

BILL ANALYSIS

C.S.H.B. 500
By: Geren
General Investigating & Ethics
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that certain elected officials who while in office commit certain felonies arising from the official duties of that office should not receive payments from the public retirement system and should vacate office on final conviction of a felony so as not to erode the public's trust and confidence in public officials. C.S.H.B. 500 seeks to make certain public officials ineligible for service retirement annuities under the applicable public retirement system and to provide for such vacation of office.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the governing body of a public retirement system in SECTION 3 of this bill.

ANALYSIS

C.S.H.B. 500 amends the Government Code to make a member of the elected class of the Employees Retirement System of Texas (ERS) who is a member of the legislature or who is a person who holds a state office normally filled by statewide election and not included in the coverage of the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two, or a person otherwise eligible for membership in a public retirement system wholly or partly because the person was elected or appointed to an elected office, ineligible to receive a service retirement annuity under the retirement system if the member is convicted of a qualifying felony committed while in office and arising directly from the official duties of that elected office. The bill defines a "qualifying felony" as any felony involving bribery; the embezzlement, extortion, or other theft of public money; perjury; coercion of public servant or voter; tampering with governmental record; misuse of official information; conspiracy or the attempt to commit any of those foregoing offenses; or abuse of official capacity. The bill requires the governmental entity to which a person convicted of a qualifying felony was elected or appointed to provide written notice of the conviction to the public retirement system in which the person is enrolled not later than the 30th day after the conviction. The bill requires such notice to comply with the administrative rules adopted by the governing body of the public retirement system under the bill's provisions. The bill requires a court to notify the applicable public retirement system of the terms of a conviction of a person convicted of a qualifying felony committed while in office and arising directly from the official duties of that elected office.

C.S.H.B. 500 requires an applicable retirement system to suspend payments of an annuity to a person the system determines is ineligible to receive the annuity under the bill's provisions on receipt of such a notice of conviction from a court or a governmental entity, any similar notice of

a conviction of a qualifying felony from a U.S. district court or U.S. attorney, or any other information that the system determines by rule is sufficient to establish a conviction of a qualifying felony, but entitles a person whose conviction is overturned on appeal or who meets certain requirements for innocence under applicable Civil Practice and Remedies Code provisions to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period and authorizes such a person to resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person.

C.S.H.B. 500 entitles a member who is ineligible to receive a service retirement annuity under the bill's provisions to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. The bill establishes that such refund is subject to an award of all or part of the member's service retirement annuity contributions to a former spouse, including as a just and right division of the contributions on divorce, payment of child support, or payment of spousal maintenance or contractual alimony.

C.S.H.B. 500 establishes that benefits payable to an alternate payee who is recognized by a qualified domestic relations order established before the bill's effective date are not affected by a member's ineligibility to receive a service retirement annuity under the bill's provisions. The bill authorizes such an alternate payee to exercise any choice the member could have exercised regarding the form of payment of the benefit.

C.S.H.B. 500 authorizes a court, on the conviction of a member for a qualifying felony and in the same manner as in a divorce or annulment proceeding, to make a just and right division of the member's service retirement annuity by awarding to the member's spouse all or part of the community property interest in the annuity forfeited by the member and requires a court, on such a conviction and if the member's service retirement annuity was partitioned or exchanged by written agreement of the spouses before the member's commission of the offense, to award the annuity forfeited by the member to the member's spouse as provided in the agreement. The bill establishes that the service retirement annuity so awarded to a convicted member's spouse is the separate property of that spouse and that the member's community interest in the annuity, if any, is forfeited. The bill prohibits an annuity so awarded to a member's spouse from being converted to community property. The bill establishes that a spouse of a member convicted of a qualifying felony who is convicted of the felony as a party to the offense, or of another qualifying offense arising out of the same criminal episode, forfeits the member's service retirement annuity and service retirement contributions to the same extent as the member.

