

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1667
By: Duncan
State Affairs
4/21/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During a comprehensive review of the Teacher Retirement System of Texas' (TRS) policies and procedures, the board of trustees of TRS and staff held several public meetings in 2010 to consider provisions which would allow TRS to operate more efficiently and clarify certain statutory references.

C.S.S.B. 1667 amends current law relating to the administration of and benefits payable by the Teacher Retirement System of Texas and to certain domestic relations orders.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts Section 411.081(i), Government Code, as amended by Chapters 183 (H.B. 1830), 780 (S.B. 1056), 816 (S.B. 1599), and 1027 (H.B. 4343), Acts of the 81st Legislature, Regular Session, 2009, and amends it, to authorize a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure under Subsection (d) (relating to an order of nondisclosure for a defendant on deferred adjudication) only to certain noncriminal justice agencies or entities, including the Teacher Retirement System of Texas (TRS). Makes nonsubstantive changes.

SECTION 2. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.0971, as follows:

Sec. 411.0971. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEACHER RETIREMENT SYSTEM OF TEXAS. (a) Entitles TRS to obtain from the Department of Public Safety of the State of Texas (DPS), the Federal Bureau of Investigation Criminal Justice Information Services Division (division), or another law enforcement agency criminal history record information maintained by DPS, the division, or agency that relates to a person who:

- (1) is an employee or an applicant for employment with TRS;
- (2) is a consultant, contract employee, independent contractor, intern, or volunteer for TRS or an applicant to serve in one of those positions;
- (3) proposes to enter into a contract with or has a contract with TRS to perform services for or supply goods to TRS; or
- (4) is an employee or subcontractor, or an applicant to be an employee or subcontractor, of a contractor that provides services to TRS.

(b) Prohibits criminal history record information obtained by TRS under Subsection (a) from being released or disclosed to any person except:

- (1) on court order;
- (2) with the consent of the person who is the subject of the criminal history record information; or
- (3) to a federal agency as required by federal law or executive order.

(c) Requires TRS to destroy criminal history record information obtained under this section after the information is used for the purposes authorized by this section.

(d) Authorizes TRS to provide a copy of the criminal history record information obtained from DPS, the division, or other law enforcement agency to the individual who is the subject of the information.

(e) Provides that the failure or refusal of an employee or applicant to provide the following on request constitutes good cause for dismissal or refusal to hire:

- (1) a complete set of fingerprints;
- (2) a true and complete name; or
- (3) other information necessary for a law enforcement entity to obtain criminal history record information.

SECTION 3. Amends Subchapter F, Chapter 551, Government Code, by adding Section 551.130, as follows:

Sec. 551.130. BOARD OF TRUSTEES OF TEACHER RETIREMENT SYSTEM OF TEXAS: QUORUM PRESENT AT ONE LOCATION. (a) Defines "board" in this section.

(b) Provides that this chapter does not prohibit the board of trustees of TRS (board) or a board committee from holding an open or closed meeting by telephone conference call.

(c) Authorizes the board or a board committee to hold a meeting by telephone conference call only if a quorum of the applicable board or board committee is physically present at one location of the meeting.

(d) Provides that a telephone conference call meeting is subject to the notice requirements applicable to other meetings. Requires that the notice also specify:

- (1) the location of the meeting the location where a quorum of the board or board committee, as applicable, will be physically present; and
- (2) the intent to have a quorum present at that location.

(e) Requires that the location where a quorum is physically present be open to the public during the open portions of a telephone conference call meeting. Requires that the open portions of the meeting be audible to the public at the location where the quorum is present and be tape-recorded at that location. Requires that the tape recording be made available to the public.

(f) Requires that the location of the meeting provide two-way communication during the entire telephone conference call meeting, and the identification of each party to the telephone conference call be clearly stated before the party speaks.

(g) Provides that the authority provided by this section is in addition to the authority provided by Section 551.125.

