

BILL ANALYSIS

Senate Research Center
76R11686 GCH-D

C.S.S.B. 1130
By: Armbrister
State Affairs
4/15/1999
Committee Report (Substituted)

DIGEST

The Employees Retirement System of Texas (retirement system) was created by a constitutional amendment in 1947. The retirement system provides a service retirement program, administers the Uniform Group Insurance Program, provides a 401(k) and cafeteria plan pursuant to Section 125 of the Internal Revenue Code, and is the state's Social Security Administrator. C.S.S.B. 1130 regulates programs and systems administered by the Employees Retirement System of Texas, as part of a view process overseen by the Senate State Affairs Committee with recommendations made as contained in this bill.

PURPOSE

As proposed, C.S.S.B. 1130 regulates programs and systems administered by the Employees Retirement System of Texas.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the board of trustees of the Employees Retirement System in SECTION 10 (Section 814.1082(g), Chapter 814B, Government Code), SECTION 19 (Section 815.511(a), Government Code) and SECTION 23 (Section 4B(c-1), Article 3.50-2, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 805.008, Government Code, by amending Subsection (c) and adding (h), to authorize the Texas Employees Retirement System (retirement system), as an alternative to Subsections (a) and (b) and except as provided by Subsection (h), by rule to require the system from which service credit is transferred to pay certain monthly payments. Requires a transfer of an amount equal to the portion of the actual value of a lump sum payment that represents the percentage of the amount of service credit transferred, to be made at the time the lump sum payment is made, if a person elects to receive a partial lump sum payment under the law governing the system from which the person is retiring.

SECTION 2. Amends Section 812.101(a), Government Code, to authorize a member of the retirement system to withdraw all of the member's accumulated contributions for service credited in the employee class of membership if the member does not assume or resume, during the 30th day after the date on which the member terminates employment, a position included in class, rather than calendar, month.

SECTION 3. Amends Section 812.104, Government Code, by amending Subsection (a) and adding Subsection (c), to provide that deposits representing interest or membership fees that are required of a member to establish service credit under certain sections are not refundable except as provided by Subsection (c). Requires the retirement system, at the time a service retirement, disability retirement, or death benefit annuity becomes payable, to refund any contribution, interest to membership fees used to establish service credit that is not used in computing the amount of the annuity.

SECTION 4. Amends Section 813.104(b), Government Code, to prohibit payments from being made under a rule adopted under this section to reestablish service credit of a person who is currently, rather than has, retired or has died, or to establish service credit under Section 813.511.

SECTION 5. Amends Section 813.201(b), Government Code, to prohibit a member, after August 31, 1997, rather than 1991, from accruing or establishing service credit in the employee class of membership when the total amount of service credit, multiplied by the percentage in effect for computing annuities under Section 814.105, exceeds the number 100, rather than 50. Provides that when the maximum amount

of service credit is accrued or established by a member in the employee class, member and state contributions cease, although the member retains membership subject to Section 812.005.

SECTION 6. Amends Chapter 813F, Government Code, by adding Section 813.511, as follows:

Sec. 813.511. CREDIT FOR ACCUMULATED ANNUAL LEAVE. Provides that a member who holds a position included in the employee class of membership during the month that includes the effective date of the member's retirement and who retires based on service or a disability is entitled to service credit in the retirement system for the member's annual leave that has accumulated and is unused the last day of employment. Provides that annual leave is creditable in the retirement system at the rate of one month for each fraction of days or hours remaining after division of the total hours of accumulated annual leave by 160. Authorizes a member who holds a position included in the employee class to use annual leave creditable under this section to satisfy service requirements for retirement under Section 814.104 or 814.107, if the annual leave attributed to the eligibility requirement remains otherwise unused on the last day of employment. Requires the disbursing officer of each department or agency, before the 11th day after the effective date of retirement of one or more employees of the department or agency, to certify to the retirement system certain information. Requires the disbursing officer of a department or agency that employs a member who applies for retirement under Subsection (b), not more than 90 or less than 30 days before the effective date of the member's retirement, to certify to the retirement system the amount of the member's accumulated and unused annual leave. Requires the officer to immediately notify the retirement system if the member uses annual leave after the date of certification. Requires the system to grant any credit to which a retiring member or retiree who is a subject of the certification is entitled, on receipt of a certification under Subsection (c) or (d). Provides that an increase in the computation of an annuity because of credit provided by this section after a certification under Subsection (d) begins with the first payment due after certification. Requires the retirement system to cancel the retirement of a person who used annual leave creditable under this section to qualify for service retirement if the annual leave is otherwise used by the person before the effective date of retirement.

