

Government Code

Title 8, Subtitle A

Provisions Generally Applicable to  
Public Retirement Systems



TEXAS PENSION  
REVIEW BOARD

September 2025



# Summary of Reporting Requirements for Texas Public Retirement Systems

## Each Texas public retirement system must:

1. **Register** with the Pension Review Board (PRB) within 90 days after the date of its creation. (§802.105(a))
2. Have an **actuarial valuation (AV)** prepared at least once every three years and provide a copy of the valuation to the PRB. (§802.101(a), (§802.101(c))
3. File an **annual financial report (AFR)**, based on an annual audit, within 210 days after the last day of the system's fiscal year. (§802.103(a), (§802.103(b))
4. File an annual report of total **membership** of active employees and persons receiving a benefit, within 210 days after the last day of the system's fiscal year. (§802.104)
5. Report any changes in administration, or the composition of the system's board of trustees within 30 days after the change. (§802.105(c))
6. File a copy of the system's **summary plan description** and notify the PRB of any changes within 30 days after the date of publication or adoption of any change. (§802.106(h))
7. File an **Investment Returns and Assumptions Report** within 210 days after the system's fiscal year end date. (§802.108(a))
8. File an **investment policy** not later than the 90th day after the date the policy is adopted or revised. (§802.202(d))
9. If conducted, file a copy of the system's **actuarial experience study** within 30 days after the study's adoption. (§802.1014(b))
10. If conducted, according to the evaluation schedule determined by the PRB, file a copy of the system's **Investment Practices and Performance Evaluation**. (§802.109(g))
11. File a copy of the system's **funding policy** and each change to the policy not later than the 31st day after the date the policy or change is adopted. (§802.1011(b)(3)).

**Volunteer firefighter retirement systems** organized under the Texas Local Fire Fighters Retirement Act (TLFFRA) and **defined contribution plans** are only subject to the reporting requirements contained in 1, 5, and 6.

## **Actuarial Reports for a Texas public retirement system with an asset value of at least \$100 million:**

1. The governmental entity must conduct once every five years an **actuarial audit** of the system and provide a copy of the report to the PRB within 30 days after the final report is received by the sponsoring entity. (§802.1012)
2. The system must conduct an **actuarial experience study** once every five years and provide a copy of the study to the PRB before the 31st day after the date of the study's adoption. (§802.1014)

## **Investment Practices and Performance Evaluation:**

Systems with asset values over **\$30 million** shall select an independent firm with substantial experience in evaluating institutional investment practices and performance to evaluate the appropriateness, adequacy, and effectiveness of the system's investment practices and performance and to make recommendations for improvement. Systems with assets of **at least \$100 million** must conduct an evaluation once every three years. Systems with assets between \$30 million and \$100 million must conduct an evaluation once every six years. (§802.109)

## **Investment Expense Reporting:**

All systems are required to include within their AFRs a listing, by asset class, of all direct and indirect investment fees and commissions paid by the system during its previous fiscal year for the sale, purchase, or management of system assets. (§802.103(a) and 40 T.A.C. Ch. 609) The PRB has provided a template that a system may choose to use in its AFR; however, systems are not required to use the template. See more information on the PRB website.

## **Funding Policy:**

A system and its sponsor shall jointly develop and adopt a written funding policy that details the governing body's plan for achieving a funded ratio that is equal to or greater than 100 percent. A system and its sponsor must also timely revise the policy to reflect any significant changes, such as those resulting from a funding soundness restoration plan or a revised funding soundness restoration plan. (§802.2011)

## **Funding Soundness Restoration Plan:**

A system is required to notify its associated governmental entity if it receives an actuarial valuation indicating the system's actual contributions are insufficient to achieve an amortization period of 30 years or less. If the system's amortization period exceeds 30 years over a few valuations, the system and its associated governmental entity shall jointly formulate a **Funding Soundness Restoration Plan (FSRP)**. (§802.2015, §802.2016) See more information on the PRB website.

## **Each FSRP shall:**

- be designed to achieve a contribution rate sufficient to amortize the unfunded actuarially accrued liability (UAAL) within 30 years no later than two years after the

triggering AV or Sept. 1, 2025, whichever is later. (§802.2015(e)(2)(A))

- be adopted during open meetings of the governing bodies of both system and sponsor. (§802.2015(e)(4))
- be submitted to the PRB not later than the 31st day after the date on which the plan or any change is agreed to (§802.2015(g))

**Progress Reports:** The system and sponsor are required to provide progress reports to the PRB no later than the first anniversary of the date of the AV that required an FSRP and each subsequent six-month period until an FSRP is submitted. The first draft must include a projected timeline for enactment of the plan and identify actions that various entities must take to approve or enact the plan. Each subsequent progress report should include a draft plan and a description of any changes under consideration. (§802.2015(f) and 40 T.A.C. §610.31(b))

### **Legacy Funding Soundness Restoration Plan (L-FSRP):**

A very small number of systems have L-FSRPs that were formulated before the law was changed in 2021. If a system is adhering to one of these L-FSRPs, it may continue operating under the old version of the FSRP statute under certain conditions. (Former §802.2015(d-1) in effect before Sept. 1, 2021.)

### **Minimum Educational Training Program:**

The PRB is mandated to develop, administer, and track compliance with an educational training program for trustees and system administrators. (§801.211) The Minimum Educational Training (MET) Program in 40 T.A.C. Ch. 607 requires public retirement systems to report qualified training and other information related to the program.

### **Summary of Information to be Provided to Members:**

**When a person becomes a member of a retirement system, the system must provide:**

- a summary of plan benefits and procedures for claiming them; and
- a summary of provisions for employer and employee contributions, withdrawal of contributions, and eligibility for benefits, including any right to terminate employment and retain eligibility.

**In addition, each system must provide to active members and annuitants:**

- a summary of any significant change that is made in statutes or ordinances governing the retirement system and any significant change that affects contributions, benefits, or eligibility before the 271st day after the day the change is adopted;
- an annual statement of the amounts of the member’s total accumulated contributions and total accumulated service credit; and
- a summary of the financial condition of the system if the actuary finds the financing arrangement is inadequate under an advanced funding actuarial cost method.

On written request, a non-contributing member may receive any of the information provided to active members of the system.

**Texas Local Fire Fighters Retirement Act**

The Texas Local Fire Fighters Retirement Act (TLFFRA) allows for paid and part-paid fire departments and volunteer fire departments in participating cities to administer their own local retirement systems. TLFFRA provides a general framework for the establishment of TLFFRA systems, including some investment restrictions, but leaves administration, plan design, contributions, and specific investments to each system’s local board. Systems operating under TLFFRA are entirely locally funded. The following are duties assigned to the PRB related to TLFFRA systems.

1. The agency provides technical assistance and information to the TLFFRA systems on various issues, including service verification; questions relating to the TLFFRA statute; and reporting requirements. (V.T.C.S. Article 6243e Sec. 18B(a))
2. The PRB must assign one person to specialize in providing assistance to TLFFRA plans. (V.T.C.S. Article 6243e Sec. 18B(b))
3. The PRB refers any TLFFRA system member appeals to the State Office of Administrative Hearings, and for the convenience of TLFFRA systems and their members, provides a TLFFRA Notice of Appeal Form and procedure for the referral. (V.T.C.S. Article 6243e Sec. 22)

*See Vernon’s Texas Civil Statutes Article 6243e and the PRB website for more information on TLFFRA systems.*

Table of Contents

**SUBTITLE A. PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS** ..... 1

**CHAPTER 801. STATE PENSION REVIEW BOARD** ..... 1

    SUBCHAPTER A. GENERAL PROVISIONS..... 1

    SUBCHAPTER B. ADMINISTRATIVE PROVISIONS ..... 1

    SUBCHAPTER C. POWERS AND DUTIES OF BOARD ..... 6

**CHAPTER 802. ADMINISTRATIVE REQUIREMENTS** ..... 10

    SUBCHAPTER A. GENERAL PROVISIONS..... 10

    SUBCHAPTER B. STUDIES AND REPORTS ..... 11

    SUBCHAPTER C. ADMINISTRATION OF ASSETS..... 21

    SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION ..... 30

**CHAPTER 803. PROPORTIONATE RETIREMENT PROGRAM** ..... 34

    SUBCHAPTER A. GENERAL PROVISIONS..... 34

    SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP ..... 35

    SUBCHAPTER C. CREDITABLE SERVICE..... 37

    SUBCHAPTER D. BENEFITS ..... 40

    SUBCHAPTER E. ADMINISTRATION ..... 40

**CHAPTER 804. DOMESTIC RELATIONS ORDERS AND SPOUSAL CONSENT** ... 42

    SUBCHAPTER A. QUALIFIED DOMESTIC RELATIONS ORDERS..... 42

    SUBCHAPTER B. SPOUSAL CONSENT REQUIREMENTS ..... 47

    SUBCHAPTER C. TERMINATION OF INTEREST IN PUBLIC RETIREMENT SYSTEM ..... 48

**CHAPTER 805. CREDIT TRANSFER BETWEEN EMPLOYEES RETIREMENT SYSTEM OF TEXAS AND TEACHER RETIREMENT SYSTEM OF TEXAS** ..... 49

**CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT ISRAEL** ..... 54

    SUBCHAPTER A. GENERAL PROVISIONS..... 54

    SUBCHAPTER B. DUTIES REGARDING INVESTMENTS ..... 56

    SUBCHAPTER C. REPORT; ENFORCEMENT ..... 58

**CHAPTER 809. PROHIBITION ON INVESTMENT IN FINANCIAL COMPANIES THAT BOYCOTT CERTAIN ENERGY COMPANIES** ..... 59

    SUBCHAPTER A. GENERAL PROVISIONS..... 59

    SUBCHAPTER B. DUTIES REGARDING INVESTMENTS ..... 61

    SUBCHAPTER C. REPORT; ENFORCEMENT ..... 63

**CHAPTER 810. MISCELLANEOUS PROVISIONS**..... 66

**SUBTITLE A.**  
**PROVISIONS GENERALLY APPLICABLE TO PUBLIC RETIREMENT SYSTEMS**

**CHAPTER 801. STATE PENSION REVIEW BOARD**

**SUBCHAPTER A. GENERAL PROVISIONS**

**§801.001. Definitions.**

In this chapter:

(1) "Board" means the State Pension Review Board.

(1-a) "Governing body of a public retirement system" has the meaning assigned by Section 802.001.

(2) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, and includes the optional retirement program governed by Chapter 830, but does not include:

(A) a program, other than the optional retirement program, for which benefits are administered by a life insurance company;

(B) a program providing only workers' compensation benefits;

(C) a program administered by the federal government;

(D) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986 (26 U.S.C. Section 409);

(E) a plan described by Section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401);

(F) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403); or

(G) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

(3) "System administrator" means a person designated by the governing body of a public retirement system to supervise the day-to-day affairs of the public retirement system.

(4) "Trustee" means a member of the governing body of a public retirement system.

**SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**

**§801.101. Pension Review Board.**

The State Pension Review Board is an agency of the state.

**§801.102. Composition of Board.**

(a) The board is composed of seven members.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

**§801.1021. Conflict Provisions.**

(a) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person is not eligible for appointment as a member of the board if the person or the person's spouse:

(1) is employed by or participates in the management of a business entity or other organization receiving funds from the board;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization receiving funds from the board; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

(c) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(d) A person may not be a member of the board and may not be a board employee 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:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of pensions; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of pensions.

**§801.103. Members Appointed by Governor.**

(a) The governor shall appoint, with the advice and consent of the senate, seven members to the board.

(b) The governor shall appoint to the board:

(1) three persons who have experience in the fields of securities investment, pension administration, or pension law but who are not members or retirees of a public retirement system;

(2) one person who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.);

(3) one person who has experience in the field of governmental finance;

(4) one person who is a contributing member of a public retirement system; and

(5) one person who is receiving retirement benefits from a public retirement system.

**§801.104. Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1152, Sec. 17, eff. Sept. 1, 2013.**

**§801.105. Repealed by Acts 1991, 72nd Leg., Ch. 624, Sec. 16, eff. Sept. 1, 1991.**

**§801.106. Terms of Office.**

Members of the board hold office for staggered terms of six years, with the terms of two or three members, as appropriate, expiring on January 31 of each odd-numbered year.

**§801.1061. Removal.**

(a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 801.103;

(2) does not maintain during service on the board the qualifications required by Section 801.103;

(3) is ineligible for membership under Section 801.1021;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the potential ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

**§801.1062. Training Program.**

(a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this chapter;

(2) the programs operated by the board;

(3) the role and functions of the board;

(4) the rules of the board, with an emphasis on the rules that relate to disciplinary and investigatory authority;

(5) the current budget for the board;

(6) the results of the most recent formal audit of the board;

(7) the requirements of:

(A) the open meetings law, Chapter 551;

(B) the public information law, Chapter 552;

(C) the administrative procedure law, Chapter 2001; and

(D) other laws relating to public officials, including conflict of interest

laws; and

(8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

**§801.107. Sunset Provision.**

The State Pension Review Board is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2029.

**§801.108. Compensation; Expenses.**

A member of the board is entitled to reimbursement by the state for actual and necessary expenses incurred in performing the functions of the board. A member of the board who also is a member of the legislature is ineligible to receive compensation for service performed as a board member.

**§801.109. Meetings.**

The board shall meet at least three times each year and may meet at other times at the call of the presiding officer or as provided by board rule.

**§801.110. Presiding Officers.**

The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor.

**§801.111. Executive Director; Employees.**

(a) The board shall employ an executive director to be the executive head of the board and perform its administrative duties.

(b) The executive director may employ staff members necessary for administering the functions of the board.

(c) The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

(d) The executive director or the executive director's designee shall develop a system of annual performance evaluations. All merit pay for board employees must be based on the system established under this subsection.

(e) Repealed by Acts 2009, 81st Leg., R.S., Ch. 614, Sec. 4(13), eff. June 19, 2009.

**§801.1111. Equal Employment Opportunity.**

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation,

selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) A policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

(d) The governor's office shall deliver a biennial report to the legislature based on the information received under Subsection (c). The report may be made separately or as a part of other biennial reports made to the legislature.

### **§801.112. Finances and Equipment.**

(a) The executive director may set staff salaries, within the limits of appropriated funds and subject to the approval of the board.

(b) The board may request and use staff assistance, equipment, and office space from the Employees Retirement System of Texas.

(c) The legislature may appropriate funds from the general revenue fund to the board for the payment of staff salaries and operating expenses of the board.

### **§801.113. Fund.**

(a) The State Pension Review Board fund is created in the state treasury. Money in the fund may be appropriated only to assist in paying staff salaries, operating and actuarial expenses of the board, and for such activities as defined by Subsection (e) of this section.

(b) In this section:

(1) "Active member" means a person who is on the payroll of an employing entity included in the coverage of a public retirement system and who receives credit in the retirement system for service performed in the position for which the person is paid.

(2) "Annuitant" means a person who receives periodic payments from a public retirement system that are based on service that was credited in the retirement system to a person who was an active member.

(c) The governing board of any public retirement system may vote to make an annual contribution to the State Pension Review Board not to exceed 50 cents for each active member and annuitant of the retirement system as of September 1 of the year for which the contribution is made. The contribution is payable in a lump sum.

(d) Each public retirement system shall certify to the board and to the comptroller of public accounts the amount of the annual contribution to be made under Subsection (c) of this section. The comptroller by rule may prescribe the form and content of certifications. The comptroller shall deposit remittances received under this subsection in the State Pension Review Board fund.

(e) The board is authorized to conduct training sessions, schools, or other educational activities for trustees and administrators of public retirement systems. The board may also furnish other appropriate services such as actuarial studies or other requirements of

systems and may establish appropriate fees for these activities and services. The fees may be based on whether or not the trustees, administrators, or systems contribute to the State Pension Review Board fund under Subsection (c) of this section. The net proceeds of these fees shall be deposited in the fund.

(f) Under the provisions of Sections 403.094 and 403.095, the dedication of the State Pension Review Board fund is reenacted, and the fund is established as a special account within the state treasury dedicated for the purposes defined by Subsections (a) and (e).

**§801.114. Qualifications and Standards of Conduct.**

The executive director or the executive director’s designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person’s responsibilities under applicable laws relating to standards of conduct for state officers or employees.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

**§801.201. Rulemaking.**

(a) The board shall adopt rules for the conduct of its business.

(b) For the purpose of performing its duties under Section 801.202(1) or (2), the board by rule may require clarification of information provided by a public retirement system in a report that is required by law and is required to be filed with the board. A rule adopted under this subsection may not be enforced against a public retirement system if compliance with the rule would cause the system to incur a major expense.

(c) The board by rule shall:

(1) adopt a brief standard form that will assist the board in efficiently determining the actuarial soundness and current financial condition of a public retirement system; and

(2) require that a retirement system submitting information required for the review or study described under Section 801.202(1) or (2) include the form with the submission.

**§801.2012. Negotiated Rulemaking and Alternative Dispute Resolution Procedures**

(a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008 for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009 to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must 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.

(c) The board shall:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

- (3) collect data concerning the effectiveness of those procedures.

#### **§801.202. General Duties.**

The board shall:

- (1) conduct a continuing review of public retirement systems, compiling and comparing information about benefits, creditable service, financing, and administration of systems;
- (2) conduct intensive studies of potential or existing problems that threaten the actuarial soundness of or inhibit an equitable distribution of benefits in one or more public retirement systems;
- (3) provide information and technical assistance on pension planning to public retirement systems on request; and
- (4) recommend policies, practices, and legislation to public retirement systems and appropriate governmental entities.

#### **§801.203. Reports to Legislature and Governor.**

(a) The board shall present to the legislature and the governor, in November of each even-numbered year, a public report explaining the work and findings of the board during the preceding two-year period and including drafts or recommendations of any legislation relating to public retirement systems that the board finds advisable.

