

GOVERNMENT CODE
CHAPTER 830. OPTIONAL RETIREMENT PROGRAM
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 830.001. PURPOSE OF CHAPTER. The purpose of this chapter is to establish a complete retirement program for faculty members employed in state-supported institutions of higher education as an incentive that will attract high quality faculties and thereby improve the level of education at state-supported colleges and universities.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.001 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 830.0011. DEFINITION. Notwithstanding Section 821.001, in this chapter "retirement system" means the Teacher Retirement System of Texas or the Employees Retirement System of Texas, as the context requires.

Added by Acts 1995, 74th Leg., ch. 586, Sec. 33, eff. Aug. 28, 1995.

Sec. 830.002. OPTIONAL RETIREMENT PROGRAM. (a) The optional retirement program established as provided by this subtitle shall provide for contributions to any type of investment authorized by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403), as it existed on January 1, 1981, and for the purchase of fixed or variable retirement annuities that meet the requirements of that section and Section 401(g) of the Internal Revenue Code of 1986 (26 U.S.C. Section 401).

(b) Participation in the optional retirement program is an alternative to active membership in the retirement system.

(c) The Texas Higher Education Coordinating Board shall develop policies, practices, and procedures as necessary in accordance with applicable statutes to provide greater uniformity in the administration of the retirement annuity insurance program available to employees of Texas state colleges and universities through the optional retirement program.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 207, ch. 18, Sec. 35, eff. Nov. 10, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.002 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 242, Sec. 11.117, eff. Sept. 1, 1991.

Sec. 830.003. APPLICATION. In this chapter, the term "institution of higher education" includes the Texas Higher Education Coordinating Board, the Texas State Technical College System, and the institutions defined in Section 821.001(10), but excludes the Rodent and Predatory Animal Control Service.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.003 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 287, Sec. 31, eff. Sept. 1, 1991.

Sec. 830.004. ADMINISTRATION. (a) A governing board may provide for contributions to any type of investment authorized by Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403), as it existed on January 1, 1981, and may arrange the purchase of annuity contracts from any insurance or annuity company that is qualified to do business in this state.

(b) If a governing board has more than one component institution, agency, or unit under its jurisdiction, the governing board may provide a separate optional retirement program for each component or may place two or more components under a single program.

(c) An institution of higher education may establish a governmental excess benefit arrangement as provided by Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)) for the purpose of providing to participants in the optional retirement program any portion of a participant's benefits that would otherwise be payable under the terms of the program except for the limitation on benefits imposed by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C. Section 415). The governing board of an institution of higher education may take any action necessary to establish and implement a governmental excess benefit arrangement authorized in accordance with this subsection.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, Sec. 36, eff. Nov. 10, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.004 and amended by Acts 1989, 71st Leg., ch. 179, Sec.

1, eff. Sept. 1, 1989. Amended by Acts 1997, 75th Leg., ch. 697, Sec. 1, eff. June 17, 1997.

Sec. 830.005. EXEMPTION FROM TAXES. If qualified to do business in this state, a life insurance or annuity company is exempt from the payment of franchise or premium taxes on annuity or group insurance policies issued under a benefit program authorized and at least partly paid for by the governing board of an institution of higher education or the Texas Education Agency. Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.005 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 391, Sec. 73, eff. July 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 6.24, eff. Sept. 1, 1997.

Sec. 830.006. REPORTS FROM INSTITUTIONS. (a) The governing board of each institution of higher education, other than the Texas Higher Education Coordinating Board, shall annually submit a report to the coordinating board that includes information concerning the number of participants and eligible positions and the amount of contributions.

(b) The governing board of each institution required to file a report under Subsection (a) shall keep records, make certifications, and furnish to the Texas Higher Education Coordinating Board information and reports as required by the coordinating board to enable it to carry out its functions under this subtitle.

(c) The Texas Higher Education Coordinating Board shall prepare the report required by Subsection (a) and shall maintain the information required by Subsection (b) with respect to its own employees.

Added by Acts 1991, 72nd Leg., ch. 242, Sec. 11.118, eff. Sept. 1, 1991.

SUBCHAPTER B. PARTICIPATION

Sec. 830.101. ELIGIBILITY TO PARTICIPATE. (a) The governing board of each institution of higher education shall provide an opportunity to participate in the optional retirement program to all faculty members in the component institutions governed by the board. The State Board of Education shall provide an opportunity to participate in the optional retirement program to the commissioner of education.

