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By:  Middleton H.B. No. 4171

A BILL TO BE ENTITLED

AN ACT

relating to drug testing members of the legislature to establish or maintain eligibility for membership in the elected class of the Employees Retirement System of Texas.

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

SECTION 1.  Section 812.002(a), Government Code, is amended to read as follows:

(a)  Membership in the elected class of the retirement system is limited to:

(1)  persons who hold state offices that are normally filled by statewide election and that are not included in the coverage of the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two;

(2)  subject to Section 812.0051(e), members of the legislature; and

(3)  district and criminal district attorneys, to the extent that they receive salaries from the state general revenue fund.

SECTION 2.  Section 812.005(a), Government Code, is amended to read as follows:

(a)  A person's membership in the retirement system is terminated by:

(1)  death of the person;

(2)  retirement based on service credited in all classes of membership in which the person has service credit; [~~or~~]

(3)  application of Section 812.0051(e); or

(4)  withdrawal of all of the person's accumulated contributions.

SECTION 3.  Subchapter A, Chapter 812, Government Code, is amended by adding Sections 812.0051 and 812.0052 to read as follows:

Sec. 812.0051.  DRUG TESTING OF LEGISLATORS; TERMINATION OF MEMBERSHIP. (a) In this section, "controlled substance" and "marihuana" have the meanings assigned by Chapter 481, Health and Safety Code.

(b)  This section applies to a member of the legislature who:

(1)  is first eligible to become a member of the elected class on or after September 1, 2021; or

(2)  on September 1, 2021, has less than eight years of service credit in the elected class.

(c)  The board of trustees by rule shall establish a drug screening and testing program designed to screen and test members of the legislature for unlawful marihuana or controlled substance use during a legislative session. The program must:

(1)  require that, at the beginning of each legislative session or as soon as practicable after a member's term begins during a legislative session, each member submit to a marihuana and controlled substance use screening assessment developed and administered by or on behalf of the system;

(2)  require that a member submit to a drug test if the screening assessment described by Subdivision (1) indicates good cause to suspect the member of unlawful marihuana or controlled substance use; and

(3)  prescribe procedures for:

(A)  providing initial notice to a member who fails a drug test;

(B)  providing any member who fails a drug test with the immediate opportunity to appeal and retake the drug test; and

(C)  making a formal, final determination regarding whether a member has failed a drug test.

(d)  The marihuana and controlled substance use screening assessment described by Subsection (c)(1) must:

(1)  consist of a written questionnaire to be completed by the member of the legislature; and

(2)  be designed to accurately determine the reasonable likelihood that a person responding to the questionnaire is unlawfully using marihuana or a controlled substance.

(e)  A member of the legislature is not eligible to become a member of the elected class or, if the member of the legislature is already a member of the elected class, the member's membership terminates if:

(1)  the member fails or refuses to comply with the requirements of the drug screening and testing program established under this section; or

(2)  the system makes a final determination that the member failed a drug test administered under this section.

(f)  Notwithstanding any other law, a person who is determined not eligible for membership in the elected class or whose membership in the retirement system is terminated under this section may not join or rejoin the retirement system, as applicable, as a member of the elected class.

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

Sec. 812.0052.  DRUG TESTING OF LEGISLATORS; SUSPENSION OF MEMBERSHIP. (a) This section applies to a member of the legislature who on September 1, 2021, has eight or more years of service credit in the elected class.

(b)  Each member of the legislature subject to this section shall submit to the drug screening and testing program established under Section 812.0051 at the beginning of each legislative session.

(c)  Notwithstanding any other law, a member of the legislature's membership in the elected class is suspended if:

(1)  the member fails or refuses to comply with the requirements of the drug screening and testing program established under Section 812.0051; or

(2)  the system makes a final determination that the member failed a drug test administered under that section.

(d)  If a member of the legislature's membership in the elected class is suspended under Subsection (c) of this section:

(1)  the member may not make additional employee contributions to or accrue additional service credit in the retirement system; and

(2)  the state shall cease contributions attributable to service performed by the member on or after the date of the suspension.

(e)  This section does not prohibit a member of the elected class from retiring and receiving a service retirement annuity that is based, wholly or partly, on service credit earned in that class before the date of the member's suspension.

(f)  The board of trustees shall adopt rules necessary to implement this section.

SECTION 4.  Not later than January 1, 2022, the board of trustees of the Employees Retirement System of Texas shall adopt rules necessary to implement Sections 812.0051 and 812.0052, Government Code, as added by this Act.

SECTION 5.  This Act takes effect September 1, 2021.