(b) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, eff. June 17, 2011.

#### **§801.204. Inspection of Records.**

In performing its functions, the board may inspect the books, records, or accounts of a public retirement system during business hours of the system.

#### **§801.205. Subpoena.**

(a) The board, if reasonably necessary in the course of performing a board function, may subpoena witnesses or books, records, or other documents. The presiding officer of the board shall issue, in the name of the board, only such subpoenas as a majority of the board may direct.

(b) A peace officer shall serve a subpoena issued by the board. If the person to whom a subpoena is directed fails to comply, the board may bring suit to enforce the subpoena in a district court of the county in which the witness resides or in the county in which the books, records, or other documents are located. If the district court determines that good cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt.

(c) The attorney general shall represent the board in a suit to enforce a subpoena.

#### **§801.206. Public Access and Testimony.**

(a) The board shall prepare and maintain a written plan that describes how a person who does not speak English or who has a physical, mental, or developmental disability may be provided reasonable access to the board's programs.

(b) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the

jurisdiction of the board.

### **§801.207. Complaints.**

(a) The board shall maintain a file on each written complaint filed with the board. The file must include:

- (1) the name of the person who filed the complaint;
- (2) the date the complaint is received by the board;
- (3) the subject matter of the complaint;
- (4) the name of each person contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint;

and

(6) an explanation of the reason the file was closed, if the board closed the file without taking action other than to investigate the complaint.

(b) The board shall provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the board's policies and procedures relating to complaint investigation and resolution.

(c) The board, at least quarterly until final disposition of the complaint, shall notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation.

### **§801.208. Education and Training.**

As authorized by Section 801.113(e), the board may develop and conduct training sessions and other educational activities for trustees and administrators of public retirement systems. In exercising the board's authority under this section, the board may:

- (1) conduct live training seminars on an Internet website at intervals the board considers necessary to keep trustees and administrators reasonably informed;
- (2) maintain archives of previous seminars reasonably accessible to trustees and administrators on the Internet website; and
- (3) use technologies and innovations the board considers appropriate to educate the greatest practicable number of trustees and administrators.

### **§801.209. Public Retirement System Reports and Information.**

(a) For each public retirement system, the board shall post on the board's Internet website, or on a publicly available website that is linked to the board's website, the most recent data from reports received under Sections 802.101, 802.103, 802.104, 802.105, 802.108, 802.109, 802.2015, and 802.2016.

(b) On the 60th day after the date a report or information required by this chapter or Chapter 802 is due to the board, the board shall post on the board's website a list of public retirement systems that have not submitted the required reports or information.

(c) For each public retirement system included on the list posted under Subsection (b), the board shall notify:

- (1) the governor and the Legislative Budget Board regarding the lack of a timely submission by the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, the Texas Emergency Services Retirement System, or the Judicial

Retirement System of Texas Plan Two; or

(2) the governing body of the political subdivision of which members of the public retirement system are employees regarding the lack of a timely submission by a public retirement system other than a system listed in Subdivision (1).

**§801.210. Model Ethical Standards and Conflict-of-Interest Policies.**

(a) The board shall develop and make reasonably accessible on the board's Internet website model ethical standards and model conflict-of-interest policies, including disclosure requirements, for voluntary use by a public retirement system.

(b) A public retirement system is not required to adopt a standard or policy based on the model developed under this section.

**§801.211. Public Retirement System Educational Training Program.**

(a) The board shall develop and administer an educational training program for trustees and system administrators.

(b) The curriculum of the educational training program must include minimum training requirements for trustees and system administrators. The board shall develop a system to track compliance with the minimum training requirements by trustees and system administrators and shall report the level of compliance in the biennial report required by Section 801.203.

(c) The curriculum of the educational training program under this section may include optional training classes for trustees, system administrators, and other employees of public retirement systems.

(d) To the extent practicable, the board shall make training classes reasonably accessible to trustees and system administrators of public retirement systems on an Internet website maintained for that purpose.

(e) The board may adopt rules and appropriate fees to administer and provide educational training programs under this section. The fees set by the board must be reasonable to pay the actual costs incurred by the board to conduct the training classes. The fees must be paid from a source considered appropriate by the governing body of the public retirement system. A public retirement system may provide its own educational training to its trustees and system administrators if the board determines that the system's training meets or exceeds the minimum training requirements established by the board. A trustee or system administrator who participates in that approved educational training fulfills the minimum training requirements established by the board.

## CHAPTER 802. ADMINISTRATIVE REQUIREMENTS

### SUBCHAPTER A. GENERAL PROVISIONS

#### **§802.001. Definitions.**

In this chapter:

(1) "Board" means the State Pension Review Board.

(1-a) "Defined contribution plan" means a plan provided by the governing body of a public retirement system that provides for an individual account for each participant and for benefits based solely on the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants that may be allocated to the participant's account.

(2) "Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.

(3) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, other than:

(A) a program providing only workers' compensation benefits;

(B) a program administered by the federal government;

(C) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986 (26 U.S.C. Sections 408, 409);

(D) a plan described by Section 401(d) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401);

(E) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403);

(F) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457); or

(G) (i) in Sections 802.104 and 802.105 of this chapter, a program for which benefits are administered by a life insurance company; and

(ii) in the rest of this chapter, a program for which the only funding agency is a life insurance company.

(4) "System administrator" means a person designated by the governing body of a public retirement system to supervise the day-to-day affairs of the public retirement system.

#### **§802.002. Exemptions.**

(a) Except as provided by Subsection (b), the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and the Judicial Retirement System of Texas Plan Two are exempt from Sections 802.101(a), 802.101(b), 802.101(d), 802.102, 802.103(a), 802.103(b), 802.2015, 802.2016, 802.202, 802.203, 802.204, 802.205, 802.206, and 802.207. The Judicial Retirement System of Texas Plan One is exempt from all of

Subchapters B and C except Sections 802.104 and 802.105. The optional retirement program governed by Chapter 830 is exempt from all of Subchapters B and C except Section 802.106.

(b) If a public retirement system or program that is exempt under Subsection (a) is required by law to make an actuarial valuation of the assets of the system or program and publish actuarial information about the system or program, the actuary making the valuation and the governing body publishing the information must include the information required by Section 802.101(b).

(c) Notwithstanding any other law, a defined contribution plan 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).

(d) Notwithstanding any other law, a retirement system that is organized under the Texas Local Fire Fighters Retirement Act (Article 6243e, Vernon's Texas Civil Statutes) for a fire department consisting exclusively of volunteers as defined by that Act is exempt from Sections 802.101, 802.1012, 802.1014, 802.102, 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).

### **§802.003. Writ of Mandamus.**

(a) Except as provided by Subsection (b), if the governing body of a public retirement system fails or refuses to comply with a requirement of this chapter that applies to it, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the applicable requirement.

(b) If the governing body of the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, or the Texas County and District Retirement System fails or refuses to comply with a requirement of this chapter that applies to it, any resident of the state may file a pleading in a district court in Travis County to compel the governing body to comply with the applicable requirement.

(c) If the prevailing party in an action under this section is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.

(d) The State Pension Review Board may file an appropriate pleading, in the manner provided by this section for filing by an individual, for the purpose of enforcing a requirement of Subchapter B or C, other than a requirement of Section 802.101(a), 802.101(d), 802.102, 802.103(a), or 802.104.

## **SUBCHAPTER B. STUDIES AND REPORTS**

### **§802.101. Actuarial Valuation.**

(a) The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate

of anticipated experience under the program. The valuation must include a recommended contribution rate needed for the system to achieve and maintain an amortization period that does not exceed 30 years.

(b) On the basis of the valuation, the actuary shall make recommendations to the governing body of the public retirement system to ensure the actuarial soundness of the system. The actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.

(d) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

### **§802.1012. Audits of Actuarial Valuations, Studies, and Reports.**

(a) In this section, "governmental entity" means a unit of government that is the employer of active members of a public retirement system.

(b) Except as provided by Subsection (k), this section applies only to a public retirement system with total assets the book value of which, as of the last day of the preceding fiscal year, is at least \$100 million.

(c) Every five years, the actuarial valuations, studies, and reports of a public retirement system most recently prepared for the retirement system as required by Section 802.101 or other law under this title or under Title 109, Revised Statutes, must be audited by an independent actuary who:

- (1) is engaged for the purpose of the audit by the governmental entity; and
- (2) has the credentials required for an actuary under Section 802.101(d).

(d) Before beginning an audit under this section, the governmental entity and the independent actuary must agree in writing to maintain the confidentiality of any nonpublic information provided by the public retirement system for the audit.

(e) Before beginning an audit under this section, the independent actuary must meet with the manager of the pension fund for the public retirement system to discuss the appropriate assumptions to use in conducting the audit.

(f) Not later than the 30th day after completing the audit under Subsection (c), the independent actuary shall submit to the public retirement system for purposes of discussion and clarification a preliminary draft of the audit report that is substantially complete.

(g) The independent actuary shall:

(1) discuss the preliminary draft of the audit report with the governing body of the public retirement system; and

(2) request in writing that the retirement system, on or before the 30th day after the date of receiving the preliminary draft, submit to the independent actuary any response that the retirement system wants to accompany the final audit report.

(h) The independent actuary shall submit to the governmental entity the final audit report that includes the audit results and any response received from the public

retirement system:

(1) not earlier than the 31st day after the date on which the preliminary draft is submitted to the retirement system; and

(2) not later than the 60th day after the date on which the preliminary draft is submitted to the retirement system.

(i) At the first regularly scheduled open meeting after receiving the final audit report, the governing body of the governmental entity shall:

(1) include on the posted agenda for the meeting the presentation of the audit results;

(2) present the final audit report and any response from the public retirement system; and

(3) provide printed copies of the final audit report and the response from the public retirement system for individuals attending the meeting.

(j) The governmental entity shall:

(1) maintain a copy of the final audit report at its main office for public inspection;

(2) submit a copy of the final audit report to the public retirement system and the State Pension Review Board not later than the 30th day after the date the final audit report is received by the governmental entity; and

(3) pay all costs associated with conducting the audit and preparing and distributing the report under this section.

(k) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

#### **§802.1014. Actuarial Experience Study.**

(a) In this section, "actuarial experience study" means a study in which actuarial assumptions are reviewed in light of relevant experience factors, important trends, and economic projections with the purpose of determining whether actuarial assumptions require adjustment.

(b) Except as provided by Subsection (c), a public retirement system that conducts an actuarial experience study shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study's adoption.

(b-1) Except as provided by Subsection (c), a public retirement system that has assets of at least \$100 million shall conduct once every five years an actuarial experience study and shall submit to the board a copy of the actuarial experience study before the 31st day after the date of the study's adoption.

(c) This section does not apply to the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, or the Judicial Retirement System of Texas Plan Two.

#### **§802.102. Audit.**

The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant in accordance with generally

accepted auditing standards. A general audit of a governmental entity, as defined by Section 802.1012, does not satisfy the requirement of this section.

**§802.1024. Correction of Errors.**

(a) Except as provided by Subsection (b), if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the retirement system may recover the overpayment in any manner that would be permitted for the collection of any other debt.

(a-1) On discovery of an error described by Subsection (a), the public retirement system shall as soon as practicable, but not later than the 90th day after the date of discovery, give written notice of the error to the person receiving an incorrect amount of money. The notice must include:

- (1) the amount of the correction in overpayment or underpayment;
- (2) how the amount of the correction was calculated;
- (3) a brief explanation of the reason for the correction;
- (4) a statement that the notice recipient may file a written complaint with the retirement system if the recipient does not agree with the correction;
- (5) instructions for filing a written complaint; and
- (6) a payment plan option if no future payments are due.

(a-2) Except as provided by this subsection and Section 802.1025, the public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits under Subsection (a) not later than the 90th day after the date the notice required by Subsection (a-1) is delivered by certified mail, return receipt requested. If the system does not receive a signed receipt evidencing delivery of the notice on or before the 30th day after the date the notice is mailed, the system shall mail the notice a second time by certified mail, return receipt requested. Except as provided by Section 802.1025, not later than the 90th day after the date the second notice is mailed, the system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits.

(b) Except as provided by Subsection (c), a public retirement system:

- (1) may correct the overpayment of benefits to a person entitled to receive payments from the system by the method described by Subsection (a) only for an overpayment made during the three years preceding the date the system discovers or discovered the overpayment;
- (2) may not recover from the recipient any overpayment made more than three years before the discovery of the overpayment; and
- (3) may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the time prescribed by Subsection (a-2) or Section 802.1025.

(c) Subsection (b) does not apply to an overpayment a reasonable person should know the person is not entitled to receive.

### **§802.1025. Complaint Procedure.**

(a) Not later than the 20th day after the date of receiving notice under Section 802.1024(a-1) or, if applicable, the second notice under Section 802.1024(a-2), the notice recipient may file a written complaint with the retirement system. The recipient shall include any available supporting documentation with the complaint.

(b) Not later than the 30th day after the date of receiving a complaint under Subsection (a), the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include:

- (1) how the modified correction was calculated;
- (2) a brief explanation of the reason for the modification; and
- (3) a payment plan option if no future payments are due.

(c) Subject to Subsection (d), if a complaint is filed under this section, the retirement system may not adjust future payments or recover an overpayment under Section 802.1024 until:

(1) the 20th day after the date the notice recipient receives the response under Subsection (b), if the recipient does not file an administrative appeal by that date; or

(2) the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the date described by Subdivision (1).

(d) If the retirement system has begun the adjustment of future payments or the recovery of an overpayment under Section 802.1024(a-2), the system shall discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system. The system may not recommence the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as applicable. If a complaint is resolved in favor of the person filing the complaint, not later than the 30th day after the date of the resolution, the system shall pay the person the appropriate amount.

(e) A person whose complaint is not resolved under this section must exhaust all administrative procedures provided by the retirement system. Not later than the 30th day after the date a final administrative decision is issued by the retirement system, a person aggrieved by the decision may appeal the decision to an appropriate district court.

### **§802.103. Annual Financial Report.**

(a) The governing body of a public retirement system shall publish an annual financial report showing the financial condition of the system as of the last day of the fiscal year covered in the report. The report must include:

(1) the financial statements and schedules examined in the most recent audit performed as required by Section 802.102;

(2) a statement of opinion by the certified public accountant as to whether or not the financial statements and schedules are presented fairly and in accordance with generally accepted accounting principles;

(3) a listing, by asset class, of all direct and indirect commissions and fees paid

by the retirement system during the system's previous fiscal year for the sale, purchase or management of system assets; and

(4) the names of investment managers engaged by the retirement system.

(b) The governing body of a public retirement system shall, before the 211th day after the last day of the fiscal year under which the system operates, file with the State Pension Review Board a copy of each annual financial report it makes as required by law.

(c) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1152, Sec. 17, eff. September 1, 2013.

(d) A general audit of a governmental entity, as defined by Section 802.1012, does not satisfy the requirement of this section.

(e) The board may adopt rules necessary to implement this section.

#### **§802.104. Report of Members and Retirees.**

Each public retirement system annually shall, before the 211th day after the last day of the fiscal year under which the system operates, submit to the board a report containing the number of members and number of retirees of the system as of the last day of the immediately preceding fiscal year.

#### **§802.105. Registration.**

(a) Each public retirement system shall, before the 91st day after the date of its creation, register with the State Pension Review Board.

(b) A registration form submitted to the board must include:

(1) the name, mailing address, and telephone number of the public retirement system;

(2) the names and occupations of the chairman and other members of its governing body;

(3) a citation of the law under which the system was created;

(4) the beginning and ending dates of its fiscal year; and

(5) the name of the administrator of the system and the person's business mailing address and telephone number if different from those of the retirement system.

(c) A public retirement system shall notify the board of changes in information required under Subsection (b) before the 31st day after the day the change occurs.

#### **§802.106. Information to Member or Annuitant.**

(a) When a person becomes a member of a public retirement system, the system shall provide the person:

(1) a summary of the benefits from the retirement

system available to or on behalf of a person who retires or dies while a member or retiree of the system;

(2) a summary of procedures for claiming or choosing the benefits available from the retirement system; and

(3) a summary of the provisions for employer and employee contributions, withdrawal of contributions, and eligibility for benefits, including any right to terminate employment and retain eligibility.

(b) A public retirement system shall distribute to each active member and retiree a summary of any significant change that is made in statutes or ordinances governing the

retirement system and that affects contributions, benefits, or eligibility. A distribution must be made before the 271st day after the day the change is adopted.

(c) A public retirement system annually shall provide to each active member a statement of the amounts of the member's accumulated contributions and total accumulated service credit on which benefits may be based and to each annuitant a statement of the amount of payments made to the annuitant by the system during the preceding 12 months.

(d) A public retirement system shall provide to each active member and annuitant a summary of the financial condition of the retirement system, if the actuary of the system determines, based on a computation of advanced funding of actuarial costs, that the financing arrangement of the system is inadequate. The actuarial determination must be disclosed to members and annuitants at the time annual statements are next provided under Subsection (c) after the determination is made. An actuary who makes a determination under this subsection must have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(e) A member not currently contributing to a particular public retirement system is entitled on written request to receive from that system a copy of any document required by this section to be furnished to a member who is actively contributing.

(f) The governing body of a public retirement system composed of participating subdivisions or municipalities may provide one copy of any document it prepares under this section to each affected participating subdivision or municipality. Each participating subdivision or municipality shall distribute the information contained in the document to its employee members and annuitants, as applicable.

(g) Information required by this section may be contained, at the discretion of the public retirement system providing the information, in one or more separate documents. The information must be stated to the greatest extent practicable in terms understandable to a typical member of the public retirement system.

(h) A public retirement system shall submit to the board copies of the summarized information required by Subsections (a) and (b) before the 31st day after the date of publication or the date a change is adopted, as appropriate.

