

By: Murphy, Flynn, Menendez, Davis of Dallas,
Fallon

H.B. No. 2432

Substitute the following for H.B. No. 2432:

By: Callegari

C.S.H.B. No. 2432

A BILL TO BE ENTITLED

AN ACT

relating to benefits from and administration of certain public
retirement systems; providing civil penalties.

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

SECTION 1. Section 802.002(a), Government Code, is amended
to read as follows:

(a) Except as provided by Subsection (b), the Employees
Retirement System of Texas, the Teacher Retirement System of Texas,
the Texas County and District Retirement System, the Texas
Municipal Retirement System, and the Judicial Retirement System of
Texas Plan Two are exempt from Sections 802.004, 802.005, 802.006,
802.007, 802.101(a), 802.101(b), 802.101(d), 802.102, 802.103(a),
802.103(b), 802.103(d), 802.202, 802.203, 802.204, 802.2041,
802.2042, 802.205, 802.206, and 802.207. The Judicial Retirement
System of Texas Plan One is exempt from all of Subchapters B and C
except Sections 802.104 and 802.105. The optional retirement
program governed by Chapter 830 is exempt from all of Subchapters B
and C except Section 802.106.

SECTION 2. Subchapter A, Chapter 802, Government Code, is
amended by adding Sections 802.004 through 802.008 to read as
follows:

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

(1) a member of the governing body of a public

1 retirement system;

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

4 (3) any other person, including an investment
5 consultant or advisor, providing services under contract to a
6 public retirement system relating to the management and investment
7 of the system's assets.

8 (b) Not later than the 30th day after the date the person
9 learns of the relationship, a person to whom this section applies
10 shall disclose in writing to the public retirement system that the
11 person or an immediate family member of the person, including the
12 person's spouse, has a business, commercial, or other relationship
13 that a reasonable person would find likely to diminish the person's
14 independence of judgment in the performance of the person's
15 responsibilities with respect to the management or investment of
16 the system's assets, including a relationship in which the person
17 or the person's immediate family member:

18 (1) is employed by or participates in the management
19 of a business entity or other organization receiving funds from the
20 retirement system; or

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

24 (c) If a person described by Subsection (a)(1) fails to
25 disclose a relationship under Subsection (b), it is a ground for
26 removal from the governing body of the public retirement system on
27 which the person serves. If the board determines that a person

1 described by Subsection (a)(1) should be removed under this
2 subsection, the board shall:

3 (1) notify the appropriate appointing officer that a
4 ground for removal exists; or

5 (2) if the person was elected to the governing body,
6 notify the presiding officer or the assistant presiding officer of
7 the governing body of the ground for removal.

8 (d) An appointing officer or, in the case of an elected
9 trustee, the governing body, on receipt of notice under Subsection
10 (c) or on making the officer's or body's own determination, may
11 remove the person from the governing body if the appointing officer
12 or governing body determines a violation of Subsection (b) has
13 occurred.

14 (e) If a person described by Subsection (a)(2) or (3) fails
15 to disclose a relationship under Subsection (b):

16 (1) the contract is voidable by the public retirement
17 system; and

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

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

1 (g) The board by rule shall adopt guidelines relating to the
2 types of relationships that must be disclosed under Subsection (b).

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

6 (b) Except as provided by Subsection (c), a person to whom
7 Section 802.004 applies or a member of the immediate family of the
8 person may not accept any benefit with an aggregate value in any
9 calendar year of more than \$1,000 from any individual who enters
10 into or seeks to enter into a contract with a public retirement
11 system.

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

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

21 Sec. 802.007. CIVIL PENALTY. (a) In this section, "theft"
22 means the conduct prohibited by Section 31.03, Penal Code.

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

1 Penal Code, has been sought or obtained against the person.

2 (c) A person who commits a breach of the person's fiduciary
3 duty in relation to a service provided by the person to a public
4 retirement system is liable to the system for a civil penalty in an
5 amount not to exceed \$2,000 in the aggregate for the violation and
6 all violations of a similar nature.

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

10 (e) The attorney general may bring an action to impose and
11 recover a civil penalty for a violation of this section made in
12 relation to:

13 (1) the Employees Retirement System of Texas,
14 including a retirement system administered by that system;

15 (2) the Teacher Retirement System of Texas;

16 (3) the Texas Municipal Retirement System;

17 (4) the Texas County and District Retirement System;

18 and

19 (5) the Texas Emergency Services Retirement System.