C.S.H.B. 500 establishes that ineligibility for a service retirement annuity under the bill's provisions does not impair a person's right to any other retirement benefit for which the person is eligible and requires the governing body of a public retirement system to adopt rules and procedures to implement the bill's provisions relating to certain elected officials' ineligibility for a service retirement annuity.

C.S.H.B. 500 establishes that a member of the legislature, the governor, or a state elected official convicted of a felony vacates the member's, governor's, or official's office on the date the conviction becomes final.

C.S.H.B. 500 amends the Code of Criminal Procedure to require the judge in the trial of a qualifying felony, as defined by the bill, committed while in office and arising directly from the official duties of that elected office to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the defendant is a member of the elected class of the Employees Retirement System of Texas (ERS) who is a member of the legislature or who is a person who holds a state office normally filled by statewide election and not included in the coverage of the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two while a member of the ERS, or that the defendant is a holder of an elected office for which the defendant wholly or partly

became eligible for membership in a public retirement system. The bill requires a judge who makes such an affirmative finding to make the determination and provide notice to the applicable public retirement system as required by the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 500 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

No equivalent provision.

No equivalent provision.

SECTION 1. Chapter 810, Government Code, is amended by adding Section 810.002 to read as follows:
Sec. 810.002. CERTAIN ELECTED OFFICIALS INELIGIBLE FOR

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Article 42.01, Code of Criminal Procedure, is amended by adding Section 12 to read as follows:
Sec. 12. In addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.0196.

SECTION 2. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0196 to read as follows:
Art. 42.0196. FINDING REGARDING OFFENSE RELATED TO PERFORMANCE OF PUBLIC SERVICE.
(a) In the trial of an offense described by Section 810.002, Government Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the defendant is:
(1) a member of the elected class described by Section 810.002(b)(1), Government Code, while a member of the Employees Retirement System of Texas; or
(2) a holder of an elected office for which the defendant wholly or partly became eligible for membership in a public retirement system.
(b) A judge who makes the affirmative finding described by this article shall make the determination and provide the notice required by Section 810.002(k), Government Code.

SECTION 3. Chapter 810, Government Code, is amended by adding Section 810.002 to read as follows:
Sec. 810.002. CERTAIN ELECTED OFFICIALS INELIGIBLE FOR

RETIREMENT ANNUITY. (a) In this section:

(1) "Governing body of a public retirement system" and "public retirement system" have the meanings assigned by Section 802.001.

(2) "Qualifying felony" means any felony involving:

(A) bribery;

(B) the embezzlement, extortion, or other theft of public money;

(C) perjury;

(D) coercion of public servant or voter;

(E) tampering with governmental record;

(F) misuse of official information;

(G) conspiracy or the attempt to commit any of the offenses described by Paragraphs (A)-(F); or

(H) abuse of official capacity.

(b) This section applies only to a person who is:

(1) a member of the elected class of the Employees Retirement System of Texas as described by Section 812.002(a)(1) or (2); or

(2) otherwise eligible for membership in a public retirement system wholly or partly because the person held an elected office.

(c) Except as provided by Subsection (d), a member of a public retirement system is not eligible to receive a service retirement annuity under the retirement system if the member is convicted of a qualifying felony committed while in office and arising directly from the official duties of that elected office.

(d) The retirement system

shall suspend payments of an annuity to a person ineligible to receive the annuity under Subsection (c).

A person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest

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(2) "Qualifying felony" means any felony involving:

(A) bribery;

(B) the embezzlement, extortion, or other theft of public money;

(C) perjury;

(D) coercion of public servant or voter;

(E) tampering with governmental record;

(F) misuse of official information;

(G) conspiracy or the attempt to commit any of the offenses described by Paragraphs (A)-(F); or

(H) abuse of official capacity.

(b) This section applies only to a person who is:

(1) a member of the elected class of the Employees Retirement System of Texas as described by Section 812.002(a)(1) or (2); or

(2) otherwise eligible for membership in a public retirement system wholly or partly because the person was elected or appointed to an elected office.

(c) Except as provided by Subsection (d), a member of a public retirement system is not eligible to receive a service retirement annuity under the retirement system if the member is convicted of a qualifying felony committed while in office and arising directly from the official duties of that elected office.