### **§802.107. General Provisions Relating to Reports and Contact Information.**

(a) A public retirement system shall maintain for public review at its main office and at such other locations as the retirement system considers appropriate copies of the most recent edition of each type of report or other information required by this chapter to be submitted to the State Pension Review Board.

(b) Information required by this chapter to be submitted to the State Pension Review Board may be contained in one or more documents but must be submitted within the period provided by the provision requiring the information.

(c) A public retirement system shall post on a publicly available Internet website:

(1) the name, business address, and business telephone number of a system administrator of the public retirement system; and

(2) a copy of the most recent edition of each report and other written information that is required by this chapter or Chapter 801 to be submitted to the board.

(d) A public retirement system that maintains a website or for which a website is maintained shall prominently post a link on that website to the information required by Subsection (c). All other public retirement systems shall:

(1) prominently post the information required by Subsection (c) on a website that is maintained by the governing body of the political subdivision of which members of the public retirement system are officers or employees; or

(2) post the information required by Subsection (c) on a publicly available website that is maintained by a state agency.

(e) A report or other information posted under Subsection (c) must remain posted until replaced with a more recently submitted edition of the report or information.

### **§802.108. Report of Investment Returns and Assumptions.**

(a) A public retirement system shall, before the 211th day after the last day of its fiscal year, submit to the board an investment returns and actuarial assumptions report that includes:

(1) gross investment returns and net investment returns for each of the most recent 10 fiscal years;

(2) the rolling gross and rolling net investment returns for the most recent 1-year, 3-year, and 10-year periods;

(3) the rolling gross and rolling net investment return for the most recent 30-year period or the gross and net investment return since inception of the system, whichever period is shorter;

(4) the assumed rate of return used in the most recent actuarial valuation; and

(5) the assumed rate of return used in each of the most recent 10 actuarial valuations.

(b) For purposes of this section, "net investment return" means the gross investment return minus investment expenses. The net investment return may be calculated as the money-weighted rate of return as required by generally accepted accounting principles. The period basis for each report of investment returns under this section must be the fiscal year of the public retirement system submitting the report.

(c) If any information required to be reported by a public retirement system under Subsection (a) is unavailable, the governing body of the public retirement system shall, before the 211th day after the last day of the public retirement system's fiscal year, submit to the board a letter certifying that the information is unavailable, providing a reason for the unavailability of the information, and agreeing to timely submit the information to the board if it becomes available.

### **§802.1085. Biennial Report on Investment Returns of Certain Public Retirement Systems.**

(a) This section applies only to the:

(1) Employees Retirement System of Texas; and

(2) Teacher Retirement System of Texas.

(b) Not later than December 31 of each even-numbered year, the governing body of a public retirement system shall submit to the governor, the lieutenant governor, and each member of the legislature a report that details and compares the assumed rate of return

and the annualized actual time-weighted rate of return achieved by the system for the most recent 1-year, 5-year, 10-year, and 20-year fiscal periods. The report must include:

(1) for each period, an estimate of what the market value of the invested assets of the fund would have been as of the most recent fiscal year end had the system achieved the applicable assumed rate of return; and

(2) a comparison of each estimate described by Subdivision (1) and the actual market value of the invested assets in the fund as of the most recent fiscal year end.

(c) The report required by this section may be combined with any other report required by law.

### **§802.109. Investment Practices and Performance Report.**

(a) Except as provided by Subsection (e) and subject to Subsections (c) and (k), a public retirement system shall select an independent firm with substantial experience in evaluating institutional investment practices and performance to evaluate the appropriateness, adequacy, and effectiveness of the retirement system's investment practices and performance and to make recommendations for improving the retirement system's investment policies, procedures, and practices. Each evaluation must include:

(1) a summary of the independent firm's experience in evaluating institutional investment practices and performance and a statement that the firm's experience meets the experience required by this subsection;

(2) a statement indicating the nature of any existing relationship between the independent firm and the public retirement system and confirming that the firm and any related entity are not involved in directly or indirectly managing the investments of the system;

(3) a list of the types of remuneration received by the independent firm from sources other than the public retirement system for services provided to the system;

(4) a statement identifying any potential conflict of interest or any appearance of a conflict of interest that could impact the analysis included in the evaluation due to an existing relationship between the independent firm and:

(A) the public retirement system; or

(B) any current or former member of the governing body of the system; and

(5) an explanation of the firm's determination regarding whether to include a recommendation for each of the following evaluated matters:

(A) an analysis of any investment policy or strategic investment plan adopted by the retirement system and the retirement system's compliance with that policy or plan;

(B) a detailed review of the retirement system's investment asset allocation, including:

(i) the process for determining target allocations;

(ii) the expected risk and expected rate of return, categorized by asset class;

(iii) the appropriateness of selection and valuation methodologies of alternative and illiquid assets; and

(iv) future cash flow and liquidity needs;

(C) a review of the appropriateness of investment fees and commissions paid by the retirement system;

(D) a review of the retirement system's governance processes related to investment activities, including investment decision-making processes, delegation of investment authority, and board investment expertise and education; and

(E) a review of the retirement system's investment manager selection and monitoring process.

(b) The governing body of a public retirement system may determine additional specific areas to be evaluated under Subsection (a) and may select particular asset classes on which to focus, but the first evaluation must be a comprehensive analysis of the retirement system's investment program that covers all asset classes.

(c) In selecting an independent firm to conduct the evaluation described by Subsection (a), a public retirement system:

(1) subject to Subdivision (2), may select a firm regardless of whether the firm has an existing relationship with the retirement system; and

(2) may not select a firm that directly or indirectly manages investment s of the retirement system.

(d) In accordance with a schedule of deadlines prescribed by the board and except as provided by Subsection (e), a public retirement system shall conduct an evaluation under Subsection (a):

(1) once every three years, if the total assets of the retirement system as of the date of the preceding evaluation were at least \$100 million; or

(2) subject to Subsection (d-1), once every six years, if the total assets of the retirement system as of the date of the preceding evaluation were at least \$30 million and less than \$100 million.

(d-1) If a public retirement system is conducting evaluations every six years as required by Subsection (d)(2) and the system's total pension liability increases to at least \$100 million during a fiscal year, the system shall complete the next evaluation under Subsection (a) by the next appropriate deadline, as determined by the board, under the evaluation schedule.

(d-2) Subject to Subsection (d-1) and except as provided by Subsection (e), a public retirement system subject to an evaluation requirement under Subsection (d)(1) or (2) remains subject to that same requirement unless both the total assets and the total pension liability of the system decrease to an amount that is below the minimum amount prescribed by the applicable requirement.

(e) A public retirement system is not required to conduct an evaluation under Subsection (a) if the total assets of the retirement system were less than \$30 million as of the last day of the fiscal year immediately preceding the next evaluation deadline under the evaluation schedule.

(e-1) An independent firm that completes an evaluation described by Subsection (a) shall:

(1) submit to the public retirement system for purposes of discussion and clarification a substantially completed draft of the evaluation report; and

(2) request in writing that the system submit to the firm:

(A) a description of any action taken or expected to be taken in

response to a recommendation made in the evaluation; and

(B) any written response of the system that the system wants to accompany the final evaluation report.

(f) The independent firm shall file the final evaluation report, including the evaluation results and any response received from the public retirement system, with the governing body of the system.

(g) The governing body of a public retirement system that receives a report of an evaluation under this section shall submit the report to the board.

(h) A governmental entity that is the employer of active members of a public retirement system evaluated under Subsection (a) may pay all or part of the costs of the evaluation. The public retirement system shall pay any remaining unpaid costs of the evaluation.

(i) The board shall submit an investment performance report to the governor, the lieutenant governor, the speaker of the house of representatives, and the legislative committees having principal jurisdiction over legislation governing public retirement systems in the biennial report required by Section 801.203. The report must compile and summarize the information received under this section by the board during the preceding two fiscal years.

(j) In this section:

(1) "Evaluation schedule" means the schedule of deadlines prescribed by the board under Subsection (d).

(2) "Total pension liability" means the portion of the present value of projected retirement benefit payments to be provided through the retirement system to active and inactive members that is attributable to those members' past periods of service, in compliance with Statement No. 68 of the Governmental Accounting Standards Board.

(k) The following reports may be used by the applicable public retirement systems to satisfy the retirement for a report of an evaluation under this section:

(1) an investment report under Section 10A, Article 6243g-4, Revised Statutes;

(2) an investment report under Section 2D, Chapter 88 (H.B. 1573), Acts of the 77th Legislature, Regular Session, 2001 (Article 6243h, Vernon's Texas Civil Statutes); and

(3) a report on a review conducted on the retirement system's investments under Section 2B, Article 6243e.2(1), Revised Statutes.

(l) The board may adopt rules necessary to implement this section.

## SUBCHAPTER C. ADMINISTRATION OF ASSETS

### **§802.201. Assets in Trust.**

The governing body of a public retirement system shall hold or cause to be held in trust the assets appropriated or dedicated to the system, for the benefit of the members and retirees of the system and their beneficiaries.

### **§802.2011. Funding Policy.**

(a) In this section:

(1) "Funded ratio" means the ratio of a public retirement system's actuarial value of assets divided by the system's actuarial accrued liability.

(2) "Governmental entity" has the meaning assigned by Section 802.1012.

(3) "Statewide retirement system" means:

- (A) the Employees Retirement System of Texas, including a retirement system administered by that system;
- (B) the Teacher Retirement System of Texas;
- (C) the Texas County and District Retirement System;
- (D) the Texas Emergency Services Retirement System; and
- (E) the Texas Municipal Retirement System.

(b) The governing body of a public retirement system and, if the system is not a statewide retirement system, its associated governmental entity shall:

(1) jointly, if applicable:

(A) develop and adopt a written funding policy that details a plan for achieving a funded ratio of the system that is equal to or greater than 100 percent; and

(B) timely revise the policy to reflect any significant changes to the policy, including changes required as a result of formulating and implementing a funding soundness restoration plan, including a revised funding soundness restoration plan, under Section 802.2015 or 802.2016;

(2) maintain for public review at its main office a copy of the policy;

(3) file a copy of the policy and each change to the policy with the board not later than the 31st day after the date the policy or change, as applicable, is adopted; and

(4) post a copy of the most recent edition of the policy on a publicly available Internet website in accordance with Section 802.107(c)(2).

(c) For purposes of Subsection (b)(1)(B), the written funding policy must outline any automatic contribution or benefit changes designed to prevent having to formulate a revised funding soundness restoration plan under Section 802.2015(d), including any automatic risk-sharing mechanisms that have been implemented, the adoption of an actuarially determined contribution structure, and other adjustable benefit or contribution mechanisms.

(d) The board may adopt rules necessary to implement this section.

### **§802.2015. Funding Soundness Restoration Plan.**

(a) In this section:

(1) "Funded ratio" has the meaning assigned by Section 802.2011.

(2) "Governmental entity" has the meaning assigned by Section 802.1012.

(b) This section applies to a public retirement system and its associated governmental entity other than a public retirement system and its associated governmental entity subject to Section 802.2016.

(c) A public retirement system shall notify the associated governmental entity in writing if the system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 30 years. The governing body of the public retirement system and the governing body of the associated governmental entity shall jointly formulate a funding soundness restoration plan under Subsection (e) if the system's actuarial valuation shows that the system's expected funding period:

(1) has exceeded 30 years for three consecutive annual actuarial valuations, or

two consecutive annual actuarial valuations in the case of a system that conducts the valuations every two or three years; or

(2) effective September 1, 2025:

(A) exceeds 40 years; or

(B) exceeds 30 years and the funded ratio of the system is less than

65 percent.

(d) Except as provided by Subsection (d-1), the governing body of a public retirement system and the governing body of the associated governmental entity that have an existing funding soundness restoration plan under Subsection (e) shall formulate a revised funding soundness restoration plan under Subsection (e-1) if the system becomes subject to Subsection (c) before the 10th anniversary of the date prescribed by Subsection (e)(2)(A) or (B), as applicable.

(d-1) The governing body of a public retirement system and the governing body of the associated governmental entity are not subject to Subsection (d) if:

(1) the system's actuarial valuation shows that the system's expected funding period exceeds 30 years but is less than or equal to 40 years; and

(2) the system is:

(A) adhering to an existing funding soundness restoration plan that was formulated before September 1, 2025; or

(B) implementing a contribution rate structure that uses or will ultimately use an actuarially determined contribution structure and the system's actuarial valuation shows that the system is expected to achieve full funding.

(e) A funding soundness restoration plan formulated under this section must:

(1) be developed by the public retirement system and the associated governmental entity in accordance with the system's governing statute;

(2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 30 years not later than the later of:

(A) the second anniversary of the valuation date stated in the actuarial valuation that required formulation of the plan under this subsection; or

(B) September 1, 2025;

(3) be based on actions agreed to be taken by the system and entity that were approved by the respective governing bodies of both the system and the entity before the plan was adopted; and

(4) be adopted at open meetings of the respective governing bodies of the system and the entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.

(e-1) A revised funding soundness restoration plan formulated under this section must:

(1) be developed by the public retirement system and the associated governmental entity in accordance with the system's governing statute;

(2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 25 years not later than the second anniversary of the valuation date stated in the actuarial valuation that required formulation of a revised plan under this subsection;

(3) be based on actions, including automatic risk-sharing mechanisms, an actuarially determined contribution structure, and other adjustable benefit or contribution mechanisms, agreed to be taken by the system and entity that were approved by the respective governing bodies of both the system and the entity before the plan was adopted; and

(4) be adopted at open meetings by the respective governing bodies of the system and the entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.

(e-2) Not later than the 90th day after the date on which the plan is adopted by both the governing body of the system and the governing body of the associated governmental entity, a system may submit to the board an actuarial valuation required under Section 802.101(a) or other law that shows the combined impact of all changes to a funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1). If a system does not provide an actuarial valuation to the board in accordance with this subsection, the board may request that the system provide a separate analysis of the combined impact of all changes to a funding soundness restoration plan adopted under this section not later than the 90th day after the date the board makes the request. An actuarial valuation or separate analysis conducted under this subsection must include:

(1) an actuarial projection of the public retirement system's expected future assets and liabilities between the valuation date described by Subsection (e)(2)(A) or (e-1)(2), as applicable, and the date at which the plan is expected to achieve full funding; and

(2) a description of all assumptions and methods used to perform the analysis which must comply with actuarial standards of practice.

(e-3) The associated governmental entity may pay all or part of the costs of the separate analysis required under Subsection (e-2). The public retirement system shall pay any costs for the analysis not paid by the associated governmental entity.

(e-4) A funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1), may not include actions that are subject to future approval by the governing bodies of either the public retirement system or the associated governmental entity.

(f) A public retirement system and the associated governmental entity required to formulate a funding soundness restoration plan under this section, including a revised funding soundness restoration plan, shall provide a report to the board on progress made by the system and entity in formulating the plan, including a draft of any plan and a description of any changes under consideration for inclusion in a plan, not later than the first anniversary of the date of the actuarial valuation that required formulation of the plan under Subsection (e) or (e-1) and each subsequent six-month period until the plan is submitted to the board under this section.

(g) Each public retirement system that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan is adopted by both the governing body of the system and the governing body of the associated governmental entity or the date the change is agreed to.

(h) The board may adopt rules necessary to implement this section.

**§802.2016. Funding Soundness Restoration Plan for Certain Public Retirement Systems.**

(a) In this section:

(1) "Funded ratio" has the meaning assigned by Section 802.2011.

(2) "Governmental entity" has the meaning assigned by Section 802.1012.

(b) This section applies only to a public retirement system that is governed by Article 6243i, Revised Statutes, and its associated governmental entity.

(c) A public retirement system shall notify the associated governmental entity in writing if the system receives an actuarial valuation indicating that the system's actual contributions are not sufficient to amortize the unfunded actuarial accrued liability within 30 years. The governing body of the associated governmental entity shall formulate a funding soundness restoration plan under Subsection (e) if the system's actuarial valuation shows that the system's expected funding period:

(1) has exceeded 30 years for three consecutive annual actuarial valuations, or two consecutive annual actuarial valuations in the case of a system that conducts the valuations every two or three years; or

(2) effective September 1, 2025:

(A) exceeds 40 years; or

(B) exceeds 30 years and the funded ratio of the system is less than

65 percent.

(d) Except as provided by Subsection (d-1), the governing body of an associated governmental entity that has an existing funding soundness restoration plan under Subsection (e) shall formulate a revised funding soundness restoration plan under Subsection (e-1) if the system becomes subject to Subsection (c) before the 10th anniversary of the date prescribed by Subsection (e)(2)(A) or (B), as applicable.

(d-1) The associated governmental entity is not subject to Subsection (d) if:

(1) the system's actuarial valuation shows that the system's expected funding period exceeds 30 years but is less than or equal to 40 years; and

(2) the system is:

(A) adhering to an existing funding soundness restoration plan that was formulated before September 1, 2025; or

(B) implementing a contribution rate structure that uses or will ultimately use an actuarially determined contribution structure and the system's actuarial valuation shows that the system is expected to achieve full funding.

(e) A funding soundness restoration plan formulated under this section must:

(1) be developed in accordance with the public retirement system's governing statute by the associated governmental entity;

(2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 30 years not later than the later of:

(A) the second anniversary of the valuation date stated in the actuarial valuation that required formulation of the plan under this subsection; or

(B) September 1, 2025;

(3) be based on actions, including automatic risk-sharing mechanisms, an actuarially determined contribution structure, and other adjustable benefit or contribution mechanisms, agreed to be taken by the system and entity that were approved by the governing body of the associated governmental entity before the plan was adopted; and

(4) be adopted at an open meeting of the governing body of the associated governmental entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.

