

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1459
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State Affairs
4/23/2013
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Legislature evaluates the Employees Retirement System of Texas (ERS) in regard to the statute currently in place on occasion. In order to encompass the needs of both the legislature and ERS, this bill is put in place to facilitate the changes.

C.S.S.B. 1459 amends current law relating to the powers and duties of and contributions to and benefits from the systems and programs administered by the Employees Retirement System of Texas.

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. Amends Section 411.1402(a), Government Code, as follows:

(a) Entitles the Employees Retirement System of Texas (ERS) 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 the agency that relates to a person who is:

- (1) an applicant for employment with, or who is or has been employed by, ERS;
- (2) a consultant, contract employee, independent contractor, intern, or volunteer for ERS or an applicant to serve in one of those positions; or
- (3) a candidate for appointment or election to the board of trustees of ERS or an advisory committee to that board.

SECTION 2. Amends Section 661.091(a), Government Code, as follows:

(a) Entitles a contributing member of ERS who retires to a lump-sum payment, from funds of the agency or department from which the member retires, for the member's accrued vacation time as of the date of retirement, unless the member opts to receive for that accrued vacation time service credit under Section 813.511(a) (relating to entitling 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 to service credit in ERS for the member's annual leave that has accumulated and is unused on the last day of employment). Makes a nonsubstantive change.

SECTION 3. Amends Section 811.007, Government Code, to provide that certain individuals, including members of an advisory committee appointed by the board of trustees of ERS, are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty in connection with any program or system administered by ERS.

SECTION 4. Amends Section 812.003(b), Government Code, as follows:

(b) Provides that an office or employment that is included in the coverage of the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two or, except as provided by Section 9.01 (relating to entitling an employee of the Texas Department of Criminal Justice (TDCJ) to retain the salary and benefits applicable to TDCJ under certain circumstances), Chapter 238 (S.B. 378), Acts of the 73rd Legislature, Regular Session, 1993, is with a university system or institution of higher education, as defined by Section 61.003 (Donation of Reimbursement), Education Code, is not a position with a department, commission, board agency, or institution of the state for purposes of this subtitle.

SECTION 5. Amends Section 813.202(c), Government Code, as follows:

(c) Requires the state to contribute for service established under this section an amount in the same ratio to the member's contribution and interest paid under Subsection (b) (relating to authorizing a member to establish credit under this section by depositing with ERS in a lump sum a contribution in addition to interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit) for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section. Requires that the state's contribution and interest be paid from the fund or account from which the member receives compensation at the time the service is established or, if the member does not hold a position at the time the service is established, from the fund or account from which the member received compensation when the member most recently held a position.

SECTION 6. Amends Section 813.302(b), Government Code, to provide that a member eligible to establish military service credit is one who meets certain criteria, including is one who does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty, rather than based on 20 years or more of active federal military duty or its equivalent.

SECTION 7. Amends Section 813.509(k), Government Code, to authorize a member, rather than a member who was not a member on the date hired and was hired on or after September 1, 2009, or a death benefit beneficiary of that member to use sick leave creditable under this section only for purposes of calculating the member's or beneficiary's annuity.

SECTION 8. Amends Sections 813.511(a) and (j), Government Code, as follows:

(a) Entitles 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 to service credit in ERS for the member's annual leave that has accumulated and is unused on the last day of employment, unless the member opts to receive for the accumulated leave a lump-sum payment under Section 661.091 (Payment for Vacation Time on Retirement).

(j) Authorizes a member, rather than a member who was not a member on the date hired and was hired on or after September 1, 2009, or a death benefit beneficiary of that member to use annual leave creditable under this section only for purposes of calculating the member's or beneficiary's annuity.

SECTION 9. Amends Sections 814.105(a) and (d), Government Code, as follows:

(a) Provides that the standard service retirement annuity for service credited in the employee class of membership is an amount computed as the member's average monthly compensation for service in that class for the 60 highest months of compensation, rather than the 36 highest months of compensation, multiplied by 2.3 percent for each year of

service credit in that class. Deletes existing text relating to an exception otherwise provided in this section.

(d) Provides that the standard service retirement annuity computed under this section is reduced by five percent for each year the member retires before the member reaches age 62, rather than providing that the standard service retirement annuity computed under Subsection (c) (relating to providing the formula for computing the standard service retirement annuity for service credited in the employee class of membership for a member who was not a member on the date hired, was hired on or after September 1, 2009, and is eligible to retire) is reduced by five percent for each year the member retires before the member reaches age 60, with a maximum reduction of 25 percent.