(b) Eligibility to participate in the optional retirement program is subject to rules adopted by the Texas Higher Education Coordinating Board.

(c) A person who before September 1, 1987, had chosen to participate in the optional retirement program and who was participating in the program on September 1, 1987, is entitled to continue to participate in the program until the person terminates participation as provided by Section 830.105(a).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., 2nd C.S., ch. 58, Sec. 2, eff. Oct. 20, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.101 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 391, Sec. 74, eff. July 1, 1991.

Sec. 830.102. OPTION TO PARTICIPATE. (a) A member of the retirement system who is eligible to participate in the optional retirement program may elect to continue as a member of the retirement system or to participate in the optional retirement program.

(b) A person eligible to participate in the optional retirement program on the date the program becomes available at the person's place of employment must elect to participate in the program no later than August 1 of the calendar year after the year in which the program becomes available.

(c) A person who becomes eligible to participate in the optional retirement program after the date the program becomes available at the person's place of employment must elect to participate before the 91st day after becoming eligible.

(d) An eligible person who does not elect to participate in the optional retirement program is considered to have chosen to continue membership in the retirement system.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.102 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 830.103. EFFECT OF TRANSFERS AND CHANGES IN EMPLOYMENT STATUS. (a) An institution of higher education shall accept the

transfer of a participant's optional retirement program from another institution of higher education or from the Texas Education Agency. The Texas Education Agency shall accept the transfer of a participant's optional retirement program from an institution of higher education if the participant becomes commissioner of education.

(b) If, after participating in the optional retirement program for at least one year, a person becomes employed in an institution of higher education in a position normally covered by the retirement system, the person shall continue participation in the optional retirement program if the person has had no intervening employment in the public schools other than as commissioner of education or a position in an institution of higher education.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.103 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 391, Sec. 75, eff. July 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 6.25, eff. Sept. 1, 1997.

Sec. 830.104. WITHDRAWAL OF CONTRIBUTIONS TO THE RETIREMENT SYSTEM. (a) A person who is a participant in the optional retirement program may withdraw accumulated contributions from the retirement system.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) Before the first anniversary of the date an application is received, the retirement system shall pay a withdrawing member the member's accumulated contributions.

(d) A person who withdraws contributions under this section relinquishes all accrued rights in the retirement system.

(e) Nothing in Section 830.105 precludes the election by a participant to withdraw accumulated contributions under this section.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.104 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 830.105. TERMINATION OF PARTICIPATION. (a) A person terminates participation in the optional retirement program, without losing any accrued benefits, by:

- (1) death;
- (2) retirement; or

(3) termination of employment in all institutions of higher education.

(b) A change of company providing optional retirement program benefits or a participant's transfer between institutions of higher education is not a termination of employment.

(c) The benefits of an annuity purchased under the optional retirement program are available only if the participant obtains the age of 70-1/2 years or terminates participation in the program as provided by Subsection (a).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, Sec. 37, eff. Nov. 10, 1981; Acts 1987, 70th Leg., ch. 173, Sec. 1, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.105 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989.

Sec. 830.106. ELIGIBILITY FOR RESUMPTION OF MEMBERSHIP. A participant in the optional retirement program is not eligible for membership in the retirement system unless the person:

(1) terminates employment covered by the optional retirement program; and

(2) becomes employed in the public school system or with a state agency in a position that is not eligible for participation in the optional retirement program.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.106 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 586, Sec. 34, eff. Aug. 28, 1995.

Sec. 830.107. INVESTMENT ADVISORY FEES. (a) A participant in the optional retirement program may authorize the payment of investment advisory fees from the amount in the participant's custodial account or annuity if:

- (1) the investment advisory fees for each fiscal year

do not exceed two percent of the annual value of the participant's custodial account or annuity as of the last day of that fiscal year;

(2) the fees are paid directly to a registered investment advisor that provides investment advice to the participant;

(3) the investment advisor to whom the fees are paid is registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-1 et seq.) and is engaged full-time in the business of providing investment advice;

(4) the participant and the investment advisor enter into a contract, for a term of no more than one year, for services that provides for the payment of fees as provided by this section; and

(5) the attorney general has received an official determination from the Internal Revenue Service that payment of investment advisory fees as prescribed by this section is not a distribution of funds that is prohibited or subject to taxation and penalty under the Internal Revenue Code.