(e-1) A revised funding soundness restoration plan formulated under this section must:

(1) be developed by the associated governmental entity in accordance with the system's governing statute;

(2) be designed to achieve a contribution rate that will be sufficient to amortize the unfunded actuarial accrued liability within 25 years not later than the second anniversary of the valuation date stated in the actuarial valuation that required formulation of a revised plan under this subsection;

(3) be based on actions agreed to be taken by the system and entity that were approved by the governing body of the associated governmental entity before the plan was adopted; and

(4) be adopted at an open meeting of the governing body of the associated governmental entity not later than the second anniversary of the date the actuarial valuation that required application of this subsection was adopted by the governing body of the system.

(e-2) Not later than the 90th day after the date on which the plan is adopted by the governing body of the associated governmental entity, a system may submit to the board an actuarial valuation required under Section 802.101(a) or other law that shows the combined impact of all changes to a funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1). If a system does not provide an actuarial valuation to the board in accordance with this subsection, the board may request that the system provide a separate analysis of the combined impact of all changes to a funding soundness restoration plan adopted under this section not later than the 90th day after the date the board makes the request. An actuarial valuation or the separate analysis conducted under this subsection must include:

(1) an actuarial projection of the public retirement system's expected future assets and liabilities between the valuation date described by Subsection (e)(2)(A) or (e-1)(2), as applicable, and the date at which the plan is expected to achieve full funding; and

(2) a description of all assumptions and methods used to perform the analysis which must comply with actuarial standards of practice.

(e-3) The associated governmental entity may pay all or part of the costs of the separate analysis required under Subsection (e-2). The public retirement system shall pay any costs for the analysis not paid by the associated governmental entity.

(e-4) A funding soundness restoration plan adopted under this section, including a revised funding soundness restoration plan adopted under Subsection (e-1), may not include

actions that are subject to future approval by the governing body of the associated governmental entity.

(f) An associated governmental entity required to formulate a funding soundness restoration plan under this section, including a revised funding soundness restoration plan, shall provide a report to the board on progress made by the associated governmental entity in formulating the plan, including a draft of any plan and a description of any changes under consideration for inclusion in a plan, not later than the first anniversary of the date of the actuarial valuation that required formulation of the plan under Subsection (e) or (e-1) and each subsequent six-month period until the plan is submitted to the board under this section.

(g) An associated governmental entity that formulates a funding soundness restoration plan as provided by this section shall submit a copy of that plan to the board and any change to the plan not later than the 31st day after the date on which the plan is adopted by the governing body of the associated governmental entity or the date the change is formulated.

(h) The board may adopt rules necessary to implement this section.

### **§802.202. Investment of Surplus.**

(a) The governing body of a public retirement system is responsible for the management and administration of the funds of the system.

(b) When, in the opinion of the governing body, a surplus of funds exists in accounts of a public retirement system over the amount needed to make payments as they become due within the next year, the governing body shall deposit all or as much of the surplus as the governing body considers prudent in a reserve fund for investment.

(c) The governing body shall determine the procedure it finds most efficient and beneficial for the management of the reserve fund of the system. The governing body may directly manage the investments of the system or may choose and contract for professional investment management services.

(d) The governing body of a public retirement system shall:

(1) develop and adopt a written investment policy;

(2) maintain for public review at its main office a copy of the policy;

(3) file a copy of the policy with the State Pension Review Board not later than the 90th day after the date the policy is adopted; and

(4) file a copy of each change to the policy with the State Pension Review Board not later than the 90th day after the change is adopted.

### **§802.203. Fiduciary Responsibility.**

(a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:

(1) for the exclusive purposes of:

(A) providing benefits to participants and their beneficiaries; and

(B) defraying reasonable expenses of administering the system;

(2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of

the type would use in the conduct of an enterprise with a like character and like aims;

(3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

(4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

(b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the interest of the participants and beneficiaries of the public retirement system.

(c) A trustee is not liable for the acts or omissions of an investment manager appointed under Section 802.204, nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(d) An investment manager appointed under Section 802.204 shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.

(e) The investment standards provided by Subsection (a) and the policies, requirements, and restrictions adopted under Section 802.204(c) are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

#### **§802.204. Investment Manager.**

(a) The governing body of a public retirement system may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under this section, an investment manager must be:

(1) registered under the Investment Advisors Act of 1940 (15 U.S.C. Section 80b-1 et seq.);

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the governing body shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the governing body adopts for investments of the system.

(d) A political subdivision of which members of the public retirement system are officers or employees may pay all or part of the cost of professional investment management services under a contract under this section. Any cost not paid directly by a political

subdivision is payable from funds of the public retirement system.

**§802.205. Investment Custody Account.**

(a) If the governing body of a public retirement system contracts for professional investment management services, it also shall enter into an investment custody account agreement designating a bank, depository trust company, or brokerage firm to serve as custodian for all assets allocated to or generated under the contract.

(b) Under a custody account agreement, the governing body of a public retirement system shall require the designated custodian to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.

(c) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of custodial services under a custody account agreement under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

(d) If the governing body enters into a contract under Subsection (a) with a brokerage firm, the firm must:

- (1) be a broker-dealer registered with the Securities and Exchange Commission;
- (2) be a member of a national securities exchange;
- (3) be a member of the Securities Investor Protection Corporation;
- (4) be registered with the State Securities Board; and
- (5) maintain net regulatory capital of at least \$200 million.

(e) A brokerage firm contracted with for custodial services under this section may not have discretionary authority over the retirement system's assets in the firm's custody.

(f) A brokerage firm that provides custodial services under Subsection (a) must provide insurance against errors, omissions, mysterious disappearance, or fraud in an amount equal to the amount of the assets the firm holds in custody.

(g) A brokerage firm that provides consulting advice, custody of assets, or other services to a public retirement system under this chapter shall discharge its duties solely in the interest of the public retirement system in accordance with Section 802.203.

**§802.206. Evaluation of Investment Services.**

(a) The governing body of a public retirement system may at any time and shall at frequent intervals monitor the investments made by any investment manager for the system. The governing body may contract for professional evaluation services to fulfill this requirement.

(b) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of professional evaluation services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

**§802.207. Custody and Use of Funds.**

(a) An investment manager other than a bank having a contract with a public retirement system under Section 802.204 may not be a custodian of any assets of the reserve fund

of the system.

(b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the system and for other uses authorized by this subchapter and approved by the governing body.

#### SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

##### **§802.301. Actuarial Impact Statements.**

(a) Except as provided by Subsection (g), a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is required to have attached to it an actuarial impact statement as provided by this section.

(b) An actuarial impact statement required by this section must:

(1) summarize the actuarial analysis prepared under Section 802.302 for the bill or resolution accompanying the actuarial impact statement;

(2) identify and comment on the reasonableness of each actuarial assumption used in the actuarial analysis under Subdivision (1); and

(3) include other information determined necessary by board rule.

(c) The board is primarily responsible for preparing a required actuarial impact statement under this section.

(d) A required actuarial impact statement must be attached to the bill or resolution:

(1) before a committee hearing on the bill or resolution is held; and

(2) at the time it is reported from a legislative committee of either house for consideration by the full membership of a house of the legislature.

(e) An actuarial impact statement must remain with the bill or resolution to which it is attached throughout the legislative process, including the process of submission to the governor.

(f) A bill or resolution for which an actuarial impact statement is required is exempt from the requirement of a fiscal note as provided by Chapter 314.

(g) An actuarial impact statement is not required for a bill or resolution that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.

(h) The Board shall provide to the Legislative Budget Board a copy of any actuarial impact statement required under this section.

##### **§802.302. Preparation of Actuarial Analysis.**

(a) The board shall request a public retirement system affected by a bill or resolution as described by Section 802.301(a) to provide the board with an actuarial analysis.

(b) An actuarial analysis required by this section must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(c) A public retirement system that receives a request under Subsection (a) must provide the board with an actuarial analysis on or before the 21st day after the date of the

request, if the request relates to a bill or resolution introduced for consideration during a regular legislative session.

(d) The board shall adopt deadlines for the provision under this section of an actuarial analysis that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.

(e) The board may prepare an actuarial analysis for a public retirement system that receives a request under Subsection (a) and does not provide the board with an actuarial analysis within the required period under Subsection (c) or (d).

(f) The public retirement system may reimburse the board's costs incurred in preparing an actuarial analysis under Subsection (e).

(g) For each actuarial analysis that a public retirement system prepares, the board shall have a second actuary:

(1) review the actuarial analysis accompanying the bill or resolution; and

(2) comment on the reasonableness of each actuarial assumption used in the public retirement system's actuarial analysis.

(h) Even if a public retirement system prepares an actuarial analysis under Subsection (c) or (d), the board may have a second actuary prepare a separate actuarial analysis.

(i) A public retirement system is not prohibited from providing to the legislature any actuarial analysis or information that the system determines necessary or proper.

#### **§802.3021. State Pension Review Board Actuary.**

An actuary who reviews or prepares an actuarial analysis for the board must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

#### **§802.303. Contents of Actuarial Analysis.**

(a) An actuarial analysis must show the economic effect of the bill or resolution on the public retirement system affected, including a projection of the annual cost to the system of implementing the legislation for at least 10 years. If the bill or resolution applies to more than one public retirement system, the cost estimates in the analysis may be limited to each affected state-financed public retirement system and each affected public retirement system in a city having a population of 200,000 or more.

(b) An actuarial analysis must include a statement of the actuarial assumptions and methods of computation used in the analysis and a statement of whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound.

(c) The projection of the effect of the bill or resolution on the actuarial soundness of the system must be based on a computation of advanced funding of actuarial costs.

#### **§802.304. Cost of Actuarial Analysis.**

The state may not pay the cost of a required actuarial analysis that is prepared for a public retirement system not financed by the state, except that a sponsor of the bill or resolution for which the analysis is prepared may pay the cost of preparation out of funds available

for the sponsor's personal or office expenses.

**§802.305. Reports, Analyses, and Actuarial Impact Statements for Certain Bills and Resolutions.**

(a) The board may request a state-financed public retirement system to provide the board with:

(1) a report listing and totaling the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during the current legislative session and that affect the state-financed public retirement system; or

(2) an analysis of the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during the current legislative session and that affect the state-financed public retirement system, assuming that each bill and resolution becomes law.

(b) A state-financed public retirement system that receives a request under Subsection (a) must provide the board with the requested report or analysis on or before the 21st day after the date of the request, if the request is made during a regular legislative session. If the state-financed public retirement system does not provide the board with the requested report or analysis within the 21-day period, the board may prepare the requested report or analysis.

(c) If the board prepares a requested report or analysis under Subsection (b), the state-financed public retirement system may reimburse the board's costs incurred in preparing the requested report or analysis.

(d) Even if a public retirement system prepares a required report or analysis under Subsection (b), the board may have a second actuary prepare a separate report or analysis.

(e) On or before the 70th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement listing and totaling for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been presented in public hearings in either house of the legislature during that legislative session and that affect that state-financed public retirement system.

(f) On or before the 30th day before the last possible day of each regular session of the legislature, the board shall provide the presiding officer of the committee responsible for retirement legislation in each house of the legislature an actuarial impact statement analyzing for each state-financed public retirement system the actuarial effect of all public retirement bills and resolutions that have been passed by at least one house of the legislature during that legislative session and that affect that state-financed public retirement system, assuming that each of the bills and resolutions becomes law.

(g) The board also shall provide the statements required by Subsections (e) and (f) during a called legislative session.

(h) The board shall adopt deadlines for the provision under this section of a report, analysis, or actuarial impact statement that relates to a bill or resolution introduced for consideration during a called legislative session. The deadlines must be designed to provide the most complete information practicable in a timely manner.

(i) In this section:

(1) "Public retirement bill or resolution" means a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a state-financed public retirement system or that proposes to change a fund liability of a state-financed public retirement system.

(2) "State-financed public retirement system" means the Employees Retirement System of Texas, including the law enforcement and custodial officer supplemental retirement fund, or the Teacher Retirement System of Texas.

## **CHAPTER 803. PROPORTIONATE RETIREMENT PROGRAM**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§803.001. Definitions.**

In this chapter:

(1) "Combined service credit" means the total of a person's service credit in only those retirement systems to which this chapter applies for which the total satisfies the length-of-service requirements for service retirement at the person's attained age, and does not include:

(A) any service credit in a retirement system for which the total of a person's service credit does not satisfy the length-of-service requirements for service retirement at the person's attained age; or

(B) service credit earned with or allowed by a subdivision or municipality not participating in the program provided by this chapter or, as applicable, a subdivision or municipality whose participation is limited as provided by Section 803.103.

(2) "Service credit" means service that is in a person's account in a retirement system to which this chapter applies and that may be used to meet length-of-service requirements for service retirement in that system.

(3) Repealed by Acts 1991, 72nd Leg., Ch. 131, Sec. 9, eff. Sept. 1, 1991.

#### **§803.002. Purpose of Chapter.**

The purpose of this chapter is to implement the authority granted the legislature by Article XVI, Section 67, of the Texas Constitution to provide a program of proportionate benefits to qualified members of more than one retirement system to which this chapter applies. It is contrary to the purpose of this chapter for a person or class of persons to receive, because of service in more than one retirement system to which this chapter applies, proportionately greater benefits from a particular system than a person who has rendered faithful career service under that one system.

#### **§803.0021. Application of Chapter.**

This chapter applies only to:

(1) a retirement system for general municipal employees in a municipality with a population of not less than 950,000 nor more than 1,050,000;

(2) the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Texas County and District Retirement System, and the Texas Municipal Retirement System; and

(3) a retirement system that makes an election under Section 803.101(f).

#### **§803.003. Construction of Chapter.**

(a) The provisions of this chapter are exceptions to the other laws governing retirement systems to which this chapter applies and prevail over those laws to the extent of explicit conflict, but this chapter must be construed strictly as against those laws.

(b) Notwithstanding any other law, a person who is involuntarily transferred to a position included in the coverage of a retirement system governed by Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), from a position included in a retirement system operated by a municipality that does not

participate in a statewide retirement system governed by Chapter 101, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 6243b, Vernon's Texas Civil Statutes), may make an irrevocable election at the time of the transfer to continue membership in the municipal retirement system. An involuntary transfer is determined by the employment rules that apply to the person immediately before the time of the involuntary transfer.

## SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP

### **§803.101. Participation by Retirement Systems.**

(a) Except as provided by Subsections (b) and (f), each retirement system to which this chapter applies is required to participate in the program of proportionate retirement benefits provided by this chapter.

(b) A subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System is not required to participate in the proportionate retirement program if the subdivision or municipality elected not to participate under the authority of former law and has not revoked the election under Subsection (c).

(c) A subdivision or municipality that elected not to participate in the proportionate retirement program may revoke the election and elect to participate. An election to participate may be made by vote of the governing body of the subdivision or municipality in the manner required for official actions of the governing body. The governing body shall send notice of an election to participate to the board of trustees of the retirement system in which the subdivision or municipality participates.

(d) The effective date of participation in the proportionate retirement program by a subdivision or municipality electing to participate under Subsection (c) is the first day of the month after the month in which the appropriate board of trustees receives notice of an election.

(e) Participation in the proportionate retirement program includes all persons who are members of a retirement system to which this chapter applies and, in the case of members of the Texas County and District Retirement System or the Texas Municipal Retirement System, who are also employees or former employees of a subdivision or municipality participating in the proportionate retirement program.

(f) The governing body of a public retirement system in this state for municipal employees that is a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401) may elect to participate in the proportionate retirement program by adopting a resolution to that effect. A resolution may not be adopted under this subsection without the approval of the governing body of the municipality that finances the retirement system. The governing body of the retirement system shall notify all other participating retirement systems of the election. The effective date of participation in the proportionate retirement program by a retirement system for which an election is made under this subsection is the first day of the third month after the month in which notice is given under this subsection. An election under this subsection does not require the approval of the participants in the public retirement system making the election.

(g) The governing body of a municipality described by Section 803.0021(1) that finances a public retirement system for police officers or firefighters may not approve the retirement system's election under Subsection (f) to participate in the proportionate

retirement program unless an actuary acting on behalf of the municipality reviews the initial cost to the municipality of making the election.

(h) If the governing body of a public retirement system under Subsection (g) adopts a resolution to participate in the proportionate retirement program, the governing body of the municipality that finances the retirement system shall appropriate and pay to the retirement system, at the same time the municipality makes the municipality's monthly contribution to the retirement system, the additional amount necessary, as determined by the retirement system's actuary, to fund the additional liabilities incurred by the retirement system as a result of participating in the proportionate retirement program.

### **§803.102. Retirement System Membership.**

(a) Membership in a retirement system to which this chapter applies does not terminate because of absence from service covered by that system during a period for which the member earns service credit in another retirement system to which this chapter applies for service performed for an employer other than a subdivision or municipality not participating in the program provided by this chapter.

(b) A person may continue membership in a retirement system to which this chapter applies while absent from service with all retirement systems to which this chapter applies if the person would be eligible, under the laws governing that system, to continue membership if the person's combined service credit had been earned in that system.

(c) In this section, a person's absence from service begins on the day after the last day of service covered by any retirement system to which this chapter applies.

### **§803.103. Limitation of Participation by Retirement Systems.**

(a) Participation in the proportionate retirement program by a subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System does not include:

(1) participation with a retirement system described by Section 803.0021(1) if the subdivision or municipality has elected to so limit its participation and has not revoked the election under Subsection (b); or

(2) participation with a retirement system described by Section 803.0021(3).

(b) A subdivision or municipality that has elected to limit its participation in the proportionate retirement program may revoke the election and remove the limitation on participation. An election under this subsection may be made by vote of the governing body of the subdivision or municipality in the manner required for official actions of the governing body. The governing body shall send notice of an election under this subsection to the board of trustees of the retirement system in which the subdivision or municipality participates.

(c) The effective date of a removal of a limitation on participation in the proportionate retirement program by a subdivision or municipality electing under Subsection (b) is the first day of the month after the month in which the appropriate board of trustees receives notice of the election.

