HOUSE
RESEARCH
ORGANIZATION bill analysis 9/22/2003

HB 31
Pitts, Luna
(CSHB 31 by Pitts)

SUBJECT: Revising benefit provisions for active and retired public school employees

COMMITTEE: Appropriations — committee substitute recommended

VOTE: 18 ayes — Heflin, Luna, Berman, Branch, B. Brown, J. Davis, Deshotel, Ellis, Hamric, Hope, Hupp, McClendon, Pickett, Pitts, Solis, Stick, Truitt, Wohlgemuth

0 nays

11 absent — F. Brown, Crownover, Dukes, Eiland, Gutierrez, Isett, E. Jones, Kolkhorst, Menendez, Raymond, Turner

WITNESSES: No public hearing

BACKGROUND: ***TRS-ActiveCare passthrough.*** In 2001, the 77th Legislature enacted HB 3343 by Sadler, creating TRS-ActiveCare, a state-administered health insurance program for teachers and other public school employees. HB 3343 granted all active school employees a $1,000 annual passthrough to be held in trust by school districts until employees decided whether to use it for a medical savings account, dependent coverage, and/or a salary supplement.

As a cost-cutting measure in response to budget shortfalls at the Teacher Retirement System (TRS), HB 3459 by Pitts, enacted by the 78th Legislature during the regular session, reduced the passthrough to $500 for full-time public school employees and to $250 for part-time public school employees. Insurance Code, Art. 3.50-8 was amended to exclude certain professional staff members of a district, charter school, or service center — as defined by TRS rule — from receiving the passthrough. Further, the bill imposed a 90-day waiting period before new employees were eligible for the passthrough.

On June 26, 2003, the TRS board of trustees proposed Rule 41.42, specifying which employees were no longer eligible for the passthrough under the new state law. Excluded employees were identified by TRS based on how schools code and report certain employee groups to the Texas Education Agency (TEA). Employees for whom 50 percent or more of their time was coded as a campus or central administrator would be excluded, as would any employees whose annual compensation for all work performed exceeded $50,000. Subsequently, the Texas Federation of Teachers (TFT) filed a lawsuit in the 53rd District Court of Travis County, challenging the exclusion of certain non-teaching professionals — most notably school nurses, counselors, educational diagnosticians, and librarians — from receiving the passthrough benefit.

HB 3257 by Delisi, enacted in the 78th regular session, prohibits school employees from using the passthrough for any purpose other than a health-care reimbursement account, beginning with the 2004-05 school year.

Eligibility for retiree benefits. During the regular session, the 78th Legislature enacted SB 1369 by Duncan and HB 3459 by Pitts, both of which changed the eligibility requirements for public school employees who wish to participate in TRS-Care upon retirement. TRS-Care is the health insurance program for public school retirees.

Public school employees may retire with an annuity at age 65 if they have five years of service credit or they meet the "rule of 80" (years of credited service plus age equals 80). Public school employees also may take early age retirement and receive a reduced annuity if they are age 55 with five years of service or at any age with 30 years of service. All special service purchases can help a retiree meet retirement eligibility for the purposes of an annuity. None of the legislation passed by the 78th Legislature changed the terms under which retirees are eligible to retire with an annuity.

Through August 31, 2004, public school employees are eligible for TRS-Care if they are eligible to retire and have at least 10 years of creditable service in the Texas public schools, five years of which may be purchased out-of-state service. Public school employees with five years of actual Texas service may buy one year of out-of-state credit for every one year of Texas service, up to 15 years of credit. Employees with seven years of Texas service may buy up to three years of service, also called "air time."
Starting September 1, 2004, to qualify for TRS-Care benefits, public school employees must be retired, be at least 65 years old, and have 10 years of service of which five years may be purchased military service, but not out-of-state service or purchased "air time." Employees also can retire with health care benefits under the "rule of 80" with 10 years of service, of which five

years may be purchased military service, but not out-of-state service or purchased “air time.” SB 1370 and HB 1359 do not allow an employee to count out-of-state service or "air time" toward retiree health care benefits, either toward the “rule of 80" for health benefits or toward the required 10 years of service.

COBRA. The Consolidated Omnibus Budget Reconciliation Act (COBRA) is a federal law that gives workers and their families who lose their health benefits the right to choose to continue group health benefits provided by their group health plan for limited periods of time under certain circumstances such as voluntary or involuntary job loss, reduction in the hours worked, transition between jobs, death, divorce, and other life events. Newly retired employees who are younger than 65 may use COBRA benefits for 18 months after their retirement, but if COBRA benefits expire before they turn 65, then they either must purchase private insurance or wait until Medicare kicks in at age 65.

DIGEST:

CSHB 31 would define in statute which public school employees are considered professional administrators based on how schools code and report certain employee groups to the TEA. Employees for whom 50 percent or more of their time was coded as a campus or central administrator would be excluded. (Unlike the proposed TRS rule, a $50,000 annual salary criteria would not be used as a determining factor for passthrough eligibility.)

Article 3.50-8A, outlining terms for the administration of the passthrough would expire September 1, 2004.

CSHB 31 also would amend the definition of a retiree for the purposes of TRS-Care eligibility. It would create a grandfather clause for public school employees who are employed in actual service in the Texas public schools during or before the 2003-04 school year and who upon retirement meet the eligibility requirements for TRS-Care as they exist on August 31, 2004.

Those retirees eligible to participate in TRS-Care by virtue of the above grandfather clause would have to pay the total actuarial cost of those benefits for themselves and their dependents as determined by TRS until they turn 65. The allocation of total costs for these retirees could be determined differently in the appropriations process than the allocation of total costs for other retirees.

A second grandfather clause would apply to public school employees who had purchased out-of-state service credit and had that service credited on or before August 31, 2003, and who upon retirement meet the eligibility requirements for TRS-Care as they exist on August 31, 2004, including using up to five years of out-of-state service toward retiree eligibility. The employees subject to the second grandfather clause would remain eligible for state-subsidized health care benefits through TRS-Care, so long as they retired on or before August 31, 2009.

The bill would continue the standard set in SB 1369 and HB 3459 regarding the "rule of 80" for purposes of TRS-Care eligibility. It would require that the sum of the employee's age and amount of service credit in the TRS system must equal or exceed 80 (including up to five years of military service credit, but not any other purchased service credit).

All portions of the bill regarding the definition of a retiree for purposes of TRS-Care eligibility would take effect September 1, 2004. The rest of the bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect 91 days after the last day of the third called session.

SUPPORTERS SAY:

CSHB 31 would codify part of a proposed TRS trustee rule defining which public school employees are professional staff and thus ineligible for the TRS-ActiveCare passthrough, thus clearing up confusion created in the wake of the regular session. By codifying this language, the bill would establish legislative intent and create a legal basis for TRS administration of the passthrough. Eliminating the proposed criteria that any non-teaching professional who earns $50,000 per year is automatically ineligible would allow school nurses, librarians, educational diagnosticians, and counselors to qualify for the passthrough.

CSHB 31 also would provide access to "gap" insurance for certain public school employees who retire before age 65. Changes made by the 78th Legislature will realize long-term savings for the state, simply by ensuring that many retirees will not qualify for state health benefits until after Medicare becomes the primary payer for their health expenses. Unfortunately, an unintended consequence of establishing uniform eligibility requirements for retiree health benefits left many early retirees with few choices after they exhaust their COBRA benefits. CSHB 31 would remedy this concern by allowing retirees to purchase gap insurance from the state at the state's actuarial cost, thus allowing them to maintain their state benefits until Medicare kicks in. Older Americans pay the highest prices for private health insurance in the country, so without this bill, many early retirees could lose access to affordable health care benefits.

OPPONENTS SAY:

CSHB 31 would make a complicated system even more so for public school employees trying to make retirement decisions. Legislation enacted in the regular session created two different "rules of 80:" one to qualify for a retirement annuity and one to qualify for retirement health benefits. While this bill attempts to clarify legislative intent and grandfather in current teachers, due to differing interpretations of language in the committee substitute, major concerns remain as to whether teachers who have traded out-of-state service or invested thousands of dollars in purchasing "air time" would be penalized upon retirement.

While CSHB 31 may protect current teachers who have purchased service credits with a grandfather clause, it would create an incentive for experienced teachers to retire early — by August 31, 2004 — in order to receive more generous health-care benefits.

While the stated intention of providing access to "gap insurance" to early retirees is good, CSHB 31 is actually a stingy effort by the state to shift health care costs to employees who have spent their careers in the public schools. It seems unrealistic that a retired teacher or other public school employee could afford the total actuarial cost — estimated at $700 per month — of a health care premium. The state should acknowledge the real limitations of a pensioner's budget and take care of its retired public school employees. Those who have put in a career as a teacher and are eligible for a full unreduced pension should be eligible for health insurance.

Neither of the fiscal notes for SB 1369 by Duncan or HB 3459 by Pitts showed a savings gained by the state from shifting health costs to early retirees. Further, by only allowing early retirees to purchase state coverage at the actuarial cost, CSHB 31 could create adverse selection and end up costing the state more. It stands to reason that the only people who have an incentive to spend $700 per month on a health care premium are those people who are most medically needy. The state would be better served in the long run by allowing retirees to keep their health care benefits at the regular premium cost, because the more healthy people who stay enrolled, the more the state could spread its risk among a larger number of participants.

OTHER OPPONENTS SAY:

CSHB 31 would not repeal the 90-day waiting period for new employees to qualify for the passthrough, as would have the introduced version of the bill. The passthrough is one of the most popular benefits of the TRS-ActiveCare plan and is a hiring incentive used by the public schools to attract teachers and other employees. The full benefit should be restored as soon as possible, so as not to discriminate against new employees.

State employees and certain higher education employees also were affected by SB 1370 by Duncan, which enacted new eligibility requirements for retiree health benefits. CSHB 31 also should make state health care benefits available at actuarial cost to all early retirees from state employment and higher education. It is unfair to help retired teachers and not help other retirees affected by the same legislation.

NOTES:

HB 31 as filed would have created only one grandfather clause for public school retirees who were employed in actual service in public schools during or before the 2003-05 school year and who upon retirement met the eligibility requirements for TRS-Care as they existed on August 31, 2004.

HB 31 as filed also would have repealed upon enactment Insurance Code, art. 3.50-8A(g), which imposes a 90-day waiting period before new public school employees can receive the passthrough.