

SUBJECT:           Guaranteeing benefits earned in local public retirement systems

COMMITTEE:       Pensions and Investments — Committee substitute recommended

VOTE:             5 ayes — Ritter, Grusendorf, Martinez Fischer, Pena, Rose

0 nays

2 absent — Telford, McClendon

WITNESSES:       *(On original version:)*

For — Gerald Brown, Dallas Police and Fire Pension System; Paul Brown, Big Spring FRRF; Jim Cowgill, Texas Silver-Haired Legislature; John D. Davis III, El Paso Fireman and Policeman's Pension Fund; W. M. "Bill" Elkin, Houston Police Retired Officers Association; Charles Griffith, Dallas City Retired Employees Association; Gary Lawson, NCPERS; Randy Stalnaker, Texas Association of Public Employee Retirement Systems

Against — Tom Utter, City of Corpus Christi

On — Morris Sandefer, Office of the Firefighters Pension Commissioner

BACKGROUND:     Texas Constitution, Art. 16, sec. 67 governs legislative authority over state and local retirement systems. V.T.C.A. Civil Statutes, Title 109 applies to state, county, and city pension plans, and Government Code, Title 8 applies to public retirement systems.

A prevailing 1937 Texas Supreme Court opinion, *City of Dallas, et al. v. Trammell*, 101 S.W. 2d 1009, reversed the ruling of a court of civil appeals and a trial court that had found in favor of a retired police officer who had over 20 years of service with the city of Dallas and whose pension was cut almost in half. The Supreme Court ruled that the right of a pensioner is subordinate to the right of the Legislature to diminish accrued benefits or even abolish a pension system.

**DIGEST:** CSHJR 54 would add a new subsec. (h) to Texas Constitution Art. 16, sec. 67 that would prohibit benefits paid by certain public retirement systems from being reduced or impaired for service performed before the effective date of any change in benefit structure. Benefits granted to any retiree or other annuitant before the proposed amendment's effective date, and in effect on that date, could not be reduced or impaired.

The proposed amendment would apply to public retirement systems that were not a statewide system and that provided service and disability retirement benefits and death benefits to public officers and employees and to a statewide public retirement system that provided service and disability retirement benefits and death benefits to volunteer emergency services personnel.

The proposal would be presented to the voters at an election on Tuesday, November 4, 2003. The ballot proposal would read: "The constitutional amendment to guarantee benefits earned in local public retirement systems and certain statewide public retirement systems."

**SUPPORTERS SAY:** CSHJR 54 would ensure that municipal employees — particularly firefighters, police officers, and volunteer firefighters — would have the security of knowing that retirement, disability, and death benefits they had earned could not be reduced and would be available to them or their beneficiaries. Texas law allows for pension plans for municipal employees, but no law guarantees that retired employees of these plans will receive the pension benefits that are promised to them and that they earned. Furthermore, a prevailing Texas Supreme Court opinion allows public employees' pension benefits to be reduced. The only reliable way to guarantee the sanctity of public employee pension benefits would be to adopt an amendment to the Texas Constitution establishing that earned benefits could not be modified, reduced, or eliminated.

Many Texas public employees do not have Social Security coverage. If their public pension benefits were reduced or eliminated, these retirees could be left with little or no income. This would be especially egregious if benefits were eliminated for public employees who became disabled, or even died, in the line of service, and would create particular hardship for disabled beneficiaries or their survivors.

Since 1974, the federal Employee Retirement Income Security Act (ERISA) has protected private sector employees from benefit losses through a guaranty fund, but there is no corresponding protection for public employees. Currently, 41 states extend guaranteed retirement, disability, or death benefits to their employees. Texas should join these other states in affording municipal employees the security of benefits they deserve.

Occasionally, pension benefit systems are faced with sound actuarial reasons for reducing benefits, but these almost always are dealt with prospectively, and thus do not affect benefits that retirees, beneficiaries, or other annuitants already have earned. CSHJR 54 would not hinder a pension plan's ability to offset for investment losses or to make cost of living adjustments, but it would encourage governmental entities to be more responsible in funding and administering pension plans.

A floor amendment would clarify that cities or other political subdivisions, and the state in the case of volunteer fire departments, would not bear the complete liability of addressing reduced benefits. It also would clarify that the amendment would apply only to vested employees.

**OPPONENTS  
SAY:**

CSHJR 54 would place some cities in a situation of being liable for pension funds they did not administer. Under the Firemen's Relief Pension Fund Act, cities are entitled to only two of seven members on the pension board. Because many Texas cities and towns could find themselves with unfunded liabilities relating to matters beyond their control, this resolution should allow certain cities to opt out.

**NOTES:**

The committee substitute differs from the resolution as introduced by referring to benefits as "service and disability retirement benefits and death benefits." The substitute removed the reference to a contractual relationship contained in the original. It also included a provision that benefits granted prior to the enactment of the proposed amendment and those existing on the effective date could not be reduced or impaired and that this provision would be an obligation of the political subdivision or subdivisions that financed that particular public retirement system.

The author plans to offer the following floor amendment: "This obligation is the joint responsibility of the political subdivision or subdivisions and active

members of the system that finance the particular retirement system or the state and active members of the system that finance the particular retirement system.” Further, the amendment would read, “the subsection does not apply to members who have not qualified to receive benefits under provisions of the retirement system.”