SECTION 10. Amends Section 814.107, Government Code, by amending Subsections (b) and (c) and adding Subsection (c-1), as follows:

(b) Provides that the standard service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer is an amount computed on the basis of the member's average monthly compensation for the 60 highest months of compensation in the employee class, rather than the 36 highest months of compensation in the employee class, times the sum of the percentage factor used in the computation of a standard service retirement annuity under Section 814.105 (Service Retirement Benefits for Employee Class Service) plus .5 percent.

(c) Provides that the standard combined service retirement annuity that is payable under this section is based on retirement on or after the attainment of the normal retirement age, which for purposes of this section is the earlier of either the age of 57, rather than 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. Provides that the annuity of a law enforcement or custodial officer who retires before reaching the age of 57 under any eligibility criteria is actuarially reduced by five percent for each year of difference between the member's age at retirement and 57. Provides that that the actuarial reduction described by this section is in addition to any other actuarial reduction required by law.

(c-1) Creates this subsection from existing text. Entitles a law enforcement or custodial officer who retires before attaining the age of 50, rather than before attaining the normal retirement age, only to an annuity that is actuarially reduced from the annuity available at the age of 50 to the law enforcement or custodial officer whose service credit annuity amount is based on the sum of the member's age and amount of law enforcement or custodial officer service credit and employee class service credit, and provides that the officer is not entitled to have the annuity recalculated at normal retirement age. Provides that the standard or reduced annuity under this section is payable from the trust fund established by Section 815.310 (Trust Fund) and the law enforcement and custodial officer supplemental retirement fund in a ratio determined by ERS. Makes a conforming change.

SECTION 11. Amends Section 814.1081(a), Government Code, as follows:

(a) Authorizes a person who retired and selected an optional service retirement annuity described by Section 814.108(c)(1) (relating to authorizing an eligible person to choose to make the reduced annuity payable in the same amount throughout the life of the beneficiary after the retiree's death), (c)(2) (relating to authorizing an eligible person to choose to make one-half of the reduced annuity payable in the same amount throughout the life of the beneficiary after the retiree's death), or (c)(5) (relating to authorizing an eligible person to choose to make three-fourths of the reduced annuity payable in the same amount throughout the life of the beneficiary after the retiree's death) to change the optional annuity selection to the selection of a standard service retirement annuity if:

(1) pursuant to a divorce decree, a court orders the change in the annuity selection to a standard service retirement annuity; or

(2) the retiree files with ERS a request to change the annuity selection, if the retiree designated a person as beneficiary who:

(A) Redesignates existing Subdivision (1) as Paragraph (A) and makes no further change; or

(B) is not currently the retiree's spouse or dependent child and has executed since the designation a written, notarized instrument that releases ERS from any claim by the beneficiary to the annuity and that transfers all of the beneficiary's interest in the annuity to the retiree.

Deletes existing text authorizing a person who retired and selected an optional service retirement annuity described by Section 814.108(c)(1), (c)(2), or (c)(5) to change the optional annuity selection to the selection of a standard service retirement annuity by filing with ERS a request to change the annuity selection, if the retiree designated a person as beneficiary who has executed since the designation a transfer and release, approved by a court of competent jurisdiction pursuant to a divorce decree, of the beneficiary's interest in the annuity and is not currently the retiree's spouse or dependent child.

SECTION 12. Amends Subchapter G, Chapter 814, Government Code, by adding Section 814.604, as follows:

Sec. 814.604. COST-OF-LIVING ADJUSTMENT. (a) Requires ERS to grant a one-time cost-of-living adjustment as provided by Subsections (b) and (c) on a finding by the board of trustees that, as determined by an actuarial valuation:

(1) the amortization period for the unfunded actuarial liabilities of ERS does not exceed 30 years by one or more years; and

(2) as a result of paying the adjustment, the time required to amortize the unfunded actuarial liabilities of ERS would not be increased to a period that exceeds 30 years by one or more years.

(b) Requires ERS to pay the cost-of-living adjustment under this section to a retiree who has been retired for 20 years or more on the date the board of trustees makes the finding in Subsection (a), or to a beneficiary of the retiree, as an increase to a monthly service retirement benefit, disability retirement benefit, or death benefit, as applicable, paid under this chapter for service credited in the employee class.

(c) Provides that a cost-of-living adjustment under this section is limited to the lesser of an amount equal to three percent of the monthly benefit subject to the increase, or \$100 a month.

SECTION 13. Amends Section 815.311(b), Government Code, to provide that interest on money in an individual account in the employees saving account is earned monthly and is computed at the rate of two percent a year, rather than five percent a year, on the mean balance of the member's account for the fiscal year.

SECTION 14. Amends Section 815.317, Government Code, by adding Subsection (d), to provide that member contributions to the Law Enforcement and Custodial Officer Supplemental Retirement Fund deducted under Section 815.402(h) (relating to requiring each department or agency of the state that employs a law enforcement or custodial officer being required to deduct an additional 0.5 percent contribution from that member's compensation, to be deposited in the law enforcement and custodial officer supplemental retirement fund) earn interest at the same rate as money in an individual account in the employees savings account under Section 815.311 (Employees Savings Account), and are subject to the same computations and limitations that apply to member contributions under Section 815.311.

