

## **BILL ANALYSIS**

C.S.H.B. 3357  
By: Callegari  
Pensions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Teacher Retirement System of Texas (TRS) delivers retirement and related benefits as authorized by law for TRS members and their beneficiaries. Interested parties contend that to comply with fiduciary standards, funds held in the TRS trust must be used exclusively for the benefit of members. These parties assert that technical and clarifying changes need to be made to the current laws regulating TRS so that TRS can provide for the efficient delivery of benefits. C.S.H.B. 3357 seeks to make changes relating to the administration of and benefits paid by TRS.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3357 amends the Government Code to authorize, rather than prohibit, a person who is not a member of the board of trustees of the Teacher Retirement System of Texas (TRS) to speak at a board meeting from a remote location by telephone conference call.

C.S.H.B. 3357 authorizes a retiree who selected a specified optional service retirement annuity or a specified optional disability retirement annuity under TRS to change, under certain circumstances, the optional annuity selection made by the retiree to a standard service or disability retirement annuity, rather than revoke the designation of the beneficiary to receive the annuity on the death of the retiree, and to add as qualification for eligibility of this change that the retiree has received at least one payment under the plan originally selected. The bill requires a beneficiary, if the beneficiary is the spouse or former spouse of the retiree, to sign a notarized consent to the change or requires a court in a divorce proceeding involving the retiree and beneficiary to approve or order the change in the divorce decree or acceptance of a property settlement. The bill establishes that the change in plan selection, rather than the revocation, takes effect when TRS receives it and that the change cancels the designation of beneficiary with respect to the optional annuity benefit but does not cancel a designation with respect to any other benefit payable by TRS on the death of the retiree.

C.S.H.B. 3357 requires a former spouse of a TRS retiree who is the retiree's designated beneficiary, if the parties divorce after the designation, to give written, notarized consent to change the designated beneficiary for the benefits payable after the retiree's death.

C.S.H.B. 3357 changes the composition of the slate of three members of TRS from which the governor is required to appoint two members to the board to include, in addition to members currently employed by a public school district, members currently employed by a charter school or a regional education service center. The bill, in a provision establishing the members of the group that collectively nominate a slate of three persons to the board, from which slate one is appointed to the board by the governor, includes in the nominating group of members whose most recent credited service was performed for a public school district, members whose most

recent credited service was performed for a charter school or regional education service center. The bill provides that a member who is currently employed by a charter school or regional education service center may be nominated to the board by the group making collective nominations.

C.S.H.B. 3357 authorizes the board to accept on behalf of TRS gifts of money, services, or other property from any public or private source.

C.S.H.B. 3357 authorizes the board or its audit committee to conduct a closed meeting, in accordance with applicable state law, with TRS's internal or external auditors to discuss specified matters. The bill authorizes the board to conduct a closed meeting, in accordance with those laws, to deliberate or confer with one or more employees, consultants, or legal counsel of TRS or a third party regarding a procurement to be awarded by the board if, before conducting the closed meeting, a majority of the trustees in an open meeting vote that deliberating or conferring in an open meeting would have a detrimental effect on the position of TRS in negotiations with a third person. The bill requires the board to vote or take final action on the procurement in an open meeting.

C.S.H.B. 3357 exempts the medical board appointed by the TRS board of trustees from being subject to subpoena regarding findings the medical board makes in assisting the executive director of TRS or the board. The bill grants members of the medical board immunity from liability for any opinions, conclusions, or recommendations made under the statutory provision relating to the medical board.

C.S.H.B. 3357 revises and repeals certain provisions relating to the requirement that the board enforce an ethics policy and prohibiting certain interests in loans, investments, or contracts by a TRS trustee or employee, a consultant or advisor to TRS, and a person related within the second degree by consanguinity or affinity to a trustee, employee, consultant, or advisor. The bill instead requires the board to adopt a code or codes of ethics applicable to trustees, employees, and any contractors or any categories of contractors that the board determines provide specified advice or opinions and certain services. The bill authorizes the board, in any code of ethics adopted by the board, to impose enhanced disclosure requirements on employees that the board determines exercise significant fiduciary authority, to impose specified disclosure requirements on contractors, and to address specified topics related to ethical conduct. The bill specifies that its provisions relating to the TRS code or codes of ethics preempt the common law of conflicts of interest as applied to trustees, employees, and contracts of TRS.

