

SUBJECT: Revising Texas' Judicial Retirement System

COMMITTEE: Pensions and Investments — favorable, without amendment

VOTE: 5 ayes — Tillery, Salinas, Goodman, Rangel, Telford
2 nays — Woolley, George
2 present, not voting — Crownover, Williams

SENATE VOTE: On final passage, May 1 — voice vote

WITNESSES: No public hearing

BACKGROUND: Two systems exist to provide retirement benefits for Texas judges. The first system, Judicial Retirement System Plan 1 (JRS-1), covers judges who joined the bench before September 1, 1985. Judicial Retirement System Plan 2 (JRS-2) provides benefits for judges who began service subsequent to that date. The Employees Retirement System (ERS) administers both programs.

Under both systems, a judge may retire at age 65 with 12 years' service credit or after 20 years' service regardless of age. Government Code, sec. 834.102 requires a 10 percent increase in retirement benefits for JRS-1 judges who retire within one year of leaving judicial office, and Government Code, sec. 839.102 provides a similar 10 percent increase for JRS-2 judges retiring within one year of leaving office.

Judicial terms run from January 1 of the first year to December 31 of the last year. Some judges take office during the middle of a year either to serve in a new court created by the Legislature (usually on September 1) or to fill a vacancy arising during the year.

In 1997, the 75th Legislature repealed Government Code, sec 833.106, which provided for payroll deductions to establish or reestablish service credit for JRS-1 judges, and Government Code, sec. 838.106, which did the same for JRS-2 judges.

DIGEST: SB 1569 would allow judges in both retirement plans to buy service credit; allow judges in both plans to count service as a visiting judge toward the eligibility requirements for the 10 percent increase in retirement benefits; and limit contributions by active JRS-1 judges to 20 years.

Service credits. SB 1569 would allow a JRS-1 judge who had not retired to make a contribution to establish a service credit. A judge could buy service credit for any calendar year during which he or she held an eligible judicial office or was eligible to take the oath of office for the position.

JRS-1 judges could purchase service credit by contributing 6 percent of their current salaries for each month of service credit claimed. The contribution would be subject to an additional 10-percent interest if the credits were not established within one year of date when the judge would have been eligible for the credit. The bill would establish the same eligibility criteria and method for purchasing service credits for JRS-2 judges.

Visiting judge credit. SB 1569 would allow both JRS-1 and JRS-2 judges to count service as a visiting judge toward qualifying for the 10-percent increase in retirement benefits for retiring within one year of ending service.

20-year cutoff for contributions. An active JRS-1 judge no longer would have to contribute 6 percent of his or her salary to the retirement system after accruing 20 years of service credit.

The bill would take effect September 1, 2001.

SUPPORTERS SAY: SB 1596 would change and clarify provisions for the Judicial Retirement System to make the system more equitable for all judges and to end some differences among the two plans.

Service credit purchase. Judges often begin their terms in the middle of a calendar year because of the creation of new courts or to fill vacancies. A judge may be short of the 12 years required at age 65 or may have more than 19 years but less than 20. A judge might be six or eight months short of the credits that would make him or her eligible for retirement, so that the judge would leave the bench rather than run for reelection. Some judges also may need to end their terms early because of personal or health reasons or to

accept an appointment to a federal court. SB 1569 would allow judges to purchase the needed credits to qualify their retirements and to “round off” their years of service.

Current law already allows a judge to qualify for retirement by serving as a visiting judge. Thus, the state cannot disallow a judge from the retirement system and avoid paying the benefit altogether. SB 1569 would let judges purchase the service time at once rather qualifying in a piecemeal manner. The only fiscal implication might be that a judge could draw retirement a few months earlier.

Not all judges buying credit are eligible to retire. The state would benefit by receiving contributions for service credits that otherwise might not have been paid. Even if a judge bought service credits in the months before retirement, the payment would be based on the current salary plus 10 percent interest, rather than on an amount that would have been contributed 10 or 20 years earlier.

The Legislature already has approved changes in other pension systems this session to allow state employees and teachers to buy service credits to qualify for retirement benefits. It is only fair to extend this option to judges as well.

Visiting judge credit. The Legislature originally intended the 10-percent increase in retirement benefits to go to judges retiring within a year of leaving judicial service. Despite this clear intent, ERS does not pay the additional 10 percent, apparently basing this interpretation on a 1978 attorney general’s opinion based on a former statute and on a 1981 letter opinion. SB 1569 would clarify the legislative intent and avert potential litigation regarding this differing interpretation of the statute.

SB 1569 would allow judges to serve as visiting judges to complete the remaining months of service credit to reach the 12 years or 20 years needed for vesting rather than running for reelection. A judge needing only a portion of a term for vesting purposes may resign and create a vacancy that, in turn, causes another judge to be short of retirement service credits in the future.

20-year cutoff. SB 1569 would treat JRS-1 judges the same as JRS-2 judges in ending the salary deduction after 20 years. Currently, JRS-1 judges cannot accrue additional service credit after 20 years but only see their salaries reduced by 6 percent.

Most of the bill's fiscal note focuses on the loss to the state of the \$6,100 received from each JRS-1 judge with more than 20 years service. However, very few of those judges remain in active service now. Keeping those judges would reduce ERS' liability for \$60,600 in pension benefits for retired judges. Any fiscal analysis should consider that keeping a judge active, rather than retired, could offset the costs of as many as 10 judges who would cease to contribute to the retirement system. The bill actually could result in a gain in general revenue.

Changing the service credit could encourage experienced judges to remain on the bench after 20 years. This also could save money for the state because the taxpayers would not have to pay the full salary of the successor judge and any visiting judges needed in addition to the retired judge's benefits. Also, it is difficult to quantify the benefit of the experience and legal wisdom gained by keeping judges with more than 20 years of service.

OPPONENTS
SAY:

According to its fiscal note, SB 1569 would cost the state \$1.1 million in general revenue in fiscal 2002-03 and a higher amount in subsequent biennia by discontinuing judges' contributions after 20 years of service and by increasing benefit payments for some judges. Also, allowing purchase of additional service credit for both systems could increase their unfunded liability.