

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

May 30, 2009
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 3347 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

Robert Duncan
Sen. Duncan, Chair

Vicki Truitt
Representative Truitt, Chair

Senator Ogden

John Otto
Representative Otto

Retro Van de Putte
Senator Van de Putte

Ruth McClendon
Representative McClendon

Robert West
Senator West

John Pitts
Representative Pitts

William Williams
On the part of the Senate
Senator Williams

Chris Eiland
On the part of the House
Representative Eiland

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 3347

A BILL TO BE ENTITLED

1 AN ACT
2 relating to plan qualification provisions for and certain
3 supplemental payments and health insurance deductions under the
4 Teacher Retirement System of Texas.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 822.201, Government Code, is amended by
7 amending Subsection (b) and adding Subsection (b-1) to read as
8 follows:

9 (b) "Salary and wages" as used in Subsection (a) means:

10 (1) normal periodic payments of money for service the
11 right to which accrues on a regular basis in proportion to the
12 service performed;

13 (2) amounts by which the member's salary is reduced
14 under a salary reduction agreement authorized by Chapter 610;

15 (3) amounts that would otherwise qualify as salary and
16 wages under Subdivision (1) but are not received directly by the
17 member pursuant to a good faith, voluntary written salary reduction
18 agreement in order to finance payments to a deferred compensation
19 or tax sheltered annuity program specifically authorized by state
20 law or to finance benefit options under a cafeteria plan qualifying
21 under Section 125 of the Internal Revenue Code of 1986, if:

22 (A) the program or benefit options are made
23 available to all employees of the employer; and

24 (B) the benefit options in the cafeteria plan are

1 limited to one or more options that provide deferred compensation,
2 group health and disability insurance, group term life insurance,
3 dependent care assistance programs, or group legal services plans;

4 (4) performance pay awarded to an employee by a school
5 district as part of a total compensation plan approved by the board
6 of trustees of the district and meeting the requirements of
7 Subsection (e);

8 (5) the benefit replacement pay a person earns under
9 Subchapter H, Chapter 659, except as provided by Subsection (c);

10 (6) stipends paid to teachers in accordance with
11 Section 21.410, 21.411, 21.412, or 21.413, Education Code;

12 (7) amounts by which the member's salary is reduced or
13 that are deducted from the member's salary as authorized by
14 Subchapter J, Chapter 659;

15 (8) a merit salary increase made under Section 51.962,
16 Education Code;

17 (9) amounts received under the relevant parts of the
18 awards for student achievement program under Subchapter N, Chapter
19 21, Education Code, the educator excellence awards program under
20 Subchapter O, Chapter 21, Education Code, or a mentoring program
21 under Section 21.458, Education Code, that authorized compensation
22 for service; ~~and~~

23 (10) salary amounts designated as health care
24 supplementation by an employee under Subchapter D, Chapter 22,
25 Education Code; and

26 (11) to the extent required by Sections 3401(h) and
27 414(u)(2), Internal Revenue Code of 1986, differential wage

1 payments received by an individual from an employer on or after
2 January 1, 2009, while the individual is performing qualified
3 military service as defined by Section 414(u), Internal Revenue
4 Code of 1986.

5 (b-1) An individual receiving wages to which Subsection
6 (b)(11) applies is considered employed by the employer for purposes
7 of this section, and the differential wage payment is considered
8 earned compensation. The retirement system shall determine how
9 contributions attributable to differential wage payments are made.

10 SECTION 2. Subchapter A, Chapter 824, Government Code, is
11 amended by adding Section 824.007 to read as follows:

12 Sec. 824.007. DEDUCTIONS FROM SERVICE OR DISABILITY
13 RETIREMENT ANNUITY. (a) In this section, "program administrator"
14 means the person who administers the uniform program under Section
15 1601.102, Insurance Code.

16 (b) An individual eligible to participate in the uniform
17 program under Section 1601.102, Insurance Code, may authorize the
18 retirement system to deduct the amount of the contribution and any
19 other qualified health insurance premium from the individual's
20 regular monthly service or disability retirement annuity payment if
21 the individual is:

22 (1) eligible to receive a monthly annuity from the
23 retirement system greater than the amount of the authorized
24 deduction; and

25 (2) eligible under Section 402(l), Internal Revenue
26 Code of 1986, or a similar law, to elect to exclude from annual
27 gross income up to \$3,000 of distributions from an eligible

1 retirement plan used for qualified health insurance premiums.