SECTION 15. Amends Section 815.402(a), Government Code, as follows:

(a) Requires each department or agency of the state, except as provided by Section 813.201 (Current Service), to, each payroll period, cause to be deducted from each member's compensation a contribution of:

(1) 6.5 percent of the compensation if the member is not a member of the legislature, provided that:

(A) Creates this paragraph from existing text and makes no further change; or

(B) if the state contribution to ERS is computed using a percentage greater than 6.5 percent, the member's contribution is computed using a percentage equal to the percentage used to compute the state contribution, except that the member contribution is prohibited from exceeding seven percent; or

(2) Makes no change to this subdivision.

SECTION 16. Amends Section 837.002, Government Code, as follows:

Sec. 837.002. TERMINATION OF MEMBERSHIP. Deletes existing text providing that a person's membership in ERS is terminated by transfer of the person's accumulated contributions under Section 840.401(f) (relating to requiring ERS to cancel the service credit in the member's account, transfer the accumulated contributions in the account to an appropriate account, and close the member's account if a valid application is not made). Makes nonsubstantive changes.

SECTION 17. Amends Section 838.103(b). Government Code, as follows:

(b) Provides that a member eligible to establish military service credit is one who:

(1) Makes no change to this subdivision;

(2) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty, rather than based on 20 years or more of active federal military duty or its equivalent; and

(3) Makes no change to this subdivision.

SECTION 18. Amends Sections 838.106(a) and (c), Government Code, as follows:

(a) Deletes existing text authorizing a member to establish service credit in ERS for any calendar year during which the member was eligible to take the oath for an office included in the membership of ERS. Makes nonsubstantive changes.

(c) Provides that for the purposes of Subsection (a), rather than (a)(1), the term of a member leaving judicial office ends not later than December 31 regardless of the date on which the member's successor takes the oath of office.

SECTION 19. Amends Sections 1551.003(9) and (11), Insurance Code, to redefine "full-time employee" and "part-time employee."

SECTION 20. Amends Section 1551.004(b), Insurance Code, to redefine "child" in this section.

SECTION 21. Amends Sections 1551.1055(a) and (b), Insurance Code, as follows:

(a) Provides that except as provided by Subsection (c) (relating to the waiting period applying only to the determination of initial eligibility to participate in the group benefits program and the provision that it does not apply to the determination of initial eligibility

to participate in optional and voluntary insurance coverages under the group benefits program) and (d) (relating to the providing that this subsection apply only to an employee of an institution of higher education or an employee of an institution of higher education's dependent and certain information regarding the date of an employee's eligibility), eligibility under Section 1551.101 (Participation Eligibility: State Officers and Employees) begins not later than the 90th day, rather than begins on the first day of the calendar month that begins after the 90th day, after the date the employee performs services for a state agency or is qualified for and begins to hold elected or appointed office.

(b) Provides that eligibility under Section 1551.102 (Participation Eligibility: Annuitants), except as provided by Subsection (c) or (d), begins not later than the 90th day after the date the individual retires, rather than begins on the first day of the calendar month that begins after the 90th day after the date the individual retires.

SECTION 22. Amends Section 1551.158(a), Insurance Code, to authorize a dependent child who is unmarried and whose coverage under this chapter ends when the child becomes 26 years of age, rather than 25 years of age, to, on expiration of continuation coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272), reinstate health benefit plan coverage under this chapter if the child, or the child's participating parent, pays the full cost of the health benefit plan coverage.

SECTION 23. Amends Subchapter G, Chapter 1551, Insurance Code, by adding Section 1551.3196, as follows:

Sec. 1551.3196. AMOUNT OF CONTRIBUTION FOR CERTAIN ANNUITANT. (a) Provides that an annuitant receives the benefits of a state contribution for coverage under this chapter based on the annuitant's eligible service credit, as follows:

- (1) for an annuitant with 20 years or more of eligible service credit, a full state contribution;
- (2) for an annuitant with at least 15 years but less than 20 years of eligible service credit, 75 percent of a full state contribution; and
- (3) for an annuitant with less than 15 years of eligible service credit, 50 percent of a full state contribution.

(b) Requires an annuitant receiving a reduced state contribution under Subsection (a) to have any state contribution for dependent coverage reduced in an amount proportional to the reduction under Subsection (a).

