

## **BILL ANALYSIS**

Senate Research Center  
81R9540 KFF-D

S.B. 1548  
By: Ogden  
State Affairs  
4/8/2009  
As Filed

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

Currently, the Pension Review Board (PRB) has limited review of and provides some assistance to public retirement systems in Texas. Recent events have highlighted the need for improved policies, procedures, and oversight with respect to public pension and investment funds in Texas. This bill is intended to provide more information regarding public pensions and oversight of public pension and investment funds.

As proposed, S.B. 1548 renames PRB as the Pension and Investment Review Board (board). The bill requires state investment funds to report certain information to the board; and increases the ability of the board to gather information about public pension and investment funds and addresses problems including investigations of fraud, embezzlement, and breach of fiduciary duty.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the State Pension Review Board is modified in SECTION 11 (Section 801.201, Government Code) of this bill.

Rulemaking authority is expressly granted to the State Pension and Investment Review Board in SECTION 15 (Sections 801.305 and 801.311, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Chapter 801, Government Code, to read as follows:

CHAPTER 801. STATE PENSION AND INVESTMENT REVIEW BOARD

SECTION 2. Amends Section 801.001(1), Government Code, to redefine "board."

SECTION 3. Amends Section 801.101, Government Code, as follows:

Sec. 801.101. New heading: PENSION AND INVESTMENT REVIEW BOARD. Provides that the State Pension and Investment Review Board (board) is an agency of the state.

SECTION 4. Amends Section 801.102(a), Government Code, to provide that the board is composed of five, rather than nine, members.

SECTION 5. Amends Section 801.103, Government Code, as follows:

Sec. 801.103. MEMBERS APPOINTED BY GOVERNOR. Requires the governor to appoint, with the advice and consent of the senate, three, rather than seven, members to the board. Deletes existing Subsection (b) requiring the governor to appoint certain persons to the board. Makes a nonsubstantive change.

SECTION 6. Amends Section 801.104, Government Code, as follows:

Sec. 801.104. MEMBERS APPOINTED BY OTHERS. (a) Requires the lieutenant governor to appoint one member to the board, rather than one member of the senate to the board.

(b) Requires the speaker of the house of representatives to appoint one member to the board, rather than one member of the house to the board.

SECTION 7. Amends Subchapter B, Chapter 801, Government Code, by adding Section 801.105, as follows:

Sec. 801.105. QUALIFICATIONS OF MEMBERS. Requires each person appointed to the board to have experience in the field of securities investment, pension administration, or pension law.

SECTION 8. Amends Section 801.106, Government Code, to provide that members of the board hold office for staggered terms of six years, with the terms of one or two, rather than three, members expiring on January 31 of each odd-numbered year.

SECTION 9. Amends Section 801.107, Government Code, to provide that the board is subject to Chapter 325 (Texas Sunset Act).

SECTION 10. Amends Sections 801.113(a), (c), (d), (e), and (f), to make conforming and nonsubstantive changes.

SECTION 11. Amends Sections 801.201(b) and (c), Government Code, as follows:

(b) Authorizes the board, for the purposes of performing its duties under Section 801.202(1) or (2), by rule to require clarification of information provided by a public retirement system or other entity subject to Subchapter D in a report that is required by law and is required to be filed with the board. Deletes existing text prohibiting a rule adopted under this subsection from being enforced against a public retirement system if compliance with the rule would cause the system to incur a major expense.

(c) Requires the board by rule to:

(1) adopt actuarial standards that are authorized to be used by public retirement systems;

(2) adopt a brief standard form that will assist the board in efficiently determining the actuarial soundness, if applicable, and current financial condition of a public retirement system or other entity subject to Subchapter D; and

(3) require that a retirement system or other entity subject to Subchapter D submitting information required for the review or study described under Section 801.202(1) or (2) to include the form with the submission. Makes a nonsubstantive change.