(b) The attorney general shall request an official determination from the Internal Revenue Service concerning whether the payment of investment advisory fees as prescribed by this section is a distribution of funds that is prohibited or subject to taxation and penalty under the Internal Revenue Code. If the attorney general receives an official determination from the Internal Revenue Service as specified by this subsection, the attorney general shall file the official determination with the secretary of state's office for publication in the Texas Register. Added by Acts 1991, 72nd Leg., ch. 16, Sec. 11.07(a), eff. Aug. 26, 1991.

SUBCHAPTER C. CONTRIBUTIONS AND BENEFITS

Sec. 830.201. CONTRIBUTIONS. (a) Each fiscal year the state shall contribute to the optional retirement program an amount equal to 8-1/2 percent of the aggregate annual compensation of all participants in the program during that year. A participant in the optional retirement program shall contribute to the program 6.65 percent of the person's annual compensation.

(b) Contributions required by this section shall be credited to the benefit of the participant.

(c) In this section, "annual compensation" has the meaning assigned to that term by Section 821.001(4).

(d) For a person who first became a participant in the optional retirement program beginning after August 31, 1996, the compensation limitation of Section 401(a)(17), Internal Revenue Code of 1986 (26 U.S.C. Section 401), applies.

(e) For a person who first became a participant in the optional retirement program before September 1, 1996, the compensation limitation under Section 401(a)(17), Internal Revenue Code (26 U.S.C. Section 401), does not apply. For these persons, the amount of compensation allowed to be taken into account under the plan shall be the amount allowed to be taken into account as of July 1, 1993.

(f) Subsection (e) of this section does not apply to a person whose compensation in excess of the compensation limitation of Section 401(a)(17), Internal Revenue Code (26 U.S.C. Section 401), or whose state retirement contribution under this subchapter, is paid from general revenue funds or any student tuition or fee assessed under Chapters 54 or 55, Education Code.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1985, 69th Leg., ch. 228, Sec. 5, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.201 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1995, 74th Leg., ch. 736, Sec. 2, eff. June 15, 1995.

Sec. 830.2015. SUPPLEMENTAL CONTRIBUTIONS FROM INSTITUTIONS OF HIGHER EDUCATION. (a) Each fiscal year, the governing board of an institution of higher education may make a contribution to the optional retirement program as provided by this section. The governing board may use any source of funds for the contribution.

(b) A contribution under this section may be any amount that is equal to or less than the difference between the amount the state is required to contribute under Section 830.201 to the benefit of each participant employed by the institution of higher education and the amount the state appropriates for that purpose.

(c) The governing board of an institution of higher

education may contribute an amount under this section to the benefit of a participant employed by an institution of higher education on or before August 31, 1995, that is different from the amount the governing board contributes to the benefit of a participant employed by an institution of higher education after that date.

Added by Acts 2003, 78th Leg., ch. 418, Sec. 1, eff. June 20, 2003.

Sec. 830.202. COLLECTION AND DISBURSEMENT OF CONTRIBUTIONS. (a) The contributions of participants in the optional retirement program shall be made by salary reduction pursuant to an agreement made under Section 830.204.

(b) The comptroller of public accounts shall pay the state's contributions to the optional retirement program to the appropriate institutions of higher education and, if applicable, to the Texas Education Agency.

(c) The disbursing officer of an institution of higher education and, if applicable, of the Texas Education Agency shall pay the contributions collected under this section to a company providing an optional retirement program for that institution not later than the third business day after the date the funds become legally available. If possible, the disbursing officer shall send the state's contributions and the participants' contributions together, and otherwise shall send the participants' contributions at the time of withholding and the state's contributions on receipt from the comptroller. This subsection does not apply to a supplemental payroll. This subsection applies only to a currently authorized company or a company with at least 50 participants at the institution.

(d) An institution of higher education and, if applicable, the Texas Education Agency shall certify to the comptroller, in the manner provided for estimate of state contributions to the retirement system, estimates of funds required for the payments by the state under this section.

(e) The disbursing officer of an institution of higher education and, if applicable, of the Texas Education Agency, shall:

(1) send contributions to a company providing an optional retirement program for the institution by electronic transfer if the institution is currently able to send funds by electronic transfer; or

(2) certify to the Texas Higher Education Coordinating Board that the company is unable to receive funds by electronic transfer and send contributions by paper check.

(f) The company shall allocate and credit the contemporaneous deposit to each participant's account on the receipt of the electronic funds transfer and the electronic information on the amount to be allocated and credited to each participant's account. A company who violates this section shall become ineligible for certification as a company eligible to provide an optional retirement program.