(h) Provides that a member of the board who participates in a board or board committee meeting by telephone conference call but is not physically present at the location of the meeting is not considered to be absent from the meeting for any purpose. Provides that the vote of a member of the board who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee.

(i) Authorizes a member of the board to participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. Provides that a board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. Provides that, for purposes of the limit provided by this subsection, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a meeting of the board, even if:

(1) a quorum of the full board attends the board committee meeting; or

(2) notice of the board committee meeting is also posted as notice of a board meeting.

(j) Prohibits a person who is not a member of the board from speaking at the meeting from a remote location by telephone conference call, except as provided by Section 551.129 (Consultations Between Governmental Body and Its Attorney).

SECTION 4. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.153, as follows:

Sec. 552.153. EXCEPTION: NAME OF APPLICANT FOR EXECUTIVE DIRECTOR, CHIEF INVESTMENT OFFICER, OR CHIEF AUDIT EXECUTIVE OF TEACHER RETIREMENT SYSTEM OF TEXAS. Provides that the name of an applicant for the position of executive director, chief investment officer, or chief audit executive of TRS is excepted from the requirements of Section 552.021 (Availability of Public Information), except that the board of TRS is required to give public notice of the names of three finalists being considered for one of those positions at least 21 days before the date of the meeting at which the final action or vote is to be taken on choosing a finalist for employment.

SECTION 5. Amends Section 804.003, Government Code, by amending Subsections (f) and (g) and adding Subsection (p), as follows:

(f) Provides that a domestic relations order is a qualified domestic relations order only if such order:

(1) clearly specifies the name and last known mailing address of the member or retiree, and each alternate payee covered by the order, and social security number, or an express authorization for the parties to use an alternate method acceptable to the public retirement system to verify the social security number, of the member or retiree and each alternate payee covered by the order, rather than clearly specifies the name, social security number, and last known mailing address, if any, of the member or retiree and the name, social security number, and mailing address of each alternate payee covered by the order;

(2) clearly specifies the amount or percentage of the member's or retiree's benefits to be paid by a public retirement system to each such alternate payee or the manner in which such amount or percentage is to be determined;

- (3) clearly specifies the number of payments or the period to which such order applies;
- (4) clearly specifies that such order applies to a designated public retirement system;
- (5) does not require the public retirement system to provide any type or form of benefit or any option not otherwise provided under the plan;
- (6) does not require the public retirement system to provide increased benefits determined on the basis of actuarial value;
- (7) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and
- (8) does not require the payment of benefits to an alternate payee before the retirement of a member, the distribution of a withdrawal of contributions to a member, or other distribution to a member required by law.

Makes nonsubstantive changes.

(g) Authorizes a public retirement system to reject a domestic relations order as a qualified domestic relations order unless the order:

- (1) provides for a proportional reduction of the amount awarded to an alternate payee in the event of the retirement of the member before normal retirement age;
- (2) does not purport to require the designation of a particular person as the recipient of benefits in the event of a member's or annuitant's death;
- (3) does not purport to require the selection of a particular benefit payment plan or option;
- (4) provides clearly for each possible benefit distribution under plan provisions;
- (5) does not require any action on the part of the retirement system contrary to its governing statutes or plan provision other than the direct payment of the benefit awarded to an alternate payee;
- (6) does not make the award of an interest contingent on any condition other than those conditions resulting in the liability of a retirement system for payments under its plan provisions;
- (7) does not purport to award any future benefit increases that are provided or required by the legislature;
- (8) provides for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the retiree or member are reduced by law; and
- (9) if required by TRS, conforms to a model order adopted by TRS.

(p) Authorizes a public retirement system to assess administrative fees on a party who is subject to a domestic relations order for the review of the order under this subchapter and, as applicable, for the administration of payments under an order that is determined to be qualified. Authorizes a retirement system, in addition to other methods of collecting fees that a retirement system is authorized to establish, to deduct fees from payments made under the order.