(d) The retirement system, on receipt of notice of a conviction under Subsection (e) or (k), any similar notice of a conviction of a qualifying felony from a United States district court or United States attorney, or any other information that the retirement system determines by rule is sufficient to establish a conviction of a qualifying felony, shall suspend payments of a service retirement annuity to a person the system determines is ineligible to receive the annuity under Subsection (c).

A person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest

earned on the payments withheld during the suspension period; and
(2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (e).

(e) A member who is ineligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the member's service retirement annuity contributions, including interest earned on those contributions.

(f) Benefits payable to an alternate payee under Chapter 804 who is recognized by a domestic relations order established before January 8, 2019, are not affected by a member's ineligibility to receive a service retirement annuity under Subsection (c).

(g) On conviction of a member for a qualifying felony,
a court may, in the interest of justice and in the same manner as in a divorce proceeding, award half of the service retirement annuity forfeited by the member as the separate property of an innocent spouse if the annuity

is partitioned or exchanged by written agreement of the spouses as provided by

earned on the payments withheld during the suspension period; and
(2) may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under Subsection (f).

(e) Not later than the 30th day after the conviction of a person of a qualifying felony, the governmental entity to which the person was elected or appointed must provide written notice of the conviction to the public retirement system in which the person is enrolled. The notice must comply with the administrative rules adopted by the public retirement system under Subsection (m).

(f) A member who is ineligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. A refund under this subsection is subject to an award of all or part of the member's service retirement annuity contributions to a former spouse, including as a just and right division of the contributions on divorce, payment of child support, or payment of spousal maintenance or contractual alimony.

(g) Benefits payable to an alternate payee under Chapter 804 who is recognized by a qualified domestic relations order established before the effective date of this subsection are not affected by a member's ineligibility to receive a service retirement annuity under Subsection (c). Notwithstanding any other provision of this chapter, an alternate payee to whom this subsection applies may exercise any choice the member could have exercised regarding the form of payment of the benefit.

(h) On conviction of a member for a qualifying felony:

(1) a court may, in the same manner as in a divorce or annulment proceeding, make a just and right division of the member's service retirement annuity by awarding to the member's spouse all or part of the community property interest in the annuity forfeited by the member; and

(2) a court shall, if the member's service retirement annuity

was partitioned or exchanged by written agreement of the spouses as provided by

Subchapter B, Chapter 4, Family Code.

The amount awarded to the innocent spouse may not be converted to community property.

(h) Ineligibility for a service retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(i) The governing body of a public retirement system shall adopt rules and procedures to implement this section.

SECTION 2. Chapter 601, Government Code, is amended.

SECTION 3. Section 810.002, Government Code, as added by this Act, applies only to a member of a public retirement system who holds or has held elected office and, on or after the effective date of this Act, commits an offense that is a qualifying felony as defined by that section. A person who commits a qualifying felony before the effective date of this Act is subject to the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

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Subchapter B, Chapter 4, Family Code, before the member's commission of the offense, award the annuity forfeited by the member to the member's spouse as provided in the agreement.

(i) The service retirement annuity awarded to the convicted member's spouse under Subsection (h) is the separate property of that spouse and the member's community interest in the annuity, if any, is forfeited. An annuity awarded to a member's spouse under this section may not be converted to community property.

(j) If the spouse of a member convicted of a qualifying felony is convicted of the felony as a party to the offense as provided by Section 7.01, Penal Code, or of another qualifying offense arising out of the same criminal episode as defined by Section 3.01, Penal Code, the spouse forfeits the member's service retirement annuity and service retirement contributions to the same extent as the member.

(k) A court shall notify the retirement system of the terms of a conviction of a person convicted of an offense described by Subsection (c).

(l) Ineligibility for a service retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(m) The governing body of a public retirement system shall adopt rules and procedures to implement this section.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

17.93.750

SECTION 4. This Act takes effect January 8, 2019.

SECTION 6. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.