

AN ACT

relating to participation in and contributions to the optional retirement program for certain employees of institutions of higher education.

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

SECTION 1. Section 830.102, Government Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (c-2) to read as follows:

(c) Except as provided by Subsections (c-1) and (c-2), a [A] person who becomes eligible to participate in the optional retirement program after the date the program becomes available at the person's place of employment must elect to participate before the 91st day after becoming eligible.

(c-1) A person who becomes eligible to participate in the optional retirement program and is notified by the person's employer of the opportunity to participate in the program after the first day and before the 91st day after the date the person becomes eligible must elect to participate in the program before the later of:

(1) the 91st day after the date the person becomes eligible; or

(2) the 31st day after the date the person receives notice of the opportunity to participate in the program.

(c-2) A person who becomes eligible to participate in the

1 optional retirement program and is notified by the person's  
2 employer of the opportunity to participate in the program on or  
3 after the 91st day after the date the person becomes eligible must  
4 be notified by the employer before the 151st day after the date the  
5 person becomes eligible. The person must elect to participate in  
6 the program before the later of:

7 (1) the 151st day after the date the person becomes  
8 eligible; or

9 (2) the 31st day after the date the person receives  
10 notice of the opportunity to participate in the program.

11 SECTION 2. Subchapter B, Chapter 830, Government Code, is  
12 amended by adding Section 830.108 to read as follows:

13 Sec. 830.108. CORRECTION OF CERTAIN REPORTING ERRORS.

14 (a) For purposes of this section, an employer submits a member  
15 contribution to the retirement system on behalf of a person in error  
16 if the person:

17 (1) previously elected to participate in the optional  
18 retirement program;

19 (2) participated in the program for at least one year;  
20 and

21 (3) is or was employed by an institution of higher  
22 education in a position normally covered by the retirement system  
23 and is or was at the time of that employment not eligible for  
24 membership in the retirement system under Section 830.106.

25 (b) If an employer commits an error described by Subsection  
26 (a) and the person on whose behalf the member contribution is  
27 erroneously made is a participant in the optional retirement

1 program:

2 (1) the person's participation in the program shall be  
3 immediately restored; and

4 (2) in accordance with this section and as soon as  
5 practicable, funds shall be deposited in the person's participant  
6 account in the program or otherwise remitted to the person.

7 (c) Subject to Subsection (d), on discovery of an error  
8 described by this section, the retirement system shall, on  
9 certification by an employer that the employer committed the error:

10 (1) make a direct trustee-to-trustee transfer to the  
11 trustee of the optional retirement program for deposit in the  
12 person's participant account in an amount equal to the participant  
13 contribution that would have been paid for the benefit of the person  
14 to the program under Section 830.201 during the period in which  
15 member contributions were submitted to the retirement system in  
16 error, plus an amount representing earnings on the member  
17 contribution at the assumed rate of return provided by Subsection  
18 (g);

19 (2) credit the employer through the retirement  
20 system's employer reporting system an amount equal to the amount of  
21 any employer contributions made under Section 825.4041, 825.406,  
22 825.407, or 825.4071 in error on compensation paid to the person;  
23 and

24 (3) remit to the person:

25 (A) the amount of any member contribution made to  
26 the retirement system in error that exceeds the amount of the  
27 participant contribution that would have been paid for the benefit

1 of the person to the program during the period in which member  
2 contributions were submitted to the retirement system in error;

3 (B) the amount of any member contribution made to  
4 the retirement system in error that was made on an after-tax basis  
5 and that the retirement system could not transfer via a direct  
6 trustee-to-trustee transfer under applicable provisions of the  
7 Internal Revenue Code, including regulations adopted under the  
8 Internal Revenue Code, or under the terms of the program  
9 established by the employer; and

10 (C) any amount paid by the person to the  
11 retirement system to purchase or reinstate service credit during  
12 the period the person was not eligible for membership in the  
13 retirement system, including any administrative, reinstatement,  
14 and installment fees paid in connection with the purchase.

15 (d) A transfer described by Subsection (c) may not include  
16 the amount of any member contribution made to the retirement system  
17 in error that:

18 (1) exceeds the amount of the participant contribution  
19 that would have been paid for the benefit of the person to the  
20 optional retirement program under Section 830.201; or

21 (2) was made on an after-tax basis unless the plan  
22 document for each employer program:

23 (A) permits the employer program to receive  
24 direct trustee-to-trustee transfers of after-tax amounts; and

25 (B) provides that the trustee of the employer  
26 program agrees to separately account for amounts transferred and  
27 earnings on amounts transferred, including accounting for the

1 portion of the distribution that is includable in gross income and  
2 the portion of the distribution that is not includable in gross  
3 income.

4 (e) On certification by an employer that the employer  
5 committed an error described by this section, the comptroller shall  
6 transfer to or credit the employer an amount equal to the state  
7 contribution that would have been paid for the benefit of the person  
8 under Section 830.201 plus an amount representing earnings on the  
9 state contribution at the assumed rate of return provided by  
10 Subsection (g).

11 (f) An employer that commits an error described by this  
12 section shall deposit in the person's participant account in the  
13 program:

14 (1) in accordance with Subsection (c), the amount of  
15 the employer contribution that would have been paid for the benefit  
16 of the person as a participant under Section 830.201 and under any  
17 other law, rule, or employer policy;

18 (2) an amount representing earnings on the employer  
19 contribution at the assumed rate of return determined by the  
20 employer in accordance with applicable Internal Revenue Code  
21 correction requirements; and

22 (3) an amount equal to the state contribution that  
23 would have been paid for the benefit of the person under Section  
24 830.201 plus the amount representing earnings credited to the  
25 employer under Subsection (e).

26 (g) The assumed rate of return is earned monthly and  
27 computed at the rate of four percent per year. Except as provided

1 by this subsection, the amount of earnings based on the assumed rate  
2 of return is credited annually at the end of each 12-month period.  
3 The first 12-month period begins with the month the first deposit  
4 was submitted in error. The amount of assumed earnings is prorated  
5 to the month of payment.

6 (h) Amounts paid, transferred, or credited under this  
7 section are reduced by any amount required to be withheld by law or  
8 court order.

9 SECTION 3. Section 830.108, Government Code, as added by  
10 this Act, applies to a member contribution submitted in error as  
11 provided by that section and maintained by a retirement system,  
12 regardless of whether the contribution was submitted before, on, or  
13 after the effective date of this Act.

14 SECTION 4. This Act takes effect September 1, 2017.

S.B. No. 1954

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 1954 passed the Senate on April 19, 2017, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 1954 passed the House on May 17, 2017, by the following vote: Yeas 140, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor