

Ch. 641, § 4

70th LEGISLATURE—REGULAR SESSION

CHAPTER 642

H.B. No. 2252

AN ACT

relating to providing for tax sheltering employee contributions to the Teacher Retirement System of Texas and the Employees Retirement System of Texas and to qualification of the retirement system under the Internal Revenue Code.

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

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SECTION 1. Title 110B, Revised Statutes, is amended by adding Section 35.407 to read as follows:

Sec. 35.407. EMPLOYER PICKUP OF MEMBER CONTRIBUTIONS. (a) Each employer shall pick up the employee contribution required of each of its employees by Section 35.403 of this subtitle for all compensation earned after December 31, 1987. Employers shall pay to the retirement system the picked-up contributions from the same source of funds that is used in paying earnings to the employees. Such payments shall be in lieu of contributions by the employees. An employer shall pick up these contributions by a corresponding reduction in the cash salary of the employees, by an offset against a future salary increase, or by a combination of a salary reduction and offset against a future salary increase. Employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(b) Contributions picked up as provided in Subsection (a) of this section shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, each employer shall continue to withhold federal income taxes on these picked-up contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to Section 414(h) of the Internal Revenue Code of 1986 (26 U.S.C.A. Section 414(h)) these picked-up contributions shall not be included as gross income of the employee until such time as they are distributed or made available.

(c) Employee contributions picked up as provided in Subsection (a) of this section shall be transmitted to the retirement system in the manner required by Section 35.403 of this subtitle. Employee contributions picked up by an employer and credited to the employee's account shall be treated for all other purposes as if the amount were a part of the member's annual compensation and had been deducted pursuant to the provisions of Section 35.403(a) of this subtitle.

SECTION 2. Title 110B, Revised Statutes, is amended by adding Section 35.506 to read as follows:

Sec. 35.506. PLAN QUALIFICATION. (a) It is intended that the provisions of this subtitle be construed and administered in a manner that the retirement system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C.A. Section 401(a)). The board of trustees may adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan. Rules adopted by the board of trustees are to be considered a part of the plan.

(b) In determining qualification status under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C.A. Section 401(a)), the retirement system's benefit plan shall be considered primary. An employer may not provide employee retirement or deferred benefits to the extent that, when considered together with the benefits authorized by this subtitle as required by federal law, would result in the retirement system's plan failing to meet federal qualification standards as applied to public pension plans.

SECTION 3. Title 110B, Revised Statutes, is amended by adding Section 25.406 to read as follows:

Sec. 25.406. EMPLOYER PICKUP OF MEMBER CONTRIBUTIONS. (a) The state shall pick up the employee contribution required of each of its employees by Section 25.402 of this subtitle for all compensation earned after December 31, 1987. The state shall pay to the retirement system the picked-up contributions from the same source of funds that is used in paying earnings to the employees. Such payments shall be in lieu of contributions by the employees. The state shall pick up these contributions by a corresponding reduction in the cash salary of the employees, by an offset against a future salary increase, or by a combination of a salary reduction and offset against a

future salary increase. Employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the state to the retirement system.

(b) Contributions picked up as provided in Subsection (a) of this section shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, the state shall continue to withhold federal income taxes on these picked-up contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to Section 414(h) of the Internal Revenue Code of 1986 (26 U.S.C.A. Section 414(h)) these picked-up contributions shall not be included as gross income of the employee until such time as they are distributed or made available.

(c) Employee contributions picked up as provided in Subsection (a) of this section shall be transmitted to the retirement system in the manner required by Section 25.402 of this subtitle. Employee contributions picked up by the state and credited to the employee's account shall be treated for all other purposes as if the amount were a part of the member's compensation and had been deducted pursuant to the provisions of Section 25.403(a) of this subtitle.

SECTION 4. Title 110B, Revised Statutes, is amended by adding Section 25.507 to read as follows:

Sec. 25.507. PLAN QUALIFICATION. (a) It is intended that the provisions of this subtitle be construed and administered in a manner that the retirement system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C.A. Section 401(a)). The board of trustees may adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan. Rules adopted by the board of trustees are to be considered a part of the plan.

(b) In determining qualification status under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C.A. Section 401(a)), the retirement system's benefit plan shall be considered the primary retirement plan for members of the retirement system.

SECTION 5. 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 from and after its passage, and it is so enacted.

Passed by the House on May 5, 1987, by the following vote: Yeas 142, Nays 0, 1 present, not voting. Passed by the Senate on May 23, 1987, by the following vote: Yeas 30, Nays 0.

Approved June 19, 1987.

Effective June 19, 1987.