

## **BILL ANALYSIS**

Senate Research Center

H.B. 2559  
By: Truitt (Duncan)  
State Affairs  
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Engrossed

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

H.B. 2559 relates to the powers and duties of the Employees Retirement System of Texas.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 13 (Section 815.515, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 659.102(c), Government Code, to authorize the supplemental optional benefits program to include a group coverage plan for permanent life insurance, catastrophic illness insurance, or disability insurance; prepaid legal services; or a qualified transportation benefit. Makes nonsubstantive changes.

SECTION 2. Amends Subchapter A, Chapter 811, Government Code, by adding Section 811.010, as follows:

Sec. 811.010. TRAVIS COUNTY VENUE; TWO-YEAR LIMITATION. Provides that subject to and without waiving the employee retirement system of Texas' (retirement system) sovereign immunity from suit or liability or the official immunity from liability of the trustees, officers, and employees of the retirement system under Section 811.007 (Immunity from Liability), for any action by or against the retirement system, the trustees, officers, or employees of the retirement system, or an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of the retirement system venue is in Travis County and the statute of limitations is two years unless otherwise specifically provided by law.

SECTION 3. Amends Section 814.008(a), Government Code, to authorize a retiree receiving an optional service or disability retirement annuity approved by the board of trustees of the retirement system or described by Section 814.108(c)(1) (relating to a certain optional retirement annuity approved by the board of trustees), (c)(2) (relating to a certain optional retirement annuity approved by the board of trustees), or (c)(5), to change the designated beneficiary as provided by this section for the benefits payable after the retiree's death.

SECTION 4. Amends Subchapter A, Chapter 814, Government Code, by adding Section 814.012, as follows:

Sec. 814.012. DISPOSITION OF UNCLAIMED BENEFICIARY BENEFITS. Provides that if, as of the fourth anniversary of the death of a member or annuitant, the retirement system has not paid benefits and a claim for benefits is not pending with the retirement system based on the death of the member or annuitant, the accumulated contributions of the deceased member or the balance of the reserve for the deceased annuitant reverts to the benefit of the retirement system. Requires that the retirement system transfer funds reverted under this section to the state contribution account.

SECTION 5. Amends Sections 814.108(c), (g), and (h), Government Code, as follows:

(c) Authorizes an eligible person to select one of certain options, including one which provides that after the retiree's death, three-fourths of the reduced annuity is payable

throughout the life of the person designated by the retiree before retirement. Deletes existing text authorizing an eligible person to select any optional retirement annuity approved by the board of trustees or one of certain options. Makes nonsubstantive changes.

(g) Prohibits a person who selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Subsection (c)(1), (c)(2), or (c)(5), except as provided by Section 814.008 (Change of Beneficiary After Retirement) or 814.1081(Partial Lump-Sum Option), from changing or revoking a beneficiary designation after the person's effective date of retirement.

(h) Provides that a beneficiary designation that names a former spouse as beneficiary for a guaranteed optional annuity described by Subsection (c)(3) (relating to remainder of annuity payments if the retiree dies before 60 monthly payments have been made) or (c)(4) (relating to remainder of annuity payments if the retiree dies before 120 monthly payments have been made) is invalid unless the designation is made after the date of the divorce.

SECTION 6. Amends Section 814.1081(a), Government Code, to authorize a person who retired and selected an optional service retirement annuity described by Section 814.108(c)(1), (c)(2), or (c)(5), rather than a person who retired and selected an optional service retirement annuity approved by the board of trustees or an optional service retirement annuity described by Section 814.108(c)(1), (c)(2), or (c)(5), to change the optional annuity selection to the selection of a standard service retirement annuity by filing with the retirement system a request to change the annuity selection, if the retiree designated a person as beneficiary who meets certain criteria.

SECTION 7. Amends Section 814.202, Government Code, by adding Subsection (g) to prohibit a member otherwise eligible to receive a disability retirement annuity from receiving the annuity if the member is still earning a salary or wage from the employment for which the member is claiming disability or on leave without pay from the employment for which the member is claiming disability.

SECTION 8. Amends Section 814.203, Government Code, as follows:

Sec. 814.203. CERTIFICATION OF DISABILITY. (a) Creates this subsection from existing text.

(b) Provides that, for purposes of this subchapter, a member is incapacitated for the further performance of duty if the member has demonstrably sought and been denied workplace accommodation of the disability in accordance with applicable law, and the member is physically or mentally unable to continue to hold the position occupied or to hold any other position offering comparable pay. Requires that the employee's education, training, and experience be considered when making a determination of incapacity under this subchapter.

(c) Defines "comparable pay" for the purposes of this section. Authorizes comparable pay to be adjusted by the retirement system to account for adjustments in state pay rates.

