

By: Flynn

H.B. No. 2459

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the operations and functions of the Employees
3 Retirement System of Texas and the sunset review date for,
4 financial management of, and programs administered by the agency.

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

6 SECTION 1. Section 815.005, Government Code, is amended to
7 read as follows:

8 Sec. 815.005. SUNSET PROVISION. The board of trustees of
9 the Employees Retirement System of Texas is subject to review under
10 Chapter 325 (Texas Sunset Act), but is not abolished under that
11 chapter. The board shall be reviewed during the period in which
12 state agencies abolished in 2029 [~~2017~~], and every 12th year after
13 that year, are reviewed.

14 SECTION 2. Subchapter A, Chapter 815, Government Code, is
15 amended by adding Section 815.009 to read as follows:

16 Sec. 815.009. BOARD MEMBER TRAINING. (a) A person who is
17 appointed to and qualifies for office as a member of the board of
18 trustees may not vote, deliberate, or be counted as a member in
19 attendance at a meeting of the board of trustees until the person
20 completes a training program that complies with this section.

21 (b) The training program must provide the person with
22 information regarding:

23 (1) the law governing the retirement system's
24 operations;

1 (2) the programs, functions, rules, and budget of the
2 retirement system;

3 (3) the scope of and limitations on the rulemaking
4 authority of the board of trustees;

5 (4) the results of the most recent formal audit of the
6 retirement system;

7 (5) the requirements of:

8 (A) laws relating to open meetings, public
9 information, administrative procedure, and disclosing conflicts of
10 interest; and

11 (B) other laws applicable to members of the board
12 of trustees in performing their duties; and

13 (6) any applicable ethics policies adopted by the
14 retirement system or the Texas Ethics Commission.

15 (c) A person appointed to the board of trustees is entitled
16 to reimbursement, as provided by the General Appropriations Act,
17 for the travel expenses incurred in attending the training program
18 regardless of whether the attendance at the program occurs before
19 or after the person qualifies for office.

20 (d) The executive director shall create a training manual
21 that includes the information required by Subsection (b). The
22 executive director shall distribute a copy of the training manual
23 annually to each member of the board of trustees. On receipt of the
24 training manual, each member of the board of trustees shall sign and
25 submit to the executive director a statement acknowledging receipt
26 of the training manual.

27 SECTION 3. Subchapter B, Chapter 815, Government Code, is

1 amended by adding Section 815.1025 to read as follows:

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

5 (1) negotiated rulemaking procedures under Chapter
6 2008 for the adoption of the retirement system's rules; and

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

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

16 (c) The retirement system shall:

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

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

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

24 SECTION 4. Section 815.105, Government Code, is amended to
25 read as follows:

26 Sec. 815.105. ADOPTING TABLES. At least once every four
27 years, the [The] board of trustees shall adopt mortality, service,

1 and other tables the board considers necessary for the retirement
2 system after considering the results of the actuary's investigation
3 of the mortality, service, and compensation experience of the
4 system's members and beneficiaries under Section 815.206.

5 SECTION 5. Section 815.202(f), Government Code, is amended
6 to read as follows:

7 (f) Subject to Section 815.3016, the ~~The~~ board of trustees
8 may specifically delegate any right, power, or duty imposed or
9 conferred on the executive director by law to another employee of
10 the retirement system. If not so specifically delegated and
11 subject to Section 815.3016, the executive director may delegate to
12 another employee of the retirement system any right, power, or duty
13 assigned to the executive director.

14 SECTION 6. Section 815.206(c), Government Code, is amended
15 to read as follows:

16 (c) At least once every four ~~five~~ years, the actuary,
17 under the direction of the board of trustees, shall:

18 (1) make an actuarial investigation of the mortality,
19 service, and compensation experience of the members and
20 beneficiaries of the retirement system; and

21 (2) make a valuation of the assets and liabilities of
22 the retirement system's funds.

23 SECTION 7. Sections 815.301(b) and (c), Government Code,
24 are amended to read as follows:

25 (b) Except as provided by Section 815.3016, the ~~The~~ board
26 of trustees may delegate its authority under Subsection (a) to the
27 executive director. Subject to Section 815.3016, the ~~The~~ board

1 of trustees or the executive director may, under the standard of
2 care provided by Section 815.307, invest and reinvest any of the
3 retirement system's assets and may commingle assets of the trust
4 fund and the law enforcement and custodial officer supplemental
5 retirement fund with the assets of the Judicial Retirement System
6 of Texas Plan Two for investment purposes, as long as proportionate
7 ownership records are maintained and credited. Investments may
8 include home office facilities, including land, equipment, and
9 office building, used in administering the retirement system.

10 (c) Subject to Section 815.3016, the [The] board of trustees
11 may contract with private professional investment managers to
12 assist the board in investing the assets of the retirement system.

