

## **BILL ANALYSIS**

Senate Research Center

S.B. 301  
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State Affairs  
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Enrolled

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

S.B. 301 is the Sunset bill for the Employees Retirement System of Texas (ERS). As a constitutionally created agency, ERS is not subject to abolishment under the Sunset Act.

The legislation, which reflects the recommendations of the Sunset Advisory Commission (Sunset), focuses primarily on strengthening board oversight of alternative investments, improving transparency of alternative investments, and ensuring the Group Benefit Program is managed effectively to meet the needs of members and the state.

To improve oversight of the alternative investments made by ERS, S.B. 301 requires the ERS board of trustees to approve any individual alternative investment over \$100 million and allows the board of trustees to discuss the investment in closed session or by teleconference. A vote on the alternative investment, however, must be taken in public.

Under current practice, the ERS board of trustees sets the broad investment strategy for the \$25 billion pension trust fund but leaves individual investment decisions to investment professionals on staff, which created concerns about the lack of board oversight of alternative investments. In the past five years, ERS has made 25 alternative investments over \$100 million.

The legislation also directs the agency to develop a consistent method to collect or calculate profit-sharing data for alternative investments, which are defined in the bill as a private equity fund, private real estate fund, hedge fund, infrastructure fund, or another asset as defined by rule by the board of trustees.

ERS will also be required to conduct its experience study and adopt actuarial assumptions once every four years. ERS currently does this analysis every five years.

S.B. 301 also improves the insurance appeal process for state employees and other ERS members by allowing members to participate more directly in the appeal process and providing a precedent manual to help guide agency appeal decisions. ERS will also be required to provide more comprehensive information about the Group Benefits Program in the annual report.

Finally, S.B. 301 applies Sunset's standard across-the-board good government recommendations and sets the next Sunset review for ERS at 2029. (Original Author's / Sponsor's Statement of Intent)

S.B. 301 amends current law relating to the operations and functions of the Employees Retirement System of Texas and the sunset review date for, financial management of, and programs administered by the agency.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas (board) in SECTION 8 (Sections 815.3015 and 815.3016, Government Code) of this bill.

Rulemaking authority previously granted to the board is modified in SECTION 9 (Section 840.005, Government Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 815.005, Government Code, to require the board of trustees of the Employees Retirement System of Texas (board; ERS) to be reviewed during the period in which state agencies abolished in 2029, rather than 2017, and every 12th year after that year, are reviewed.

SECTION 2. Amends Subchapter A, Chapter 815, Government Code, by adding Section 815.009, as follows:

Sec. 815.009. BOARD MEMBER TRAINING. (a) Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being 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) Requires that the training program provide the person with certain information relating to ERS and applicable laws.

(c) Provides that a person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for 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.

(d) Requires the executive director of ERS (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of the board. Requires each member of the board, on receipt of the training manual, to sign and submit to the executive director a statement acknowledging receipt of the training manual.

SECTION 3. Amends Subchapter B, Chapter 815, Government Code, by adding Section 815.1025, as follows:

Sec. 815.1025. USE OF ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a) Requires the board to develop a policy to encourage the use of certain procedures.

(b) Requires that ERS's procedures relating to alternative dispute resolution (ADR) conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of ADR by state agencies.

(c) Requires ERS to coordinate the implementation of the policy adopted under Subsection (a), provide training as needed to implement the procedures for negotiated rulemaking or ADR, and collect data concerning the effectiveness of those procedures.

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

SECTION 4. Amends Section 815.105, Government Code, as follows:

Sec. 815.105. ADOPTING TABLES. Requires the board, at least once every four years, to adopt mortality, service, and other tables the board considers necessary for ERS after considering the results of the actuary's investigation of the mortality, service, and compensation experience of ERS's members and beneficiaries under Section 815.206 (Actuary).

SECTION 5. Amends Section 815.202(f), Government Code, as follows:

(f) Authorizes the board, subject to Section 815.3016, to specifically delegate any right, power, or duty imposed or conferred on the executive director by law to another ERS employee. Authorizes the executive director, if not so specifically delegated and subject to Section 815.3016, to delegate to another ERS employee any right, power, or duty assigned to the executive director.

SECTION 6. Amends Section 815.206(c), Government Code, as follows:

(c) Requires the actuary, under the direction of the board, at least once every four, rather than five, years, to make an actuarial investigation of the mortality, service, and compensation experience of the members and beneficiaries of ERS and make a valuation of the assets and liabilities of ERS's funds.

SECTION 7. Amends Sections 815.301(b) and (c), Government Code, as follows:

(b) Authorizes the board, except as provided by Section 815.3016, to delegate its authority to the executive director. Authorizes the board or the executive director, subject to Section 815.3016, to make certain investments and reinvestments.

(c) Makes a conforming change.

SECTION 8. Amends Subchapter D, Chapter 815, Government Code, by adding Sections 815.3015 and 815.3016, as follows:

Sec. 815.3015. TRACKING AND REPORTING OF PROFIT SHARE. (a) Defines "alternative investment" and "profit share."

(b) Requires the board to develop a consistent method, guided by best industry practices and standards, to collect or calculate profit share data in connection with alternative investments of ERS.

