

BILL ANALYSIS

S.B. 301
By: Watson
Pensions
Committee Report (Unamended)

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. S.B. 301 seeks to update the board's sunset review schedule with several statutory modifications.

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

S.B. 301 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. On receipt of the training manual, each board member 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 31, 2017.

S.B. 301 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.

S.B. 301 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.

S.B. 301 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 these provisions and establishes that the board is not required to include in a report the aggregate amount of profit share data collected or calculated until the first annual financial report by the board issued after September 1, 2018.

S.B. 301 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 two percent of the total market value of alternative investments as reported in the most recent annual financial report unless the board votes to approve the investment and authorizes the board to adopt rules necessary to implement that prohibition. The bill authorizes the board to hold a closed meeting by telephone conference call or video conference call to consider and discuss such an alternative investment or a potential such alternative investment, regardless of whether a quorum is physically present at one location of the meeting. The bill prohibits board members from deliberating public business or agency policy that affects public business during such a closed meeting and requires a final action, decision, or vote on a matter considered or discussed in such a closed meeting to be made in an open meeting held in compliance with the notice provisions of state open meetings law. The bill establishes that state open meetings law does not require the board to confer with one or more ERS employees, consultants, or legal counsel 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, legal counsel, or third party relating to such an alternative investment or a potential such

alternative investment. The bill authorizes the board to adopt rules necessary to implement these provisions and 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.

S.B. 301 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.

S.B. 301 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.

EFFECTIVE DATE

September 1, 2017.