

BILL ANALYSIS

Senate Research Center

S.B. 1245
By: Huffman
Finance
6/20/2023
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Judicial Retirement System 2, under the Employees Retirement System of Texas, provides retirement benefits to over 1000 active and retired state district and appellate judges across Texas. Currently, the projected depletion date is in 46 years and it has an unfunded liability of approximately \$95 million.

S.B. 1245 would establish a new cash balance retirement plan for new judges starting on or after September 1, 2023. As a result of S.B. 1245, the Judicial Retirement System 2 pension fund will become more stable, and the funding period is lowered.

(Original Author's/Sponsor's Statement of Intent)

S.B. 1245 amends current law relating to contributions to, benefits from, and the administration of the Judicial Retirement System of Texas Plan Two.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 15 (Section 840.407, Government Code) and SECTION 16 (Sections 840A.004 and 840A.056, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 803.202, Government Code, by adding Subsection (d), to provide that a member of the Judicial Retirement System of Texas Plan Two (retirement system) who is subject to Chapter 840A is eligible to participate in the program provided by Chapter 803 (Proportionate Retirement Program).

SECTION 2. Amends Section 804.003, Government Code, by amending Subsections (j) and (k) and adding Subsection (k-2), as follows:

(j) Creates an exception under Subsection (k-2).

(k) Creates an exception under Subsection (k-2).

(k-2) Requires that payment of segregated amounts by a public retirement system, or applicable carrier if under the optional retirement program, under Subsections (j) (relating to the requirement that the public retirement system pay the segregated amounts without interest to the person or persons if a domestic relations order is determined to be a qualified domestic relations order) and (k) (relating to the requirement that the public retirement system pay the segregated amounts without interest to the person or persons who would have been entitled to such amounts if there had been no order if a domestic relations order is determined not to be a qualified domestic relations order) related to a benefit payable with respect to a member or retiree subject to Chapter 840A include annual interest provided by Section 840A.103 and gain sharing interest provided by Section 840A.104.

SECTION 3. Amends Section 836.001, Government Code by adding Subdivision (3-a) and amending Subdivision (9) to define "cash balance group member" and redefine "service credit."

SECTION 4. Amends Section 837.102(a), Government Code, as follows:

(a) Prohibits a retiree who resumes service as a judicial officer other than by assignment, rather than by appointment or assignment, described in Section 837.101 (Judicial Assignment) from rejoining or receiving credit in the retirement system for the resumed service, unless an election is made as provided by Section 837.103.

SECTION 5. Amends Subchapter B, Chapter 837, Government Code, by adding Section 837.103, as follows:

Sec. 837.103. RESUMPTION OF FULL-TIME JUDICIAL SERVICE BY CERTAIN RETIREES; OPTIONAL ELECTION TO REJOIN SYSTEM. (a) Provides that this section does not apply to a retiree receiving a cash balance annuity under Chapter 840A.

(b) Authorizes a retiree described by Section 837.102(a) to elect to rejoin the retirement system as a member and receive service credit in the retirement system for resuming service as a judicial officer if, before taking the oath of office, the retiree has been separated from judicial service for at least six full consecutive months, notwithstanding Section 837.001(c) (relating to providing that membership in the retirement system is mandatory for eligible persons) and 837.002(2) (relating to providing that a person's membership in the retirement system is terminated by retirement based on service credited in the retirement system). Requires the retiree to provide notice of the election to the retirement system in the manner prescribed by the retirement system.

(c) Requires the retirement system to recompute the annuity selected at the time of the person's original retirement, on the resumption of annuity payments that have been suspended under Section 837.102 (Resumption of Full-Time Judicial Service), to include the person's additional service credit established during membership under this section for a person who makes an election under this section. Requires the retirement system to reduce the number of months of payments by the number of months for which the annuity was paid before the person resumed service if, at the time of the person's original retirement, the person selected an optional retirement annuity payable under Section 839.103(a)(3) (relating to an annuity payable for the greater of the rest of the retiring member's life or 60 months) or (4) (relating to an annuity payable for the greater of the rest of the retiring member's life or 120 months).

(d) Authorizes a person to make an election under this section only once.

(e) Requires the retirement system to implement this section only if the retirement system is considered actuarially sound. Provides that the retirement system is considered actuarially sound for the purposes of this subsection if, based on an actuarial valuation of the retirement system prepared under Section 840.204(d) (relating to requiring the actuary to make a valuation of the assets and liabilities of the retirement system's funds annually on the basis of tables adopted by the board of trustees of the Employees Retirement System of Texas (board)) on or after September 1, 2023, the amount of contributions to the retirement system are sufficient to cover the normal cost of the retirement system and to amortize the unfunded actuarial accrued liability of the retirement system within 30 years. Requires the retirement system to implement this section not later than the 30th day after the date an actuarial valuation is prepared showing the retirement system is actuarially sound. Provides that on September 1, 2025:

(1) if this section is implemented, this subsection expires; or

(2) if this section is not implemented, this section expires.

SECTION 6. Amends Section 838.001, Government Code, as follows:

Sec. 838.001. TYPES OF CREDITABLE SERVICE. Provides that the types of service creditable in the retirement system are membership service and, as applicable, military service and equivalent membership service.

SECTION 7. Amends Subchapter A, Chapter 838, Government Code, by adding Section 838.002, as follows:

Sec. 838.002. PROVISIONS INAPPLICABLE TO CASH BALANCE GROUP MEMBERS. Provides that Sections 838.102 (Service Credit Previously Canceled), 838.103 (Military Service), 838.1035 (Service in Excess of 20 Years), 838.105 (Alternative Payments to Establish or Reestablish Service Credit), 838.106 (Credit for Year in Which Eligible for Office), 838.107 (Service Not Previously Established), and 838.108 (Credit Purchase Option) of Chapter 838 (Creditable Service) do not apply to a cash balance group member.

SECTION 8. Amends Subchapter A, Chapter 839, Government Code, by adding Section 839.005, as follows:

Sec. 839.005. PROVISIONS INAPPLICABLE TO CASH BALANCE GROUP MEMBERS. Provides that the following provisions of Chapter 839 (Benefits) do not apply to a cash balance group member:

- (1) Section 839.002 (Application for Retirement); and
- (2) Subchapters B (Service Retirement Benefits) and E (Increases in Benefits).

SECTION 9. Amends Section 839.201(a), Government Code, as follows:

(a) Provides that a member, other than a member who is eligible to receive a service retirement annuity under Section 839.101 (Eligibility for Service Retirement Annuity) or a cash balance annuity under Section 840A.052, is eligible, regardless of age, to retire from regular active service for disability and receive a disability retirement annuity if the member has at least seven years of service credit in the retirement system.

SECTION 10. Amends Subchapter A, Chapter 840, Government Code, by adding Section 840.009, as follows:

Sec. 840.009. PROVISIONS INAPPLICABLE TO CASH BALANCE GROUP MEMBERS. Provides that Sections 840.102(g) (relating to providing that a member who accrues 20 years of service credit in the retirement system ceases making contributions under Section 840.102 but is considered a contributing member for all other purposes under Subtitle E (Judicial Retirement System of Texas Plan Two)) and (h) (relating to providing that a member ceases making contributions if a member has served at least 12 years on an appellate court and the sum of the member's age and amount of service credited in the retirement system equals or exceeds the number 70), 840.1025 (Contributions After 20 Years of Service Credit), and 840.1027 (Contributions After Attaining Rule of 70) of Chapter 840 (Administration) do not apply to a cash balance group member.

SECTION 11. Amends the heading to Section 840.102, Government Code, to read as follows:

Sec. 840.102. COLLECTION OF CERTAIN MEMBER CONTRIBUTIONS.

SECTION 12. Amends Section 840.102(a), Government Code, as follows:

(a) Requires a judicial officer who is a member of the retirement system other than a cash balance group member to contribute each payroll period 9.5 percent of the officer's state

compensation for service rendered after September 1, 2019, except as provided by Subsections (g) and (h).

SECTION 13. Amends Sections 840.105(a) and (c), Government Code, as follows:

(a) Requires the state to pick up the member contributions required by Section 840.102 (Collection of Member Contributions) or 840A.101, as applicable, for all state compensation earned, rather than for all state compensation earned after December 31, 1989, by judicial officers who are members of the retirement system.

(c) Requires that member contributions picked up by the state be credited to members' individual accounts and treated for all other purposes as if the amounts were a part of the members' compensation and had been deducted as provided by Section 840.102 or 840A.101, as applicable.

SECTION 14. Amends Section 840.306(a), Government Code, as follows

(a) Provides that interest on money in a member's individual account in the retirement system is earned monthly and is computed at the rate of five percent a year on the mean balance of the member's account for the fiscal year, except as provided by Section 840A.103 or 840A.104.

SECTION 15. Amends Subchapter E, Chapter 840, Government Code, by adding Section 840.407, as follows:

Sec. 840.407. EXCESS BENEFIT ARRANGEMENT. (a) Provides that a separate nonqualified, unfunded excess benefit arrangement is created outside the trust fund of the retirement system. Requires that this excess benefit arrangement be administered as a governmental excess benefit arrangement under Section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)). Provides that the purpose of the excess benefit arrangement is to pay to annuitants of the retirement system benefits otherwise payable by the retirement system that exceed the limitations on benefits imposed by Section 415(b)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(b)(1)(A)).

(b) Provides that the board is responsible for the administration of this arrangement. Provides that the board has the same rights, duties and responsibilities concerning the excess benefit arrangement as it has to the trust fund, except as otherwise provided by this section.

(c) Provides that benefits under this section are exempt from execution to the same extent as provided by Section 836.004 (Exemption from Execution), except that benefits are completely unassignable. Provides that contributions to this arrangement are not held in trust and are prohibited from being comingled with other funds of the retirement system.

(d) Provides that an annuitant is entitled to a monthly benefit under this section in an amount equal to the amount by which the benefit otherwise payable by the retirement system has been reduced by the limitation on benefits imposed by Section 415(b)(1)(A) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(b)(1)(A)). Provides that the benefit payable by this arrangement is payable at the times and in the form that the benefit payable under the trust fund is paid.

(e) Requires that the benefit payable under this section be paid from state contributions that otherwise would be made to the trust fund under Section 840.103 (Collection of State Contributions). Requires that an amount determined by the retirement system to be necessary to pay benefits under this section be paid monthly to the credit of the dedicated account in the general revenue fund maintained only for the excess benefit arrangement in lieu of deposit in the state accumulation account. Authorizes the account to include amounts needed to amounts needed to pay reasonable and necessary expenses of administering this

arrangement. Requires that the monthly amount to be paid to the credit of the account be transferred to the account at least 15 days before the date of a monthly disbursement under this section.

(f) Authorizes the board to adopt rules governing the excess benefit arrangement that are necessary for the efficient administration of the arrangement in compliance with section 415(m) of the Internal Revenue Code of 1986 (26 U.S.C. Section 415(m)).

SECTION 16. Amends Subtitle E, Title 8, Government Code, by adding Chapter 840A, as follows:

CHAPTER 840A. CASH BALANCE BENEFIT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 840A.001. DEFINITION. Defines "accumulated account balance."

Sec. 840A.002. APPLICABILITY. Provides that this chapter applies only to a member who took office on or after September 1, 2024, and who was not a member on the date the member took office.

Sec. 840A.003. CONFLICT OF LAW. Provides that this chapter prevails to the extent of a conflict between this chapter, including a rule adopted by the retirement system under authority of this chapter, and any other law.

Sec. 840A.004. RULES. Authorizes the board to adopt rules necessary to implement this chapter.

SUBCHAPTER B. CASH BALANCE BENEFITS

Sec. 840A.051. APPLICATION FOR CASH BALANCE BENEFIT. (a) Authorizes a member to apply for a cash balance annuity by filing an application for retirement with the board.

(b) Prohibits an application for a cash balance annuity from being made after the date the member wishes to retire or more than 90 days before the date the member wishes to retire.

Sec. 840A.052. ELIGIBILITY FOR CASH BALANCE BENEFIT. Provides that a member is eligible to retire and receive a cash balance annuity if the member is at least 60 years old and has at least eight years of service credited in the retirement system or if the member is at least 50 years old and has at least 12 years of service credited in the retirement system.

Sec. 840A.053. STANDARD CASH BALANCE BENEFITS FOR MEMBERS. (a) Provides that the state match for the cash balance benefit is an amount computed by multiplying the member's accumulated account balance by 150 percent.

(b) Requires the retirement system to compute a member's cash balance annuity under this section by taking the sum of the member's accumulated account balance and the state match computed under Subsection (a) and annuitizing that amount over the life expectancy of the member as of the effective date of the member's retirement using mortality and other tables adopted by the board for that purpose under Section 840.005 (Adopting Tables and Rates).

Sec. 840A.054. OPTIONAL CASH BALANCE BENEFITS. (a) Authorizes a retiring member to elect to receive an optional cash balance annuity under this section, instead of the standard cash balance annuity payable under Section 840A.053.

(b) Requires a person who selects an optional lifetime cash balance annuity to designate, before the selection becomes effective, one beneficiary to receive the annuity on the death of the person making the selection. Authorizes a person who selects an optional cash balance annuity payable for a guaranteed period to designate, before or after retirement, one or more beneficiaries to receive the annuity on the death of the person making the selection.

(c) Authorizes a person eligible to select an optional cash balance annuity under this section to select an option which provides that:

(1) after the retiree's death, the reduced annuity is payable in the same amount throughout the life of the beneficiary designated by the retiree before retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of the beneficiary designated by the retiree before retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to one or more beneficiaries or, if one does not exist, to the retiree's estate;

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to one or more beneficiaries or, if one does not exist, to the retiree's estate; or

(5) after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of the beneficiary designated by the retiree before retirement.

(d) Requires that the reduced annuity be increased to the standard cash balance annuity that the retiree would have been entitled to receive if the retiree had not selected the optional annuity, if a beneficiary designated by a retiree under Subsection (b) predeceases the retiree and the retiree has elected an optional lifetime annuity. Requires that the standard cash balance annuity be adjusted as appropriate for post-retirement increases in retirement benefits authorized by law since the date of retirement.

(e) Provides that any increase in an annuity under Subsection (d) begins with the payment for the month following the month in which the designated beneficiary dies, and that the increased annuity is payable to the retiree for the remainder of the retiree's life.

(f) Requires that the computation of an optional cash balance annuity be made without regard to the gender of the annuitant or designated beneficiary.

(g) Prohibits a person who selected an optional cash balance annuity described by Subsection (c)(1), (2), or (5) from changing or revoking a beneficiary designation after the person's effective date of retirement, except as provided by Section 840A.055.

(h) Provides that a beneficiary designation that names a former spouse as a beneficiary for a guaranteed optional cash balance annuity described by Subsection (c)(3) or (4) is invalid unless the designation is made after the date of the divorce.

Sec. 840A.055. CHANGE IN OPTIONAL CASH BALANCE ANNUITY SELECTION.

(a) Authorizes a person who retired and selected an optional cash balance annuity described by Section 840A.054(c)(1), (2), or (5) to change the optional annuity to a standard cash balance annuity only if:

(1) pursuant to a divorce decree, a court orders the change in the annuity to a standard cash balance annuity; or

(2) the retiree files with the retirement system a request to change the annuity and, in connection with a divorce between the retiree and the beneficiary designated by the retiree under Section 840A.054(b), the beneficiary has executed a written, notarized instrument that:

(A) releases the retirement system from any claim to the annuity by the beneficiary; and

(B) transfers all of the beneficiary's interest in the annuity to the retiree.

(b) Requires the retirement system to recompute the annuity as a standard cash balance annuity if a retiree files a request as provided by Subsection (a). Provides that the increase in the annuity under this section begins with the monthly payment made to the retiree for the month following the month in which a request is filed as provided by Subsection (a).

Sec. 840A.056. PARTIAL LUMP-SUM CASH BALANCE OPTION. (a) Authorizes a member who is eligible for a cash balance annuity to select a standard cash balance annuity under Section 840A.053 or an optional cash balance annuity under Section 840A.054, together with a partial lump-sum distribution.

(b) Prohibits the amount of the lump-sum distribution under this section from exceeding the sum of 36 months of a standard cash balance annuity computed without regard to this section.

(c) Requires that the cash balance annuity selected by the member be actuarially reduced to reflect the lump-sum option selected by the member and to be actuarially equivalent to a standard or optional cash balance annuity, as applicable, without the partial lump-sum distribution. Requires that the annuity and lump sum be computed to result in no actuarial loss to the retirement system.

(d) Requires that the lump-sum distribution be made as a single payment payable at the time that the first monthly annuity payment is paid.

(e) Requires that the amount of the lump-sum distribution be deducted from any amount otherwise payable under this chapter.

(f) Authorizes the partial lump-sum option under this section to be elected only once by a member and prohibits it from being elected 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.

(g) Provides that before a retiring member selects a partial lump-sum distribution under this section:

(1) the retirement system is required to provide written notice to the member of the amount by which the member's annuity will be reduced because of the selection; and

(2) the member is required to acknowledge receipt of the notice in writing.

(h) Authorizes the board to adopt rules for the implementation of this section and to authorize the option to be used for a death benefit annuity. Provides that this section does not apply to a disability retirement annuity.

Sec. 840A.057. DEATH AND DISABILITY BENEFITS. (a) Provides that a member subject to this chapter, a retiree receiving a cash balance annuity under this chapter, or the beneficiary of a member or retiree described by this subsection, who qualifies for a death or survivor benefit annuity or a disability retirement annuity under Chapter 839 is entitled to a cash balance annuity under this subchapter instead of the annuity otherwise provided under Chapter 839, notwithstanding any other law.

(b) Authorizes the board to enter into contracts to provide additional death and disability benefits under this chapter.

SUBCHAPTER C. CONTRIBUTIONS AND INTEREST

Sec. 840A.101. COLLECTION OF MEMBER CONTRIBUTIONS. Requires each department or agency of the state to cause to be deducted, each payroll period, from the compensation of a member subject to this chapter a contribution of six percent of the compensation of the member.

Sec. 840A.102. STATE CONTRIBUTIONS FOR MILITARY SERVICE. (a) Requires the state to contribute for military service established under Section 838.1031 (Military Service Credit Governed by Uniformed Services Employment and Redeployment Rights Act) an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the retirement system who is subject to this chapter at the time the service is established under this subchapter.

(b) Requires the state's contribution under Subsection (a) to be paid from the fund 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 which the member received compensation when the member most recently held a position.

Sec. 840A.103. ANNUAL INTEREST ADJUSTMENT. Requires the retirement system to deposit for a member subject to this chapter, each fiscal year, an amount equal to four percent of the member's accumulated account balance deposited into the member's individual account in the retirement system.

Sec. 840A.104. GAIN SHARING INTEREST ADJUSTMENT. (a) Requires the retirement system, each fiscal year and subject to Subsection (b), to compute the gain sharing interest rate by:

(1) determining the average return on the investment of the system's cash and securities during the preceding five fiscal years, expressed as a percentage rate;

(2) subtracting four percentage points from the percentage rate determined under Subdivision (1); and

(3) multiplying the resulting difference under Subdivision (2) by 50 percent.

(b) Requires the retirement system, subject to Subsection (c), each fiscal year, to:

(1) deposit into each member's individual account in the retirement system, in addition to the amount deposited under Section 840A.103, an amount equal to the gain sharing interest rate determined under Subsection (a) for the fiscal year multiplied by the member's accumulated account balance as of the end of the preceding fiscal year; and

(2) recalculate the annuity payment of a retiree or annuitant under this chapter by:

(A) multiplying the annuity payment amount as of the end of the preceding fiscal year by the gain sharing interest rate determined under Subsection (a); or

(B) if the retiree or annuitant was not entitled to an annuity payment as of the end of the preceding fiscal year, multiplying the retiree's or annuitant's first annuity payment amount by the gain sharing interest rate determined under Subsection (a).

(c) Prohibits the gain sharing interest rate applied under Subsection (b) from being less than zero or more than three percent.

(d) Provides that Subsection (b) applies only to a retiree or annuitant who is receiving a cash balance annuity under Section 840A.053 or 840A.054, including an alternate payee under Section 804.005 (Payment in Certain Circumstances in Lieu of Benefits Awarded by Qualified Domestic Relations Order).

SECTION 17. Amends Section 1551.102(b), Insurance Code, as follows:

(b) Provides that an individual is eligible to participate in the group benefits program as provided by Subsection (a) (relating to relating to providing qualifications for certain individuals to participate as an annuitant in the group benefits program) if:

(1) makes no changes to this subdivision; and

(2) the individual:

(A)-(B) makes no changes to these paragraphs; or

(C) receives or is eligible to receive an annuity that is based on eligibility under certain sections or Subchapter B, Chapter 840A, Government Code; or

(D) makes no changes to this paragraph.

SECTION 18. Amends Section 1551.3196(c), Insurance Code, as follows:

(c) Provides that Section 1551.3196 (Amount of Contribution for Certain Annuitants) does not apply to an individual who:

(1) receives or is eligible to receive an annuity that is based on eligibility under certain sections, including Section 840A.052, Government Code; or

(2) makes no changes to this subdivision.

SECTION 19. Provides that Section 873.103, Government Code, as added by this Act, if implemented, applies to a retiree of the retirement system who resumes service as a judicial officer before, on, or after the date that section is implemented.

SECTION 20. Effective date: upon passage or September 1, 2023.