2 (c) An individual may authorize the deduction described by
3 Subsection (b) on a form provided by the program administrator. The
4 program administrator shall coordinate the implementation of an
5 authorization under Subsection (b) with the retirement system.

6 (d) After making the deductions, the retirement system
7 shall pay to the program administrator an aggregate amount for all
8 individuals who authorize annuity deductions under Subsection (b).

9 (e) If an individual no longer receives a monthly annuity
10 greater than the amount of the authorized deduction, the retirement
11 system:

12 (1) shall inform the program administrator; and

13 (2) is not required to make any deduction under this
14 section for the individual.

15 (f) The retirement system is not required to accept an
16 authorization for a deduction under this section if payment of
17 qualified health insurance premiums by deduction from a retirement
18 plan annuity is not required for an eligible retiree to elect the
19 gross income exclusion described by Subsection (b)(2).

20 SECTION 3. Section 824.403, Government Code, is amended to
21 read as follows:

22 Sec. 824.403. BENEFITS ON DEATH OF INACTIVE MEMBER. (a)
23 Except as provided by Section 824.401, the designated beneficiary
24 of a member who dies while absent from service is eligible to
25 receive:

26 (1) the same benefits payable under Section 824.402 or
27 824.404 if the member's absence from service was:

1 (A) because of sickness, accident, or other cause
2 the board of trustees determines involuntary;

3 (B) in furtherance of the objectives or welfare
4 of the public school system; or

5 (C) during a time when the member was eligible to
6 retire or would become eligible without further service before the
7 fifth anniversary of the member's last day of service as a member;
8 or

9 (2) an amount equal to the accumulated contributions
10 in the member's individual account in the member savings account,
11 if the member's absence from service does not satisfy a requirement
12 of Subdivision (1).

13 (b) To the extent required by Section 401(a)(37), Internal
14 Revenue Code of 1986, the designated beneficiary of a member who
15 died on or after January 1, 2007, while the member was performing
16 qualified military service as defined by Section 414(u), Internal
17 Revenue Code of 1986, is eligible to receive additional benefits to
18 the same extent as if the member had resumed employment and been
19 employed at the time of death.

20 SECTION 4. Section 825.509, Government Code, is amended by
21 adding Subsections (b-1), (e), and (f) and amending Subsections (c)
22 and (d) to read as follows:

23 (b-1) Notwithstanding Subsection (b)(3), with respect to a
24 distribution made on or after January 1, 2002, an otherwise
25 eligible portion of a rollover distribution that consists of
26 after-tax employee contributions not includable in gross income is
27 an eligible rollover distribution for purposes of this section.

1 The eligible portion may be transferred only:

2 (1) to an individual retirement account or annuity
3 described by Section 408(a) or (b), Internal Revenue Code of 1986;

4 (2) to a qualified plan described by Section 403(a),
5 Internal Revenue Code of 1986;

6 (3) for distributions occurring on or after January 1,
7 2007, to a qualified plan described by Section 401(a), Internal
8 Revenue Code of 1986; or

9 (4) to an annuity contract described by Section
10 403(b), Internal Revenue Code of 1986, that agrees to separately
11 account for amounts transferred and earnings on amounts
12 transferred, including for the portion of the distribution that is
13 includable in gross income and the portion of the distribution that
14 is not includable in gross income.

15 (c) An eligible retirement plan under this section
16 includes:

17 (1) [~~is~~] an individual retirement account described
18 by Section 408(a), Internal Revenue Code of 1986;

19 (2) [~~r~~] an individual retirement annuity described by
20 Section 408(b), Internal Revenue Code of 1986;

21 (3) [~~r~~] an annuity plan described by Section 403(a),
22 Internal Revenue Code of 1986;

23 (4) [~~r~~] a qualified trust described by Section
24 401(a), Internal Revenue Code of 1986, that accepts the
25 distributee's eligible rollover distribution;

26 (5) with respect to a distribution made on or after
27 January 1, 2002, a plan eligible under Section 457(b), Internal

1 Revenue Code of 1986, that is maintained by a state, a political
2 subdivision of a state, or an agency or instrumentality of a state
3 or political subdivision of a state that agrees to separately
4 account for amounts transferred into the plan from the retirement
5 system;

6 (6) with respect to a distribution made on or after
7 January 1, 2002, an annuity contract described by Section 403(b),
8 Internal Revenue Code of 1986; or

9 (7) with respect to a distribution made on or after
10 January 1, 2008, a Roth IRA described by Section 408A, Internal
11 Revenue Code of 1986. [~~However, in the case of an eligible rollover~~
12 ~~distribution to a surviving spouse, an eligible retirement plan~~
13 ~~under this section is an individual retirement account or~~
14 ~~individual retirement annuity.]~~

15 (d) In this section:

16 (1) "Direct rollover" means a payment by the
17 retirement system to the eligible retirement plan specified by a
18 distributee.