SECTION 12. Amends Section 801.202, Government Code, as follows:

Sec. 801.202. GENERAL DUTIES. Requires the board to:

(1) conduct a continuing review of public retirement systems, compiling and comparing information about benefits, creditable service, financing, and administration of systems and the investment practices of public retirement systems and other entities subject to Subchapter D;

(2) conduct intensive studies of potential or existing problems that threaten, rather than threaten the actuarial soundness of, or inhibit the financial condition or actuarial soundness of public funds managed or invested by an entity subject to Subchapter D or 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;

(4) determine whether an entity subject to Subchapter D is investing funds in compliance with the entity's investment strategy and applicable law governing the entity's investments; and

(5) recommend policies, practices, and legislation to public retirement systems and other entities subject to Subchapter D and appropriate governmental entities. Makes nonsubstantive changes.

SECTION 13. Amends Section 801.203(a), Government Code, to require the board to 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 or other entities subject to Subchapter D that the board finds advisable.

SECTION 14. Amends Section 801.204, Government Code, to authorize the board, in performing its functions, to inspect the books, records, or accounts of a public retirement system or another entity subject to Subchapter D during business hours of the system.

SECTION 15. Amends Chapter 801, Government Code, by adding Subchapter D, as follows:

#### SUBCHAPTER D. BOARD INVESTMENT OVERSIGHT

Sec. 801.301. **APPLICABILITY.** Provides that this subchapter applies only to the investment of public funds by a public retirement system and the comptroller; the permanent university fund by the board of regents of The University of Texas System or any entity acting on behalf of the board of regents, including a nonprofit corporation acting under Section 66.08 (Investment Management), Education Code; and the permanent school fund by the State Board of Education (SBOE) or any entity acting on behalf of SBOE, including a nonprofit corporation acting under Section 43.006 (Investment Management), Education Code.

Sec. 801.302. **ANNUAL REPORT TO BOARD.** Requires an entity subject to this subchapter, not later than six months after the last day of the fiscal year under which the entity operates, or, if a public retirement system, the plan year under which the entity operates, to file with the board and post on the entity's Internet website information that the board determines is necessary to perform the board's duties under Section 801.202.

Sec. 801.303. **REPORT ON INVESTMENT STRATEGY.** (a) Requires an entity under this subchapter to develop and adopt a written investment strategy; file a copy of the strategy with the board not later than the 90th day after the date the strategy is adopted; and file a copy of each change to the strategy with the board not later than the 90th day after the change is adopted.

(b) Authorizes a report under this section to be combined with any other report required by this chapter.

Sec. 801.304. **TIMELY SUBMISSION OF CERTAIN REPORTS AND RESPONSES REQUIRED.** (a) Provides that the presiding officer of a governing body of a public retirement system is responsible for ensuring that a report or a response to a request for information made by the board for the purpose of performing the board's duties under Section 801.202 is filed timely with the board.

(b) Provides that the presiding officer of a governing body of a public retirement system that consistently, as determined by the board, fails to timely submit a report or respond to a request for information under Subsection (a) is subject to removal from the governing body.

(c) Requires the board, if the board determines that a presiding officer should be removed under Subsection (b), to notify the appropriate appointing officer, if any, that a ground for removal exists.

Sec. 801.305. PROCUREMENT OF INVESTMENT MANAGERS AND CERTAIN OTHERS. (a) Requires the board by rule to adopt guidelines and procedures for the procurement of investment managers and other persons, including an investment consultant or advisor, who provide an entity subject to this subchapter with services relating to the management and investment of public funds for or on behalf of the entity.

(b) Authorizes the board to require an entity subject to this subchapter to provide the board with a statement, not later than the 30th day after the date of the procurement, detailing the entity's method of selecting any person described by Subsection (a).

Sec. 801.306. CONTRACTS WITH INVESTMENT MANAGERS AND CERTAIN OTHERS. (a) Provides that a contract with an investment manager or other person to provide services to an entity subject to this subchapter relating to the management and investment of public funds for or behalf of the entity is subject to review by the board regarding the fees charged and paid by the subject entity and the services rendered to the entity in consideration for the fees.

(b) Requires the investment manager or other person, as appropriate, if, in performing a review under this section, the board requests information from an investment manager or other person, to immediately submit a written response to the board's request.

