006. PROHIBITED EMPLOYMENT AND CONTRACTS. A  
14 public retirement system may not knowingly employ or contract with,  
15 either directly or indirectly, a former member of the governing  
16 body of the system before the first anniversary of the date the  
17 individual ceased to be a member of the system's governing body.

18       Sec. 802.007. ADMINISTRATIVE PENALTY. (a) In this  
19 section, "theft" means the conduct prohibited by Section 31.03,  
20 Penal Code.

21       (b) A person who commits theft in relation to a service  
22 provided by the person to a public retirement system is liable to  
23 the system for an administrative penalty in an amount not to exceed  
24 \$250,000 for each violation. An action may be brought under this  
25 subsection regardless of whether a criminal conviction under  
26 Section 31.03, Penal Code, has been sought or obtained against the  
27 person.

1        (c) A person who commits a breach of the person's fiduciary  
2 duty in relation to a service provided by the person to a public  
3 retirement system is liable to the system for an administrative  
4 penalty in an amount not to exceed:

5            (1) \$500 for each violation; or

6            (2) \$10,000 in the aggregate for all violations of a  
7 similar nature.

8        (d) The amount of an administrative penalty imposed under  
9 this section must be in an amount that is reasonably related to the  
10 harm to the public retirement system.

11        (e) The attorney general may bring an action to impose and  
12 recover an administrative penalty allowed under this section.

13        (f) A penalty under this section is in addition to any other  
14 remedy provided by law.

15        SECTION 4. Section 802.1012, Government Code, is amended by  
16 amending Subsections (b) and (c) and adding Subsections (c-1) and  
17 (c-2) to read as follows:

18        (b) Except as provided by Subsection (k), this section  
19 applies only to a public retirement system with total assets the  
20 book value of which, as of the last day of the preceding fiscal  
21 year, is at least \$10 [~~\$100~~] million.

22        (c) Subject to Subsection (c-1), every [~~Every~~] five years,  
23 the actuarial valuations, studies, and reports of a public  
24 retirement system most recently prepared for the retirement system  
25 as required by Section 802.101 or other law under this title or  
26 under Title 109, Revised Statutes, must be audited by an  
27 independent actuary who:

1           (1) is engaged for the purpose of the audit by the  
2 governmental entity; and

3           (2) has the credentials required for an actuary under  
4 Section 802.101(d).

5           (c-1) Subsection (c) applies only to a public retirement  
6 system with total assets the book value of which, as of the last day  
7 of the preceding fiscal year, is at least \$50 million.

8           (c-2) Each calendar year, the board may select five public  
9 retirement systems with total assets the book value of which, as of  
10 the last day of the fiscal year, is at least \$10 million, but not  
11 more than \$50 million, to complete the audit described in  
12 Subsection (c). If the retirement system is unable to employ an  
13 independent actuary for purposes of completing the audit required  
14 by this subsection, the board may provide the service for a fee in  
15 an amount determined by the board.

16           SECTION 5. Subchapter B, Chapter 802, Government Code, is  
17 amended by adding Section 802.1013 to read as follows:

18           Sec. 802.1013. ACTUARIAL EXPERIENCE STUDIES. (a) In this  
19 section, "plan year" means the 12-month accounting period of the  
20 affected pension plan of a public retirement system subject to this  
21 section.

22           (b) Subject to Subsection (c), the board may require a  
23 public retirement system with total assets the book value of which,  
24 as of the last day of the preceding plan year, is at least \$50  
25 million to conduct and submit to the board an actuarial experience  
26 study.

27           (c) The board may not require a public retirement system to

1 conduct more than one actuarial experience study every five years.

2 (d) The board may adopt rules to implement this section.

3 SECTION 6. Section 802.103, Government Code, is amended by  
4 adding Subsections (b-1) and (d) to read as follows:

5 (b-1) If the governing body of a public retirement system  
6 fails to file the annual financial report with the board before the  
7 10th business day after the final date by which the retirement  
8 system is required to file the report under Subsection (b), the  
9 board shall notify appropriate local media outlets before the fifth  
10 business day after that date. If, after local media outlets are  
11 notified of a failure to timely file a report under this subsection,  
12 the retirement system files the report or the board discovers that  
13 the board notified local media outlets by mistake, the board shall  
14 not later than the fifth business day after that date notify the  
15 local media outlets of the receipt of the report or the discovery of  
16 its mistake, as applicable.

17 (d) The governing body of a public retirement system shall  
18 require that all records, including the work papers involved in the  
19 preparation of the annual financial report required under this  
20 section, be retained in compliance with the records retention  
21 schedule adopted by the Texas State Library and Archives Commission  
22 applicable to all local governments.

23 SECTION 7. (a) Not later than January 1, 2012, the State  
24 Pension Review Board shall adopt rules as required by Section  
25 802.004, Government Code, as added by this Act.

26 (b) Notwithstanding Section 802.004, Government Code, as  
27 added by this Act, a person is not required to comply with that



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1 section before the 30th day after the date the State Pension Review  
2 Board adopts the rules required by that section.

3 SECTION 8. This Act takes effect September 1, 2011.