SECTION 6. Amends Section 821.008, Government Code, as follows:

Sec. 821.008. PURPOSE OF RETIREMENT SYSTEM. (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that this section does not prohibit comments by an employee of TRS on federal laws, regulations, or other official actions or proposed actions affecting or potentially affecting TRS that are made in accordance with policies adopted by the board.

SECTION 7. Amends Section 823.002, Government Code, by adding Subsection (b), as follows:

(b) Requires a member to notify TRS in writing of membership service that has not been properly credited by TRS on an annual statement. Requires the member to provide verification and make deposits as required by TRS before the service may be credited. Requires a member to notify TRS of the service in writing on or before the last day of the fifth school year after the end of the school year in which the service was rendered for the service to be credited.

SECTION 8. Amends Subchapter A, Chapter 824, Government Code, by adding Section 824.008, as follows:

Sec. 824.008. DEDUCTIONS FROM AMOUNTS PAYABLE BY THE RETIREMENT SYSTEM. (a) Authorizes TRS, notwithstanding Section 821.005 (Exemption from Execution), to deduct the amount of a person's indebtedness to TRS from an amount payable by TRS to the person or the person's estate and the distributees of the estate.

(b) Authorizes TRS, if TRS makes a payment to a participant who is deceased and the payment is not payable, to deduct the amount of the payment from any amount payable by TRS to a person who received the payment or to that person's estate and distributees of the estate.

SECTION 9. Amends Section 824.1013, Government Code, by adding Subsection (c-1), as follows:

(c-1) Entitles a beneficiary designated under this section, notwithstanding Subsection (c) (relating to a beneficiary receiving an annuity), on the retiree's death to receive monthly payments of the survivor's portion of the retiree's optional retirement annuity for the remainder of the beneficiary's life if the beneficiary designated at the time of the retiree's retirement is a trust and the beneficiary designated under this section is the sole beneficiary of that trust.

SECTION 10. Amends Section 824.103(a), Government Code, as follows:

(a) Provides that benefits payable on the death of a member or annuitant, except an optional retirement annuity under Section 824.204(c)(1) (relating to the option for a reduced annuity), (c)(2) (relating to the option of one-half of a reduced annuity), or (c)(5) (relating to the option of three-fourths of a reduced annuity), are payable, and rights to elect survivor benefits, if applicable, are available, to one of the classes of persons described in Subsection (b) (relating to certain persons eligible to receive benefits), if:

- (1) the member or annuitant fails to designate a beneficiary before death;
- (2) a designated beneficiary does not survive the member or annuitant;
- (3) a designated beneficiary, under Section 824.004 (Waiver of Benefits), waives claims to benefits payable on the death of the member or annuitant;

(4) a beneficiary designation is revoked under Section 824.101(g) (relating to a divorce decree); or

(5) a person is not eligible to receive a benefit under Section 824.105 (Beneficiary Causing Death of Member or Annuitant).

SECTION 11. Amends Section 824.105, Government Code, by amending Subsections (a), (c), and (d) and adding Subsection (f), as follows:

(a) Prohibits a benefit payable on the death of a member or annuitant from being paid to a person who has been convicted of causing that death or who is otherwise ineligible under Subsection (f) but instead is payable to a person who would be entitled to the benefit had the convicted or otherwise ineligible person predeceased the decedent.

(c) Requires TRS to reduce any annuity computed in part on the age of the convicted or otherwise ineligible person to a lump sum equal to the present value of the remainder of the annuity.

(d) Provides that TRS is not required to pay benefits under this section unless it receives actual notice of the conviction or other ground of ineligibility of a beneficiary.

(f) Provides that a person is ineligible to receive a benefit payable on the death of a member or annuitant if the person is:

(1) found not guilty by reason of insanity under Chapter 46C (Insanity Defense), Code of Criminal Procedure, of causing the death of the member or annuitant; or

(2) the subject of an indictment, information, complaint, or other charging instrument alleging that the person caused the death of the member or annuitant, and the person is determined to be incompetent to stand trial under Chapter 46B (Incompetency to Stand Trial), Code of Criminal Procedure.

SECTION 12. Amends Sections 824.202(a-1) and (b-1), Government Code, as follows:

(a-1) Provides that this subsection applies only to a person who becomes a member of TRS on or after September 1, 2007, rather than September 1, 2006.

(b-1) Makes a conforming change.

SECTION 13. Amends Section 824.405, Government Code, as follows:

Sec. 824.405. TABLES FOR DETERMINATION OF DEATH BENEFIT ANNUITY. Requires the board, for the purpose of computing a death benefit annuity under Section 824.402(a)(4) (relating to annuity payments to a beneficiary under certain circumstances) or Section 824.403 (Benefits on Death of Inactive Member), to extend the tables in Section 824.202 (Eligibility for Service Retirement) to ages earlier than indicated in the tables by actuarially reducing the benefit available under the applicable table to the actuarial equivalent at the attained age of the member. Deletes existing text requiring the board, for the purpose of computing a death benefit annuity under Section 824.402(a)(4) or Section 824.403, to extend the tables in Section 824.202(b) (relating to certain persons eligible to retire) or (b-1) (relating to certain persons who became members on or after September 1, 2006 being eligible to retire), as applicable, to ages earlier than 55 years by actuarially reducing the benefit available at the age of 55 years to the actuarial equivalent at the attained age of the beneficiary, and in Section 824.202(b) or (d-1) (relating to certain persons who became members on or after September 1, 2007 being eligible to retire), as applicable, to ages earlier than the earliest retirement age by actuarially reducing the benefit available at the earliest retirement age to the actuarial equivalent at the attained age of the beneficiary. Makes nonsubstantive changes.

SECTION 14. Amends Section 825.002, Government Code, by amending Subsections (f) and (g) and adding Subsection (h), as follows:

(f) Requires persons considered for nomination under Subsection (c) (relating to two members who are currently employed by a public school district), (d) (relating to one member who is currently receiving benefits), or (e) (relating to one member who is currently employed by an institution of higher education) to have been nominated, rather than nominated by written ballot, at an election conducted under rules adopted by the board.

(g) Requires the board, to provide for the nomination of persons for appointment under Subsection (d), to send to each retiree of TRS:

(1) notice of the deadline for filing as a candidate for nomination;

(2) information on procedures to follow in filing as a candidate; and

(3) instructions on how to request a paper ballot or vote in another manner established by the board, including by telephone or other electronic means, rather than a written ballot.

(h) Requires the governor, if only two persons are nominated under Subsection (c), (d), or (e), to appoint a member of the board to the applicable trustee position from the slate of two nominated persons. Requires the governor, if only one person is nominated under Subsection (c), (d), or (e), to appoint that person to the applicable trustee position. Requires the governor, if no member or retiree is nominated for a position under Subsection (c), (d), or (e), to appoint to the applicable trustee position a person who otherwise meets the qualifications required for the position.

SECTION 15. Amends Section 825.206(c), Government Code, to require the board, at least once every four years, rather than three years, to redesignate its actuary after advertising for and reviewing proposals from providers of actuarial services.

SECTION 16. Amends Section 825.215, Government Code, as follows:

Sec. 825.215. **ADVOCACY PROHIBITED.** (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that this section does not prohibit comments by an employee of TRS on federal laws, regulations, or other official actions or proposed actions affecting or potentially affecting TRS that are made in accordance with policies adopted by the board.

SECTION 17. Amends Section 825.315, Government Code, as follows:

Sec. 825.315. **PROHIBITED USE OF ASSETS.** (a) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that this section does not prohibit the use of system assets by an employee of TRS to comment on federal laws, regulations, or other official actions or proposed actions affecting or potentially affecting TRS that are made in accordance with policies adopted by the board.