(c) Provides that this section does not apply to an individual who:

- (1) receives or is eligible to receive an annuity that is based on eligibility under Section 814.002 (Benefits From Both Membership Classes), 814.102 (Eligibility of Elected Members for Service Retirement), 834.101 (Eligibility for Service Retirement Annuity), or 839.101 (Eligibility for Service Retirement Annuity), Government Code; or
- (2) is eligible to participate in the group benefit program under Section 1551.102(d) (relating to providing that an individual is eligible to participate in the group benefits program if the individual has at least 10 years of service credit and is disabled as determined by ERS and is receiving an annuity or periodic distribution of funds from an account under the optional retirement program) because of a disability or Section 1551.102(f) (relating to providing that an individual is eligible to participate in the group benefits program if the individual is certified and qualified as disabled and receives certain annuities).

SECTION 24. (a) Repealers, effective September 1, 2013: Sections 76.006(i) (relating to requiring a community supervision and corrections department to submit certain information in the manner and form prescribed by ERS); 606.030(f) (relating to requiring ERS to pay from the social security administration fund to the comptroller of public accounts of the State of Texas for deposit in the general revenue fund at least 10 percent of the contributions collected for administrative expenses in the preceding year and authorizing this payment to continue only until a certain amount has been reimbursed); and 840.401 (Transfer of Accumulated Contributions in Certain Circumstances), Government Code.

Repealers, effective September 1, 2014: Sections 813.509(d) (relating to authorizing certain individuals to use sick leave creditable under this section to meet certain service requirements if the sick leave attributed to the eligibility requirements remains otherwise unused on the last day of employment) and (e) (relating to authorizing certain death beneficiaries to use the deceased member's sick leave credit to qualify for a certain death benefit plan if the decedent was a member or employee on August 31, 2009); 813.511 (d) (relating to authorizing certain individuals to use annual leave creditable under this section to satisfy service requirements for retirement if the annual leave attributed to the eligibility requirements remains otherwise unused on the last day of employment) and (e) (relating to authorizing a death beneficiary to use the deceased member's annual leave credit to qualify for a death benefit plan under certain section if the decedent was a member or employee on August 31, 2009); 814.105 (c) (relating to providing that the standard service retirement annuity for service credited in the employee class of membership for a member who was not a member on the date hired, was hired on or after September 1, 2009; and is eligible to retire is an amount computed as the member's average monthly compensation for service in that class for the 48 highest months of compensation multiplied by 2.3 percent for each year of service credit in that class), and 814.1075 (Adjusted Benefits for Certain Peace Officers), Government Code.

(b) Repealer: Section 1551.321 (Required Reports of Community Supervision and Corrections Departments), Insurance Code.

SECTION 25. (a) Provides that the changes in law made by this Act to Sections 813.509, 813.511, and 814.105, Government Code, do not apply to, and the former law is continued in effect for, a person who retires as a member of ERS on or after September 1, 2014, and who meets one or more of the following requirements on or before August 31, 2014:

- (1) the person has attained 50 years of age;
- (2) the sum of the person's age and amount of service credit in ERS equals 70 or greater; or
- (3) the person has at least 20 years of service credit in ERS.

(b) Provides that the changes in law made by this Act to Section 814.107, Government Code, do not apply to, and the former law is continued in effect for, a person who retires as a member of ERS on or after September 1, 2014, and who meets one or more of the following requirements on or before August 31, 2014:

- (1) the person has attained 45 years of age; or
- (2) the person has at least 15 years of service credit in ERS.

(c) Provides that only service actually credited in ERS, the Teacher Retirement System of Texas, or a retirement system participating in the proportionate retirement program under Chapter 830 (Proportionate Retirement Program), Government Code, or service performed as a participant in the optional retirement program under Chapter 830 (Optional Retirement Program), Government Code, on or before August 31, 2014, is authorized to be used to determine eligibility under this section.

SECTION 26. Provides that Section 815.311, Government Code, as amended by this Act, applies only to interest accrued on or after January 1, 2014. Provides that interest accrued before that date is governed by the law in effect on the date the interest was accrued, and that law is continued in effect for that purpose.

SECTION 27. Provides that Section 1551.3196, Insurance Code, as added by this Act, applies only to an individual who does not have 10 years of eligible service credit on September 1, 2014. Provides that an individual who has at least 10 years of eligible service credit, or is participating in the group benefits program as a retiree, on that date is governed by the law in effect on August 31, 2014, and the former law is continued in effect for that purpose.

SECTION 28. (a) Effective date, except as provided by Subsections (b), (c), and (d) of this section: September 1, 2013.

(b) Effective date, Section 815.311, Government Code, as amended by this Act: January 1, 2014.

(c) Effective date, Section 1551.3196, Insurance Code, as added by this Act: September 1, 2014.

(d) Effective date of the changes in law made by this Act to Sections 661.091, 813.509, 813.511, 814.105, and 814.107, Government Code, and Section 1551.1055, Insurance Code: September 1, 2014.