

## **BILL ANALYSIS**

Senate Research Center

H.B. 2427  
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Government Organization  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Teacher Retirement System of Texas (TRS) delivers retirement benefits to employees of public schools and state-supported colleges and universities, and manages assets held in trust to provide future benefits for members and their beneficiaries. Following voter passage of a constitutional amendment, the Legislature created the agency in 1937. To accomplish its mission, the TRS board of trustees administers retirement benefits and health care insurance to about 1.2 million active and retired members, along with their beneficiaries; invests and manages the approximately \$100.2 billion Pension Trust Fund; and provides counseling services and pertinent information to its members.

TRS is not subject to abolishment under the Sunset Act, but the Sunset Advisory Commission identified areas that could be improved to more fairly provide counseling and retirement benefits to members, and protect investments made by public education employees in tax-advantaged 403(b) retirement products.

H.B. 2427 grants TRS a greater range of oversight tools to adequately protect investments made by public education employees in 403(b) products, requires TRS to provide equal access to retirement counseling services across the state, and restructures TRS's disability retirement benefit program to ensure the protection of Pension Trust Fund assets.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of trustees of the Teacher Retirement System of Texas in SECTION 4 (Section 824.310, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 824.302, Government Code, as follows:

Sec. 824.302. ELIGIBILITY FOR DISABILITY RETIREMENT. Provides that, subject to Section 824.310, a member is eligible to retire and receive a disability retirement annuity under certain circumstances. Makes nonsubstantive changes.

SECTION 2. Amends Sections 824.304(a), (b), and (d), Government Code, to make conforming changes and to provide that the minimum benefits provided by this section are subject to reduction under rules adopted under Section 824.310 and are also subject to reduction in the same manner as other benefits because of the selection of an optional retirement annuity.

SECTION 3. Amends Section 824.308(b), Government Code, to provide that an optional disability retirement annuity is an annuity payable throughout the disability of the disability retiree and is actuarially reduced from the annuity otherwise payable under Section 824.304(b), after any reduction under rules adopted under Section 824.310.

SECTION 4. Amends Subchapter D, Chapter 824, Government Code, by adding Section 824.310, as follows:

Sec. 824.310. PURPOSE OF DISABILITY BENEFIT; LIMIT ON SUPPLEMENTAL INCOME. (a) Provides that the purpose of a disability retirement annuity paid under this subchapter (regarding general provisions to the Teacher Retirement System (TRS)) is to lessen the financial hardships faced by a member with a disability.

(b) Requires the board of trustees of TRS (board) to adopt rules under which the disability retirement annuity paid to a disability retiree under this subchapter is reduced on a sliding-scale basis or is suspended for a period in which the compensation earned by the retiree for work performed in a 12-month period during the disability retirement, as determined by the board, exceeds the compensation earned by the retiree during the 12-month period in which the retiree earned the highest compensation for actual service as a member of TRS.

(c) Requires the rules adopted under Subsection (b) to provide for the partial or full reinstatement of a disability retirement annuity that is reduced or suspended if the compensation earned by the retiree for work performed during the disability retirement is reduced or suspended.

(d) Requires the board by rule to require a disability retiree to report the board the amount of compensation earned by the disability retiree that exceeds the amount established by the board by rule for work performed during the disability.

SECTION 5. Amends Sections 825.0032(c) and (e), Government Code, as follows:

(c) Prohibits a person from being a trustee or an employee of TRS employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if the person is a paid officer, employee, or consultant of a Texas trade association in the field of investment or insurance or the person's spouse is a paid officer, employee, or consultant of a Texas trade association in the field of investment or insurance. Deletes existing text prohibiting a paid officer, employee, or consultant of a Texas trade association in the field of investment or insurance from being a trustee or an employee of TRS who is exempt from the state's position classification plan or is compensated at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule.

(e) Redefines "Texas trade association."

SECTION 6. Amends Section 825.0041, Government Code, as follows:

Sec. 845.0041. BOARD MEMBER TRAINING. (a) Makes nonsubstantive changes.

(b) Deletes existing text providing certain information that must be included in a training program required for a new board member. Makes conforming and nonsubstantive changes.

(c) Entitles a person appointed to the board to reimbursement under Section 825.007 for the travel expenses incurred in attending the training program regardless of whether the attendance at such a program occurs before or after the person qualifies for office.

SECTION 7. Amends Section 825.006, Government Code, as follows:

Sec. 825.006. SUNSET PROVISION. Renews the sunset provision for TRS. Requires the board to be reviewed during the period in which state agencies abolished in 2019, and every 12th year after that year. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Subchapter A, Chapter 825, Government Code, by adding Section 825.0061, as follows:

Sec. 825.0061. COMPLIANCE WITH SUNSET RECOMMENDATIONS. (a) Requires the board of trustees to comply with and implement the management action recommendations regarding the board of trustees adopted by the Sunset Advisory Commission (SAC) on January 10, 2007, as a result of SAC's review of TRS; and to

report to SAC, not later than November 1, 2008, the information regarding the board of trustees' implementation of the recommendations under this section.