## SUBCHAPTER C. CREDITABLE SERVICE

### **§803.201. Retirement Eligibility Based on Combined Service Credit.**

(a) A person who has membership in two or more retirement systems to which this chapter applies is subject to the laws governing each of those systems for determination of the person's eligibility for service retirement benefits from each system, except that, for the purpose of determining whether a person meets the length-of-service requirements for service retirement of a system, the person's combined service credit must be considered as if it were all credited in each system.

(b) A person's combined service credit is useable only in determining eligibility for service retirement benefits and may not be used in determining:

(1) eligibility for disability retirement benefits, death benefits, or any type of benefit other than service retirement benefits; nor

(2) the amount of any type of benefit.

(c) A person receiving service retirement or lifetime disability retirement benefits from one or more retirement systems to which this chapter applies may use the program provided by this chapter to qualify for subsequent service retirement under another retirement system to which this chapter applies in which the person has service credit, if the person was not eligible to retire under the latter system at the time of previous service retirement, or qualification for lifetime disability retirement benefits from a retirement system to which this chapter applies, or if the person's previous retirement was not based on combined service credit.

(d) Service credit earned with or allowed by more than one retirement system to which this chapter applies for the same service may be counted only once in determining the amount of a person's combined service credit.

### **§803.202. Service in Certain Retirement Systems.**

(a) The board of trustees of the Employees Retirement System of Texas by rule may:

(1) consider the classes of service in the Employees Retirement System of Texas as if they were, for purposes of this chapter, classes in separate statewide retirement systems; or

(2) permit a person who is retiring exclusively from retirement systems administered by the board to use the shortest length-of-service requirement provided for retirement in any class in which the person has service credit.

(b) A member of a retirement system administered by the board of trustees of the Employees Retirement System of Texas may reestablish service credit previously canceled in another retirement system administered by the board if the member holds a position included in the system of which the person is a member and has held the position for at least 12 months. The method of reestablishment and the amount to be deposited are as provided by the applicable law providing for reestablishment of service credit generally in the particular retirement system.

(c) A member of the Employees Retirement System of Texas who is subject to Chapter 820 is eligible to participate in the program provided by this chapter.

(d) A member of the Judicial Retirement System of Texas Plan Two who is subject to Chapter 840A is eligible to participate in the program provided by this chapter.

### **§803.203. Reestablishment of Service Credit by Former Member.**

(a) Except as provided by Subsection (g), a person who is a member of a retirement system participating in the program provided by this chapter may reestablish service credit, including prior service credit if applicable, previously canceled in another retirement system that is participating in the program provided by this chapter if the person:

(1) is not a current member of the system under which the service was performed;

(2) in the case of the Texas County and District Retirement System, does not have an open account with the subdivision for which the person performed the service for which the credit is sought; or

(3) in the case of an employee to whom Section 803.204 applies, does not have an open account with the employing hospital district, charitable organization, or administrative agency, as applicable, for which the person performed the service for which the credit is sought.

(b) A person may apply to reestablish service credit under this section by filing an application with the retirement system in which the service was originally credited and a certification that the applicant is currently a member of the certifying system.

(c) Except as provided by Subsection (f), the retirement system in which the service credit was originally credited shall grant the service credit after receiving an application and a certification required by Subsection (b) and:

(1) to reestablish service credit other than in the Texas County and District Retirement System, the Texas Municipal Retirement System, or the retirement system in which a hospital district, charitable organization, or administrative agency described by Section 803.204 participates, a contribution in the amount generally required to reestablish service credit in the system, including any applicable interest and membership fees;

(2) to reestablish service credit in the Texas County and District Retirement System, the Texas Municipal Retirement System, or the retirement system in which a hospital district, charitable organization, or administrative agency described by Section 803.204 participates, a statement that the applicant does not wish to make a contribution for the service credit; or

(3) at the applicant's option, to reestablish current service credit in the Texas County and District Retirement System, the actuarial present value of the additional standard service benefits that would be attributable to the credit based on rates and tables recommended by the actuary and adopted by the board of trustees of the system.

(d) A subdivision participating in the Texas County and District Retirement System under Subchapter H, Chapter 844, or a municipality participating in the Texas Municipal Retirement System may make a one-time election to authorize the reestablishment of service credit under this section by payment by an applicant of a contribution in the amount provided by Section 843.003 or 853.003, as applicable, for reestablishment of service credit generally in the particular system. If a subdivision or municipality makes an election under this subsection, the applicant has the choice of reestablishing service credit under Subsection (c)(2), (c)(3), if applicable, or this subsection.

(e) Service credit in the Texas County and District Retirement System, the Texas Municipal Retirement System, or the retirement system in which a hospital district, charitable organization, or administrative agency described by Section 803.204

participates that is reestablished under Subsection (c)(2) may be used only to meet eligibility requirements for benefits. Service credit reestablished in the Texas County and District Retirement System or the Texas Municipal Retirement System under Subsection (c)(3) or (d) has the same value as service credit performed for the particular subdivision or municipality at the time of deposit. The credit is creditable to the member's and employer's accounts in each subdivision or municipality for which the service was performed.

(f) To reestablish service credit in a public retirement system for municipal employees that has elected under Section 803.101(f) to participate in the program provided by this chapter, a person must pay the actuarial present value, as determined by the appropriate system, of the additional standard service retirement benefits that would be attributable to the credit. A person who is a member only of a system that has made an election under Section 803.101(f) must pay the actuarial present value, as determined by the appropriate system, of the additional standard service retirement benefits that would be attributable to the service credit to be reestablished in any other public retirement system participating in the program provided by this chapter.

(g) Service credit may not be reestablished under this section:

(1) if it is subject to Section 805.002(e); or

(2) in a subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System if the person who seeks to reestablish the credit is a member only of a retirement system that the subdivision or municipality excludes from participation in the proportionate retirement program under Section 803.103.

(h) This section applies to an employee described by Section 803.204 on the date the federal government establishes as the effective date of the transfer of federally qualified health center status from a municipality described by Section 803.0021(1) to a hospital district, charitable organization, or administrative agency described by Section 803.204.

### **§803.204. Combined Service Credit in Certain Systems.**

(a) This section applies only to an employee who:

(1) is a member of a municipal retirement system described by Section 803.0021(1);

(2) is employed by a hospital district, a charitable organization supervised, overseen, and effectively controlled by the hospital district, or an administrative agency created under Section 791.013, either before or after being employed by the employing municipality located in the same county as the hospital district, charitable organization, or administrative agency; and

(3) participates in a public retirement system:

(A) that is determined to be a qualified plan under Section 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401(a)), of a hospital district, charitable organization, or administrative agency that is determined to be a governmental unit, or an agency or an instrumentality of a governmental unit; and

(B) that records and reports service credit as defined by Section 803.001.

(b) Any service credit earned by an employee described by Subsection (a) with a retirement system established by the hospital district, charitable organization, or

administrative agency will be combined under Section 803.201 to determine whether the employee meets the length-of-service requirements for service retirement under the municipal retirement system.

(c) On retirement, an employee described by Subsection (a) will receive a benefit from the municipal retirement system as determined by Subchapter D, and if the hospital district or administrative agency has established or participates in a retirement program or the charitable organization has a retirement plan, will receive a benefit from the hospital district, administrative agency, or charitable organization as determined by the terms of the district's, agency's, or organization's retirement plan.

(d) For purposes of this section, a charitable organization supervised, overseen, and effectively controlled by a hospital district or an administrative agency created under Section 791.013 is an agency or instrumentality of a governmental unit.

#### SUBCHAPTER D. BENEFITS

##### **§803.301. Computation of Benefits Generally.**

The amount of a benefit payable by a retirement system to which this chapter applies is determined according to and in the manner prescribed by laws governing that system and is based solely on a person's service credit in that system.

##### **§803.302. Computation of Certain Benefits.**

(a) If payable to or on behalf of a person who has used combined service credit to qualify for benefits from at least one retirement system to which this chapter applies, each of the following types of benefits must be computed as provided by Subsection (b):

(1) a base retirement annuity that does not vary in amount directly with the amount of a person's service credit;

(2) a fixed lump-sum death benefit payable on the death of a retiree;

(3) any death benefit payable on the death of a retiree who received service retirement benefits; and

(4) a survivor benefit payable to a beneficiary of a deceased retiree of the Teacher Retirement System of Texas.

(b) The amount of a benefit payable under Subsection (a) by a retirement system to which this chapter applies is a percentage, but not more than 100 percent, of the benefit that would be or would have been payable if the person retired or had retired on the basis of only the service that is credited in that system. The percentage applied is equal to the amount of service credit in that system, divided by the amount of service credit that would be or would have been required for the benefit if the person retired or had retired on the basis of only the service that is credited in that system.

#### SUBCHAPTER E. ADMINISTRATION

##### **§803.401. Administration of Program.**

(a) The board of trustees of each retirement system to which this chapter applies may adopt rules it finds necessary to implement the proportionate retirement program provided by this chapter.

(b) Each retirement system to which this chapter applies, under this chapter and other

laws governing the particular system, is responsible for determining:

(1) the eligibility of its members for benefits, including whether sufficient combined service credit exists to qualify members for proportionate retirement benefits from that system; and

(2) the amount and duration of proportionate retirement benefits payable by that system.

(c) Each retirement system to which this chapter applies shall cooperate with the other retirement systems to which this chapter applies in the implementation of the proportionate retirement program.

**§803.402. Records.**

Except as provided by other law, records of members and beneficiaries of a retirement system to which this chapter applies that are in the custody of any retirement system to which this chapter applies are confidential and not subject to disclosure and are exempt from the public access provisions of Chapter 552. The records or information in the records may be transferred between retirement systems to which this chapter applies to the extent necessary to administer the proportionate retirement program provided by this chapter.

**§803.403 Repealed by Acts 1997, 75th Leg., Ch. 1048, Sec. 56(a), eff. Sept. 1, 1997.**

**CHAPTER 804. DOMESTIC RELATIONS ORDERS AND SPOUSAL CONSENT**  
**SUBCHAPTER A. QUALIFIED DOMESTIC RELATIONS ORDERS**

**§804.001. Definitions.**

In this chapter:

(1) "Alternate payee" means a spouse, former spouse, child, or other dependent of a member or retiree who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a public retirement system with respect to such member or retiree.

(2) "Domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member or retiree, and is made pursuant to a domestic relations law, including a community property law of the State of Texas or of another state.

(3) "Public retirement system" means the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and any other continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision or of an agency or instrumentality of the state or a political subdivision and includes the optional retirement program governed by Chapter 830. Public retirement system does not include:

(A) a program, other than the optional retirement program, for which benefits are administered by a life insurance company;

(B) a program providing only workers' compensation benefits;

(C) a program administered by the federal government;

(D) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the Internal Revenue Code of 1986;

(E) a plan described by Subsection (d) of Section 401 of the Internal Revenue Code of 1986;

(F) a group or an individual account plan consisting of an annuity contract described by Subsection (b) of Section 403 of the Internal Revenue Code of 1986, other than a 403(b) contract or plan under the optional retirement program;

(G) an eligible state deferred compensation plan described by Subsection (b) of Section 457 of the Internal Revenue Code of 1986; or

(H) the program established by Chapter 615.

(4) "Qualified domestic relations order" means a domestic relations order which creates or recognizes the existence of an alternate payee's right or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a member or retiree under a public retirement system, which directs the public retirement system to disburse benefits to the alternate payee, and which meets the requirements of Section 804.003.

(5) "Statewide retirement system" means the Employees Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System

of Texas Plan Two, the Teacher Retirement System of Texas, the Texas County and District Retirement System, or the Texas Municipal Retirement System.

**§804.002. Application of Chapters.**

This subchapter and Subchapter C apply to each statewide retirement system and to the optional retirement program governed by Chapter 830. This subchapter and Subchapter C also apply to each other public retirement system for which the board of trustees of the system elects to adopt the provisions of this subchapter and Subchapter C. An election under this section must be by order or resolution and need not set out the text of this subchapter or Subchapter C. A board of trustees may not elect to adopt only this subchapter or Subchapter C.

**§804.003. Qualified Domestic Relations Orders.**

(a) Sections 811.005, 821.005, 831.004, 836.004, 841.006, and 851.006 and any similar antialienation provisions contained in any other public retirement system shall apply to the creation, assignment, recognition, or enforcement of a right to any benefit payable with respect to a member or retiree of a public retirement system to which the section applies pursuant to a domestic relations order unless the order is determined to be a qualified domestic relations order.

(b) Except as provided in Subsection (d), the administrative head of a public retirement system to which this chapter applies and to which a domestic relations order is submitted or his designee has exclusive authority to determine whether a domestic relations order is a qualified domestic relations order. A determination by the administrative head or his designee under this section may be appealed only to the board of trustees of the public retirement system. An appeal to the board of trustees of a statewide retirement system is a contested case under Chapter 2001. However, the board of a statewide retirement system by rule may waive the requirement of an appeal to the board. On appeal of a decision made by the board of trustees or by the administrative head if there is no appeal to the board under this section, the standard of review is by substantial evidence.

(c) Except as provided in Subsection (d), a court does not have jurisdiction over a public retirement system to which this chapter applies with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a member or retiree under the public retirement system is created or established. A party to such an action who attempts to make a public retirement system a party to the action contrary to the provision of this subsection shall be liable to the public retirement system for its costs and attorney's fees.

(d) Under the optional retirement program, applicable carriers shall determine whether a domestic relations order is a qualified domestic relations order. If a dispute arises over the determination of whether a domestic relations order is a qualified domestic relations order which cannot be resolved by the procedure described in Subsection (g), the court which issued the order or which otherwise has jurisdiction over the matter shall resolve the dispute with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a member or retiree under the optional retirement program is created or established.

(e) For the purposes of this section, benefits payable with respect to a member or retiree under the retirement system include the types of benefits payable by a public retirement system and a withdrawal of contributions from a public retirement system.

(f) A domestic relations order is a qualified domestic relations order only if such order:

(1) clearly specifies the:

(A) name and last known mailing address of:

(i) the member or retiree; and

(ii) each alternate payee covered by the order; and

(B) social security number, or an express authorization for the parties to use an alternate method acceptable to the public retirement system to verify the social security number, of the member or retiree and each alternate payee covered by the order;

(2) clearly specifies the amount or percentage of the member's or retiree's benefits to be paid by a public retirement system to each such alternate payee or the manner in which such amount or percentage is to be determined;

(3) clearly specifies the number of payments or the period to which such order applies;

(4) clearly specifies that such order applies to a designated public retirement system;

(5) does not require the public retirement system to provide any type or form of benefit or any option not otherwise provided under the plan;

(6) does not require the public retirement system to provide increased benefits determined on the basis of actuarial value;

(7) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and

(8) does not require the payment of benefits to an alternate payee before the retirement of a member, the distribution of a withdrawal of contributions to a member, or other distribution to a member required by law.

(g) A public retirement system may reject a domestic relations order as a qualified domestic relations order unless the order:

(1) provides for a proportional reduction of the amount awarded to an alternate payee in the event of the retirement of the member before normal retirement age;

(2) does not purport to require the designation of a particular person as the recipient of benefits in the event of a member's or annuitant's death;

(3) does not purport to require the selection of a particular benefit payment plan or option;

(4) provides clearly for each possible benefit distribution under plan provisions;

(5) does not require any action on the part of the retirement system contrary to its governing statutes or plan provision other than the direct payment of the benefit awarded to an alternate payee;

(6) does not make the award of an interest contingent on any condition other than those conditions resulting in the liability of a retirement system for payments under its plan provisions;

(7) does not purport to award any future benefit increases that are provided or required by the legislature;

(8) provides for a proportional reduction of the amount awarded to an

alternate payee in the event that benefits available to the retiree or member are reduced by law; and

(9) if required by the retirement system, conforms to a model order adopted by the retirement system.

(h) The administrative head of a public retirement system to which this chapter applies or his designee (or applicable carrier, if under the optional retirement program), upon receipt of a certified copy of a domestic relations order, shall determine whether such order is a qualified domestic relations order and shall notify the member or retiree and each alternate payee of such determination. If the order is determined to be a qualified domestic relations order, the public retirement system (or applicable carrier, if under the optional retirement program), shall pay benefits in accordance with the order. If the order is determined not to be a qualified domestic relations order, the member or retiree or any alternate payee named in the order may appeal the administrative head's determination in the manner specified in Subsection (b) or the optional retirement program carrier's determination in the manner specified in Subsection (d) and may petition the court which issued the order to amend the order so that it will be qualified. The court which issued the order or which would otherwise have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated.

(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined by the agency administrative head, his designee, the board of trustees, a court of competent jurisdiction, optional retirement program carrier, or otherwise, the public retirement system shall separately account for the amounts, in this section referred to as the "segregated amounts," which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(j) Except as provided by Subsection (k-1) or (k-2), if a domestic relations order is determined to be a qualified domestic relations order, then the public retirement system (or applicable carrier, if under the optional retirement program) shall pay the segregated amounts without interest to the person or persons entitled thereto and shall thereafter pay benefits pursuant to the order.

(k) Except as provided by Subsection (k-1) or (k-2), if a domestic relations order is determined not to be a qualified domestic relations order or if within 18 months of the date a domestic relations order is received by the public retirement system (or applicable carrier, if under the optional retirement program) the issue as to whether such order is a qualified domestic relations order is not resolved, then the public retirement system (or applicable carrier, if under the optional retirement program) shall pay the segregated amounts without interest and shall thereafter pay benefits to the person or persons who would have been entitled to such amounts if there had been no order. This subsection shall not be construed to limit or otherwise affect any liability, responsibility, or duty of a party with respect to any other party to the action out of which the order arose.

(k-1) Payment of segregated amounts by a public retirement system, or applicable carrier if under the optional retirement program, under Subsections (j) and (k) related to a

benefit payable with respect to a member or retiree subject to Chapter 820 must include annual interest provided by Section 820.102 and gain sharing interest provided by Section 820.103.