19 (2) "Distributee" means a person who receives an
20 eligible rollover distribution from the retirement system and
21 includes an employee or former employee and, regarding the interest
22 of an employee or former employee, the person's surviving spouse or
23 former spouse who is the alternate payee under a qualified domestic
24 relations order, as defined by Section 414(p), Internal Revenue
25 Code of 1986. With respect to a distribution made on or after
26 January 1, 2007, a distributee includes a beneficiary who:

27 (A) is a designated beneficiary, as defined by

1 Section 401(a)(9)(E), Internal Revenue Code of 1986, of an employee
2 or former employee; and

3 (B) is not the spouse, surviving spouse, or
4 alternate payee of an employee or former employee.

5 (e) A direct trustee-to-trustee transfer on behalf of a
6 distributee beneficiary who is not a spouse is an eligible rollover
7 distribution. A distributee beneficiary who is not a spouse may
8 roll over the distribution only to an individual retirement account
9 or individual retirement annuity that:

10 (1) is established for the purpose of receiving the
11 distribution; and

12 (2) is considered an inherited account or annuity to
13 which Section 401(a)(9)(B), Internal Revenue Code of 1986, applies,
14 except for Section 401(a)(9)(B)(iv).

15 (f) To the extent provided by federal law, a trust
16 maintained for the benefit of one or more designated beneficiaries
17 shall be treated in the same manner as a trust maintained for a
18 designated beneficiary.

19 SECTION 5. (a) The Teacher Retirement System of Texas
20 shall make a one-time supplemental payment of a retirement or death
21 benefit as provided by this section.

22 (b) The supplemental payment is payable to each eligible
23 annuitant not later than January 2010 and, to the extent
24 practicable, on a date or dates that coincide with the regular
25 annuity payment payable to each eligible annuitant.

26 (c) The amount of the supplemental payment is equal to the
27 lesser of:

1 (1) the gross amount of the regular annuity payment to
2 which the eligible annuitant is otherwise entitled for the month of
3 December 2009; or

4 (2) \$500.

5 (d) The supplemental payment is payable without regard to
6 any forfeiture of benefits under Section 824.601, Government Code.
7 The Teacher Retirement System of Texas shall make applicable tax
8 withholding and other legally required deductions before
9 disbursing the supplemental payment. A supplemental payment under
10 this section is in addition to and not in lieu of the regular
11 monthly annuity payment to which the eligible annuitant is
12 otherwise entitled.

13 (e) Subject to Subsection (f) of this section, to be
14 eligible for the supplemental payment, a person must be, for the
15 month of December 2009, and disregarding any forfeiture of benefits
16 under Section 824.601, Government Code, an annuitant eligible to
17 receive:

18 (1) a standard retirement annuity payment;

19 (2) an optional retirement annuity payment as either a
20 retiree or beneficiary;

21 (3) a life annuity payment under Section
22 824.402(a)(4), Government Code;

23 (4) an annuity for a guaranteed period of 60 months
24 under Section 824.402(a)(3), Government Code; or

25 (5) an alternate payee annuity payment under Section
26 804.005, Government Code.

27 (f) If the annuitant is a retiree or if the annuitant is a

1 beneficiary of a retiree who selected an optional retirement
2 payment plan, to be eligible for the supplemental payment, the
3 effective date of the retirement of the member of the Teacher
4 Retirement System of Texas must have been on or before December 31,
5 2008. If the annuitant is a beneficiary under Section
6 824.402(a)(3) or (4), Government Code, to be eligible for the
7 supplemental payment, the date of death of the member of the
8 retirement system must have been on or before December 31, 2008.
9 The supplemental payment shall be made to an alternate payee who is
10 an annuitant under Section 804.005, Government Code, only if the
11 annuity payment to the alternate payee commenced on or before
12 December 31, 2008. The supplemental payment is in addition to the
13 guaranteed number of payments under Section 824.402(a)(3),
14 Government Code, Section 824.204(c)(3) or (4), Government Code, or
15 Section 824.308(c)(3) or (4), Government Code, and may not be
16 counted as one of the guaranteed monthly payments.