(c) Provides that any provision in a contract described by Subsection (a) relating to providing a bonus or other performance incentive is void unless approved by the governor and the Legislative Budget Board before the contract is entered into.

Sec. 801.307. DISCLOSURE OF CERTAIN POTENTIAL CONFLICTS OF INTEREST; ANNUAL FILING. (a) Provides that this section applies to:

- (1) a member of the governing body of a public retirement system;
- (2) an investment manager for a public retirement system appointed by contract;
- (3) a member of the board of regents of The University of Texas System (UT System);
- (4) the officers and directors of a nonprofit corporation with the board of regents of UT System under Section 66.08, Education Code, to invest the funds of the permanent university fund on behalf of the board of regents;
- (5) a member of SBOE;
- (6) the officers and directors of a nonprofit corporation acting under contract with SBOE to invest the funds of the permanent school fund under Section 43.006, Education Code;
- (7) any private professional investment manager who has entered into a contract with the comptroller in investing public funds; and
- (8) any other person, including an investment manager, consultant, or advisor, providing services under contract to an entity subject to this subchapter relating to the management and investment of the entity's assets.

(b) Requires a person to whom this section applies and who has a business, commercial, or other relationship that a reasonable person would find likely to diminish the person's independence of judgment in the performance of the person's responsibilities with respect to the management or investment of public

funds for or on behalf of an entity subject to this subchapter to immediately disclose the relationship in writing to the entity.

(c) Provides that if a person described by Subsections (a)(1) or (3) fails to disclose a relationship under Subsection (b), it is ground for removal from the governing body of the entity on which the person serves.

(d) Provides that if a person described by Subsections (a)(2), (4), or (6) through (8) fails to disclose a relationship under Subsection (b) the contract is voidable by the entity and the governing body of the entity may enter an order declaring the person ineligible to contract for business relating to the management or investment of public funds for or on behalf of the entity.

(e) Requires a person to whom this section applies, at least annually and not later than a date specified by the entity, to file a statement with the entity stating that the person is aware that the person is required to disclose material conflicts of interest under this section and that the person is in compliance with this section.

Sec. 801.308. PROHIBITION AGAINST ACCEPTANCE OF GIFTS AND OTHER THINGS OF VALUE. Prohibits the comptroller of public accounts (comptroller) or a person who is a member of the governing body of a public retirement system, the board of regents of UT System, or SBOE or an employee of an entity subject to this subchapter 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.), from accepting a gift or other thing of value, including food, entertainment, and a promised future benefit, from another person doing business with or seeking to do business with the entity.

Sec. 801.309. PROHIBITED EMPLOYMENT AND CONTRACTS. Prohibits an entity subject to this subchapter from directly or indirectly employing or contracting with a former member of the entity or the governing body of the entity, as applicable, before the second anniversary of the date the individual ceased to be a member of the entity or the entity's governing body as applicable.

Sec. 801.310. CIVIL PENALTY. (a) Provides that a person who commits a breach of the person's fiduciary duty, fraud, theft, embezzlement, fraudulent conversion, unlawful appropriation, or misapplication of property in relation to a service provided by the person to an entity subject to this subchapter is liable to this state for a civil penalty in an amount not to exceed \$250,000 for each offense.

(b) Authorizes the attorney general to bring an action to recover the civil penalty imposed under this section.

(c) Provides that the penalty under this section is in addition to any other remedy provided by law.

Sec. 801.311. INVESTIGATION OF CERTAIN COMPLAINTS; ASSISTANCE OF ATTORNEY GENERAL. (a) Requires the board to adopt rules and procedures for receiving and investigating a complaint against a person who provides management or investment services to an entity subject to this subchapter alleging that the person violated or may have violated Section 801.307 or another applicable conflict of interest provision, or has been or may have been involved in criminal conduct relating to the services provided by the person to the entity.

(b) Authorizes the board or the attorney general, without receiving a complaint, to initiate an investigation under this section if the board or the attorney general, as applicable, determines an investigation is appropriate.

(c) Authorizes the board to enter into a memorandum of understanding with the attorney general to assist in an investigation under this section. Requires that the

memorandum specify the type, scope, and format of the investigative assistance provided by the attorney general.