(c) Requires the board to consistently track profit share data collected or calculated in accordance with Subsection (b) and the amount of realized gains for ERS from the associated alternative investments.

(d) Requires the board to report, at minimum, the aggregate amount of profit shares received by private professional investment managers in connection with alternative investments of ERS, categorized by asset class, in the annual financial report required under Section 2101.011 (Financial Information Required of State Agencies) and in other appropriate investment reports and board presentations.

(e) Authorizes the board to adopt rules necessary to implement this section.

Sec. 815.3016. APPROVAL OF CERTAIN ALTERNATIVE INVESTMENTS. (a) Defines "alternative investment."

(b) Prohibits the executive director, a private professional investment manager, or any other person delegated authority to invest or reinvest ERS assets under Section 815.202(f) or 815.301 (Investment of Assets) from investing ERS assets in a single alternative investment that exceeds 0.6 percent of the total market value of the trust fund established by Section 815.310 as reported in the most recent annual financial report required under Section 2101.011 unless the board votes to approve the investment.

(c) Authorizes the board to hold a closed meeting by telephone conference call or video conference call to consider and discuss an alternative investment or a potential alternative investment under this section, regardless of whether a quorum is physically present at one location of the meeting.

(d) Provides that Chapter 551 (Open Meetings) does not require the board to confer with one or more employees, consultants, or legal counsel of ERS or with a third party in an open meeting if the only purpose of the conference is to receive information from or question the employees, consultants, or legal counsel of ERS or the third party relating to an alternative investment or a potential alternative investment under this section.

(e) Prohibits members of the board, during a closed meeting held under this section, from deliberating public business or agency policy that affects public business.

(f) Authorizes a final action, decision, or vote on a matter considered or discussed in a closed meeting held under this section to only be made in an open meeting that is held in compliance with the notice provisions of Chapter 551.

(g) Authorizes the board to adopt rules necessary to implement this section.

SECTION 9. Amends Section 840.005, Government Code, to require the board, at least once every four years, by rule, to adopt interest rates and mortality, service, and other tables the board considers necessary for ERS after considering the results of the actuary's investigation of the mortality, service, and compensation experience of ERS's members and beneficiaries under Section 815.206.

SECTION 10. Amends Section 1551.061, Insurance Code, as follows:

Sec. 1551.061. ANNUAL REPORT. Requires the board to submit a written report not later than February, rather than January, 1 of each year to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board concerning the coverages provided and the benefits and services being received by all participants under this chapter (Texas Employees Group Benefits Act). Requires that the report include:

- (1) creates this subdivision from existing text and makes nonsubstantive changes;
- (2) basic information about each group coverage plan provided under this chapter, including the number of participants in each plan and the claims amounts and administrative expenses incurred under each plan;
- (3) a summary of recent changes to the benefits provided under this chapter that highlights any key benefits the board evaluated but did not implement;
- (4) a discussion of trends in claims under group coverage plans as well as other areas of interest identified by the board;
- (5) recommendations for any statutory changes the board determines necessary to achieve its goals for the group benefits program; and
- (6) any other information the board determines appropriate.

SECTION 11. Amends Section 1551.355, Insurance Code, by adding Subsection (d), to require the board to develop and implement a process to allow an employee, participant, annuitant, or covered dependent affected by a determination described by Section 1551.352 (Executive Director Determines Questions Relating to Enrollment or Payment of Claims) to participate directly in the process of appealing the determination.

SECTION 12. Amends Subchapter H, Chapter 1551, Insurance Code, by adding Section 1551.363, as follows:

Sec. 1551.363. PRECEDENT MANUAL. (a) Requires the board to develop and maintain a precedent manual relating to the enrollment and claims determinations under Section 1551.352 and appeals of those determinations. Requires that the precedent manual be composed of precedent-establishing determinations made by the board, executive director, or other staff, initially and on appeal, and include examples of previous determinations that are consistent with the identified precedent and authorizes that the manual include other information identified by the board.

(b) Requires the board to make the precedent manual available to appropriate staff and to employees, participants, annuitants, and covered dependents.

(c) Provides that the board and staff involved in the claims appeal process are not bound by a decision in the manual.

SECTION 13. Authorizes a member of the board, notwithstanding Section 815.009(a), Government Code, as added by this Act, who has not completed the training required by Section 815.009, Government Code, as added by this Act, to vote, deliberate, and be counted as a member in attendance at a meeting of the board until December 31, 2017.

SECTION 14. Provides that the board, and the actuary designated by the board, are not required to complete an actuarial investigation in the period prescribed by Section 815.206(c), Government Code, as amended by this Act, or adopt interest rates or mortality, service, or other tables based on that investigation in the period prescribed by Sections 815.105 and 840.005, Government Code, as amended by this Act, until the later of December 31, 2022, or the fourth anniversary of the date the board adopts actuarial assumptions and tables under those sections for the first time after the effective date of this Act.

SECTION 15. Requires ERS, in a contract between ERS and a private professional investment manager or other person under authority of Sections 815.202(f) and 815.301, Government Code, as amended by this Act, that is entered into or renewed on or after the effective date of this Act, to require that the private professional investment manager or other person comply with Section 815.3016, Government Code, as added by this Act.

SECTION 16. Effective date: September 1, 2017.