C.S.H.B. 3357 repeals a provision requiring the legislature to appropriate a specified amount from the general revenue fund to pay the operating expenses of TRS for each fiscal year and updates and revises certain provisions to reflect that repeal. The bill, in a provision authorizing the transfer of certain amounts from the interest account to the expense account to cover TRS fiscal year expenses that are required in the performance of the board's fiduciary duties, removes from those expenses the expense of servicing certain federally insured mortgages.

C.S.H.B. 3357, in a provision requiring TRS to use all assets contributed by the state to pay authorized benefits, removes provisions requiring TRS staff to report to the board at each board meeting the amounts and uses since the preceding board meeting of any money expended by TRS from the amounts transferred from the interest account to the expense account of TRS and requiring the board to include an explanation of the reason the amounts were needed to perform the fiduciary duties of the board. The bill, in that same provision, removes the requirement that TRS annually prepare and issue to each contributing member and annuitant and to the governor, lieutenant governor, and speaker of the house of representatives a summary of the reports presented during the preceding year to the board.

C.S.H.B. 3357 repeals provisions authorizing a contributing member to establish or reestablish service creditable in TRS by making payroll reduction payments in lieu of lump-sum payments

otherwise authorized or required and updates certain related provisions to reflect that repeal.

C.S.H.B. 3357 repeals provisions relating to an authorization for the board by order to require that the rate of contributions for each TRS member be increased to not more than 6.58 percent of the member's annual compensation for service rendered after the date of the order if the legislature requires or authorizes the board to pay a supplemental payment to specified annuitants and the board finds, as of the time the payment is to be made, that after the payment is made the amortization period for the unfunded actuarial liabilities of TRS would exceed 30 years by one or more years; relating to a prohibition on the board from making a supplemental payment required or authorized by the legislature and from imposing such an increase in the rate of contributions if the board finds that after making the payment and imposing the increase the amortization period for the unfunded actuarial liabilities of TRS would exceed 30 years by one or more years; and relating to an authorization for the board to delay making a supplemental payment required or authorized by the legislature as necessary to make those described determinations.

C.S.H.B. 3357 includes information about the records of a participant among the information that is confidential and not subject to public disclosure, specifies this information is confidential and not subject to public disclosure regardless of the form the information is in, and includes the comptroller of public accounts among the entities having custody of information to which the confidentiality applies. The bill expands the definition of "participant" to include, in addition to a member, former member, retiree, annuitant, beneficiary, or alternate payee of TRS, an employee or contractor of an employer covered by TRS for whom records were received by TRS for the purpose of administering the terms of the plan, including for audit or investigative purposes. The bill specifies that, in addition to TRS, an administering firm, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in cooperation with or on behalf of TRS 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. The bill makes a provision authorizing TRS to release records of a participant to specified individuals and entities, and a provision maintaining the confidentiality of such records after such a release, applicable to information about the records of a participant. The bill includes a participant's e-mail address among the information TRS is not authorized to compile or disclose unless the executive director determines that a compilation or disclosure is necessary to administer TRS.

C.S.H.B. 3357, in a provision requiring TRS to annually acquire and maintain records identifying members and types of positions they hold as members, specifies that employers are required to provide the information specifying the type of position held by each member and to also provide the work e-mail address for each member.

C.S.H.B. 3357 amends the Insurance Code, for purposes of the Texas Public School Retired Employees Group Benefits Act and the Texas School Employees Uniform Group Health Coverage Act, to redefine "dependent" by increasing from 25 to 26 the maximum age that a child of a retiree, deceased active member, or full-time or part-time employee is considered to be a dependent; by specifying that such a child is a dependent without regard to whether the child is unmarried; and by including a child who is lawfully placed for legal adoption as a dependent.