SECTION 9. Amends Subchapter C, Chapter 815, Government Code, by adding Section 815.214, as follows:

Sec. 815.214. SUBPOENA. Authorizes the executive director of the retirement system or the executive director's designee, notwithstanding any other law, to issue a subpoena that conforms to Rule 176 (Subpoenas), Texas Rules of Civil Procedure, including a preappeal investigative subpoena or any subpoena otherwise authorized by the Texas Rules of Civil Procedure, that the executive director or designee determines necessary to protect the interests of a program or system administered by the retirement system.

SECTION 10. Amends Section 815.301, Government Code, by adding Subsections (g), (h), and (i), as follows:

(g) Requires the board of trustees, in awarding contracts to private professional investment managers under Subsection (c) or otherwise acquiring private financial services, to make a good faith effort to award contracts to or acquire services from qualified emerging fund managers.

(h) Defines "emerging fund manager" and "private financial services" for purposes of Subsection (g).

(i) Requires that the retirement system report to the board of trustees on the methods and results of the system's efforts to hire emerging fund managers, including data disaggregated by race, ethnicity, gender, and fund size.

SECTION 11. Reenacts Section 815.307, Government Code, as amended by Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 815.307. DUTY OF CARE. Requires the assets of the retirement system to be invested and reinvested without distinction as to their source in accordance with Section 67 (State and Local Retirement Systems), Article XVI (General Provisions), Texas Constitution. Requires that a determination of whether the board of trustees has exercised prudence with respect to an investment decision be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable.

SECTION 12. Amends Section 815.512, Government Code, as follows:

Sec. 815.512. PROTECTION FROM DOUBLE OR MULTIPLE LIABILITY. (a) Creates this subsection from existing text. Authorizes the executive director to cause an action for interpleader, rather than to cause a suit, concerning a claim to be filed on behalf of the retirement system in a district court in Travis County to protect the system from double or multiple liability if the executive director determines that a claim may expose the retirement system to such liability.

(b) Prohibits a person from pursuing a counterclaim or other cause of action against the retirement system or its trustees, officers, employees, carriers, or administering firms in connection with the transactions and occurrences related to the interpleader action.

(c) Provides that a person who files suit against the retirement system or its trustees, officers, employees, carriers, or administering firms is liable for the costs and attorney's fees incurred in violation of Subsection (b).

SECTION 13. Amends Subchapter F, Chapter 815, Government Code, by adding Section 815.515, as follows:

Sec. 815.515. DISPOSITION OF UNCLAIMED CONTRIBUTIONS OF FORMER MEMBERS. (a) Authorizes the retirement system, subject to Chapters 803 (Proportionate Retirement Program) and 805 (Credit Transfer between Employees Retirement System of Texas and Teacher Retirement System of Texas), if the retirement system has not received a demand for a refund of the accumulated contributions of a member in accordance with Subchapter B (Withdrawal of Contributions), Chapter 812 (Membership), before the seventh anniversary of the member's last day of service, to refund the accumulated contributions to the member or the member's heirs. Provides that if the member or the member's heirs cannot be found, the member's accumulated contributions revert to the retirement system.

(b) Requires that the retirement system credit any amounts that revert to the retirement system under Subsection (a) to the state contribution amount.

(c) Authorizes the board of trustees to adopt rules to implement and administer this section.

SECTION 14. Amends Section 837.003, Government Code, by adding Subsection (e), to require the retirement system, at the time a service retirement, disability retirement, or death benefit annuity becomes payable, to refund any contributions, interest, or membership fees used to establish service credit that is not used in computing the amount of the annuity.

SECTION 15. Amends Section 838.106, Government Code, by adding Subsection (c), to provide that for the purpose of Subsection (a)(1) (relating to authorizing a member to establish service credit for a calendar year during which a member held an office included in the membership of the retirement system), the term of a member leaving judicial office ends December 31 regardless of the date on which the member's successor takes the oath of office.

SECTION 16. Amends Section 839.103(a), Government Code, to authorize a retiring member, instead of a service retirement annuity payable under Section 839.102, to elect to receive one of certain optional service retirement annuities, actuarially reduced to an actuarially equivalent value consisting of an annuity payable during the retiring member's life and continuing after death in an amount equal to three-fourths of the amount payable during the retiring member's life, throughout the life of one person designated by the retiring member before retirement. Makes a conforming and nonsubstantive change.