(d) Requires the board or the attorney general, as applicable, if, as a result of an investigation, the board or the attorney general determines that a criminal offense may have been committed, to refer the case to the appropriate law enforcement agency for prosecution.

SECTION 16. Amends Section 802.001(1), Government Code, to redefine "board."

SECTION 17. Amends Section 802.003(d), Government Code, to make a conforming change.

SECTION 18. Amends Section 802.101(c), Government Code, to make a conforming change.

SECTION 19. Amends Section 802.1012(j), Government Code, to make a conforming change.

SECTION 20. Amends Sections 802.103(b) and (c), Government Code, to make conforming changes.

SECTION 21. Amends Section 802.105(a), Government Code, to make a conforming change.

SECTION 22. Amends Section 802.106(h), Government Code, to make a conforming change.

SECTION 23. Amends Section 802.107, Government Code, as follows:

Sec. 802.107. GENERAL PROVISIONS RELATING TO REPORTS. (a) Authorizes any information required to be reported annually to the board to be posted on the retirement system's Internet website or on the website of the board. Makes a conforming change.

(b) Makes a conforming change.

SECTION 24. Amends Section 802.202(d), Government Code to make conforming changes.

SECTION 25. Amends the heading to Section 802.3021, Government Code, to read as follows:

Sec. 802.3021. STATE PENSION AND INVESTMENT REVIEW BOARD ACTUARY.

SECTION 26. Amends Section 810.001(f), Government Code, to make conforming changes.

SECTION 27. Amends Section 815.110(d), Government Code, to make a conforming change.

SECTION 28. Amends Section 815.510(a), Government Code, to make a conforming change.

SECTION 29. Amends Sections 825.108(c) and (d), Government Code, to make conforming changes.

SECTION 30. Amends Section 825.111(d), Government Code, to make a conforming change.

SECTION 31. Amends Section 825.512(e), Government Code, to make a conforming change.

SECTION 32. Amends Section 825.513, Government Code, to make a conforming change.

SECTION 33. Amends Section 825.518, Government Code, to make a conforming change.

SECTION 34. Amends Section 2, Chapter 817 (S.B. 127), Acts of the 73rd Legislature, Regular Session, 1993 (Article 4413(34e), V.T.C.S.), to make a conforming change.

SECTION 35. Amends Section 12.03(d), Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, V.T.C.S.), to make a conforming change.

SECTION 36. Amends Section 10, Article 6243e.2(1), Revised Statutes, to make a conforming change.

SECTION 37. (a) Provides that the name of PRB is changed to the board, and the name of PRB fund is changed to the board fund. Provides that a reference in law to the PRB means the board. Provides that a reference in law to the PRB fund means the board fund.

(b) Provides that an appropriation for the use and benefit of the PRB is available for the use and benefit of the board.

SECTION 38. (a) Provides that as soon as practicable on or after the effective date of this Act:

(1) the governor is required to appoint three persons to the board as provided by Section 801.103, Government Code, as amended by this Act, as follows: one person for a term expiring January 31, 2011; one person for a term expiring January 31, 2013; and one person for a term expiring January 31, 2015;

(2) the lieutenant governor is required to appoint one person to the board as provided by Section 801.104(a), Government Code, as amended by this Act, for a term expiring January 31, 2013; and

(3) the speaker of the house of representatives is required to appoint one person to the board as provided by Section 801.104(b), Government Code, as amended by this Act, for a term expiring January 31, 2015.

(b) Provides that the term of a member of the board serving immediately before the effective date of this Act expires at the time three or more of the members appointed to the board under Subsection (a) of this section qualify for office. Provides that until the expiration of a member's term occurs under this subsection, the member has the same powers and duties that the member had immediately before that date.

SECTION 39. (a) Provides that except as provided by Subsection (b) of this section, Subchapter D, Chapter 801, Government Code, as added by this Act, applies to the oversight of funds by the board, regardless of whether the investment of those funds was made before, on, or after the effective date of this Act.

(b) Makes application of the change in law made by Section 801.306(c), Government Code, of this Act, prospective.

SECTION 40. Effective date: September 1, 2009.