(b) Provides that this section expires June 1, 2009.

SECTION 9. Amends Section 825.010(a), Government Code, to provide that it is ground for removal from the board that a trustee is absent from more than half, rather than one-third, of the regularly scheduled board meetings that the person is eligible to attend during a calendar year without an excuse approved by a majority vote of the board. Makes nonsubstantive changes.

SECTION 10. Amends Subchapter B, Chapter 825, Government Code, by adding Section 825.1025, as follows:

Sec. 825.1025. NEGOTIATED RULEMAKING; ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking) for the adoption of the retirement system's rules and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies) to assist in the resolution of internal and external disputes under TRSs jurisdiction.

(b) Requires TRSs 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, subject to Subsection (d).

(c) Requires the board to designate a trained person to perform certain duties related to this section.

(d) Requires the board to ensure that the implementation of this section and the negotiated rulemaking procedures and alternative dispute resolution procedures adopted under this section are consistent with the fiduciary responsibility imposed on the board by law.

SECTION 11. Amends Section 825.113, Government Code, by adding Subsection (g), to require the board to implement a policy requiring TRS to use appropriate technological solutions to improve its ability to perform its function. Requires the policy to ensure that the public is able to interact with TRS on the Internet.

SECTION 12. Amends Section 825.511, Government Code, as follows:

(a) Requires TRS to maintain a system to promptly and efficiently act on complaints filed with TRS that TRS has authority to resolve, rather than keep an information file about each complaint filed with TRS that the system has authority to resolve. Requires TRS to maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring TRS to provide to the person filing the complaint and to the persons or entities complained about TRS's policies and procedures pertaining to complaint investigation and resolution. Deletes existing text requiring TRS, at least quarterly and until final disposition of the complaint and to notify the person filing the complaint and the person or entities complained about of the status of the complaint unless the notice would jeopardize an undercover investigation.

(b) Requires TRS to make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring TRS to keep certain information about each complaint filed with TRS.

(c) Requires TRS to periodically notify the complaint parties of the status of the complaint until final disposition.

SECTION 13. Amends Chapter 825, Government Code, by adding Subchapter G, as follows:

## SUBCHAPTER G. MEMBER SERVICES

Sec. 825.601. POLICIES GOVERNING RETIREMENT BENEFITS COUNSELING. Requires the board to adopt certain policies governing retirement benefits counseling provided to members by TRS.

Sec. 825.602. RETIREMENT BENEFITS COUNSELING FOR INDIVIDUALS. Requires TRS to make retirement counseling for individual members available in conjunction with informational or educational programs concerning retirement planning that TRS provides for groups. Requires TRS to provide retirement counseling for individual members in geographic regions of this state outside of Austin.

SECTION 14. Amends Sections 22.004(d) and (e), Education Code, as follows:

(d) Requires each district to report the district's compliance with this section to the executive director of TRS not later than March 1 of each even-numbered year in the manner required by the board. Requires the report, for a district that does not participate in the program described by Subsection (a), to be available for review, together with the policy or contract for the group health coverage plan, at the central administrative office of each campus in the district and be posted on the district's Internet website if the district maintains a website, to be based on the district group health coverage plan in effect during the current plan year, and to include certain information.

(e) Deletes existing text requiring the executive director of TRS (director), for each district that does not participate in the Texas school employees uniform group coverage program established under Chapter 1579, Insurance Code, as provided by Subchapter D of that chapter, to certify whether a district's coverage is comparable to the basic health coverage provided under Chapter 1551 (Texas Employees Group Benefits Act), Insurance Code. Deletes existing text requiring the director, if the director finds that the group health coverage offered by a district is not comparable, to report such information to the district and to the Legislative Budget Board. Requires TRS to post the report on the Internet website maintained by TRS. Makes a conforming change.

SECTION 15. Amends Section 1575.004(a), Insurance Code, to redefine "retiree."

SECTION 16. Amends Subchapter E, Chapter 1575, Insurance Code, by adding Section 1575.213, as follows:

Sec. 1575.213. CERTAIN DISABILITY RETIREES. Requires an individual who is eligible as a retiree under Section 1575.004(a)(3) to pay an additional premium in an amount determined by the trustee. Prohibits the amount of such a premium from exceeding the total cost, as determined by the trustee, attributable to the participation of that retiree and the dependents of that retiree during the period the individual is eligible as a retiree under Section 1575.004(a)(3).

SECTION 17. Amends Section 4, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5 (Annuities or Investments for Certain Public Employees; Salary Reductions), V.T.C.S.), as follows:

Sec. 4. Includes certain definitions to be applicable to Sections 8A, 12, and 13 of this Act.

SECTION 18. Amends Section 5(a), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), to include that an educational institution is authorized to enter into a salary reduction agreement with an employee of the institution only if the qualified investment product is registered with TRS under Section 8A of this Act.