(k-2) Payment of segregated amounts by a public retirement system, or applicable carrier if under the optional retirement program, under Subsections (j) and (k) related to a benefit payable with respect to a member or retiree subject to Chapter 840A must include annual interest provided by Section 840A.103 and gain sharing interest provided by Section 840A.104.

(l) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period shall be applied prospectively only.

(m) The public retirement system, the board of trustees, and officers and employees of the public retirement system (or applicable carrier, if under the optional retirement program) shall not be liable to any person for making payments of any benefits in accordance with a domestic relations order in a cause in which a member or a retiree was a party or for making payments in accordance with Subsection (k).

(n) The board of trustees of a public retirement system may promulgate rules it deems necessary to implement the provisions of this section.

(o) Except as specifically provided in this subtitle or by any other statute, public employment does not confer special privileges or immunities on a public employee. An ownership or beneficial interest in any retirement, pension, or other financial plan not included in the definition of "public retirement system" as set forth in Section 804.001 held in whole or in part by an officer or employee of the state or a political subdivision or of an agency or an instrumentality of either, whether obtained in connection with that employment or otherwise, shall be subject to the requirements of the federal laws governing qualified domestic relations orders.

(p) A public retirement system may assess administrative fees on a party who is subject to a domestic relations order for the review of the order under this subchapter and, as applicable, for the administration of payments under an order that is determined to be qualified. In addition to other methods of collecting fees that a retirement system may establish, the retirement system may deduct fees from payments made under the order.

**§804.004. Life Annuity or Lump-sum Payment in Lieu of Benefits Awarded by a Qualified Domestic Relations Order.**

(a) The board of trustees of a public retirement system to which this chapter applies may by rule provide that, in lieu of paying an alternate beneficiary the interest awarded by a qualified domestic relations order, the system may pay the alternate beneficiary an amount that is the actuarial equivalent of such interest in the form of:

(1) an annuity payable in equal monthly installments for the life of the alternate payee; or

(2) a lump sum.

(b) The determination of whether to pay an amount authorized by this section in lieu of the interest awarded by the qualified domestic relations order shall be at the sole discretion of the public retirement system.

(c) If a public retirement system elects to pay the alternate payee pursuant to this section, the benefit payable by the system to the member, retiree, or beneficiary shall be reduced by the interest in the benefit awarded to the alternate payee by the qualified domestic

relations order.

(d) If the public retirement system pays the alternate payee pursuant to this section, the retirement system shall be entitled to rely on a beneficiary designation or benefit option selection made or changed pursuant to its plan without regard to any domestic relations order.

**§804.005. Payment in Certain Circumstances in Lieu of Benefits Awarded by Qualified Domestic Relations Order.**

(a) This section applies only to the Employees Retirement System of Texas and the Teacher Retirement System of Texas.

(b) A public retirement system to which this section applies shall pay an alternate payee of a member of the retirement system who is described by Subsection (c), if the alternate payee so elects and in lieu of the interest awarded by a qualified domestic relations order on or after January 1, 1985, an amount that is the alternate payee's portion of the actuarial equivalent of the accrued retirement benefit of the member of the retirement system, determined as if the member retired on the date of the alternate payee's election. The amount becomes payable at the time the actuarial equivalent is determined, and the amount is payable in the form of an annuity payable in equal monthly installments for the life of the alternate payee.

(c) A member whose benefits are subject to partial payment under this section is one who has not retired from the retirement system, has attained the greater of the age of 62 or normal retirement age and the service requirements for service retirement, and retains credit and contributions in the retirement system attributable to that service.

(d) If an alternate payee elects to be paid under this section, the retirement system shall reduce the benefit payable by the system to the member or the member's beneficiary by the alternate payee's portion of the actuarial equivalent determined under Subsection (b).

(e) In determining under Subsection (b) the actuarial equivalent of an accrued retirement benefit, the system shall consider the member's benefit as a normal age standard service retirement annuity, without regard to any optional annuity chosen or beneficiary designated by the member.

(f) The beginning of monthly payments under this section terminates any interest that the alternate payee who receives the payment might otherwise have in benefits that accrue to the account of the member after the date the initial payment to the alternate payee is made.

(g) A public retirement system may adopt rules for administration of this section.

**SUBCHAPTER B. SPOUSAL CONSENT REQUIREMENTS**

**§804.051. Authority to Require Spousal Consent.**

A public retirement system may adopt rules to require spousal consent for the selection of a service retirement annuity other than a joint and survivor annuity that pays benefits to the member's spouse on the death of the member or for the selection of a death benefits plan that pays benefits in the form of an annuity to a person other than the member's spouse on the death of the member.

## SUBCHAPTER C. TERMINATION OF INTEREST IN PUBLIC RETIREMENT SYSTEM

### **§804.101. Termination of Interest in Public Retirement System.**

The death of an alternate payee as defined in Section 804.001 or the death of a spouse of a member or retiree of a public retirement system to which this chapter applies shall terminate the interest of the alternate payee or spouse in that public retirement system. This section shall not affect an interest in a public retirement system accrued to an individual as a member of the public retirement system.

## **CHAPTER 805. CREDIT TRANSFER BETWEEN EMPLOYEES RETIREMENT SYSTEM OF TEXAS AND TEACHER RETIREMENT SYSTEM OF TEXAS**

### **§805.001. Definitions.**

In this chapter:

(1) "Employees retirement system" means the Employees Retirement System of Texas.

(2) "Member" means a person having membership in the employees retirement system or the teacher retirement system under statutes and rules governing membership in the respective systems.

(3) "Service credit" has the meaning assigned, as applicable, by Section 811.001 or Section 821.001.

(4) "System" means the employees retirement system or the teacher retirement system.

(5) "Teacher retirement system" means the Teacher Retirement System of Texas.

### **§805.0015. Applicability.**

This chapter does not apply to a member of the employees retirement system who is subject to Chapter 820.

### **§805.002. Eligibility to Transfer Service Credit.**

(a) Except as provided by Subsection (h), a member of both the employees retirement system and the teacher retirement system who applies for service or disability retirement from either system may transfer to that system service credit established in the other system if the member has at least three years of service credit in the system from which the member is retiring. If a person whose membership was transferred from the teacher retirement system to the employees retirement system pursuant to Section 43(a), Chapter 812, Acts of the 73rd Legislature, 1993, ceases to hold any position included in the membership of the employees retirement system before the earlier of the date the person retires or dies, the person's service credit accrued in the teacher retirement system before the date the membership was transferred remains credited in that system, unless the person has withdrawn contributions made for the service.

(b) Except as provided by Subsection (h), a member of both the employees retirement system and the teacher retirement system who has less than three years of service credit in the system in which the person most recently received service credit and at least three years of service credit in the other system may, at the time the person applies for service or disability retirement, transfer service credit to the other system from the system in which the person most recently received service credit.

(c) Except as provided by Subsections (e) and (f), a member of the employees retirement system or the teacher retirement system who formerly was a member of the other system may reinstate or purchase service credit in the other system for the purpose of making a transfer under Subsection (a) if the member has at least three years of service credit in the system in which the person currently is a member. Except as provided by Subsections (e) and (f), a member of the employees retirement system or the teacher retirement system who formerly was a member of the other system, who before September 1, 1993, transferred at least three years of service credit to the system in which the person

currently is a member, and who has at least three years of service credit other than the transferred credit in the system in which the person currently is a member may reinstate or purchase service credit in the other system for the purpose of making a transfer of all service credit to that other system.

(d) Except as provided by Subsections (e) and (f), the designated beneficiary of a member of the employees retirement system or the teacher retirement system who dies while holding a position included in the membership of the system may make a transfer under Subsection (a) and a reinstatement or purchase under Subsection (c) if the deceased member had at least three years of service credit in the system in which the member was performing service at the time of death. The designated beneficiary may make a transfer under Subsection (b) if the deceased member had less than three years of service credit in the system in which the member was performing service at the time of death. If a member is not survived by a designated beneficiary, an alternate beneficiary, or a beneficiary provided by law or has failed to designate a beneficiary after becoming a member or resuming membership, the personal representative of the member's estate has the same right under this subsection as a designated beneficiary. A transfer of service by the beneficiary or personal representative of a deceased member's estate is not permitted unless the transfer will result in the payment of a death benefit annuity.

(e) Repealed by Acts 2003, 78th Leg., Ch. 1111, Sec. 46(2), eff. Sept. 1, 2003.

(f) A person who is receiving retirement benefits based on the person's service credited in one system and who applies for service or disability retirement from the other system is not eligible to transfer service credit under this chapter. The designated beneficiary, or the personal representative of the estate, of a person who at the time of death was receiving benefits based on the person's service credited in one system and who held a position included in the other system is not eligible to transfer service credit under this chapter.

(g) To be eligible to make a transfer pursuant to Subsection (d), a person must be the same beneficiary under both retirement systems, except that if the only service credited in the system from which service is being transferred is reinstated service and no beneficiary designation was made at or after the time of reinstatement, the beneficiary in the receiving system may make the election.

(h) A member applying for occupational disability retirement from the employees retirement system may transfer service credit from the teacher retirement system only if the member was contributing to the employees retirement system at the time the disabling condition occurred.

### **§805.003. Payments to Reinstate or Purchase Service Credit.**

The cost of reinstating or purchasing service credit under Section 805.002 is determined according to the statutes that govern the reinstatement or purchase of the type of service credit in the system in which it is to be reinstated or purchased. All payments for service credit reinstated or purchased under Section 805.002 must be made before retirement or the first payment of a death benefit annuity, as applicable, or before a later date if allowed for members of the retirement system in which the credit is to be reinstated or purchased.

**§805.004. Transfer of Service Credit.**

- (a) A person who elects to transfer service credit under Section 805.002 shall notify, in the manner required by the system to which the credit will be transferred, the system of the election. The system shall notify the other system of the election.
- (b) The systems by rule or agreement shall determine the manner in which the service credit is transferred.
- (c) A transfer of service credit under this chapter cancels service credit and, if applicable, membership in the system from which it is transferred.

**§805.005. Applicability of Proportionate Retirement Program.**

An election to transfer service credit under Section 805.002 is an alternative to participation in the program provided by Chapter 803, except that a person having service credit in the employees retirement system, the teacher retirement system, and another public retirement system participating in that program may transfer service credit under this chapter, if eligible, and use the combined service credit for purposes of the program provided by Chapter 803.

**§805.006. Crediting of Transferred Service Credit; Refund.**

- (a) Except as provided by Subsections (b) and (c), service credit transferred under this chapter is credited in the system to which it is transferred according to rules of the teacher retirement system determining the amount of service creditable.
- (b) Not more than one month of service credit may be granted for service during that month.
- (c) A person who transfers service credit under this chapter may not receive service credit for all military service performed in an amount that exceeds the maximum amount creditable in the system to which credit is transferred. A person is eligible for a refund from the system from which credit is transferred under this section of contributions made for military service credit, other than any amount that represents a fee, that exceeds the maximum amount creditable.

**§805.007. Effect of Transfer of Service Credit.**

- (a) A person who transfers service credit under this chapter forfeits all rights to benefits payable by the system from which it is transferred and is not an annuitant of that system for any purpose, including the payment of postretirement increases to annuitants of that system. This subsection does not preclude a person from receiving benefits as a beneficiary of an account not related to the transferred service credit.
- (b) Service credit transferred under this chapter is considered as if it had been granted for service performed under the system to which it has been transferred and is used in satisfying minimum service requirements for retirement and in determining the amount of benefits that are based on the amount of a person's service credit:
  - (1) except that a person's average salary for the purpose of computing an annuity may be determined only from service credit that was originally established in one system and that results in the higher average salary;
  - (2) except as provided by Section 805.006; and
  - (3) except service credit transferred by a member applying for occupational disability retirement.

**§805.008. Responsibility for Benefit Payments.**

(a) Except as provided by Subsection (c), the system from which a person's service credit is transferred under this chapter shall transfer to the other system, at the time the annuity based on the service credit becomes payable, an amount equal to the portion of the actuarial value of the annuity that represents the percentage of the total amount of the person's service credited in both systems that was credited in the system from which the credit is being transferred.

(b) Except as provided by Subsection (c), the systems jointly by rule shall adopt actuarial tables and investment assumptions to be used in computing actuarial values under this section.

(c) As an alternative to Subsections (a) and (b) and except as provided by Subsection (h), the systems by rule may require the system from which service credit is transferred to pay monthly an amount equal to the portion of the actual value of the monthly payment of the annuity that represents the percentage of the total amount of service credit that is transferred.

(d) For the purpose of computing an amount to be transferred under this section, service credit in either system must be considered as if it were credited under rules of the teacher retirement system determining the amount of service creditable.

(e) An amount transferred under this section is payable from amounts credited to the person's individual account and amounts credited to the account in which the system places state contributions. Except as provided by Subsection (g), an amount received under this section shall be deposited in the account from which the system receiving the amount pays annuities.

(f) The system to which a transfer is made under this section is responsible for paying the annuity for which the transfer was made, including the entire amount of any increase in the annuity granted after the transfer.

(g) At the time of the death of a person whose membership was transferred from the teacher retirement system to the employees retirement system pursuant to Section 43(a), Chapter 812, Acts of the 73rd Legislature, 1993, the teacher retirement system shall transfer to the employees retirement system the person's service credit in the teacher retirement system and, if employment with the transferring agency was continuous from the date of transfer to the date of death:

(1) an amount determined under Subsections (a) and (b) or under Subsection (c), if an annuity is paid under Chapter 814; or

(2) the amount of money in the member savings account plus an amount equal to five percent of the person's account balance for each full year of service credited in the teacher retirement system, if a death benefit other than an annuity is paid under Chapter 814.

(h) If a person elects to receive a partial lump-sum payment under the law governing the system from which the person is retiring, a transfer of an amount equal to the portion of the actual value of a lump-sum payment that represents the percentage of the amount of service credit transferred shall be made at the time the lump-sum payment is made.

**§805.009. Rules.**

In addition to the rules specifically required by this chapter, a system may adopt other

rules for the administration of this chapter.

**CHAPTER 806. Transferred to Subtitle F, Title 10, Government Code, redesignated as Chapter 2270, by Acts 2017, 85th Leg., R.S., Ch. 96, eff. May 23, 2017.**

**CHAPTER 807. Repealed by Acts 2017, 85th Leg., R.S., Ch. 96, eff. May 23, 2017.**

## **CHAPTER 808. PROHIBITION ON INVESTMENT IN COMPANIES THAT BOYCOTT ISRAEL**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§808.001. Definitions.**

In this chapter:

(1) "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(3) "Direct holdings" means, with respect to a company, all securities of that company held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests.

(4) "Indirect holdings" means, with respect to a company, all securities of that company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to the provisions of this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986.

(5) "Listed company" means a company listed by the comptroller under Section 808.051.

(6) "State governmental entity" means:

(A) the Employees Retirement System of Texas, including a retirement system administered by that system;

(B) the Teacher Retirement System of Texas;

(C) the Texas Municipal Retirement System;

(D) the Texas County and District Retirement System;

(E) the Texas Emergency Services Retirement System; and

(F) the permanent school fund.

#### **§808.002. Other Legal Obligations.**

With respect to actions taken in compliance with this chapter, including all good faith determinations regarding companies as required by this chapter, a state governmental entity and the comptroller are exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of companies, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.

**§808.003. Indemnification of State Governmental Entities, Employees, and Others.**

In a cause of action based on an action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend:

- (1) an employee, member of the governing body, or any other officer of a state governmental entity;
- (2) a contractor of a state governmental entity;
- (3) a former employee, a former member of the governing body, or any other former officer of a state governmental entity who was an employee, member of the governing body, or other officer when the act or omission on which the damages are based occurred;
- (4) a former contractor of a state governmental entity who was a contractor when the act or omission on which the damages are based occurred; and
- (5) a state governmental entity.

**§808.004. No Private Cause of Action.**

(a) A person, including a member, retiree, or beneficiary of a retirement system to which this chapter applies, an association, a research firm, a company, or any other person may not sue or pursue a private cause of action against the state, a state governmental entity, a current or former employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, company communication, report, or other determination made or taken in connection with this chapter.

(b) A person who files suit against the state, a state governmental entity, an employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

**§808.005. Inapplicability of Requirements Inconsistent with Fiduciary Responsibilities and Related Duties.**

A state governmental entity is not subject to a requirement of this chapter if the state governmental entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

**§808.006. Reliance on Company Response.**

The comptroller and a state governmental entity may rely on a company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

## SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

### **§808.051. Listed Companies.**

(a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all companies that boycott Israel. In maintaining the list, the comptroller may review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities.

(b) The comptroller shall update the list annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (a).

(c) Not later than the 30th day after the date the list of companies that boycott Israel is first provided or updated, the comptroller shall file the list with the presiding officer of each house of the legislature and the attorney general and post the list on a publicly available website.

### **§808.052. Identification of Investment in Listed Companies.**

Not later than the 30th day after the date a state governmental entity receives the list provided under Section 808.051, the state governmental entity shall notify the comptroller of the listed companies in which the state governmental entity owns direct or indirect holdings.

### **§808.053. Actions Relating to Listed Company.**

(a) For each listed company identified under Section 808.052, the state governmental entity shall send a written notice:

(1) informing the company of its status as a listed company;

(2) warning the company that it may become subject to divestment by state governmental entities after the expiration of the period described by Subsection (b); and

(3) offering the company the opportunity to clarify its Israel-related activities.

(b) Not later than the 90th day after the date the company receives notice under Subsection (a), the company must cease boycotting Israel in order to avoid qualifying for divestment by state governmental entities.

(c) If, during the time provided by Subsection (b), the company ceases boycotting Israel, the comptroller shall remove the company from the list maintained under Section 808.051 and this chapter will no longer apply to the company unless it resumes boycotting Israel.