C.S.H.B. 3357 authorizes TRS to spend a part of the money received for the Texas Public School Employees Group Insurance Program to offset a part of the costs for optional coverage paid by the retirees on the condition that the group program is projected to remain financially solvent during the currently funded biennium, rather than on the condition that the expenditure does not reduce the period the group program is projected to remain financially solvent by more than one year in a biennium.

C.S.H.B. 3357 repeals the following provisions of the Government Code:

- Section 825.211

- Sections 825.212(d), (e), (f), (g), and (h)
- Sections 825.402(b), (c), and (d)
- Section 825.404(d)
- Section 825.411

**EFFECTIVE DATE**

September 1, 2013.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3357 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Sections 551.130(e) and (j), Government Code, are amended.	SECTION 1. Same as introduced version.
SECTION 2. The heading to Section 824.1012, Government Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Sections 824.1012(a) and (b), Government Code, are amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 824.1013(b), Government Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Sections 825.002(c), (e), and (e-1), Government Code, are amended.	SECTION 5. Same as introduced version.
SECTION 6. Section 825.103, Government Code, is amended.	SECTION 6. Same as introduced version.
SECTION 7. Section 825.115, Government Code, is amended.	SECTION 7. Same as introduced version.
SECTION 8. Section 825.204, Government Code, is amended.	SECTION 8. Same as introduced version.
SECTION 9. Sections 825.212(a), (b), and (c), Government Code, are amended.	SECTION 9. Same as introduced version.

SECTION 10. Section 825.312(b), Government Code, is amended.

SECTION 10. Same as introduced version.

SECTION 11. The heading to Section 825.313, Government Code, is amended.

SECTION 11. Same as introduced version.

SECTION 12. Section 825.313(d), Government Code, is amended.

SECTION 12. Same as introduced version.

SECTION 13. Section 825.314, Government Code, is amended.

SECTION 13. Same as introduced version.

SECTION 14. The heading to Section 825.404, Government Code, is amended.

SECTION 14. Same as introduced version.

SECTION 15. Section 825.404(e), Government Code, is amended.

SECTION 15. Same as introduced version.

SECTION 16. Section 825.410(b), Government Code, is amended.

SECTION 16. Same as introduced version.

SECTION 17. Section 825.507, Government Code, is amended by amending Subsections (a), (b), (c), (f), and (g) and adding Subsection (h) to read as follows:

SECTION 17. Sections 825.507(a), (b), (c), (f), and (g), Government Code, are amended to read as follows:

(a) Records of a participant and information about the records of a participant that are in the custody of the retirement system or of an administrator, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure [~~in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section~~]. Because the records and information described by this section [~~subsection~~] are exempt from the public access provisions of Chapter 552, the retirement system or an administering firm, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in cooperation with or on behalf of the retirement system, is not required to accept or comply with a request for a record or information about a record or to seek an

(a) Records of a participant and information about the records of a participant that are in the custody of the retirement system or of an administrator, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure [~~in a form that would identify an individual and are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section~~]. Because the records and information described by this section [~~subsection~~] are exempt from the public access provisions of Chapter 552, the retirement system or an administering firm, carrier, attorney, consultant, or governmental agency, including the comptroller, acting in cooperation with or on behalf of the retirement system, 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, except as otherwise provided by this section.

(b) The retirement system may release records of a participant, or information about the records of a participant, including a participant to which Chapter 803 applies, to:

(1) the participant or the participant's attorney or guardian or another person who the executive director determines is acting on behalf of the participant;

(2) the executor or administrator of the deceased participant's estate, including information relating to the deceased participant's beneficiary, or if an executor or administrator of the deceased participant's estate has not been named, a person or entity who the executive director determines is acting in the interest of the deceased participant's estate, or an heir, legatee, or devisee of the deceased participant;

(3) a spouse or former spouse of the participant if the executive director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(4) an administrator, carrier, consultant, attorney, or agent acting on behalf of the retirement system;

(5) a governmental entity, an employer, or the designated agent of an employer, only to the extent the retirement system needs to share the information to perform the purposes of the retirement system, as determined by the executive director;

(6) a person authorized by the participant in writing to receive the information;

(7) a federal, state, or local criminal law enforcement agency that requests a record for a law enforcement purpose;

(8) the attorney general to the extent necessary to enforce child support; or

(9) a party in response to a subpoena issued under applicable law if the executive director determines that the participant will have a reasonable opportunity to contest the subpoena.