SECTION 19. Amends Sections 6(c), (e), and (h), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), to make conforming and nonsubstantive changes.

SECTION 20. Amends Section 7(a), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), to include that TRS is authorized to collect a fee, not to exceed the administrative cost to TRS, from a company that registers a qualified investment product under Section 8A. Requires the fee for registration of a qualified investment product to be set by TRS in the reasonable amount necessary to recover the cost to TRS of administering Section 8A of this Act.

SECTION 21. Amends Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), by adding Section 8A, as follows:

Sec. 8A. (a) Requires a qualified investment product (product) offered to an employee under Section 5 of this Act to be an eligible qualified investment registered with TRS under this section. Requires the company offering the product to submit an application to TRS in accordance with this section and pay the registration fee established under Section 7 of this Act in order to register a product.

(b) Requires TRS to adopt the form and content of the registration application.

(c) Requires TRS to designate not more than two registration periods each year during which a company is authorized to apply to register a product and add the product to the list of products maintained under Subsection (f) of this section. Requires a company to submit an application for a designated registration period in the manner required by TRS in order to register a product.

(d) Requires a company that registers a product under this section to notify TRS if, at any time, the product is not an eligible qualified investment.

(e) Provides that a registration under this section remains in effect for five years unless denied, suspended, or revoked.

(f) Requires TRS to establish and maintain a list of products that are registered under this section. Requires such a list to include information concerning all the fees charged in connection with each registered product and authorizes the list to include other information concerning each product and the sale and administration of the product. Requires the list to be made available on TRS's website. Requires the list to include other information concerning each product as determined by TRS. Requires TRS, in implementing the list, to take action to avoid increasing the amount of work required of educational institutions, which may include assigning a unique identifying number to each product. Requires the list to be available on the TRS's Internet website.

SECTION 22. Amends Section 9, Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), to prohibit an educational institution from refusing to enter into a salary reduction agreement with an employee if the product that is the subject of the salary reduction is an eligible qualified investment and is registered with TRS under Section 8A.

SECTION 23. Amends Section 10(a), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(a) Provides that a person commits an offense if the person sells or offers for sale a product that is not registered under Section 8A of this Act and the person knows will be the subject of a salary reduction agreement, violates the licensing requirements of Title 13 (Regulation of Professionals), Insurance Code, rather than Subchapter A (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices), Chapter 21, Insurance Code, with regard to a qualified investment product that the person knows will be the subject of a salary reduction agreement, or engages in activity described by Subchapter B, Chapter 541, Insurance Code, with regard to a product that the person knows will be the subject of a salary reduction agreement.

SECTION 24. Amends Section 11(c), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), as follows:

(c) Requires the notice under this section (regarding a notice to a potential purchaser from a person who offers to sell an annuity contract that is or will likely be the subject of a salary reduction) to state, in plain language, that the annuity must be a product registered under Section 8A of this Act. Requires such a notice to state, in plain language, that the potential purchaser is authorized to contact TRS or access its website to determine which products are registered under Section 8A of this Act.

SECTION 25. Amends Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), by adding Section 13, as follows:

Sec. 13. (a) Authorizes the board to deny, suspend, or revoke the certification or recertification of a company if the company violates Section 5, 6, 7, 8, 8A, 10, 11, or 12 of this Act or a rule adopted under those sections.

(b) Authorizes the board to deny, suspend, or revoke the registration of an investment product under this section if the product is not an eligible qualified investment, the offer of the product violates Section 5, 6, 7, 8, 8A, 10, 11, or 12 of this Act or a rule adopted under those sections.

(c) Provides that a proceeding to suspend or revoke a certification, recertification, or registration under this section is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 26. Amends Section 17.46(b), Business & Commerce Code, to include that except as provided in Subsection (d) of this section (Deceptive Trade Practices Unlawful), the term "false, misleading, or deceptive acts or practices" includes, but is not limited to, the selling, offering to sell, or illegally promoting an annuity contract under Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), with the intent that the annuity contract will be the subject of a salary reduction agreement, as defined by that Act, if the annuity contract is not eligible qualified investment under that Act or is not registered with TRS as required by Section 8A of that Act.

SECTION 27. Repealer: Section 825.0032(d) (regarding ineligibility of certain employees for board positions and retirement system), Government Code.

SECTION 28. Makes application of Sections 824.302, 824.304, 824.308, Government Code, and Section 1575.004, Insurance Code, as amended by this Act, and Section 824.310, Government Code, and Section 1575.213, Insurance Code, as added by this Act, prospective.

SECTION 29. Makes application of Sections 825.0032, 825.0041, and 825.010, Government Code, prospective.

SECTION 30. Makes application of Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), to a product prospective to January 1, 2008.

SECTION 31. Makes application of Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5, V.T.C.S.), to an offense prospective to January 1, 2008.

SECTION 32. Makes application of Section 17.46(b), Business & Commerce Code, as amended by this Act, prospective to January 1, 2008.

SECTION 33. Effective date: September 1, 2007.