

BILL ANALYSIS

C.S.H.B. 2459
By: Flynn
Pensions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The board of trustees of the Employees Retirement System of Texas is subject to review but not abolishment under the Texas Sunset Act. C.S.H.B. 2459 seeks to update the period of the board's next review under that act and implement the statutory modifications recommended by the Sunset Advisory Commission.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 8 of this bill.

ANALYSIS

C.S.H.B. 2459 amends the Government Code to change the period during which the board of trustees of the Employees Retirement System of Texas (ERS) is reviewed but not abolished under the Texas Sunset Act from the period during which state agencies abolished in 2017, and every 12th year after that year, are reviewed to the period during which state agencies abolished in 2029, and every 12th year after that year, are reviewed. The bill prohibits a person who is appointed to and qualifies for office as a board member from voting, deliberating, or being counted as a member in attendance at a meeting of the board until the person completes a training program that complies with the bill's provisions. The bill requires the training program to provide the person with information regarding the law governing ERS operations; the programs, functions, rules, and budget of ERS; the scope of and limitations on the rulemaking authority of the board; the results of the most recent formal audit of ERS; the requirements of laws relating to open meetings, public information, administrative procedure, and disclosure of conflicts of interest and other laws applicable to board members in performing their duties; and any applicable ethics policies adopted by ERS or the Texas Ethics Commission. The bill requires the executive director of ERS to create a training manual that includes such information and to distribute a copy of the training manual annually to each board member who, on receipt of the training manual, is required to sign and submit to the executive director a statement acknowledging receipt of the training manual. The bill entitles a person appointed to the board to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office. The bill authorizes a board member who has not completed the required training to vote, deliberate, and be counted as a member in attendance at a meeting of the board until December 1, 2017.

C.S.H.B. 2459 requires the board to develop a policy to encourage the use of negotiated

rulemaking procedures under the Negotiated Rulemaking Act for the adoption of ERS rules and of appropriate alternative dispute resolution procedures under the Governmental Dispute Resolution Act to assist in the resolution of internal and external disputes under ERS jurisdiction. The bill requires ERS to coordinate the implementation of such a policy, provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution, and collect data concerning the effectiveness of those procedures. The bill requires ERS procedures relating to alternative dispute resolution to conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies. The bill requires the board to ensure that the implementation of these provisions and the negotiated rulemaking procedures and alternative dispute resolution procedures adopted under these provisions are consistent with the fiduciary responsibility imposed on the board by law.

C.S.H.B. 2459 specifies that the frequency with which the board is required to adopt mortality, service, and other tables the board considers necessary for ERS after considering the results of an investigation conducted by a board-designated actuary of the mortality, service, and compensation experience of ERS members and beneficiaries is at least once every four years and increases from at least once every five years to at least once every four years the frequency with which the actuary is required to make such an investigation and make a valuation of the assets and liabilities of ERS funds. The bill specifies that the frequency with which the board is required to adopt interest rates and mortality, service, and other tables the board considers necessary for the Judicial Retirement System of Texas Plan Two after considering the results of such an investigation conducted by that actuary is at least once every four years. The bill expressly does not require the board and the board-designated actuary to complete such an actuarial investigation or adopt interest rates or mortality, service, or other tables based on that investigation in the periods specified by the bill until the later of December 31, 2022, or the fourth anniversary of the date the board adopts actuarial assumptions and tables under these bill provisions for the first time after the bill's effective date.

C.S.H.B. 2459 requires the board to develop a consistent method, guided by best industry practices and standards, to collect or calculate profit share data in connection with ERS alternative investments, as defined by the bill, and to consistently track that data and the amount of realized gains for ERS from the associated alternative investments. The bill requires the board to report, at a minimum, the aggregate amount of profit shares received by private professional investment managers in connection with ERS alternative investments, categorized by asset class, in the required annual financial report regarding ERS use of appropriated money during the preceding fiscal year and in other appropriate investment reports and board presentations. The bill authorizes the board to adopt rules necessary to implement the bill's provisions relating to the tracking and reporting of profit share.

