

By: Gates

H.B. No. 1438

A BILL TO BE ENTITLED

AN ACT

relating to requiring the Employees Retirement System of Texas to establish a cash balance retirement plan to provide retirement benefits to certain employees.

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

SECTION 1. Section 802.002, Government Code, is amended by adding Subsection (e) to read as follows:

(e) Notwithstanding any other law, including Subsection (a), a cash balance retirement plan established under Chapter 820 is exempt from Sections 802.101, 802.1012, 802.1014, 802.103, 802.104, and 802.202(d). This subsection may not be construed to exempt any plan from Section 802.105 or 802.106(h).

SECTION 2. Subtitle B, Title 8, Government Code, is amended by adding Chapter 820 to read as follows:

CHAPTER 820. CASH BALANCE RETIREMENT PLAN

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 820.001. DEFINITIONS. In this chapter:

(1) "Cash balance retirement plan" means a cash balance retirement plan established under this chapter.

(2) "Defined benefit plan" means, as appropriate, the plan that provides benefits to members of the employee class of the retirement system under Chapters 811 through 815.

(3) "Employee" means an employee or appointed officer described by Section 812.003(a).

1 (4) "Interest" means the interest credited to a
2 participant's notional account, which may not:

3 (A) exceed a percentage rate equal to the cash
4 balance retirement plan's most recent five fiscal years' smoothed
5 rate of return; or

6 (B) be less than zero percent.

7 (5) "Participant" means a member, retiree, or other
8 beneficiary of the retirement system who participates in the cash
9 balance retirement plan.

10 (6) "Qualified plan" means an employee benefit plan
11 qualified under Section 401(a), Internal Revenue Code of 1986 (26
12 U.S.C. Section 401).

13 Sec. 820.002. CONFLICT OF LAW. To the extent of a conflict
14 between this chapter, including a rule adopted by the retirement
15 system under authority of this chapter, and any other law, this
16 chapter prevails.

17 Sec. 820.003. CERTAIN REFERENCES IN LAW TO RETIREMENT
18 SYSTEM MEMBERS. A reference in law outside this subtitle to a
19 member of or membership in the retirement system includes a
20 participant of or participation in, as appropriate, a cash balance
21 retirement plan unless the reference is expressly defined
22 otherwise.

23 SUBCHAPTER B. CREATION OF CASH BALANCE RETIREMENT PLAN

24 Sec. 820.051. DUTY TO CREATE PLAN. Notwithstanding any
25 other law and subject to the requirements of Subchapter C, the board
26 of trustees shall by rule establish and administer a cash balance
27 retirement plan to provide benefits to newly hired employees under

1 that plan instead of under a defined benefit plan.

2 SUBCHAPTER C. PLAN MINIMUM REQUIREMENTS

3 Sec. 820.101. MINIMUM REQUIREMENTS. In establishing a cash
4 balance retirement plan, the board of trustees shall ensure the
5 plan meets the requirements of this subchapter.

6 Sec. 820.102. ATTRIBUTES OF PLAN. (a) A cash balance
7 retirement plan must:

8 (1) provide for a closed amortization period not to
9 exceed 20 years from the date an actuarial gain or loss is realized;

10 (2) provide for the crediting of participant, state,
11 and employer contributions to each participant's notional account;

12 (3) provide for the crediting of interest to each
13 participant's notional account;

14 (4) include a vesting schedule;

15 (5) include benefit options, including options for
16 participants who separate from service prior to retirement;

17 (6) provide for death and disability benefits;

18 (7) allow a participant who is eligible to retire
19 under the plan to elect to:

20 (A) receive a monthly annuity payable for the
21 life of the participant in an amount actuarially determined on the
22 date of the participant's retirement based on the participant's
23 accumulated notional account balance annuitized in accordance with
24 the actuarial assumptions and actuarial methods established in the
25 most recent actuarial experience study conducted by the system's
26 actuary under Section 815.206; or

27 (B) receive a single, partial lump-sum payment

1 from the participant's accumulated notional account balance and a
2 monthly annuity payable for life in an amount determined in
3 accordance with Paragraph (A) based on the participant's notional
4 account balance after receiving the partial lump-sum payment; and
5 (8) include any other provision determined necessary
6 by the board of trustees.

7 (b) At the time the cash balance retirement plan is
8 implemented, the employer normal cost rate of the cash balance
9 retirement plan may not exceed the employer normal cost rate for the
10 salary-based benefit plan.

11 Sec. 820.103. QUALIFIED PLAN. A cash balance retirement
12 plan must be a qualified plan.

13 Sec. 820.104. PARTICIPATION IN PLAN; RESUMPTION OF SERVICE.

14 (a) In adopting rules to establish a cash balance retirement plan,
15 the board of trustees shall designate the date by which all newly
16 hired employees shall begin participation in the plan.

17 (b) A person who resumes employment with an employer on or
18 after the date designated by the board of trustees under Subsection
19 (a) and who is already a member of the retirement system eligible to
20 participate in a defined benefit plan remains eligible to
21 participate in the defined benefit plan and is not considered a
22 newly hired employee for purposes of this section.

23 (c) Notwithstanding any other law, including Section
24 812.003, an employee who participates in a cash balance retirement
25 plan is not eligible for membership in the retirement system and may
26 not participate in the defined benefit plan administered by the
27 retirement system.

1 Sec. 820.105. EFFECT OF EMPLOYMENT CHANGES. A person
2 participating in a cash balance retirement plan continues to
3 participate in the plan when the person changes employment to
4 another position included in the coverage of the retirement system.

5 Sec. 820.106. VESTING OF BENEFITS. Benefits in a cash
6 balance retirement plan vest in a participant not later than the
7 fifth anniversary of the date the person begins to participate in
8 the plan.

9 Sec. 820.107. TERMINATION OF PARTICIPATION. A person
10 terminates participation in a cash balance retirement plan, without
11 losing any vested benefits, by:

12 (1) death;

13 (2) retirement; or

14 (3) termination of employment in all positions
15 included in the coverage of the retirement system.

16 Sec. 820.108. CREDITABLE SERVICE. A person may not
17 establish in the defined benefit plan administered by the
18 retirement system credit for service performed during a period the
19 person was participating in a cash balance retirement plan.

20 Sec. 820.109. CONTRIBUTIONS. (a) A participant in a cash
21 balance retirement plan shall make contributions to the plan at the
22 same rate that a member of the retirement system participating in a
23 defined benefit plan is required to make for current service, and
24 the state and employers otherwise required to make contributions to
25 a defined benefit plan shall make contributions to the cash balance
26 retirement plan for each participant at the same rate as the state
27 and employers are required to contribute for contributing members

1 of the defined benefit plan. Contributions required under this
2 subsection shall be credited to the benefit of the participant.

3 (b) A participant in a cash balance retirement plan and the
4 participant's employer shall execute an agreement under which the
5 salary of the participant is reduced by the amount of the
6 contribution required by this section. An agreement under this
7 subsection is irrevocable until the participant terminates
8 participation in the plan under Section 820.107.

9 (c) Participant, state, and employer contributions, as
10 applicable, shall be made in the manner provided by Subchapter E,
11 Chapter 815.

12 SECTION 3. This Act takes effect September 1, 2021.