

By: Murphy

H.B. No. 2432

A BILL TO BE ENTITLED

AN ACT

1
2 relating to benefits from and administration of certain public
3 retirement systems; providing civil penalties.

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

5 SECTION 1. Sections 552.0038(c), (h), and (i), Government
6 Code, are amended to read as follows:

7 (c) Records of individual members, annuitants, retirees,
8 beneficiaries, alternate payees, program participants, or persons
9 eligible for benefits from a retirement system under a retirement
10 plan or program administered by the retirement system that are in
11 the custody of the system or in the custody of an administering
12 firm, a carrier, or another governmental agency, including the
13 comptroller, acting in cooperation with or on behalf of the
14 retirement system are confidential and not subject to public
15 disclosure. ~~[The retirement system, administering firm, carrier,
16 or governmental agency is not required to accept or comply with a
17 request for a record or information about a record or to seek an
18 opinion from the attorney general because the records are exempt
19 from the provisions of this chapter, except as otherwise provided
20 by this section.]~~

21 (h) ~~[The retirement system has sole discretion in
22 determining whether a record is subject to this section.]~~ For
23 purposes of this section, a record includes any identifying
24 information about a person, living or deceased, who is or was a

1 member, annuitant, retiree, beneficiary, alternate payee, program
2 participant, or person eligible for benefits from the retirement
3 system under any retirement plan or program administered by the
4 retirement system.

5 (i) To the extent of a conflict between this section and any
6 other law with respect to the confidential information held by a
7 public retirement system or other entity described by Subsection
8 (c) concerning an individual member, annuitant, retiree,
9 beneficiary, alternate payee, program participant, or person
10 eligible for benefits from the retirement system:

11 (1) [✓] the prevailing provision is the provision that
12 provides the greater substantive [~~and procedural~~] protection for
13 the privacy of information concerning that individual member,
14 annuitant, retiree, beneficiary, alternate payee, program
15 participant, or person eligible for benefits; and

16 (2) a procedural provision of this chapter prevails.

17 SECTION 2. Subchapter A, Chapter 802, Government Code, is
18 amended by adding Sections 802.004 through 802.007 to read as
19 follows:

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

22 (1) a member of the governing body of a public
23 retirement system;

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

26 (3) any other person, including an investment
27 consultant or advisor, providing services under contract to a

1 public retirement system relating to the management and investment
2 of the system's assets.

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

13 (1) is employed by or participates in the management
14 of a business entity or other organization receiving funds from the
15 retirement system; or

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

19 (c) If a person described by Subsection (a)(1) fails to
20 disclose a relationship under Subsection (b), it is a ground for
21 removal from the governing body of the public retirement system on
22 which the person serves. If the board determines that a person
23 described by Subsection (a)(1) should be removed under this
24 subsection, the board shall:

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

27 (2) if the person was elected to the governing body,

1 notify the presiding officer or the assistant presiding officer of
2 the governing body of the ground for removal.

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

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

11 (1) the contract is voidable by the public retirement
12 system; and

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

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

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

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

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

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

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

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

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

24 (c) A person who commits a breach of the person's fiduciary
25 duty in relation to a service provided by the person to a public
26 retirement system is liable to the system for a civil penalty in an
27 amount not to exceed:

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

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

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

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

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

12 (2) the Teacher Retirement System of Texas;

13 (3) the Texas Municipal Retirement System;

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

15 and

16 (5) the Texas Emergency Services Retirement System.

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

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

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

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

1 be:

2 (1) retained in compliance with the records retention
3 schedule adopted by the Texas State Library and Archives Commission
4 applicable to all local governments; and

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

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

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

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

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

26 SECTION 5. Chapter 810, Government Code, is amended by
27 adding Section 810.002 to read as follows:

1 Sec. 810.002. DETERMINATION OF CERTAIN PUBLIC RETIREMENT
2 SYSTEM BENEFITS. (a) In this section "public retirement system"
3 has the meaning assigned by Section 802.001.

4 (b) Notwithstanding any other law, if benefits provided
5 under a public retirement system's defined benefit plan are
6 calculated based in part on a member's final average salary, the
7 determination of that salary may not include overtime pay or any
8 other amounts received by the member as payment for time worked in
9 excess of the member's normal work schedule.

10 SECTION 6. (a) Not later than January 1, 2014, the State
11 Pension Review Board shall adopt rules as required by Sections
12 802.004 and 802.2041, Government Code, as added by this Act.

13 (b) Notwithstanding Section 802.004, Government Code, as
14 added by this Act, a person is not required to comply with that
15 section before the 30th day after the date the State Pension Review
16 Board adopts initial rules under that section.

17 SECTION 7. (a) Section 810.002, Government Code, as added
18 by this Act, applies only to a member of a public retirement system
19 who:

20 (1) is hired on or after the effective date of this
21 Act; and

22 (2) was not a member of the system on the date the
23 member was hired.

24 (b) A member of a public retirement system who was hired
25 before the effective date of this Act or who was a member of a public
26 retirement system on the date the member was hired is subject to the
27 law in effect on the date the member was hired, and that law is

1 continued in effect for that purpose.

2 SECTION 8. This Act takes effect September 1, 2013.