(d) If, after the time provided by Subsection (b) expires, the company continues to boycott Israel, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the company, except securities described by Section 808.055, according to the schedule provided by Section 808.054.

### **§808.054. Divestment of Assets.**

(a) A state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed company shall comply with the following schedule:

(1) at least 50 percent of those assets must be removed from the state governmental entity's assets under management not later than the 180th day after the date the company receives notice under Section 808.053 or Subsection (b) unless the

state governmental entity determines, based on a good faith exercise of its fiduciary discretion and subject to Subdivision (2), that a later date is more prudent; and

(2) 100 percent of those assets must be removed from the state governmental entity's assets under management not later than the 360th day after the date the company receives notice under Section 808.053 or Subsection (b).

(b) If a company that ceased boycotting Israel after receiving notice under Section 808.053 resumes its boycott, the state governmental entity shall send a written notice to the company informing it that the state governmental entity will sell, redeem, divest, or withdraw all publicly traded securities of the company according to the schedule in Subsection (a).

(c) Except as provided by Subsection (a), a state governmental entity may delay the schedule for divestment under that subsection only to the extent that the state governmental entity determines, in the state governmental entity's good faith judgment, and consistent with the entity's fiduciary duty, that divestment from listed companies will likely result in a loss in value or a benchmark deviation described by Section 808.056(a). If a state governmental entity delays the schedule for divestment, the state governmental entity shall submit a report to the presiding officer of each house of the legislature and the attorney general stating the reasons and justification for the state governmental entity's delay in divestment from listed companies. The report must include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by Section 808.056(a), including objective numerical estimates. The state governmental entity shall update the report every six months.

#### **§808.055. Investments Exempted from Divestment.**

A state governmental entity is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit letters to the managers of each investment fund containing listed companies requesting that they remove those companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed companies. If the manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the 450th day after the date the fund is created.

#### **§808.056. Authorized Investment in Listed Companies.**

(a) A state governmental entity may cease divesting from one or more listed companies only if clear and convincing evidence shows that:

(1) the state governmental entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the state governmental entity as a result of having to divest from listed companies under this chapter; or

(2) an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed companies under this chapter.

(b) A state governmental entity may cease divesting from a listed company as provided by this section only to the extent necessary to ensure that the state governmental entity

does not suffer a loss in value or deviate from its benchmark as described by Subsection (a).

(c) Before a state governmental entity cease divesting from a listed company under this section, the state governmental entity must provide a written report to the comptroller, the presiding officer of each house of the legislature, and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed company.

(d) The state governmental entity shall update the report required by Subsection (c) semiannually, as applicable.

(e) This section does not apply to reinvestment in a company that is no longer a listed company.

**§808.057. Prohibited Investments.**

Except as provided by Section 808.056, a state governmental entity may not acquire securities of a listed company.

SUBCHAPTER C. REPORT; ENFORCEMENT

**§808.101. Report.**

Not later than January 5 of each year, each state governmental entity shall file a publicly available report with the presiding officer of each house of the legislature and the attorney general that:

- (1) identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 808.054;
- (2) identifies all prohibited investments under Section 808.057; and
- (3) summarizes any changes made under Section 808.055.

**§808.102. Enforcement.**

The attorney general may bring any action necessary to enforce this chapter.

**CHAPTER 809. PROHIBITION ON INVESTMENT IN FINANCIAL COMPANIES  
THAT BOYCOTT CERTAIN ENERGY COMPANIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

**§809.001. Definitions.**

In this chapter:

(1) "Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:

(A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or

(B) does business with a company described by Paragraph (A).

(2) "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(3) "Direct holdings" means, with respect to a financial company, all securities of that financial company held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests.

(4) "Financial company" means a publicly traded financial services, banking, or investment company.

(5) "Indirect holdings" means, with respect to a financial company, all securities of that financial company held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to the provisions of this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986.

(6) "Listed financial company" means a financial company listed by the comptroller under Section 809.051.

(7) "State governmental entity" means:

(A) the Employees Retirement System of Texas, including a retirement system administered by that system;

(B) the Teacher Retirement System of Texas;

(C) the Texas Municipal Retirement System;

(D) the Texas County and District Retirement System;

(E) the Texas Emergency Services Retirement System; and

(F) the permanent school fund.

**§809.002. Other Legal Obligations.**

With respect to actions taken in compliance with this chapter, including all good faith determinations regarding financial companies as required by this chapter, a state governmental entity and the comptroller are exempt from any conflicting statutory or

common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of financial companies, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.

**§809.003. Indemnification of State Governmental Entities, Employees, and Others.**

In a cause of action based on an action, inaction, decision, divestment, investment, financial company communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend:

- (1) an employee, a member of the governing body, or any other officer of a state governmental entity;
- (2) a contractor of a state governmental entity;
- (3) a former employee, a former member of the governing body, or any other former officer of a state governmental entity who was an employee, member of the governing body, or other officer when the act or omission on which the damages are based occurred;
- (4) a former contractor of a state governmental entity who was a contractor when the act or omission on which the damages are based occurred; and
- (5) a state governmental entity.

**§809.004. No Private Cause of Action.**

(a) A person, including a member, retiree, or beneficiary of a retirement system to which this chapter applies, an association, a research firm, a financial company, or any other person may not sue or pursue a private cause of action against the state, a state governmental entity, a current or former employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, financial company communication, report, or other determination made or taken in connection with this chapter.

(b) A person who files suit against the state, a state governmental entity, an employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

**§809.005. Inapplicability of requirements inconsistent with Fiduciary Responsibilities and Related Duties.**

A state governmental entity is not subject to a requirement of this chapter if the state governmental entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of entity assets or other duties imposed by law relating to the investment of entity assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

**§809.006. Reliance on Financial Company Response.**

The comptroller and a state governmental entity may rely on a financial company's response to a notice or communication made under this chapter without conducting any further investigation, research, or inquiry.

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

**§809.051. Listed Financial Companies**

(a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all financial companies that boycott energy companies. In maintaining the list, the comptroller may:

(1) review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding financial companies, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities; and

(2) request written verification from a financial company that it does not boycott energy companies and rely, as appropriate in the comptroller's judgment and without conducting further investigation, research, or inquiry, on a financial company's written response to the request.

(b) A financial company that fails to provide to the comptroller a written verification under Subsection (a)(2) before the 61st day after receiving the request from the comptroller is presumed to be boycotting energy companies.

(c) The comptroller shall update the list annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (a).

(d) Not later than the 30th day after the date the list of financial companies that boycott energy companies is first provided or updated, the comptroller shall file the list with the presiding officer of each house of the legislature and the attorney general and post the list on a publicly available Internet website.

**§809.052. Identification of Investment in Listed Financial Companies.**

Not later than the 30th day after the date a state governmental entity receives the list provided under Section 809.051, the state governmental entity shall notify the comptroller of the listed financial companies in which the state governmental entity owns direct holdings or indirect holdings.

**§809.053. Actions Relating to Listed Financial Company.**

(a) For each listed financial company identified under Section 809.052, the state governmental entity shall send a written notice:

(1) informing the financial company of its status as a listed financial company;

(2) warning the financial company that it may become subject to divestment by state governmental entities after the expiration of the period described by Subsection (b); and

(3) offering the financial company the opportunity to clarify its activities related to companies described by Sections 809.001(1)(A) and (B).

(b) Not later than the 90th day after the date the financial company receives notice under Subsection (a), the financial company must cease boycotting energy companies in order

to avoid qualifying for divestment by state governmental entities.

(c) If, during the time provided by Subsection (b), the financial company ceases boycotting energy companies, the comptroller shall remove the financial company from the list maintained under Section 809.051 and this chapter will no longer apply to the financial company unless it resumes boycotting energy companies.

(d) If, after the time provided by Subsection (b) expires, the financial company continues to boycott energy companies, the state governmental entity shall sell, redeem, divest, or withdraw all publicly traded securities of the financial company, except securities described by Section 809.055, according to the schedule provided by Section 809.054.

#### **§809.054. Divestment of Assets.**

(a) A state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed financial company shall comply with the following schedule:

(1) at least 50 percent of those assets must be removed from the state governmental entity's assets under management not later than the 180th day after the date the financial company receives notice under Section 809.053 or Subsection (b) unless the state governmental entity determines, based on a good faith exercise of its fiduciary discretion and subject to Subdivision (2), that a later date is more prudent; and

(2) 100 percent of those assets must be removed from the state governmental entity's assets under management not later than the 360th day after the date the financial company receives notice under Section 809.053 or Subsection (b).

(b) If a financial company that ceased boycotting energy companies after receiving notice under Section 809.053 resumes its boycott, the state governmental entity shall send a written notice to the financial company informing it that the state governmental entity will sell, redeem, divest, or withdraw all publicly traded securities of the financial company according to the schedule in Subsection (a).

(c) Except as provided by Subsection (a), a state governmental entity may delay the schedule for divestment under that subsection only to the extent that the state governmental entity determines, in the state governmental entity's good faith judgment, and consistent with the entity's fiduciary duty, that divestment from listed financial companies will likely result in a loss in value or a benchmark deviation described by Section 809.056(a). If a state governmental entity delays the schedule for divestment, the state governmental entity shall submit a report to the presiding officer of each house of the legislature and the attorney general stating the reasons and justification for the state governmental entity's delay in divestment from listed financial companies. The report must include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by Section 809.056(a), including objective numerical estimates. The state governmental entity shall update the report every six months.

#### **§809.055. Investments Exempted From Divestment.**

A state governmental entity is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit letters to the managers of each investment fund containing listed financial companies requesting that they remove those financial companies from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed financial companies. If a manager creates a similar fund with substantially the same

management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the similar fund in a time frame consistent with prudent fiduciary standards but not later than the 450th day after the date the fund is created.

**§809.056. Authorized Investment in Listed Financial Companies.**

(a) A state governmental entity may cease divesting from one or more listed financial companies only if clear and convincing evidence shows that:

(1) the state governmental entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the state governmental entity as a result of having to divest from listed financial companies under this chapter; or

(2) an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed financial companies under this chapter.

(b) A state governmental entity may cease divesting from a listed financial company as provided by this section only to the extent necessary to ensure that the state governmental entity does not suffer a loss in value or deviate from its benchmark as described by Subsection (a).

(c) Before a state governmental entity may cease divesting from a listed financial company under this section, the state governmental entity must provide a written report to the comptroller, the presiding officer of each house of the legislature, and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed financial company.

(d) The state governmental entity shall update the report required by Subsection (c) semiannually, as applicable.

(e) This section does not apply to reinvestment in a financial company that is no longer a listed financial company.

**§809.057. Prohibited Investments.**

Except as provided by Section 809.056, a state governmental entity may not acquire securities of a listed financial company.

SUBCHAPTER C. REPORT; ENFORCEMENT

**§809.101. Report.**

Not later than January 5 of each year, each state governmental entity shall file a publicly available report with the presiding officer of each house of the legislature and the attorney general that:

(1) identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 809.054;

(2) identifies all prohibited investments under Section 809.057; and

(3) summarizes any changes made under Section 809.055.

**§809.102. Enforcement.**

The attorney general may bring any action necessary to enforce this chapter.

**CHAPTER 809A. PROHIBITION ON INVESTMENT IN CERTAIN CHINESE-  
AFFILIATED ENTITIES**

**SUBCHAPTER A. GENERAL PROVISIONS**

**§809A.001. Definitions.**

In this chapter:

(1) "Chinese-affiliated entity" means a publicly traded entity that:

(A) is both:

(i) incorporated or headquartered in the People's Republic of China, including in the Hong Kong special administrative region, other than a U.S. subsidiary, as that term is defined by 15 C.F.R. Section 772.1; and

(ii) publicly confirmed to be controlled by the People's Republic of China, the Chinese Communist Party, or a provincial division, municipality, governmental agency, sovereign wealth fund, or political instrumentality of the People's Republic of China; or

(B) is identified by one or more of the appropriate government agencies to be required by the National Intelligence Law of the People's Republic of China (2017), as amended in 2018, or any successor law, to support, assist, and cooperate with the state intelligence work of the People's Republic of China and keep the secrets of the national intelligence work of the People's Republic of China.

(2) "Direct holdings" means, with respect to a restricted entity, all securities of that restricted entity held directly by a state governmental entity in an account or fund in which a state governmental entity owns all shares or interests.

(3) "Entity" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(4) "Indirect holdings" means, with respect to a restricted entity, all securities of that restricted entity held in an account or fund, such as a mutual fund, managed by one or more persons not employed by a state governmental entity, in which the state governmental entity owns shares or interests together with other investors not subject to the provisions of this chapter. The term does not include money invested under a plan described by Section 401(k) or 457 of the Internal Revenue Code of 1986 (26 U.S.C. Section 401(k) or 457).

(5) "Listed restricted entity" means a restricted entity listed by the comptroller under Section 809A.051.

(6) "Restricted entity" means a Chinese-affiliated entity or other entity associated with the People's Republic of China that is identified or included on an entities list maintained by the federal government for the purpose of imposing prohibitions or restrictions on or against entities to address national security concerns, protect human rights, or combat unfair trade practices. The term includes an entity that:

(A) is listed on the entity list under supplement No. 4 to 15 C.F.R. Part 744 as associated with the People's Republic of China because there is reasonable cause to believe the entity is involved, has been involved, or poses a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States of America; and

(B) is listed in the Federal Register by the United States Secretary of Defense as a Chinese military company operating directly or indirectly in the United States or in any territory or possession of the United States on the most recent list compiled under Section 1260H of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Pub. L. No. 116-283, reprinted in note, 10 U.S.C. Section 113), or any successor list of Chinese military companies the secretary is required by law to compile and publish.

(7) "State governmental entity" means:

(A) the Employees Retirement System of Texas, including a retirement system administered by that system;

(B) the Teacher Retirement System of Texas;

(C) the Texas Municipal Retirement System;

(D) the Texas County and District Retirement System;

(E) the Texas Emergency Services Retirement System; or

(F) the permanent school fund.

### **§809A.002. Other Legal Obligations.**

With respect to actions taken in compliance with this chapter, including all good faith determinations regarding restricted entities as required by this chapter, a state governmental entity and the comptroller are exempt from any conflicting statutory or common law obligations, including any obligations with respect to making investments, divesting from any investment, preparing or maintaining any list of restricted entities, or choosing asset managers, investment funds, or investments for the state governmental entity's securities portfolios.

### **§809A.003. Indemnification of State Governmental Entities, Employees, and Others.**

In a cause of action based on an action, inaction, decision, divestment, investment, restricted entity communication, report, or other determination made or taken in connection with this chapter, the state shall, without regard to whether the person performed services for compensation, indemnify and hold harmless for actual damages, court costs, and attorney's fees adjudged against, and defend:

(1) an employee, a member of the governing body, or any other officer of a state governmental entity;

(2) a contractor of a state governmental entity;

(3) a former employee, a former member of the governing body, or any other former officer of a state governmental entity who was an employee, member of the governing body, or other officer when the act or omission on which the damages are based occurred;

(4) a former contractor of a state governmental entity who was a contractor when the act or omission on which the damages are based occurred; and

(5) a state governmental entity.

### **§809A.004. No Private Cause of Action.**

(a) A person, including a member, retiree, or beneficiary of a retirement system to which this chapter applies, an association, a research firm, a restricted entity, or any other person may not sue or pursue a private cause of action against the state, a state governmental entity, a current or former employee, a member of the governing body, or

any other officer of a state governmental entity, or a contractor of a state governmental entity, for any claim or cause of action, including breach of fiduciary duty, or for violation of any constitutional, statutory, or regulatory requirement in connection with any action, inaction, decision, divestment, investment, restricted entity communication, report, or other determination made or taken in connection with this chapter.

(b) A person who files suit against the state, a state governmental entity, an employee, a member of the governing body, or any other officer of a state governmental entity, or a contractor of a state governmental entity, is liable for paying the costs and attorney's fees of a person sued in violation of this section.

**§809A.005. Inapplicability of Requirements Inconsistent With Fiduciary Responsibilities and Related Duties.**

A state governmental entity is not subject to a requirement of this chapter if the state governmental entity determines that the requirement would be inconsistent with its fiduciary responsibility with respect to the investment of its assets or other duties imposed by law relating to the investment of its assets, including the duty of care established under Section 67, Article XVI, Texas Constitution.

**§809A.006. Reliance on Federal Determination and Restricted Entity Response.**

The comptroller may rely on the following, in the following order of priority, without conducting any further investigation, research, or inquiry:

(1) a determination by a federal agency or officer made under a federal law, regulation, or executive order regarding whether an entity is a restricted entity; and (2) a restricted entity's response to a communication made under this chapter.

SUBCHAPTER B. DUTIES REGARDING INVESTMENTS

**§809A.051. Listed Restricted Entities.**

(a) The comptroller shall prepare and maintain, and provide to each state governmental entity, a list of all restricted entities. In maintaining the list, the comptroller may:

(1) review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding restricted entities, including information provided or made available by federal, state, or local governments, nonprofit organizations, research firms, and international organizations; and

(2) request written verification from a restricted entity that it does not meet any of the criteria in Section 809A.001(6) and rely, as appropriate in the comptroller's judgment and without conducting further investigation, research, or inquiry, on the entity's written response to the request.

(b) A restricted entity that fails to provide to the comptroller a written verification under Subsection (a)(2) before the 61st day after receiving the request from the comptroller is presumed to be a restricted entity.

(c) The comptroller shall update the list annually or more often as the comptroller considers necessary, but not more often than quarterly, based on information from, among other sources, those listed in Subsection (a).

(d) Not later than the 30th day after the date the list of restricted entities is first provided or updated, the comptroller shall file the list with the presiding officer of each house of the legislature and the attorney general and post the list on a publicly available Internet website.