13 SECTION 8. Subchapter D, Chapter 815, Government Code, is
14 amended by adding Sections 815.3015 and 815.3016 to read as
15 follows:

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

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

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

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

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

7 (c) The board of trustees shall consistently track profit
8 shares calculated in accordance with Subsection (b) and the amount
9 of realized gains for the retirement system from the associated
10 alternative investments.

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

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

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

22 (b) The executive director, a private professional
23 investment manager, or any other person delegated authority to
24 invest or reinvest retirement system assets under Section
25 815.202(f) or 815.301 may not invest retirement system assets in a
26 single alternative investment that exceeds \$100 million unless the
27 board of trustees votes to approve the investment.

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

3 SECTION 9. Section 840.005, Government Code, is amended to
4 read as follows:

5 Sec. 840.005. ADOPTING TABLES AND RATES. At least once
6 every four years, the [~~The~~] board of trustees by rule shall adopt
7 interest rates and mortality, service, and other tables the board
8 considers necessary for the retirement system after considering the
9 results of the actuary's investigation of the mortality, service,
10 and compensation experience of the system's members and
11 beneficiaries under Section 815.206.

12 SECTION 10. Section 1551.061, Insurance Code, is amended to
13 read as follows:

14 Sec. 1551.061. ANNUAL REPORT. The board of trustees shall
15 submit a written report not later than February [~~January~~] 1 of each
16 year to the governor, lieutenant governor, speaker of the house of
17 representatives, and Legislative Budget Board concerning the
18 coverages provided and the benefits and services being received by
19 all participants under this chapter. The report must include:

20 (1) information about the effectiveness and
21 efficiency of:

22 (A) [~~(1)~~] managed care cost containment
23 practices; and

24 (B) [~~(2)~~] fraud detection and prevention
25 procedures;

26 (2) basic information about each group coverage plan
27 provided under this chapter, including the number of participants

1 in each plan and the claims amounts and administrative expenses
2 incurred under each plan;

3 (3) a summary of recent changes to the benefits
4 provided under this chapter that highlights any key benefits the
5 board of trustees evaluated but did not implement;

6 (4) a discussion of trends in claims under group
7 coverage plans as well as other areas of interest identified by the
8 board of trustees;

9 (5) recommendations for any statutory changes the
10 board of trustees determines necessary to achieve its goals for the
11 group benefits program; and

12 (6) any other information the board of trustees
13 determines appropriate.

14 SECTION 11. Section 1551.355, Insurance Code, is amended by
15 adding Subsection (d) to read as follows:

16 (d) The board of trustees shall develop and implement a
17 process to allow an employee, participant, annuitant, or covered
18 dependent affected by a determination described by Section 1551.352
19 to participate directly in the process of appealing the
20 determination.

21 SECTION 12. Subchapter H, Chapter 1551, Insurance Code, is
22 amended by adding Section 1551.363 to read as follows:

23 Sec. 1551.363. PRECEDENT MANUAL. (a) The board of trustees
24 shall develop and maintain a precedent manual relating to the
25 enrollment and claims determinations under Section 1551.352 and
26 appeals of those determinations. The precedent manual:

27 (1) must be composed of precedent-establishing

1 determinations made by the board, executive director, or other
2 staff, initially and on appeal, and include examples of previous
3 determinations that are consistent with the identified precedent;
4 and

5 (2) may include other information identified by the
6 board.

7 (b) The board of trustees shall make the precedent manual
8 available to appropriate staff and to employees, participants,
9 annuitants, and covered dependents.

10 (c) The board of trustees and staff involved in the claims
11 appeal process are not bound by a decision in the manual.

12 SECTION 13. Notwithstanding Section 815.009(a), Government
13 Code, as added by this Act, a member of the board of trustees of the
14 Employees Retirement System of Texas who has not completed the
15 training required by Section 815.009, Government Code, as added by
16 this Act, may vote, deliberate, and be counted as a member in
17 attendance at a meeting of the board of trustees until December 1,
18 2017.

19 SECTION 14. The board of trustees of the Employees
20 Retirement System of Texas, and the actuary designated by the
21 board, are not required to complete an actuarial investigation in
22 the period prescribed by Section 815.206(c), Government Code, as
23 amended by this Act, or adopt interest rates or mortality, service,
24 or other tables based on that investigation in the period
25 prescribed by Sections 815.105 and 840.005, Government Code, as
26 amended by this Act, until the later of December 31, 2022, or the
27 fourth anniversary of the date the board of trustees adopts

1 actuarial assumptions and tables under those sections for the first
2 time after the effective date of this Act.

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

11 (b) The Employees Retirement System of Texas shall seek to
12 amend a contract entered into with a private professional
13 investment manager or other person under authority of Sections
14 815.202(f) and 815.301, Government Code, as those sections existed
15 before the effective date of this Act, to require that the private
16 professional investment manager or other person comply with Section
17 815.3016, Government Code, as added by this Act. To the extent of a
18 conflict between the requirement of Section 815.3016, Government
19 Code, and a provision of a contract with a private professional
20 investment manager or other person entered into before the
21 effective date of this Act, the contract provision prevails.

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