SECTION 17. Reenacts Section 840.303, Government Code, as amended by Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th Legislature, Regular Session, 2003, as follows:

Sec. 840.303. DUTY OF CARE. Requires that the assets of the retirement system be invested and reinvested without distinction as to their source in accordance with Section 67 (State and Local Retirement Systems), Article XVI (General Provisions), Texas Constitution. Requires that a determination of whether the board of trustees has exercised prudence with respect to an investment decision be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable.

SECTION 18. Amends Section 1551.102(d), Insurance Code, to make nonsubstantive changes.

SECTION 19. Amends Section 1551.155, Insurance Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes a person who is the surviving spouse of an individual to secure group health coverage without evidence of the person's insurability if the individual was eligible to participate in the group benefits program under Section 1551.101 (Participation Eligibility: State Officers and Employees) or 1551.102 (Participation Eligibility: Annuitants) but was not participating at the time of the individual's death.

(d) Provides that a surviving spouse seeking group coverage under Subsection (c) is required to apply for the coverage not later than the 30th day after the date on which the individual who was eligible to participate in the group benefits program dies and pay for the coverage at the group rate as provided by Subsection (b) (relating to coverage at the group rate for other participants).

SECTION 20. Amends the heading to Section 1551.156, Insurance Code, to read as follows:

Sec. 1551.156. COVERAGE OPTIONS FOR SURVIVING DEPENDENT.

SECTION 21. Amends Section 1551.156, Insurance Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes a person who is a surviving dependent of an annuitant to secure group health coverage after the death of the annuitant without evidence of the person's insurability if the annuitant was eligible to participate in the group benefits program of a retirement system named in the chapter but was not participating at the time of the individual's death.

(e) Provides that a surviving dependent seeking group coverage under Subsection (d) is required to apply for the coverage not later than the 30th day after the date on which the individual who was eligible to participate in the group benefits program dies and pay for the coverage at the group rate as provided by Subsection (b).

SECTION 22. Amends Section 1551.354, Insurance Code, by amending Subsection (b) and adding Subsections (c) and (d), as follows:

(b) Makes a conforming change.

(c) Prohibits a person from pursuing a counterclaim or other cause of action against the retirement system or its trustees, officers, employees, carriers, or administering firms in connection with the transactions and occurrences related to the interpleader action.

(d) Provides that a person who files suit against the retirement system or its trustees, officers, employees, carriers, or administering firms is liable for the costs and attorney's fees incurred in violation of Subsection (c).

SECTION 23. Amends Subchapter H, Chapter 1551, Insurance Code, by adding Section 1551.362, as follows:

Sec. 1551.362. SUBPOENA. Authorizes the executive director or the executive director's designee, notwithstanding any other law, to issue a subpoena that conforms to Rule 176, Texas Rules of Civil Procedure, including a preappeal investigative subpoena otherwise authorized by the Texas Rules of Civil Procedure, that the executive director or designee determines necessary to protect the interests of a program or system administered by the retirement system.

SECTION 24. Amends Section 1551.401, Insurance Code, by adding Subsection (g), to authorize the retirement system, except as provided by Section 1551.259(d) (relating to a participant payment that has not been made and a claim for payment by a person entitled under this section), to deposit to the credit of the fund any unclaimed money on a finding that a good faith effort has been made to locate the person entitled to the money.

SECTION 25. Repealer: Section 812.006 (Optional Membership), Government Code.

Repealer: Section 833.1035(c) (relating to a prohibition against a member establishing more than 120 months of service credit), Government Code.

Repealer: Section 833.104 (Service on Domestic Relations or Special Juvenile Court), Government Code.

Repealer: Section 835.1015(c) (relating to the length of time a member is authorized to make contributions under this section), Government Code.

Repealer: Section 838.1035(c) (relating to the prohibition against a member establishing more than 120 months of service credit), Government Code.

Repealer: Section 838.104 (Service on Domestic Relations or Special Juvenile Court), Government Code.

Repealer: Section 840.1025(c) (relating to the length of time a member is authorized to make contributions under this section), Government Code.

Repealer: Section 840.1027(c) (relating to the length of time a member is authorized to make contributions under this section), Government Code.

Repealer: Section 1551.221 (Voluntary Supplemental Health Coverage for Individuals Eligible Under Tricare Military Health System), Insurance Code.

SECTION 26. Makes application of Sections 811.010 and 815, Government Code, and Section 1551.362, Insurance Code, as added by this Act, and Sections 815.512, Government Code, and 1551.354, Insurance Code, as amended by this Act, prospective.

SECTION 27. Makes application of Section 814.203(b), Government Code, as added by this Act, prospective.

SECTION 28. Makes application of Section 837.003(e), Government Code, as added by this Act, prospective.

SECTION 29. Makes application of Section 838.106(c) Government Code, as added by this Act, prospective.

SECTION 30. Effective date: September 1, 2009.