20 (f) A local prosecuting attorney may bring an action to
21 impose or recover a civil penalty for a violation of this section
22 made in relation to a public retirement system other than a system
23 described by Subsection (e).

24 (g) A penalty under this section is in addition to any other
25 remedy provided by law.

26 Sec. 802.008. ANNUAL REPORT ON CERTAIN ANNUITIES PAID BY
27 LOCAL RETIREMENT SYSTEMS. (a) In this section:

1 (1) "Statewide retirement system" has the meaning
2 assigned by Section 804.001.

3 (2) "Sponsoring authority" means the governing body of
4 a municipality or other political subdivision that participates, or
5 has an agency or instrumentality of the political subdivision that
6 participates, in a public retirement system.

7 (b) Except as provided by Subsection (f), in addition to
8 other reports required by law, a public retirement system, other
9 than a statewide public retirement system, not later than the 90th
10 day after the end of the fiscal year under which the system
11 operates, shall file with the sponsoring authority a report
12 regarding annuities:

13 (1) the retirement system began paying during the
14 preceding fiscal year; and

15 (2) the amounts of which were calculated based at
16 least in part:

17 (A) on a member's final average salary; or

18 (B) on a member's average salary during a
19 particular period of employment.

20 (c) The report required by this section must include:

21 (1) if the amount of an annuity was calculated based on
22 a salary that was increased as a result of overtime pay or any other
23 amount received by the member as payment for time worked in excess
24 of the member's normal work schedule:

25 (A) the amount by which the annuity was
26 increased; and

27 (B) a calculation of the amount that the member's

1 annuity would have been had the member's annuity excluded the
2 amounts earned for time worked in excess of the member's normal work
3 schedule; and

4 (2) the number of annuitants whose annuities meet the
5 terms of Subdivision (1) and the aggregate amount by which the
6 amounts of the annuities paid exceed the amount described by
7 Subdivision (1)(B).

8 (d) Information included in the report required by this
9 section that, if in the custody of the public retirement system
10 would be considered confidential and not subject to disclosure
11 under Section 552.0038, while in the custody of the sponsoring
12 authority is considered confidential and not subject to disclosure
13 in a manner that could reasonably be expected to identify an
14 individual.

15 (e) The report required by this section may be combined with
16 any other report that a public retirement system is required to
17 provide to a sponsoring authority.

18 (f) This section does not apply to a public retirement
19 system that is not designed to be funded on an actuarial basis.

20 SECTION 3. Section 802.103, Government Code, is amended by
21 adding Subsection (d) to read as follows:

22 (d) The governing body of a public retirement system shall
23 require that all records, including documents used to prepare or
24 explain the annual financial report required under this section,
25 be:

26 (1) retained in compliance with the records retention
27 schedule adopted by the Texas State Library and Archives Commission

1 applicable to all local governments; and

2 (2) made available to the board on request.

3 SECTION 4. Subchapter C, Chapter 802, Government Code, is
4 amended by adding Sections 802.2041 and 802.2042 to read as
5 follows:

6 Sec. 802.2041. PROCUREMENT OF INVESTMENT MANAGERS AND
7 CERTAIN OTHERS. (a) The board shall by rule adopt guidelines for
8 the procurement of investment managers and other persons, including
9 an investment consultant or advisor, who provide a public
10 retirement system with services relating to the management and
11 investment of the system's assets.

12 (b) The board may require a public retirement system to
13 provide the board with a statement, not later than the 30th day
14 after the date of the procurement, detailing the system's method of
15 selecting any person described by Subsection (a).

16 Sec. 802.2042. CONTRACTS WITH INVESTMENT MANAGERS AND
17 CERTAIN OTHERS. A contract with an investment manager or other
18 person to provide services to a public retirement system relating
19 to the management and investment of the system's assets is subject,
20 at the board's request, to review by the board regarding the fees
21 charged and paid by the system and the services rendered to the
22 system in consideration for the fees.

23 SECTION 5. (a) Not later than January 1, 2014, the State
24 Pension Review Board shall adopt rules as required by Sections
25 802.004 and 802.2041, 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 initial rules under that section.

3 SECTION 6. This Act takes effect September 1, 2013.