

SUBJECT: Programs administered by the Teacher Retirement System of Texas

COMMITTEE: Pensions and Investments — committee substitute recommended

VOTE: 4 ayes — Ritter, McClendon, Martinez Fischer, Rose

0 nays

3 absent — Telford, Grusendorf, Pena

SENATE VOTE: On final passage, May 19 — voice vote

WITNESSES: No public hearing

BACKGROUND: The Teacher Retirement System of Texas (TRS) was established in 1937 and provides group insurance, retirement, death, survivor, and disability benefits for employees of public educational institutions. The board of trustees has the general responsibility of administering the system and approving retirement fund investment decisions. The retirement program is financed from the Pension Trust Fund.

The Texas Public School Retired Employee Group Insurance Program, referred to as TRS-Care, was created in 1985. TRS was granted the responsibility of designing and administering it. TRS-Care offers health insurance coverage for public school TRS retirees, who are not eligible to participate in the state higher education plans or the state employee plans.

In 2001, the 77th Legislature enacted HB 3343 by Sadler, establishing a state-administered health insurance program for teachers and other public school employees in districts with 500 or fewer employees. Lawmakers directed TRS to manage the new health plan, TRS-ActiveCare, in part because of the agency's 17-year history managing TRS-Care. Beginning with the 2003-04 school year, all districts will be eligible to join TRS-ActiveCare.

Government Code, ch. 824 governs benefits payable by TRS. Subch. G addresses the loss of benefits on resumption of service. Under sec. 824.601, if a retired teacher returns to work at a public educational institution, generally

that member must forfeit TRS benefits. Sec. 824.602(5) allows an exception for a full-time classroom teacher if that person teaches in an acute shortage area as determined by the school district and has been separated from service with all public schools for at least 12 months.

Attorney General Opinion GA-0018, issued in February 2003, states that “former teachers who accept temporary employment with third-party contractors who provide educational services to school districts do not thereby forfeit retirement benefits as a matter of law. Such teachers are not ‘professional employee[s] of a school district’ for the purposes of the Education Code’s limited grant of immunity for personal liability.”

DIGEST:

TRS coverage. An employee of a home-rule school district would not qualify for membership in TRS and could not receive service credit for any services performed for a home-rule school district after August 31, 2003. An employee of an independent school district who was employed on a campus or program granted a charter and who qualified for membership in TRS would be covered under the system in the same manner as a qualified employee of an independent school district who was employed on a regularly operating campus or program. The bill would extend TRS coverage to an employee of an open-enrollment charter school operating under a charter granted by the State Board of Education.

Third-party contractors. CSSB 12443 would define “third-party entity” as an entity retained by a public educational institution to provide personnel to perform duties that an employee of the institution otherwise would perform. The bill would specify that a retiree employed by a third-party entity would be considered an employee of a public educational institution for purposes of Government Code, ch. 824, subch. G, relating to loss of benefits on resumption of service, unless the retiree did not perform duties or provide services for the institution. TRS could adopt rules necessary for administering this provision.

Qualified vendor. A plan administrator would develop and implement criteria and procedures for evaluating an application to become a qualified vendor. This provision would be subject to other criteria stating that a plan administrator could not approve a vendor’s application if the vendor were a state or national bank not insured by the Federal Deposit Insurance

Corporation; a credit union not insured by the National Credit Union Administration Board or the Texas Share Guaranty Credit Union; or an insurance company that was not a member of the Life, Accident, Health, and Hospital Service Insurance Guaranty Association or that was an impaired or insolvent insurer.

Additional requirements for 457 plan vendors. Under current law, a “457 plan” is an employees’ deferred compensation plan governed for federal tax purposes by the Internal Revenue Code of 1986, Section 457 (26 U.S.C. Section 457). This bill would impose additional requirements for 457 vendors in school districts. Under the bill, a 457 plan administrator for a school district could approve a vendor’s application to be a qualified vendor only if the vendor was a company that had certified to TRS, did not have costs associated with its investment products that exceeded the maximum amounts established by TRS rules, and provided notice as specified in current law.

No acceptance of benefits from a vendor. An educational institution could not accept any benefit from a company or from an agent or affiliate that offered qualified investment products, other than a meal or entertainment valued at \$50 or less per employee, or marketing materials — such as pens, bags, or hats — valued at \$10 or less per employee. Further, an institution could not accept a bid or award a contract for a qualified investment product that included proposed financial participation by a company or person that participated to any extent in preparing a specification or RFP on which a bid or contract was based.

Deferred retirement option plan (DROP) participation. Under current law, a contributing member who is eligible to retire and receive a standard service retirement annuity that is not reduced for early age and who has at least 25 years of service credit can, if the member remains an employee, elect to participate in the DROP. The bill would specify that a member would have to make an election to participate in the DROP not later than December 31, 2003.

A member participating in the DROP on September 1, 2003, or a member whose participation in the DROP had expired on or before September 1, 2003, but who had not retired on or before that date could, before December 31, 2003, revoke a prior decision to participate in the DROP.

TRS-ActiveCare. The bill would add a provision relating to payment of contributions stating that a premium or contribution on a policy, insurance contract, or agreement would not be subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

The bill would strike current provisions that involve election dates, option elections, and a model explanation.

Exclusion from member compensation. CSSB 1243 would add to the items excluded from salary and wages any compensation for health coverage received by an employee.

Composition of TRS board. The bill would add a requirement that on September 1, 2003, the governor would appoint one member of the board who was a classroom teacher employed by a public school district or was a retiree receiving benefits from TRS. Also, the governor would appoint on September 1, 2007, one board member who represented the public.