SECTION 18. Amends Section 825.408, Government Code, as follows:

Sec. 825.408. **INTEREST ON CONTRIBUTIONS AND FEES; DEPOSITS IN TRUST.** (a) Requires an employer, rather than an employing district, that fails to remit, before the seventh day after the last day of a month, all member and employer deposits and documentation of the deposits required by this subchapter to be remitted by the employer, rather than the district, for the month to pay to TRS, in addition to the deposits,

interest on the unpaid or undocumented amounts at an annual rate compounded monthly. Authorizes TRS, on request, to grant a waiver of the deadline imposed by this subsection based on an employer's, rather than a district's, financial or technological resources.

(b) Provides that an employer and its trustees or other governing body, rather than an employing district and its trustees, hold amounts due to TRS under this subtitle in trust for TRS and its members and prohibits them from diverting the amounts to any other purpose.

SECTION 19. Amends Section 825.507(b), Government Code, to authorize TRS to release records of a participant, including a participant to which Chapter 803 applies, to certain persons, including the executor or administrator of the deceased participant's estate, including information relating to the deceased participant's beneficiary, or if an executor or administrator of the deceased participant's estate has not been named, a person or entity who the executive director determines is acting in the interest of the deceased participant's estate, or an heir, legatee, or devisee of the deceased participant.

SECTION 20. Amends Section 825.515(a), Government Code, as follows:

(a) Requires that the type of position be identified as Administrative/Professional, Teacher/Full-Time Librarian, Support, Bus Driver, or Peace Officer. Requires that the records, for each member identified as a Peace Officer, specify whether the member is an employee of an institution of higher education or of a public school that is not an institution of higher education. Requires an employer to provide the information required by this section in the form and manner specified by TRS.

SECTION 21. Amends Section 1575.003(1), Insurance Code, to redefine "dependent."

SECTION 22. Amends Section 1575.206, Insurance Code, to provide that an employing public school and its governing body, rather than an employing school district and its trustees, hold contributions required by this subchapter in trust for the fund and its participants, and is prohibited from diverting the contributions for any other purpose.

SECTION 23. Amends Section 1575.207, Insurance Code, as follows:

Sec. 1575.207. New heading: INTEREST ASSESSED ON LATE PAYMENT OF DEPOSITS BY EMPLOYING PUBLIC SCHOOLS. (a) Requires an employing public school, rather than an employing school district, that does not remit to the trustee all contributions required by this subchapter before the seventh day after the last day of the month to pay to the fund the contributions, and interest on the unpaid amounts at the annual rate of six percent compounded monthly.

(b) Authorizes the trustee, on request, to grant a waiver of the deadline imposed by this section based on an employing public school's financial or technological resources, rather than an employing district's financial or technological resources.

SECTION 24. Amends Section 1579.004, Insurance Code, to redefine "dependent."

SECTION 25. Requires a member of TRS who seeks credit under Section 823.002(b), Government Code, as added by this Act, for service rendered before September 1, 2011, but not properly credited to a member's annual statement, to notify TRS not later than the date specified in Section 823.002(b), Government Code, as added by this Act, or August 31, 2016, whichever is later.

SECTION 26. (a) Makes application of the change in law made by this Act to Section 804.003, Government Code, to a qualified domestic relations order entered on or after the effective date of this Act, prospective.

(b) Makes application of the changes in law made by this Act to Section 824.105, Government Code, to the death of a member or annuitant of TRS that is caused by conduct that occurs on or after the effective date of this Act, prospective.

(c) Makes application of the change in law made by this Act to Section 825.002, Government Code, to a vacancy on the board for a term that expires on or after the effective date of this Act, prospective.

(d) Makes application of the change in law made by this Act to Section 825.507(b), Government Code, to the release of records by TRS, prospective.

SECTION 27. (a) Authorizes the amount of the state contribution to TRS under Section 825.404(a), Government Code, notwithstanding that section, for the state fiscal year ending August 31, 2012, to be less than the amount contributed by members during that fiscal year.

(b) Authorizes the state, notwithstanding Section 1575.202(a), Insurance Code, for the state fiscal year ending August 31, 2013, to contribute an amount to the retired school employees group insurance fund that is less than one percent of the salary of each active employee.

SECTION 28. Effective date: September 1, 2011.