

**CHAPTER 556**

**H.B. No. 2089**

An Act relating to compensation subject to contributions to and credit in the Teacher Retirement System of Texas.

Be it enacted by the Legislature of the State of Texas:

**SECTION 1.** Section 31.001(4), Title 110B, Revised Statutes, is amended to read as follows:

(4) "Annual compensation" means the compensation to a member of the retirement system for service during a school year that is reportable and subject to contributions as provided by Section 32.201 of this subtitle [:

(A) for school years beginning with the 1981/82 school year, salary and wages that are paid to a member for service during a school year, but excluding expense payments, allowances, fringe benefits, payments for unused vacation or sick leave, other amounts excluded by rules adopted under Section 35.110 of this subtitle, and any compensation that is not a regular payment of monetary compensation made pursuant to an employment agreement; and

(B) for school years before the 1981/82 school year, all compensation that was or should have been reported for a school year under laws and rules that governed the retirement system at the time, but excluding compensation greater than \$25,000 for a school year beginning after August 31, 1969, but before September 1, 1979; and compensation greater than \$8,400 for a school year beginning before September 1, 1969].

**SECTION 2.** Chapter 32, Title 110B, Revised Statutes, is amended by adding Subchapter C to read as follows:

### SUBCHAPTER C. MEMBER COMPENSATION SUBJECT TO CONTRIBUTIONS AND CREDIT

**Sec. 32.201. MEMBER COMPENSATION.** (a) Unless otherwise provided by this subtitle, compensation subject to report and deduction for member contributions and to credit in benefit computations is:

(1) beginning with the 1981-82 school year, only a member's salary and wages for service, less any amounts excluded by rules of the board of trustees adopted pursuant to Section 35.110 of this subtitle; and

(2) in school years before the 1981-82 school year, all compensation for service that was or should have been reported under laws and rules governing the retirement system when the compensation was paid but excluding compensation greater than \$25,000 for a school year beginning after August 31, 1969, but before September 1, 1979, and compensation greater than \$8,400 for a school year beginning before September 1, 1969.

(b) "Salary and wages" as used in Subsection (a) of this section means:

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

(2) career ladder payments of money authorized by Section 16.057, Education Code; and

(3) amounts that would otherwise qualify as salary and wages under Subdivision (1) or (2) of this subsection but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the United States Internal Revenue Code, if:

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

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation, group health and disability insurance, group term life insurance, dependent care assistance programs, or group legal services plans.

(c) Excluded from salary and wages are expense payments, allowances, payments for unused vacation or sick leave, maintenance or other nonmonetary compensation, fringe benefits, deferred compensation other than as provided in Subsection (b)(3) of this section, compensation that is not made pursuant to a valid employment agreement, and any compensation not described in Subsection (b) of this section.

**SECTION 3.** Section 35.110, Title 110B, Revised Statutes, is amended to read as follows:

**Sec. 35.110. DETERMINATION OF ANNUAL COMPENSATION.** The board of trustees shall adopt rules to exclude from annual compensation that part of salary and wages in the final years of a member's employment that reasonably can be presumed to have been derived from [attributed to] a conversion of fringe benefits, maintenance, or [and] other payments not includable in annual compensation to salary and wages [in anticipation of retirement]. The board of trustees may adopt rules that [rules may] include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment.

**SECTION 4.** Subchapter F, Chapter 35, Title 110B, Revised Statutes, is amended by adding Section 35.505 to read as follows:

*Sec. 35.505. AUDITS. For the purpose of determining the propriety of contributions or credits, the records of an employer concerning the employment and compensation of its personnel are subject to examination, in the offices of the employer during regular working hours, by representatives of the retirement system designated to conduct the examination.*

**SECTION 5.** (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately.

(b) The inclusion of salary reduction agreements to finance cafeteria plan benefits in salary and wages that are subject to deductions and credit applies only to compensation for service performed on or after September 1, 1985.

**SECTION 6.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Passed by the House on May 8, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 2089 on May 26, 1985, by a non-record vote; passed by the Senate, with amendments, on May 24, 1985, by the following vote: Yeas 29, Nays 0.

Approved: June 12, 1985

Effective: August 26, 1985