C.S.H.B. 2459 prohibits the executive director, a private professional investment manager, or any other person delegated authority to invest or reinvest ERS assets from investing ERS assets in a single alternative investment that exceeds one percent of the total market value of the ERS trust fund as reported in the most recent ERS annual financial report unless the board votes to approve the investment. The bill authorizes the board to hold a closed meeting by telephone conference call or video conference call to consider and discuss an alternative investment or a potential alternative investment, regardless of whether a quorum is physically present at one location of the meeting, and establishes that state open meetings law does not require the board to confer with one or more employees, consultants, or legal counsel of ERS or with a third party in an open meeting if the only purpose of the conference is to receive information from or question the employees, consultants, or legal counsel of ERS or the third party relating to an alternative investment or a potential alternative investment. The bill prohibits the board members from deliberating public business or agency policy that affects public business during such a closed meeting and authorizes a final action, decision, or vote on a matter considered or discussed in such a closed meeting to be made only in an open meeting that is held in compliance with the notice provisions of state open meetings law. The bill authorizes the board

to adopt rules necessary to implement these provisions relating to the approval of certain alternative investments.

C.S.H.B. 2459 requires ERS, in a contract between ERS and a private professional investment manager or other person delegated certain authority by the board that is entered into or renewed on or after the bill's effective date, to require that the investment manager or other person comply with bill provisions requiring board approval of certain alternative investments.

C.S.H.B. 2459 amends the Insurance Code to change the deadline by which the board must submit an annual written report to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board concerning the coverages provided and the benefits and services being received by all participants under the Texas Employees Group Benefits Act from January 1 of each year to February 1 of each year. The bill includes among the report's required contents basic information about each group coverage plan provided under the Texas Employees Group Benefits Act, a summary of recent changes to the benefits provided under that act that highlights any key benefits the board evaluated but did not implement, a discussion of trends in claims under group coverage plans as well as other areas of interest identified by the board, recommendations for any statutory changes the board determines necessary to achieve its goals for the group benefits program, and any other information the board determines appropriate.

C.S.H.B. 2459 requires the board to develop and implement a process to allow an employee, participant, annuitant, or covered dependent under the Texas Employees Group Benefits Act affected by a determination relating to enrollment in or payment of a claim arising from group coverages or benefits provided under that act, other than questions relating to payment of a claim by a health maintenance organization, to participate directly in the process of appealing the determination. The bill requires the board to develop and maintain a precedent manual relating to such enrollment and claims determinations and appeals of those determinations. The bill requires the manual to be composed of precedent-establishing determinations made by the board, executive director, or other staff, initially and on appeal, and to include examples of previous determinations that are consistent with the identified precedent. The bill authorizes the inclusion in the manual of other information identified by the board and requires the board to make the manual available to appropriate staff and to employees, participants, annuitants, and covered dependents. The bill establishes that the board and staff involved in the claims appeal process are not bound by a decision in the manual.

C.S.H.B. 2459 repeals Section 814.604, Government Code, which relates to ERS's required grant of a one-time cost-of-living adjustment under certain conditions.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2459 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 815.005, Government Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Subchapter A, Chapter 815,	SECTION 2. Same as introduced version.

Government Code, is amended.

SECTION 3. Subchapter B, Chapter 815, Government Code, is amended by adding Section 815.1025 to read as follows:

Sec. 815.1025. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The board of trustees shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of the retirement system's rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the retirement system's jurisdiction.

(b) The retirement system's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The retirement system shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

SECTION 3. Subchapter B, Chapter 815, Government Code, is amended by adding Section 815.1025 to read as follows:

Sec. 815.1025. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) The board of trustees shall develop a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of the retirement system's rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the retirement system's jurisdiction.