(c) The records of a participant and information about the records remain confidential after release to a person as authorized by this section. This section does not prevent the retirement system or administering firm or carrier acting in cooperation with or on behalf of the

opinion from the attorney general, except as otherwise provided by this section.

(b) The retirement system may release records of a participant, or information about the records of a participant, including a participant to which Chapter 803 applies, to:

(1) the participant or the participant's attorney or guardian or another person who the executive director determines is acting on behalf of the participant;

(2) the executor or administrator of the deceased participant's estate, including information relating to the deceased participant's beneficiary, or if an executor or administrator of the deceased participant's estate has not been named, a person or entity who the executive director determines is acting in the interest of the deceased participant's estate, or an heir, legatee, or devisee of the deceased participant;

(3) a spouse or former spouse of the participant if the executive director determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the retirement system;

(4) an administrator, carrier, consultant, attorney, or agent acting on behalf of the retirement system;

(5) a governmental entity, an employer, or the designated agent of an employer, only to the extent the retirement system needs to share the information to perform the purposes of the retirement system, as determined by the executive director;

(6) a person authorized by the participant in writing to receive the information;

(7) a federal, state, or local criminal law enforcement agency that requests a record for a law enforcement purpose;

(8) the attorney general to the extent necessary to enforce child support; or

(9) a party in response to a subpoena issued under applicable law if the executive director determines that the participant will have a reasonable opportunity to contest the subpoena.

(c) The records of a participant and information about the records remain confidential after release to a person as authorized by this section. This section does not prevent the retirement system or administering firm or carrier acting in cooperation with or on behalf of the

retirement system from disclosing or confirming [disclosure or confirmation], on an individual basis, [of] the status or identity of a participant as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system.

(f) This section does not authorize the retirement system to compile or disclose a list of participants' names, addresses, including e-mail addresses, or social security numbers unless the executive director determines that a compilation or disclosure is necessary to administer the retirement system.

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system, or an employee or contractor of an employer covered by the retirement system for whom records were received by the retirement system for the purpose of administering the terms of the plan, including for audit or investigative purposes.

(h) The retirement system has sole discretion in determining whether a record or information about a record is subject to this section.

SECTION 18. Section 825.515(a), Government Code, is amended.

SECTION 19. Section 1575.003(1), Insurance Code, is amended.

SECTION 20. Section 1575.205(c), Insurance Code, is amended.

SECTION 21. Section 1579.004, Insurance Code, is amended.

SECTION 22. The following laws are repealed:

- (1) Section 825.211, Government Code;
- (2) Sections 825.212(d), (e), (f), (g), and (h), Government Code;
- (3) Sections 825.402(b), (c), and (d), Government Code;

retirement system from disclosing or confirming [disclosure or confirmation], on an individual basis, [of] the status or identity of a participant as a member, former member, retiree, deceased member or retiree, beneficiary, or alternate payee of the retirement system.

(f) This section does not authorize the retirement system to compile or disclose a list of participants' names, addresses, including e-mail addresses, or social security numbers unless the executive director determines that a compilation or disclosure is necessary to administer the retirement system.

(g) In this section, "participant" means a member, former member, retiree, annuitant, beneficiary, or alternate payee of the retirement system, or an employee or contractor of an employer covered by the retirement system for whom records were received by the retirement system for the purpose of administering the terms of the plan, including for audit or investigative purposes.

SECTION 18. Same as introduced version.

SECTION 19. Same as introduced version.

SECTION 20. Same as introduced version.

SECTION 21. Same as introduced version.

SECTION 22. Same as introduced version.

- (4) Section 825.404(d), Government Code;  
and
- (5) Section 825.411, Government Code.

SECTION 23. This Act takes effect  
September 1, 2013.

SECTION 23. Same as introduced version.