

SUBJECT: Employees Retirement System revisions

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 5 ayes — Truitt, Anchia, Nash, Orr, Veasey
1 nay — Legler
3 absent — C. Anderson, Creighton, Hernandez Luna

SENATE VOTE: On final passage, May 4 — 29-2 (Harris, Jackson)

WITNESSES: For — Andrew Homer, Texas Public Employees Association; (*Registered, but did not testify*: Caryl Yontz, American Federation of State County and Municipal Employees)
Against — None
On — Ann Fuelberg, Employees Retirement System; Jennifer Jones, Legislative Budget Board; Mike Gross, Texas State Employees Union

BACKGROUND: The Employees Retirement System of Texas (ERS) administers a number of public employee benefits systems and programs, which are regulated in various sections of the Government Code and the Insurance Code. Within title 8 of the Government Code, subtitle B regulates ERS, including the Law Enforcement and Custodial Officer Supplemental Retirement Fund (LECOS), subtitle D regulates the Judicial Retirement System of Texas Plan One (JRS 1), and subtitle E regulates the Judicial Retirement System of Texas Plan Two (JRS 2). Insurance Code, ch. 1551 regulates the Texas Employees Group Benefits Program (GBP). Government Code, title 6 also regulates certain aspects of public officer and employee compensation.

Under Government Code, sec. 815.402(a), the employee member contribution rate to ERS is set at 6.5 percent of compensation, but is tied to the state contribution rate, which is set by the Legislature. If the state contribution rate is set at less than 6.5 percent, then the employee member rate decreases as well, although Texas Constitution, Art. 16, sec. 67(b)(3)

prohibits an employee or state contribution rate of less than 6 percent. Under Government Code, 815.402(h), LECOS members pay an additional contribution of 0.5 percent of compensation and the state pays the same percentage, but if the Legislature sets a lower rate, then the LECOS member rate also is decreased.

DIGEST:

CSSB 1664 would revise various sections of the Government and Insurance Codes administered by ERS.

The bill would create a tobacco user health care premium differential that tobacco users would have to pay monthly at a rate set by ERS, if not set by the Legislature in the general appropriations act. ERS would have to develop a plan for providing tobacco cessation coverage that included tobacco cessation prescription drugs. ERS would have to implement both the premium differential and the cessation coverage plan by January 1, 2012.

The bill would allow the decoupling of the ERS member contribution rate from the state contribution rate for fiscal 2012. If the state contribution rate was set below 6.5 percent, the employee contribution rate would remain 6.5 percent. Likewise, the bill would allow the decoupling of the LECOS member contribution rate from the state contribution rate for fiscal 2012. If the state contribution rate was set below 0.5 percent, the member contribution rate would remain 0.5 percent.

The bill would create an employer enrollment fee, in an amount not to exceed a percentage of the employer's total payroll as determined by the general appropriations act, that would be deposited into the ERS GBP health insurance trust fund.

ERS retirees could authorize deductions from their annuities to contribute to the state employee charitable campaign. ERS would have to charge participating charitable organizations an administrative fee.

The bill would change the timing of ERS's provision of personal member, retiree, and beneficiary data to the comptroller from once every year to once every five years and would not require another provision until 2016.

Of the various remaining provisions of the bill, several would relate to the disenrollment for benefits of a beneficiary that was found responsible for the plan member's death.

The bill would take effect September 1, 2011.

SUPPORTERS
SAY:

CSSB 1664 would enact a number of important cost-saving measures and would make numerous technical and clarifying statutory changes to help ERS operate more efficiently.

The proposed separation of the ERS and LECOS member contribution rates from the state contribution rates in fiscal 2012 would significantly preserve the viability of these pension funds if the Legislature, in the face of the current budget crisis, reduced the state contribution rates to the legal minimums of 6 percent and 0 percent, respectively. By pinning the employee contribution rates at the current 6.5 percent and 0.5 percent, the bill would mitigate the loss from the expected state contribution reduction for fiscal 2012 and keep the combined ERS contribution rate above the current normal cost rate of 12.3 percent.

The tobacco user premium differential is a recommendation from the Legislative Budget Board's January 2011 *Government Effectiveness and Efficiency Report*. This premium differential would help cover the costs of treating tobacco-related health problems, fund tobacco cessation prescription drug coverage, encourage wellness, and bolster the ERS insurance trust fund. According to the LBB's fiscal note, the premium differential would generate \$24 million per year for the fund, about \$2 million of which would fund the new cessation drug coverage. The remaining revenue would offset the costs tobacco users imposed on the system for the treatment of tobacco-related diseases.

Tobacco surcharges, fees, or contributions are common in private health insurance plans and increasingly common among state insurance plans. Several states currently have some form of surcharge or financial disincentive. The monthly differential under consideration would be slightly lower than the average of these other states' surcharges, intended to be high enough to incentivize quitting while not being overly punitive or burdensome.

The implementation of a tobacco user premium differential would not lead to additional premium surcharges in the future. The bill specifically would target tobacco use because funding tobacco cessation treatment is especially cost-effective in terms of long-term health care cost savings. Public health officials agree that smoking cessation is the low-hanging fruit of wellness efforts and the easiest way to curb future health care

costs. Furthermore, tobacco users typically want to quit, and the cessation drugs available are effective in helping them do so. Research suggests that ERS members would support a tobacco use surcharge. The Texas Public Employees Association has sought tobacco cessation prescription drug coverage for several years, but ERS has never been able to afford it. The tobacco user premium differential would make this coverage possible.

Concerns that the self-enforcement of a premium differential would lead to dishonesty and workplace issues are unfounded. In states that have a tobacco use surcharge, the predicted rates of self-reported tobacco use have been accurate, and the incidence of coworker reporting has been low.

OPPONENTS
SAY:

The tobacco user premium differential would be unfair and would set a worrisome precedent. Smokers too often are the first to be picked on when the government is trying to save money. Smokers are more likely to be of lower socioeconomic status, so this surcharge would place a new financial burden on those least able to bear it. Furthermore, the bill would start down the slippery slope of charging higher insurance premiums for certain behaviors. Under the same justification used for this premium differential, the state could begin to charge employees fees for failing to exercise, drinking alcohol, or any other behavior with potentially negative health effects.

Enforcement of the tobacco user premium differential could lead to mistrust and conflict in the workplace. A vindictive coworker would have nothing to lose by reporting a smoker to ERS, so the coworker's lack of knowledge of the smoker's self-reported status regarding tobacco use would not matter.

Among the prescription tobacco cessation drugs under consideration by ERS is Chantix, which is very controversial and has been linked to cases of violent behavior. The state should not encourage or sponsor use of this drug until it is understood better by the medical community.

NOTES:

The House committee substitute differs from Senate-passed version of the bill by changing the timing of ERS's delivery of personal member data to the comptroller and by specifying that the bill's provisions would prevail over any other bills from this legislative session if there were conflicts of nonsubstantive additions and corrections.