(b) The retirement system's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The retirement system shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures.

(d) The board of trustees shall ensure that the implementation of this section and the negotiated rulemaking procedures and alternative dispute resolution procedures adopted under this section are consistent with the fiduciary responsibility imposed on the board by law.

SECTION 4. Section 815.105, Government Code, is amended.

SECTION 4. Same as introduced version.

SECTION 5. Section 815.202(f), Government Code, is amended.

SECTION 5. Same as introduced version.

SECTION 6. Section 815.206(c), Government Code, is amended.

SECTION 6. Same as introduced version.

SECTION 7. Sections 815.301(b) and (c), Government Code, are amended.

SECTION 7. Same as introduced version.

SECTION 8. Subchapter D, Chapter 815, Government Code, is amended by adding

SECTION 8. Subchapter D, Chapter 815, Government Code, is amended by adding

Sections 815.3015 and 815.3016 to read as follows:

Sec. 815.3015. TRACKING AND REPORTING OF PROFIT SHARE. (a) In this section:

(1) "Alternative investment" means an investment in an asset other than a traditional asset. The term includes an investment in private equity funds, private real estate transactions, hedge funds, and infrastructure.

(2) "Profit share" means an amount received by a private professional investment manager either in consideration for achieving certain investment returns or as part of the negotiated division of investment returns between the private professional investment manager and an investor. The term includes a performance fee, incentive fee, and carried interest.

(3) "Traditional asset" includes stocks, bonds, and cash.

(b) The board of trustees shall develop a consistent method, guided by best industry practices and standards, to calculate profit share in connection with alternative investments of the retirement system.

(c) The board of trustees shall consistently track profit shares calculated in accordance with Subsection (b)

and the amount of realized gains for the retirement system from the associated alternative investments.

(d) The board of trustees shall report, at a minimum, the aggregate amount of profit shares received by private professional investment managers in connection with alternative investments of the retirement system, categorized by asset type, in the annual financial report required under Section 2101.011 and in other appropriate investment reports and board presentations.

(e) The board of trustees may adopt rules necessary to implement this section.

Sec. 815.3016. APPROVAL OF CERTAIN ALTERNATIVE INVESTMENTS. (a) In this section, "alternative investment" has the meaning assigned by Section 815.3015.

(b) The executive director, a private professional investment manager, or any

Sections 815.3015 and 815.3016 to read as follows:

Sec. 815.3015. TRACKING AND REPORTING OF PROFIT SHARE. (a) In this section:

(1) "Alternative investment" means an investment in an asset other than a traditional asset. The term includes an investment in a private equity fund, private real estate fund, hedge fund, or infrastructure fund.

(2) "Profit share" means an amount received by a private professional investment manager either in consideration for achieving certain investment returns or as part of the negotiated division of investment returns between the private professional investment manager and an investor. The term includes a performance fee, incentive fee, and carried interest.

(3) "Traditional asset" means an investment in public equity, public fixed income, public real estate, cash, or cash equivalents or an investment that references any of the preceding assets.

(b) The board of trustees shall develop a consistent method, guided by best industry practices and standards, to collect or calculate profit share data in connection with alternative investments of the retirement system.

(c) The board of trustees shall consistently track profit share data collected or calculated in accordance with Subsection (b) and the amount of realized gains for the retirement system from the associated alternative investments.

(d) The board of trustees shall report, at a minimum, the aggregate amount of profit shares received by private professional investment managers in connection with alternative investments of the retirement system, categorized by asset class, in the annual financial report required under Section 2101.011 and in other appropriate investment reports and board presentations.

(e) The board of trustees may adopt rules necessary to implement this section.

Sec. 815.3016. APPROVAL OF CERTAIN ALTERNATIVE INVESTMENTS. (a) In this section, "alternative investment" has the meaning assigned by Section 815.3015.