SECTION 7. Amends Section 814.104, Government Code, by amending Subsection (a) and adding Subsection (c), to provide that a member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity if the member is at least 60 years old and has at least 5 years of service credit in the employment class or has at least five years of service credit in the employee class and the sum of the member's age and amount of service credit in the employee class, including months of age and credit, equals or exceeds the number 80. Requires the retirement system, for the sole purpose of determining eligibility to receive a service retirement annuity, to consider service performed as a participant in the optional retirement program under Chapter 830 as if it were service for which credit is established in the retirement system.

SECTION 8. Amends Section 814B, Government Code, by adding Section 814.1042, as follows:

Sec. 814.1042. SERVICE FOR CERTAIN GOVERNMENTAL EMPLOYERS. Requires the retirement system, for the sole purpose of determining eligibility to receive a service retirement annuity under Section 814.104(a)(2), to consider not more than 60 months, or portions of months, of service performed for a Texas governmental employer by a member who has at least five years of service credit, excluding military services, in the employee class as if it were service for which credit is established in the retirement system. Requires a member who seeks the application of this section to provide documentation satisfactory to the retirement system of the amount of service performed for the governmental employer. Prohibits service described by this section from being used in determining eligibility for participation in the Texas Employees Uniform Group Insurance Benefits Act.

SECTION 9. Amends Section 814.107(c), (d), and (e), Government Code, to provide that the standard combined service retirement annuity that is payable under this section is based on retirement on or after the attainment of normal retirement age, which for purposes of this section is the earlier of either the age of 50 or the age at which the sum of the member's age and amount of service credit in the employee class equals the number 80, rather than the age of 50 or older. Provides that a law enforcement or custodial officer who retires before attaining the normal retirement age, rather than 50, is entitled to an annuity that is actuarially reduced from the annuity available at the normal retirement age, rather than 50, to the law enforcement or custodial officer service credit annuity amount available at the sum of the member's age

and amount of employee class service credit. Provides that the annuity is payable from the law enforcement and custodial officer supplemental retirement fund. Makes conforming changes.

SECTION 10. Amends Chapter 814B, Government Code, by adding Section 814.1082, as follows:

Sec. 814.1082. PARTIAL LUMP SUM OPTION. Authorizes a member who is eligible for an unreduced service retirement annuity to select a standard retirement annuity or an optional retirement annuity described by Section 814.108 together with a partial lump sum distribution. Prohibits the amount of the lump sum distribution under this section from exceeding the sum of 36 months of a standard service retirement annuity computed without regard to this section. Requires the service retirement annuity selected by the member to be actuarially reduced to reflect the lump sum option selected by the member and to be actuarially equivalent to a standard or optional service retirement annuity, as applicable, without the partial lump sum distribution. Requires the annuity and lump sum to be computed to result in no actuarial loss to the retirement system. Provides that unless otherwise specified in rules adopted by the board of trustees of the retirement system (board), the lump sum distribution will be made as a single payment payable at the time that the first monthly annuity payment is paid to the retiree. Provides that the amount of lump sum distribution will be deducted from any amount otherwise payable under Section 814.505. Authorizes the partial lump sum option under this section to be elected only once by a member and not by a retiree. Provides that a member retiring under the proportionate retirement program under Chapter 803 is not eligible for the partial lump sum option. Authorizes the board to adopt rules for the implementation of this section and authorize the option to be used for a death benefit annuity. Provides that this section does not apply to a disability retirement annuity.

SECTION 11. Amends Section 814.202, Government Code, by adding Subsection (d), to require the retirement system to consider service performed as a participant in the optional retirement program under Chapter 830 as if it were service for which credit is established in the retirement system.

SECTION 12. Amends Section 814.302(b), Government Code, to authorize the person surviving a spouse to select a plan in the same manner that the decedent could have made the selection if the decedent had retired on the last day of the month in which the person died, if the person was a contributing member of the employee class, had at least three years of service credit in that class, and would have been eligible to retire under the proportionate retirement program under Chapter 803.

SECTION 13. Amends Section 815.103, Government Code, by adding Subsection (d), to authorize the board to accept on behalf of the retirement system gifts of money or other property from any public or private source.

SECTION 14. Amends Section 815.110(e), Government Code, to require the board of trustees to select an independent auditor to perform an annual financial audit of the retirement system. Requires the selection to be in accordance with the requirements of Chapter 2254 for obtaining the services of a certified public accountant, rather than made under a competitive bidding process in which the state auditor is eligible to bid. Makes conforming changes.

SECTION 15. Amends Section 815.202(f), Government Code, to authorize the executive director to delegate to another employee of the retirement system any right, power, or duty assigned to the executive director, if not specifically delegated.

SECTION 16. Amends Section 815.208, Government Code, by adding Subsection (d), to authorize the board to compensate employees of the retirement system, whether subject to or exempt from the overtime provisions of the Fair Labor Standard Act, at the rate equal to the employees' regular rate of pay for work performed on a legal holiday or for other compensatory time accrued, when taking compensatory time off would be disruptive to the retirement system's normal business functions.

SECTION 17. Amends Section 815.322, Government Code, to require the executive director, rather than the board of trustees, to make a transfer to make the amount in the retirement annuity reserve account equal, as of the last day of each fiscal year, to the actuarial present value of the annuities for which a transfer of assets has been made as required by Section 815.318, after making the transfer required by Section 815.319.

SECTION 18. Amends Section 815.502(a), Government Code, to authorize, than require, the retirement system to mail a certain notice.

SECTION 19. Amends Section 815.511, Government Code, as follows:

Sec. 815.511. New heading: ADMINISTRATIVE DECISION; APPEAL. Authorizes the board to modify or delete a proposed finding of fact or conclusion of law contained in a proposal for decision submitted by an administrative law judge or other hearing examiner, or make alternative findings of fact and conclusions of law, in a proceeding considered to be a contested case under Chapter 2001. Requires the board of trustees to state in writing the specific reason for its determination and to adopt rules of the implementation of this subsection. Provides that the appeal is considered to be an appeal of a contested case under the administrative procedure law, Chapter 2001.

SECTION 20. Amends Section 840.103(b), Government Code, to require the retirement system to certify to the Legislative Budget Board and to the budget division of the governor's office certain information, not later than December 31, rather than before November 2 of even-numbered years.

SECTION 21. Amends Section 3(a)(18), Article 3.50-2, Insurance Code, to redefine "institution of higher education."

SECTION 22. Amends Section 3A, Article 3.50-2, Insurance Code. as follows:

Sec. 3A. New heading: PARTICIPATION BY CERTAIN ENTITIES. Requires the Texas Municipal Retirement System (TMRS) and the Texas County and District Retirement System (TCDRS), rather than Texas Tech University, the University of Houston System or both, to participate in the Texas Employee Uniform Group Insurance Program administered by the Employees Retirement System of Texas under this Act. Sets forth certain limitations for participation. Authorize certain persons employed by the Texas Turnpike Authority and the North Texas Tollway Authority to obtain coverage for the person's dependents as any other participating annuitant. Provides that the North Texas Tollway Authority is responsible for payment of the contributions the state would make if the annuitants were state employees.

SECTION 23. Amends Section 4B, Article 3.50-2, Insurance Code. by adding Subsection (c-1), to authorize the board of trustees to modify or delete a proposed finding of fact or conclusion of law contained in a proposal for decision submitted by an alternative findings of fact and conclusions of law, in a proceeding considered to be a contested case under Chapter 2001. Requires the executive director to state in writing the specific reasons for the determination and may adopt rules for the implementation of this section.

SECTION 24. Amends Section 5, Article 3.50-2, Insurance Code. by amending Subsections (a), (d), and (f) and adding Subsection (e), to require the trustee to determine the coverage desired for state employees and other eligible participants, rather than will submitting this information to the State Board of Insurance for any recommendations as to the types and sufficiency of such coverages. Provides that the trustee will notify eligible carriers that competitive bidding will be conducted and that they are to submit their bids to the trustee by a specified date if they wish to bid on the contract. Requires an actuary selected by the trustee to advise the trustee as to the actuarial soundness of the bids received. Requires the trustee to submit the coverage provided by the group plan for competitive bidding at least every six years. Requires the trustee, before the first day of each state fiscal biennium, to estimate for an average 60-day period during the biennium the expenditures from the fund anticipated for self-funded plans, considering claims and administrative expenses for those plans that are projected to be incurred. Requires the trustee to place the estimated amount in a contingency reserved fund to provide for adverse fluctuations in claims or administrative expenses. Requires the trustee to include in each request for legislative appropriations to the program the amount the trustee determines to be necessary to maintain the contingency reserve fund at the level required by this subsection. Authorizes the trustee to invest and reinvest any portion of the contingency reserve fund under the standard of care provided by Section 815.307, Government Code, considering the functional need to provide for adverse fluctuations in claims or administrative expenses. Requires the interest on, earning of, and proceeds from the sale of investments of assets in the contingency reserve to be credited to the fund. Requires a qualified actuary selected by the trustee to advise the trustee as to an actuarially sound level of contributions required to provide coverage directly from the fund. Deletes text regarding State Board of Insurance, deferred compensation program, and restricted balance.

SECTION 25. Amends Section 8, Article 3.50-2, Insurance Code, to authorize the trustee, in its sole discretion and under conditions it approves, to reinsure any coverage that it has determined will be

provided directly from the fund in accordance with Section 5(f) of this Act. Deletes text regarding carriers.

SECTION 26. Amends Section 10, Article 3.50-2, Insurance Code, by adding Subsection (c), to provide that the records of a participant in the Texas Employees Uniform Group Insurance Program (TEUGP) in the custody of the trustee, or certain other persons are confidential and not subjected to disclosure and are not exempt from the public access provisions of Chapter 552, Government Code, except as provided by this subsection. Authorizes records to be released to a participant or to an authorized attorney, family member, or representative acting on behalf of the participant. Authorizes the trustee to release the records to an administrator, carrier, or agent or attorney acting on behalf of the participant for the purpose of carrying out the purposes of this Act, or to a party in response to a subpoena issued under applicable law. Provides that the records of a participant remain confidential after release to person as authorized by this subsection. Authorizes the records of a participant to become part of the public record of an administrative or judicial proceeding related to a contested case under this Act, unless the records are closed to public access by a protective order issued under applicable law.

SECTION 27. Amends Section 11(e)(3), Article 3.50-2, Insurance Code, to provide that an annuitant, rather than retiree, participating in optional term life insurance coverage, is not eligible for premium-waived extended insurance benefits if the total disability begins after the date of retirement. Provides that an annuitant participating in optional term life insurance coverage is eligible for accelerated authority of Subsection (d) of this section, as added by Chapter 1048, Acts of the 75th Legislature, Regular Session, 1997. Deletes text regarding accelerated life insurance.

SECTION 28. Amends Section 11A, Article 3.50-2, Insurance Code, to require the trustee to adopt rules requiring a group life insurance program provided to employees including annuitants or dependents to make, in conjunction with receipt of a viatical settlement, irrevocable designation of beneficiary for part or all of the group life coverage benefits. Provides that a viatical settlement is not valid for any coverage under the TEUGIP unless the employee annuitant, or dependent has a terminal illness or terminal injury defined by rules adopted by the trustee, at the time application for benefits are made. Deletes text regarding accelerated benefits and viatical settlement.

SECTION 29. Amends Section 13, Article 3.50-2, Insurance Code, by adding Subsection (e), to provide that on application to the trustee and arrangement for payment of contributions, a former member of a board or commission described by Section 3(a)(5)(A)(vi) of this Act or a former member of the governing body of an institution of higher education remains eligible for participation in a group health coverage plan offered under this Act as long as no lapse in coverage occurs after the end of the former member's term. Prohibits a participant described by this subsection from receiving a state contribution for premiums. Prohibits the participant's contribution for coverage under a group health coverage plan from being greater than the contribution for continuation coverage under the Consolidated Omnibus Reconciliation Act of 1985.

SECTION 30. Amends Section 13B(d), Article 3.50-2, V.T.C.S., to delete text regarding notification in writing that the employee elects not to be enrolled.

SECTION 31. Amends Article 3.50-2, Insurance Code, by adding Section 16A, as follows:

Sec. 16A. MANAGEMENT OF ASSETS. Authorizes a trustee to commingle for investment purposes the assets of any fund created under this Act with any other fund created under this Act or any other trust fund administered by the trustee, as long as proportionate ownership records are maintained and credited.

SECTION 32. Amends Article 3.50-2, Insurance Code, by adding Section 16C, as follows:

Sec. 16C. EMPLOYEES' HEALTH CARE STABILIZATION TRUST FUND. Provides that the employees' health care stabilization trust fund is a special fund in the treasury outside the general revenue fund. Provides that the fund is composed of certain items. Requires the trustee to administer the fund. Authorizes the trustee to manage and invest the money in the fund under the standards of care provided by Section 815.307, Government Code. Requires the trustee to make investments in a manner that preserves the purchasing power of the fund's assets. Prohibits money in the fund from being spent for any purpose, except that the interest and investment returns of the fund may be appropriated only for the purpose of stabilizing the cost of state and participant contributions for health care coverage under this Act by minimizing to the greatest extent possible

increases in those contributions. Provides that the fund is exempt from the application of Section 403.095, Government Code.

SECTION 33. Amends Section 18(a), Article 3.50-2, Insurance Code, to require one member to be a state employee of state agency eligible for membership in the Texas Small State Agency Task Force, rather than one of the eight largest state agencies, appointed by the trustee.

SECTION 34. Amends Section 19(b), Article 3.50-2, Insurance Code, to require the state to pay the same portion of the cost of the required contributions for a deceased retiree's surviving spouse or other surviving dependent who elects to retain coverage under this subsection as it pays for similar dependent coverage for an employee or retiree participating in the program.

SECTION 35. Amends Section 403.026(a), Government Code, to delete text regarding group health insurance programs administered through the Employees Retirement System of Texas.

SECTION 36. Amends Section 609.007, Government Code, by adding Subsection (d), to provide that a contract created under this section need not be in writing and may be communicated to the plan administrator electronically or by any other means approved by the plan's trustees.

SECTION 37. Amends Section 609.505, Government Code, by adding amending Subsection (a) and adding Subsections (c) and (d), to provide that a vendor investment product having an ownership or other financial interest in the contractor selected by the board of trustees to administer a deferred compensation plan in not qualified to participate in the plan. Requires the board of trustees to select vendors or investment products based on the quality of certain criteria. Requires the board of trustees to determine the minimum and maximum number of vendors and investment products that may be offered by the plan at any particular time. Makes a conforming change.

SECTION 38. Amends Section 615.001, Government Code, to redefine "minor child."

SECTION 39. Provides that monthly payments of a retirement or death benefit annuity by the employee annuity by the retirement system under Title 8B, Government Code, are increased beginning with the first payment of the annuities that becomes due on or after the effective date of this section. Provides that the increase does not apply to annuities payable under Section 814.103, Government Code. Provides that the monthly increase is computed by multiplying the previous monthly benefit by a percentage determined in accordance with a certain table.

SECTION 40. Repealers: Section 5(b), Article 3.50-2, Insurance Code (regarding selection of carrier whose bid was not lowest); Section 5(c), Article 3.50-2, Insurance Code (regarding competitive bidding); Section 5(g), Article 3.50-2, Insurance Code (requiring trustee to determine the contributions required to provided coverages directly from the fund).

SECTION 41. Provides that except as provided by Subsection (b) of this section, Section 814.302(b), Government Code, as amended by this Act, applies only to death of contributing members of the retirement system that occurs on or after the effective date of this Act. Authorizes the surviving spouse of a contributing member of the retirement system who died before the effective date of this Act and whose account has not been refunded to apply for and receive a death benefit annuity under Section 814.302(b), Government Code, as amended by this Act. Provides that the effective date of an annuity under this subsection is the last day of the month in which the member died. Provides that the amount of an annuity payable under this subsection will be determined under the plan terms in effect in the month in which the member died. Requires the retirement system to make a lump sum payment of all unpaid annuity payments under this subsection at the time the first payment of the annuity becomes due on or after the effective date of this Act. Provides that this subsection expires December 31, 1999.

SECTION 42. Provides that a person who retires from the TCDRS or the TMRS on or after the effective date of this Act but before September 1, 2002, is not required to meet the requirement of the three years of service for a department whose employees are authorized to participate in the program.

SECTION 43. Provides that Section 814.1082, Government Code, applies only to retirements that occur on or after January 1, 2000.

SECTION 44. Effective date: September 1, 1999, except SECTIONS 27, 28, and 39, which take effect

January 1, 2000.

SECTION 45. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 805.008, Government Code, to authorize the retirement system, as an alternative to Subsections (a) and (b) and except as provided by Subsection (h), by rule to require the system from which service credit is transferred to pay certain monthly payments. Requires a transfer of an amount equal to the portion of the actual value of a lump sum payment that represents the percentage of the amount of service credit transferred, to be made at the time the lump sum payment is made, if a person elects to receive a partial lump sum payment under the law governing the system from which the person is retiring.

Redesignates existing SECTIONS accordingly.

SECTION 8.

Amends Section 814.1042, Government Code, to delete text regarding participation in the proportionate retirement program under Chapter 803.

SECTION 9.

Amends Section 814.107(c), Government Code, to provide that the standard combined service retirement annuity that is payable under this section is based on retirement on or after the attainment of normal retirement age, which for purposes of this section is the earlier of either the age of 50 or the age at which the sum of the member's age and amount of service credit in the employee class equals the number 80.

SECTION 10.

Amends Section 814.1082(g), Government Code, to authorize the option to be used for a death benefit annuity. Provides that this section does not apply to a disability retirement annuity.

SECTION 18.

Adds new SECTION 18 to amend Section 815.502(a), to authorize, than require, the retirement system to mail a certain notice.

Redesignates existing SECTIONS accordingly.

SECTION 19.

Amends Section 815.511, Government Code, to require the board of trustees to state in writing the specific reason for its determination.

SECTION 22.

Amends Section 3A, Article 3.50-2, Insurance Code, to set forth certain limitations for participation. requires the TMRS and TCDRS to pay all contributions that would be paid by the state if their participants were state employees.

SECTION 29.

Amends Section 13, Article 3.50-2, Insurance Code, to prohibit a participant described by this subsection from receiving a state contribution for premiums.

SECTION 30.

Adds new SECTION 30 to amend Section 13B(d), Article 3.50-2, Insurance Code, to delete text regarding notification in writing that the employee elects not to be enrolled.

SECTION 32.

Adds new SECTION 32 to amend Article 3.50-2, Insurance Code, by adding Section 16C, to create the Employees' Health Care Stabilization Trust Fund.

SECTION 37.

Adds new SECTION 37 by amending Section 609.505, Government Code, to set forth certain requirements for vendors. Makes conforming changes.

SECTION 39.

Amends this SECTION to provide that the monthly increase is computed by multiplying the previous monthly benefit by a percentage determined in accordance with a certain table.

SECTION 42.

Adds new SECTION to provide that a person who retires from the TCDRS or the TMRS on or after the effective date of this Act but before September 1, 2002, is not required to meet the requirement of the three years of service for a department whose employees are authorized to participate in the program.

SECTION 44.

Amends the SECTION to provide that this Act takes effect September 1, 1999, except Sections 27, 28, and 39, which take effect January 1, 2000.