Laws regarding contested case administrative hearings would not apply to TRS.

TRS purchases. TRS, in the exercise of its constitutional and statutory discretion to manage the assets of the system, could exercise any purchasing function related to the purchase of goods or services from funds other than general revenue funds. TRS would acquire goods or services by any procurement method it approved. At TRS' request, the Texas Building and Procurement Commission would procure goods or services for TRS.

Interagency contracts for certain services. TRS could enter into an interagency contract with the State Office of Risk Management (SORM) for workers' compensation coverage, claims, administration, and risk management services. A contract could provide that TRS reimburse SORM for the cost of a claim paid to an employee or former employee of TRS. SORM would credit to TRS any money it recovered from a third party through subrogation on a claim paid to an employee or former employee. Current law that provides for SORM to maintain and review records of property, casualty, or liability insurance for an agency would not apply to TRS.

Annuities or investments for certain public employees. The bill would include a section stating that an entity was not eligible to certify to TRS if the entity was a reinsurance company; a third-party administrator; an entity performing duties under a contract for administrative services only; or a broker, dealer, or licensed or registered agent; and the entity did not have primary responsibility for performance of an obligation in an investment contract.

Repealed provisions. CSSB 1243 would repeal a provision for the governor to appoint two TRS board members from nominees submitted by the State Board of Education. A TRS board member appointed through this provision would be entitled to serve the remainder of the trustee's unexpired term. A vacancy of a board member appointed under this provision would be filled by a public member.

The bill also would repeal current law providing for a legislative audit committee and requiring retirees to be enrolled in a basic health plan offered under the group insurance program.

Conflict provision. To the extent of any conflict, this bill would prevail over another Act of the 78th Legislature relating to nonsubstantive additions and corrections in enacted codes.

The bill would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSSB 1243 would make numerous changes aimed at clarifying TRS-related statutes in areas affecting membership, retirement issues related to third-party contractors, the DROP plan, and compensation for retirement calculations. In addition, it would amend current provisions related to 457 plans, benefits from vendors, composition of the board of trustees, interagency contracts, and TRS purchases. In these ways, the bill would protect the TRS fund, active members, and retirees.

This bill would address concerns about "double dipping" by retired teachers employed by third-party education contractors who exploit statutory return-to-work provisions. Under current law, an individual teacher or school district employee cannot retire and resume work immediately as a direct employee of the district while retaining TRS pension benefits. Generally, to retain benefits,

the educator must have a 12-month break in service before returning to work full-time. Through an employee lease agreement with a third-party contractor, however, the teacher could return to the classroom immediately. Retired or retiring teachers find this arrangement appealing because they can receive their TRS pensions as well a reduced salary (85 percent, on average) from third-party contractors.

This employee leasing practice could harm the TRS fund significantly by altering retirement patterns, because teachers and other educators have an incentive to retire earlier than they would otherwise. Many teachers already are retiring early under the “Rule of 80,” a criterion that is met when the sum of the retiree’s age and the total years of service credit equals or exceeds 80. As more teachers retire to work for third-party contractors — one third-party contractor has expanded from 200 teachers to 500 in less than a year — TRS soon could be destabilized by an excessively large population of retirees collecting benefits. If everyone retired who was eligible under TRS, it would cost the fund between \$5 billion and \$6 billion.

In addition, the practice can harm teachers as well. Teachers hired through education contractors are at-will employees and lose contract rights afforded to teachers whom school districts hire directly. They also forfeit their statutory immunity from liability and surrender other benefits assigned through the Education Code, such as entitlement to a planning period, duty-free lunch, and personal leave time.

CSSB 1243 would eliminate concerns about rehiring teachers through third-party entities by declaring contract teachers employees of school districts. Education contractors are no panacea to the teacher shortage and raise legitimate labor issues. This bill would protect the rights of rehired teachers as well as the solvency of the TRS pension fund.

**OPPONENTS
SAY:**

CSSB 1243 would eliminate important options that school districts exercise to retain experienced teachers at lower costs and that retired teachers exercise to earn more money. Third-party contractors have combined the best practices of public institutions and private businesses to develop solutions to the education system’s fiscal and personnel crises. Outsourcing employees is an effective business practice. By specifying that employees of third-party entities would be considered employees of school districts, CSSB 1243 would reduce retired

teachers' incentive to work for education contractors, stripping school districts of critical personnel and financial options.

Through third-party entities, school districts can rehire teachers for 15 to 18 percent less money, lessening the potential need for reductions in force. Through the contractors' employee leasing arrangements, retired teachers can remain in their chosen profession and make more money, all at a savings to public education systems. Third-party education contractors are responsible employers who take out Social Security deductions and provide workers' compensation benefits and professional liability insurance. They also allow their employees to invest in 401(k) plans.

Third-party entities are not jeopardizing the stability of the TRS fund by lowering the age at which teachers retire. The majority of educators employed by these contractors have not retired at the earliest available opportunity.

NOTES:

The committee substitute would modify the Senate engrossed version by:

- deleting a provision reestablishing service credit by a retiree;
- repealing Insurance Code, sec. 1575.154, requiring retirees to enroll in a basic plan offered by TRS-Care;
- striking provisions involving any willing provider; and
- deleting language related to investments by an education institution that would not prohibit a company from offering a qualified investment product under this legislation or under another retirement plan.

HB 2169 by Telford, a related bill containing provisions that would affect third-party education contractors, passed the House on April 24. An amended version passed the Senate on May 24, and the House concurred with the Senate amendments on May 26.