### **§809A.052. Identification of Investment in Listed Restricted Entities.**

Not later than the 30th day after the date a state governmental entity receives the list provided under Section 809A.051, the state governmental entity shall notify the comptroller of the restricted entities in which the state governmental entity owns direct holdings or indirect holdings.

### **§809A.053. Notice of Divestment to Listed Restricted Entity.**

For each listed restricted entity identified under Section 809A.052, the state governmental entity shall send a written notice:

- (1) informing the restricted entity of its status as a restricted entity; and
- (2) warning the restricted entity that it may become subject to divestment by the state governmental entity.

### **§809A.054. Divestment of Assets.**

(a) A state governmental entity required to sell, redeem, divest, or withdraw all publicly traded securities of a listed restricted entity shall comply with the following schedule:

(1) at least 50 percent of those assets must be removed from the state governmental entity's assets under management not later than the 180th day after the date the restricted entity receives notice under Section 809A.053 unless the state governmental entity determines, based on a good faith exercise of its fiduciary discretion and subject to Subdivision (2), that a later date is more prudent; and

(2) 100 percent of those assets must be removed from the state governmental entity's assets under management not later than the 360th day after the date the restricted entity receives notice under Section 809A.053.

(b) Except as provided by Subsection (a), a state governmental entity may delay the schedule for divestment under that subsection only to the extent that the state governmental entity determines, in the state governmental entity's good faith judgment, and consistent with the state governmental entity's fiduciary duty, that divestment from listed restricted entities will likely result in a loss in value or a benchmark deviation described by Section 809A.056(a). If a state governmental entity delays the schedule for divestment, the state governmental entity shall submit a report to the presiding officer of each house of the legislature and the attorney general stating the reason and justification for the state governmental entity's delay in divestment from listed restricted entities. The report must include documentation supporting its determination that the divestment would result in a loss in value or a benchmark deviation described by Section 809A.056(a), including objective numerical estimates. The state governmental entity shall update the report every six months.

### **§809A.055. Investments Exempted From Divestment.**

A state governmental entity is not required to divest from any indirect holdings in actively or passively managed investment funds or private equity funds. The state governmental entity shall submit letters to the managers of each investment fund containing listed restricted entities requesting that they remove those restricted entities from the fund or create a similar actively or passively managed fund with indirect holdings devoid of listed restricted entities. If a manager creates a similar fund with substantially the same management fees and same level of investment risk and anticipated return, the state governmental entity may replace all applicable investments with investments in the

similar fund in a time frame consistent with prudent fiduciary standards but not later than the 450th day after the date the fund is created.

**§809A.056. Authorized Investment in Listed Restricted Entities.**

(a) A state governmental entity may cease divesting from one or more listed restricted entities only if clear and convincing evidence shows that:

(1) the state governmental entity has suffered or will suffer a loss in the hypothetical value of all assets under management by the state governmental entity as a result of having to divest from listed restricted entities under this chapter; or

(2) an individual portfolio that uses a benchmark-aware strategy would be subject to an aggregate expected deviation from its benchmark as a result of having to divest from listed restricted entities under this chapter.

(b) A state governmental entity may cease divesting from a listed restricted entity as provided by this section only to the extent necessary to ensure that the state governmental entity does not suffer a loss in value or deviate from its benchmark as described by Subsection (a).

(c) Before a state governmental entity may cease divesting from a listed restricted entity under this section, the state governmental entity must provide a written report to the comptroller, the presiding officer of each house of the legislature, and the attorney general setting forth the reason and justification, supported by clear and convincing evidence, for deciding to cease divestment or to remain invested in a listed restricted entity.

(d) The state governmental entity shall update the report required by Subsection (c) semiannually, as applicable.

**§809A.057. Prohibited Investments.**

Except as provided by Section 809A.056, a state governmental entity may not acquire securities of a listed restricted entity.

SUBCHAPTER C. REPORT; ENFORCEMENT

**§809A.101. Report.**

Not later than January 5 of each year, each state governmental entity shall file a publicly available report with the presiding officer of each house of the legislature and the attorney general that:

(1) identifies all securities sold, redeemed, divested, or withdrawn in compliance with Section 809A.054;

(2) identifies all prohibited investments under Section 809A.057; and

(3) summarizes any changes made under Section 809A.055.

**§809A.102. Enforcement.**

The attorney general may bring any action necessary to enforce this chapter.

## CHAPTER 810. MISCELLANEOUS PROVISIONS

### **§810.001. Establishment of Public Retirement System.**

(a) In this section:

(1) "Political entity" means a municipality or any agency thereof, a junior college district, river authority, water district, appraisal district, or other special purpose district or authority that is created pursuant to state law and that is not an agency of the state.

(2) "Public retirement system" means a continuing, organized program or plan (including a plan qualified under Section 401(a) of the Internal Revenue Code of 1986) of service retirement, disability retirement, or death benefits for officers or employees of a political entity, other than:

(A) a program providing only workers' compensation benefits;

(B) a program administered by the federal government;

(C) an individual retirement account or individual retirement annuity within the meaning of Section 408 or a retirement bond within the meaning of Section 409 of the Internal Revenue Code of 1986 (26 U.S.C. Sections 408, 409);

(D) an individual account plan consisting of an annuity contract described by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403); or

(E) an eligible state deferred compensation plan described by Section 457(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 457).

(b) Except as provided by Subsection (d), the governing body of a political entity may establish and maintain a public retirement system for its appointive officers and employees and determine the benefits, funding source and amount, and administration of the system. Each active member of a public retirement system established under the authority provided by this section shall contribute to the system an amount, if any, determined by the political entity. The political entity shall contribute for each active member in a defined contribution plan or a defined benefit plan an amount determined by the political entity to be required to meet the system's benefit plan.

(c) The governing body of the political entity may arrange for administration of the system by a private provider of public retirement benefits, whether or not the provider is also a source of benefits provided for under the system.

(d) The authority granted by Subsections (b) and (c) does not apply to a political entity to the extent that the entity, by specific statute, is:

(1) required to establish or participate exclusively in a particular public retirement system; or

(2) prohibited from establishing or participating in any public retirement system or in a particular retirement system.

(e) The authority granted by Subsections (b) and (c) is in addition to any other statutory authority to provide a public retirement system or programs specifically excluded from the definition of a public retirement system.

(f) Every political entity which establishes or maintains a public retirement system covered under this Act shall file all reports with the State Pension Review Board required by Chapter 802. If a political subdivision establishes a retirement program that would be a "public retirement system" within the meaning ascribed to that term by Section

801.001, but for the fact that the program is administered by a life insurance company, the subdivision shall notify the State Pension Review Board of the establishment of the program and the name of the administering company.

(g) "Civil union" means any relationship status that grants to the parties of the relationship the same legal protections, benefits, and responsibilities as are granted to the spouses of a marriage.

(h) For purposes of this title, the state may not give effect to a:

(1) public act, record, or judicial proceeding that recognizes or validates a marriage or civil union between persons of the same sex; or

(2) right or claim asserted as a result of the purported marriage or civil union.

(i) Subsection (h) does not preclude the enforcement in this state of an order issued in another state relating to child custody, child support, or property division, including a qualified domestic relations order.

(j) A single governmental employer is not considered to be permitting a person who is a public employee, officer, or retiree of that employer to be receiving benefits from more than one system or program of retirement for the same service if:

(1) the employer participates in the Texas Municipal Retirement System or the Texas County and District Retirement System and also sponsors one or more supplemental plans:

(A) funded by the employer, the employee, or a combination of the employer and the employee; and

(B) established before January 1, 2005; and

(2) the amount of the combined benefits paid to the person by the Texas Municipal Retirement System or the Texas County and District Retirement System and all of the supplemental plans described by Subdivision (1) is in compliance with Section 415, Internal Revenue Code of 1986.

### **§810.002. Alternative Benefit Plan for Certain Municipalities.**

(a) In this section, "alternative benefit plan" means a continuing, organized benefit plan, including a plan qualified under Section 401(a) of the Internal Revenue Code of 1986, of service retirement, disability retirement, or death benefits for officers or employees of a municipality.

(b) This section applies only to a municipality subject to Article 6243a-1, Revised Statutes.

(c) Notwithstanding any other law and subject to Subsection (f), the governing body of a municipality subject to this section may by ordinance:

(1) establish an alternative benefit plan and determine the benefits, funding source and amount, and administration of the alternative benefit plan; and

(2) require an employee first hired by the municipality on or after the date the alternative benefit plan is implemented to participate in the alternative benefit plan instead of participating in the pension system provided under Article 6243a-1, Revised Statutes.

(d) Each active participant of an alternative benefit plan established under this section shall contribute to the plan an amount, if any, determined by the municipality. The municipality shall contribute for each active participant in an alternative benefit plan established under Subsection (c) an amount determined by the municipality.

(e) A municipality that establishes an alternative benefit plan under this section shall file

all reports with the State Pension Review Board required by Chapter 802.

(f) The governing body of a municipality may only establish an alternative benefit plan under this section if:

(1) the qualified actuary of the pension system established under Article 6243a-1, Revised Statutes, determines that after establishment and implementation of the alternative benefit plan, the pension system would continue to comply with funding and amortization period requirements applicable to the pension system under Subchapter C, Chapter 802; and

(2) the State Pension Review Board conducts a review of and validates the determination made under Subdivision (1).

### **§810.003 Certain Elected Officials Ineligible for Retirement Annuity.**

(a) In this section:

(1) “Governing body of a public retirement system” and “public retirement system” have the meanings assigned by Section 802.001.

(2) “Qualifying felony” means any felony involving:

(A) bribery;

(B) the embezzlement, extortion, or other theft of public money;

(C) perjury;

(D) coercion of public servant or voter;

(E) tampering with governmental record;

(F) misuse of official information;

(G) conspiracy or the attempt to commit any of the offenses described by Paragraphs (A)-(F); or

(H) abuse of official capacity.

(b) This section applies only to a person who is:

(1) a member of the elected class of the Employees Retirement System of Texas as described by Section 812.002(a)(1) or (2); or

(2) otherwise eligible for membership in a public retirement system wholly or partly because the person was elected or appointed to an elected office.

(c) Except as provided by Subsection (d), a member of a public retirement system is not eligible to receive a service retirement annuity under the retirement system if the member is convicted of a qualifying felony committed while in office and arising directly from the official duties of that elected office.

(d) The retirement system, on receipt of notice of a conviction under Subsection (e) or (k), any similar notice of a conviction of a qualifying felony from a United States district court or United States attorney, or any other information that the retirement system determines by rule is sufficient to establish a conviction of qualifying felony, shall suspend payments of a service retirement annuity to a person the system determines is ineligible to receive the annuity under Subsection (c). A person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and

(2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (f).

(e) Not later than the 30th day after the conviction of a person of a qualifying felony, the governmental entity to which the person was elected or appointed must provide written notice of the conviction to the public retirement system in which the person is enrolled. The notice must comply with the administrative rules adopted by the public retirement system under Subsection (j).

(f) A member who is ineligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. A refund under this subsection is subject to an award of all or part of the member's service retirement annuity contributions to a former spouse, including as a just and right division of the contributions on divorce, payment of child support, or payment of spousal maintenance or contractual alimony or other order of a court.

(g) Benefits payable to an alternative payee under Chapter 804 who is recognized by a qualified domestic relations order established before the effective date of this subsection are not affected by a member's ineligibility to receive a service retirement annuity under Subsection (c).

(h) On conviction of a member for a qualifying felony:

(1) a court may, in the same manner as in a divorce or annulment proceeding, make a just and right division of the member's service retirement annuity by awarding to the member's spouse all or part of the community property interest in the annuity forfeited by the member; and

(2) a court shall, if the member's service retirement annuity was partitioned or exchanged by written agreement of the spouses as provided by Subchapter B, Chapter 4, Family Code, before the member's commission of the offense, award the annuity forfeited by the member to the member's spouse as provided in the agreement.

(i) Ineligibility for a service retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(j) The governing body of a public retirement system shall adopt rules and procedures to implement this section.

(k) A court shall notify the retirement system of the terms of a conviction of a person convicted of an offense described by Subsection (c).

(l) Notwithstanding any other provision of this section, if the spouse of a member convicted of a qualifying felony is convicted of the felony as a party to the offense as defined by Section 7.01, Penal Code, or of another qualifying offense arising out of the same criminal episode as defined by Section 3.01, Penal Code, the spouse forfeits the member's service retirement annuity and service retirement contributions to the same extent as the member.

#### **§810.004. Certain Corrections Employees Ineligible for Retirement Annuity.**

(a) In this section:

(1) "Governing body of a public retirement system" and "public retirement system" have the meanings assigned by Section 802.001.

(2) "Qualifying felony" means any felony involving an incarcerated member of

a criminal street gang as defined by Section 71.01, Penal Code, including:

- (A) bribery;
- (B) the embezzlement, extortion, or other theft of public money;
- (C) perjury;
- (D) engaging in organized criminal activity;
- (E) tampering with governmental record;
- (F) misuse of official information;
- (G) abuse of official capacity; or
- (H) conspiracy or the attempt to commit any of the offenses described

by Paragraphs (A) - (G).

(b) This section applies only to a person who is:

(1) a member of the employee class of the Employees Retirement System of Texas as described by Section 812.003 because the person serves as a corrections officer for the Texas Department of Criminal Justice or the Texas Juvenile Justice Department; or

(2) otherwise eligible for membership in a public retirement system wholly or partly because the person served as a corrections officer for the Texas Department of Criminal Justice or the Texas Juvenile Justice Department.

(c) Except as provided by Subsection (d), a member of a public retirement system is not eligible to receive a service retirement annuity under the retirement system if the member is convicted of a qualifying felony for conduct arising directly from the member's service as a corrections officer.

(d) The retirement system, on receipt of notice of a conviction under Subsection (j), any similar notice of a conviction of a qualifying felony from a United States district court or United States attorney, or any other information that the retirement system determines by rule is sufficient to establish a conviction of a qualifying felony, shall suspend payments of a service retirement annuity to a person the system determines is ineligible to receive the annuity under Subsection (c). A person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and

(2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (e).

(e) A member who is ineligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. A refund under this subsection is subject to an award of all or part of the member's service retirement annuity contributions to a former spouse, including as a just and right division of the contributions on divorce, payment of child support, or payment of spousal maintenance or contractual alimony or other order of a court.

(f) Benefits payable to an alternate payee under Chapter 804 who is recognized by a qualified domestic relations order established before the effective date of this subsection are not affected by a member's ineligibility to receive a service retirement annuity under

Subsection (c).

(g) On conviction of a member for a qualifying felony:

(1) a court may, in the same manner as in a divorce or annulment proceeding, make a just and right division of the member's service retirement annuity by awarding to the member's spouse all or part of the community property interest in the annuity forfeited by the member; and

(2) a court shall, if the member's service retirement annuity was partitioned or exchanged by written agreement of the spouses as provided by Subchapter B, Chapter 4, Family Code, before the member's commission of the offense, award the annuity forfeited by the member to the member's spouse as provided in the agreement.

(h) Ineligibility for a service retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(i) The governing body of a public retirement system shall adopt rules and procedures to implement this section.

(j) A court shall notify the retirement system of the terms of a conviction of a person convicted of an offense described by Subsection (c).

(k) Notwithstanding any other provision of this section, if the spouse of a member convicted of a qualifying felony is convicted of the felony as a party to the offense as defined by Section 7.01, Penal Code, or of another qualifying offense arising out of the same criminal episode as defined by Section 3.01, Penal Code, the spouse forfeits the member's service retirement annuity and service retirement contributions to the same extent as the member.

### **§810.006. Minimum Retirement Funding Requirements for Defunding Municipalities.**

(a) In this section:

(1) "Defunding municipality" means a municipality that is considered to be a defunding municipality under Chapter 109, Local Government Code.

(2) "Public retirement system" has the meaning assigned by Section 802.001.

(b) This section applies only to a municipality that is:

(1) an employer of active members of a public retirement system administering a defined benefit plan; and

(2) a defunding municipality.

(c) Notwithstanding any other law and as soon as practicable after the date the criminal justice division of the office of the governor issues a written determination under Section 109.003(2), Local Government Code, with respect to a municipality, the municipality shall for the purpose of funding retirement benefits increase municipal contributions to a public retirement system in which its employees participate as members in a manner that ensures that the total amount the municipality and members contribute to the system for the fiscal year on which the determination is based is not less than the total amount the municipality and members of the system contributed to the system for the fiscal year immediately preceding the fiscal year on which the determination is based.

(d) A municipality subject to this section shall increase contributions in the manner provided by Subsection (c) for each fiscal year for which the municipality is considered a defunding municipality.

## Notes

## Notes



# **Texas Pension Review Board**

William P. Clements Building

300 West 15th Street

Suite 406

Austin, TX 78701

## **Mailing Address:**

P.O. Box 13498

Austin, TX 78711-3498

512-463-1736

Email: [prb@prb.texas.gov](mailto:prb@prb.texas.gov)

[www.prb.texas.gov](http://www.prb.texas.gov)

GREAT EFFORT HAS BEEN MADE TO REPRODUCE THE PROVISIONS IN THIS BOOK AS THE PROVISIONS ARE FOUND IN THE OFFICIAL LAWS OF THE STATE OF TEXAS. HOWEVER, THE MAIN PURPOSE IS TO PROVIDE A CONVENIENT SOURCE OF REFERENCE. THE LAWS AND CONSTITUTIONAL PROVISIONS AS PUBLISHED IN THE OFFICIAL LAWS OF THE STATE WILL PREVAIL IN ALL QUESTIONS OF INTERPRETATION AND APPLICATION. IN ADDITION, THIS BOOK, WHILE PROVIDING GENERAL INFORMATION, IS NOT INTENDED TO BE A SUBSTITUTE FOR INDEPENDENT LEGAL RESEARCH OR THE ADVICE OF AN ATTORNEY.