17 (g) The supplemental payment does not apply to payments
18 under:

19 (1) Section 824.304(a), Government Code, relating to
20 disability retirees with less than 10 years of service credit;

21 (2) Section 824.804(b), Government Code, relating to
22 participants in the deferred retirement option plan with regard to
23 payments from their deferred retirement option plan accounts;

24 (3) Section 824.501(a), Government Code, relating to
25 retiree survivor beneficiaries who receive a survivor annuity in an
26 amount fixed by statute; or

27 (4) Section 824.404(a), Government Code, relating to

1 active member survivor beneficiaries who receive a survivor annuity
2 in an amount fixed by statute.

3 (h) Except as provided by this section, the board of
4 trustees of the Teacher Retirement System of Texas shall determine
5 the eligibility for and the amount and timing of a supplemental
6 payment and the manner in which the payment is made.

7 (i) The supplemental payment is contingent on sufficient
8 funds being appropriated from general revenue to the Teacher
9 Retirement System of Texas for this purpose and may not be paid from
10 trust funds.

11 SECTION 6. This Act takes effect September 1, 2009.

House Bill 3347
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Amends Section 822.201(b), Government Code, relating to the definition of "salary and wages," and adds Section 822.201(b-1), Government Code, relating to certain individuals receiving differential wage payments while performing qualified military service.

No equivalent provision.

SENATE VERSION

SECTION 1. Same as House version.

SECTION 2. Adds Section 824.007, Government Code, Deductions from Service or Disability Retirement Annuity. Defines "program administrator" and authorizes an individual eligible to participate in the uniform program under Section 1601.102, Insurance Code, to authorize the retirement system, on a form provided by the program administrator, to deduct the amount of the contribution and any other qualified health insurance premium from the individual's regular monthly service or disability retirement annuity payment if the individual is eligible to receive a monthly annuity from the retirement system greater than the amount of the authorized deduction and is eligible under Section (402)(1), Internal Revenue Code of 1986, or similar law, to elect to exclude from annual gross income up to \$3,000 of distributions from an eligible retirement plan used for qualified health insurance premiums. Requires the program administrator to coordinate the implementation of the authorization with the retirement system. Requires the retirement system, after making the deductions, to pay to the program administrator an aggregate amount for all individuals who authorize

CONFERENCE

SECTION 1. Same as House version.

SECTION 2. Same as Senate version.

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Section-by-Section Analysis

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SENATE VERSION

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annuity deductions. Provides that the retirement system is required to inform the program administrator, but is not required to make any deduction for the individual, if an individual no longer receives a monthly annuity greater than the amount of the authorized deduction. Provides that the retirement system is not required to accept an authorization for a deduction if payment of qualified health insurance premiums by deduction from a retirement plan annuity is not required for an eligible retiree to elect the gross income exclusion under Section (402)(1), Internal Revenue Code of 1986 as described above.

SECTION 2. Amends Section 824.403, Government Code, relating to benefits on the death of an inactive member.

SECTION 3. Same as House version.

SECTION 3. Same as House version.

SECTION 3. Adds Sections 825.509(b-1), (e), and (f), Government Code, and amends Sections 825.509(c) and (d), Government Code, relating to direct rollovers under the teacher retirement system of Texas.

SECTION 4. Same as House version.

SECTION 4. Same as House version.

No equivalent provision.

No equivalent provision.

SECTION 5. (a) – (c) Requires the Teacher Retirement System of Texas to make a one-time supplemental payment of a retirement or death benefit, as provided by this section, payable to each eligible annuitant not later than January 2010 and, to the extent practicable, on a date or dates that coincide with the regular annuity payment payable to each eligible annuitant, in an amount

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equal to the lesser of the gross amount of the regular annuity payment to which the eligible annuitant is otherwise entitled for the month of December 2009 or \$500.

(d) Provides that the supplemental payment is payable without regard to any forfeiture of benefits under Section 824.601, Government Code, and is in addition to and not in lieu of the regular monthly annuity payment to which the eligible annuitant is otherwise entitled. Requires the Teacher Retirement System of Texas to make applicable tax withholding and other legally required deductions before disbursing the supplemental payment.

(e) As a condition of eligibility for the supplemental payment, subject to Subsection (f), requires a person to be, for the month of December 2009, and disregarding any forfeiture of benefits under Section 824.601, Government Code, an annuitant eligible to receive a standard retirement annuity payment; an optional retirement annuity payment as either a retiree or beneficiary; a life annuity payment under Section 824.402(a)(4), Government Code; an annuity for a guaranteed period of 60 months under Section 824.402(a)(3), Government Code; or an alternate payee annuity payment under Section 804.005, Government Code.