(b) The executive director, a private professional investment manager, or any

other person delegated authority to invest or reinvest retirement system assets under Section 815.202(f) or 815.301 may not invest retirement system assets in a single alternative investment that exceeds \$100 million

unless the board of trustees votes to approve the investment.

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

SECTION 9. Section 840.005, Government Code, is amended.

SECTION 10. Section 1551.061, Insurance Code, is amended.

SECTION 11. Section 1551.355, Insurance Code, is amended.

SECTION 12. Subchapter H, Chapter 1551, Insurance Code, is amended.

other person delegated authority to invest or reinvest retirement system assets under Section 815.202(f) or 815.301 may not invest retirement system assets in a single alternative investment that exceeds one percent of the total market value of the trust fund established by Section 815.310 as reported in the most recent annual financial report required under Section 2101.011 unless the board of trustees votes to approve the investment.

(c) The board of trustees may hold a closed meeting by telephone conference call or video conference call to consider and discuss an alternative investment or a potential alternative investment under this section, regardless of whether a quorum is physically present at one location of the meeting.

(d) Chapter 551 does not require the board of trustees to confer with one or more employees, consultants, or legal counsel of the retirement system or with a third party in an open meeting if the only purpose of the conference is to receive information from or question the employees, consultants, or legal counsel of the retirement system or the third party relating to an alternative investment or a potential alternative investment under this section.

(e) During a closed meeting held under this section, members of the board of trustees may not deliberate public business or agency policy that affects public business.

(f) A final action, decision, or vote on a matter considered or discussed in a closed meeting held under this section may only be made in an open meeting that is held in compliance with the notice provisions of Chapter 551.

(g) The board of trustees may adopt rules necessary to implement this section.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Notwithstanding Section 815.009(a), Government Code, as added by this Act, a member of the board of trustees of the Employees Retirement System of Texas who has not completed the training required by Section 815.009, Government Code, as added by this Act, may vote, deliberate, and be counted as a member in attendance at a meeting of the board of trustees until December 1, 2017.

No equivalent provision.

SECTION 14. The board of trustees of the Employees Retirement System of Texas, and the actuary designated by the board, are not required to complete an actuarial investigation in the period prescribed by Section 815.206(c), Government Code, as amended by this Act, or adopt interest rates or mortality, service, or other tables based on that investigation in the period prescribed by Sections 815.105 and 840.005, Government Code, as amended by this Act, until the later of December 31, 2022, or the fourth anniversary of the date the board of trustees adopts actuarial assumptions and tables under those sections for the first time after the effective date of this Act.

SECTION 15. (a) The Employees Retirement System of Texas shall, in a contract between the retirement system and a private professional investment manager or other person under authority of Sections 815.202(f) and 815.301, Government Code, as amended by this Act, that is entered into or renewed on or after the effective date of this Act, require that the private professional investment manager or other person comply with Section 815.3016, Government Code, as added by this Act.

(b) The Employees Retirement System of Texas shall seek to amend a contract entered into with a private professional investment manager or other person under authority of Sections 815.202(f) and 815.301, Government Code, as those sections existed before the effective date of this Act, to require that the private professional investment manager or other person comply with Section 815.3016, Government Code, as added by this Act. To the extent of a conflict between the requirement of Section

SECTION 14. Same as introduced version.

SECTION 13. Section 814.604, Government Code, is repealed.

SECTION 15. Same as introduced version.

SECTION 16. The Employees Retirement System of Texas shall, in a contract between the retirement system and a private professional investment manager or other person under authority of Sections 815.202(f) and 815.301, Government Code, as amended by this Act, that is entered into or renewed on or after the effective date of this Act, require that the private professional investment manager or other person comply with Section 815.3016, Government Code, as added by this Act.

815.3016, Government Code, and a provision of a contract with a private professional investment manager or other person entered into before the effective date of this Act, the contract provision prevails.

SECTION 16. This Act takes effect September 1, 2017.

SECTION 17. Same as introduced version.