(g) At least once each fiscal year, an institution of higher education and the Texas Education Agency shall give notice to each participant in the optional retirement program at the institution or agency indicating which companies are unable to receive funds by electronic transfer.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1987, 70th Leg., ch. 173, Sec. 2, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.202 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 391, Sec. 76, eff. July 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 6.26, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1359, Sec. 1, eff. Sept. 1, 1997.

Sec. 830.203. COLLECTION OF CONTRIBUTIONS FROM NONEDUCATIONAL AND GENERAL FUNDS. (a) In this section:

(1) "General academic teaching institution" has the meaning assigned by Section 61.003, Education Code.

(2) "Medical and dental unit" has the meaning assigned by Section 61.003, Education Code.

(3) "Noneducational and general funds" means all funds of an institution of higher education except those funds used as a method of financing for an institutional appropriation in the General Appropriations Act or dedicated by the Constitution of the State of Texas.

(b) The governing board of each general academic teaching institution and the governing board of each medical and dental unit shall reimburse the state, from noneducational and general funds of

the institution or unit, for state contributions that are made based on any portion of an optional retirement program participant's salary that is paid from the noneducational and general funds.

(c) The designated disbursing officer of each general academic teaching institution and the designated disbursing officer of each medical and dental unit shall submit to the retirement system, at a time and in the manner prescribed by the retirement system, a monthly report containing:

(1) the name of each optional retirement program participant employed by the institution or unit who, for the most recent payroll period, was paid wholly or partly from noneducational and general funds;

(2) the amount of the employee's salary for the most recent payroll period that was paid from noneducational and general funds;

(3) a certification of the total amount of employer contributions due under this section for the payroll period; and

(4) any other information the retirement system determines is necessary to administer this section.

(d) A monthly report required under Subsection (c) shall be accompanied by payment of the amount certified under Subdivision (3) of that subsection.

(e) After the end of each fiscal year, the retirement system shall report to the comptroller of public accounts and the State Auditor the name of any general academic teaching institution and any medical and dental unit delinquent in the reimbursement of contributions under this section for the preceding fiscal year and the amount by which each reported institution or unit is delinquent.

(f) Any portion of the reimbursement required under this section to be made for a fiscal year by a general academic teaching institution or a medical and dental unit that remains unpaid on the first day of the next fiscal year accrues interest, beginning on that day or the due date for the portion, whichever is later, at an annual rate, compounded monthly, equal to the rate established under Section 825.313(b)(1), plus two percent.

(g) The retirement system shall submit all money it receives under this section to the comptroller of public accounts for deposit in the general revenue fund.

Added by Acts 1985, 69th Leg., ch. 99, Sec. 2, eff. Sept. 1, 1985. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.2021 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1118, Sec. 11, eff. Sept. 1, 1999.

Sec. 830.204. SALARY REDUCTION AGREEMENT. (a) A participant in the optional retirement program and either the employing institution of higher education or, as applicable, the Texas Education Agency, acting through its governing board, shall execute an agreement under which the salary of the participant is reduced by the amount of the contribution required under Section 830.201 and under which the employer or agency contributes an amount equal to the reduction for any type of investment authorized in Section 403(b) of the Internal Revenue Code of 1986 (26 U.S.C. Section 403) or toward the purchase of an annuity under the program.

(b) An agreement under this section is irrevocable until the earlier of the time:

(1) the participant ceases participation in the optional retirement program; or

(2) it is determined by the Internal Revenue Service or by legislative enactment that the contributions of participants to the optional retirement program are elective deferrals within the meaning of Section 402 of the Internal Revenue Code of 1986 (26 U.S.C. Section 402).

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1981, 67th Leg., 1st C.S., p. 208, ch. 18, Sec. 38, eff. Nov. 10, 1981; Acts 1987, 70th Leg., ch. 173, Sec. 3, eff. Aug. 31, 1987. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.203 and amended by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 391, Sec. 77, eff. July 1, 1991; Acts 1997, 75th Leg., ch. 165, Sec. 6.27, eff. Sept. 1, 1997.

Sec. 830.205. BENEFITS. Benefits in the optional retirement program vest in a participant after one year of participation in one or more optional retirement plans operating under this chapter.

Acts 1981, 67th Leg., p. 1876, ch. 453, Sec. 1, eff. Sept. 1, 1981. Renumbered from Vernon's Ann.Civ.St. Title 110B, Sec. 36.204 by Acts 1989, 71st Leg., ch. 179, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 391, Sec. 78, eff. July 1, 1991.