(f)- Requires the effective date of the retirement of the

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member of the Teacher Retirement System of Texas to have been on or before December 31, 2008 for the annuitant to be eligible for the supplemental payment if the annuitant is a retiree or if the annuitant is a beneficiary of a retiree who selected an optional retirement payment plan. Requires the date of death of the member of the retirement system to have been on or before December 31, 2008 for an annuitant who is a beneficiary of a retiree under Section 824.402(a)(3) or (4), Government Code, to be eligible for the supplemental payment. Requires the supplemental payment to be made to an alternate payee who is an annuitant under Section 804.005, Government Code, only if the annuity payment to the alternate payee commenced on or before December 31, 2008. Provides that the supplemental payment is in addition to the guaranteed number of payments under Section 824.402(a)(3), Government Code, Section 824.204(c)(3) or (4), Government Code, or Section 824.308(c)(3) or (4), Government Code, and may not be counted as one of the guaranteed monthly payments.

(g) Provides that the supplemental payment does not apply to payments under:

(1) Section 824.304(a), Government Code, relating to disability retirees with less than 10 years of service credit;

(2) Section 824.804(b), Government Code, relating to participants in the deferred retirement option plan with

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regard to payments from their deferred retirement option plan accounts;

(3) Section 824.501(a), Government Code, relating to retiree survivor beneficiaries who receive a survivor annuity in an amount fixed by statute; or

(4) Section 824.404(a), Government Code, relating to active member survivor beneficiaries who receive a survivor annuity in an amount fixed by statute.

(h) – (i) Requires the board of trustees of the Teacher Retirement System of Texas to determine the eligibility for and the amount and timing of a supplemental payment and the manner in which the payment is made, except as provided by this section and provides that the supplemental payment is contingent on sufficient funds being appropriated from general revenue to the Teacher Retirement System of Texas for this purpose and may not be paid from trust funds.

(The conference committee may have exceeded the limitations imposed on its jurisdiction, but only the presiding officer can make the final determination on this issue).

SECTION 4. This Act takes effect September 1, 2009.

SECTION 5. Same as House version.

SECTION 6. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: **HB3347** by Truitt (Relating to plan qualification provisions for and certain supplemental payments and health insurance deductions under the Teacher Retirement System of Texas.),
Conference Committee Report

Estimated Two-year Net Impact to General Revenue Related Funds for HB3347, Conference Committee Report: a negative impact of (\$120,525,691) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$120,525,691)
2011	\$0
2012	\$0
2013	\$0
2014	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/(Cost) from <i>General Revenue Fund</i> 1
2010	(\$120,525,691)
2011	\$0
2012	\$0
2013	\$0
2014	\$0

Fiscal Analysis

The bill would update state law governing the TRS retirement plan to maintain compliance with federal tax code requirements for qualified plans. The bill would make changes to state law governing the definition of salary and wages in the TRS plan to include "differential pay" for active duty military under the federal "Heroes Act" (Heroes Earnings Assistance and Relief Tax Act of 2008). The bill also conforms state law to federal law for members who die while performing active military duty and their survivors. The bill also allows a nonspouse beneficiary to rollover an eligible distribution to an IRA; thereby electing to continue the deferral of taxes on those funds as permitted under the federal Pension Protection Act of 2006 and the Worker, Retiree, and Employer Recovery Act of 2008. The

bill would also make other updates needed to keep TRS rollover provisions consistent with federal law rollover provisions.

The bill would allow for the withholding of health insurance premiums for eligible retired public safety officers participating in the University of Texas and Texas A&M University retiree health programs from their Teacher Retirement System (TRS) retirement annuities. Retirees would need to meet the requirements of Section 845 of the Pension Protection Act of 2006 or a similar law to exclude from annual gross income up to \$3,000 of distributions from an eligible retirement plan used for qualified health insurance premiums.

The bill would allow the TRS board of Trustees to make a one-time payment to qualified retired public school employees in an amount equivalent to the annuitant's monthly benefit, not to exceed \$500. The one-time payment is payable only if General Revenue funds are appropriated and may not be paid from pension trust funds.

Methodology

The cost of a one-time payment to qualified retired public school employees in an amount equivalent to the annuitant's monthly benefit, not to exceed \$500, is estimated to be \$120,525,691. The General Appropriations Act contains a contingent appropriation in this amount for this purpose.

TRS would incur additional administrative and technology expenses associated with implementing the provisions of the bill. TRS assumes that these costs could be absorbed within the current administrative budget.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 323 Teacher Retirement System

LBB Staff: JOB, SZ, KJG, JGM, JW