

- SUBJECT:** Public retirement system benefit adjustments to correct payment errors
- COMMITTEE:** Pensions and Investments — Committee substitute recommended
- VOTE:** 7 ayes — Truitt, Villarreal, McClendon, Burnam, Keffer, Macias, Rodriguez  
0 nays
- WITNESSES:** For — Chris Jones, Combined Law Enforcement Associations of Texas; Deborah C. Ingersoll; (*Registered, but did not testify:* Josh Sanderson, Association of Texas Professional Educators)  
  
Against — Max Patterson, Texas Association of Public Employee Retirement Systems
- BACKGROUND:** Under Government Code, sec. 802.1024, if an error in the records of a public retirement system results in a person receiving more or less money than the person is entitled to receive in regular annuity payments, the governing body must correct the error and, as far as practicable, adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. If no future payments are due, the system's board may recover the overpayment in any manner that would be permitted for the collection of any debt.  
  
A public retirement system may correct the overpayment only if it was made during the three years preceding the date that the error was discovered. An overpayment made more than three years before the discovery of the error cannot be recovered. This does not apply to an overpayment that a reasonable person should know that the person is not entitled to receive.
- DIGEST:** CSHB 155 would amend Government Code, sec. 802.1024 to require the governing body of a public retirement system, on discovery of an error in records that resulted in a retiree receiving more or less money than the person was entitled to receive, to give written notice to the person receiving the incorrect amount as soon as practicable but no later than the 90th day after the date the error was discovered.

The notice would have to include:

- the amount of the correction in overpayment or underpayment;
- how the amount of the correction was calculated;
- a brief explanation of the reason for the correction;
- a statement that the notice recipient could file a written complaint with the retirement system if the recipient did not agree with the correction and instructions for filing a written complaint; and
- a payment plan option if no future payments were due.

The public retirement system would have to begin to adjust future payments or institute recovery of an overpayment of benefits not later than the 90th day after the date the required notice was sent by certified mail, return receipt requested, if the system received a signed receipt evidencing delivery on or before that date.

If the system did not receive a signed receipt of delivery, a second notice would have to be sent by registered mail, and the adjustments would have to be made no later than the 90th day after the second notice was mailed. If the system did not follow these procedures, an overpayment could not be recovered.

The bill also would establish a complaint procedure and a timeline for filing and responding to complaints.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007, and would apply to an underpayment or overpayment regardless of whether it was made before, on or after this date, but would not apply to a correction, adjustment or recovery of an overpayment that commenced before or was resolved by agreement before the effective date of the bill.

**SUPPORTERS  
SAY:**

CSHB 115 would establish timely notification and complaint practices that all public retirement systems should follow when the system has miscalculated retirement benefits. The bill would help prevent a situation like one that happened in August 2002 when the El Paso Firemen and Police Retirement Fund asked 15 beneficiaries — 14 widows and one retiree — to repay a total of \$750,000 to the fund. The city of El Paso,

which at that time administered the now independent fund, made mistakes over a period of years that led to these overpayments.

In 2003, the Legislature enacted legislation to limit the time in which public pension plans can charge for over- or under- payments to its annuitants, but that bill did not go far enough in requiring timely action for notification and response to complaints. While HB 155 would not solve the problem for the El Paso widows, it would help prevent a similar situation in the future.

Requiring that notices be delivered by certified mail with proof of receipt would be the best way to ensure that the affected parties received the notices of adjustment. Other methods may present less of a burden to retirement systems but could be less likely to reach the intended recipients.

OPPONENTS  
SAY:

The boards of public retirement systems should retain flexibility in determining how to respond to miscalculation of benefits. The process for notifying and responding to complaints established in HB 155 would be overly prescriptive and could lead a board to require repayment when it might not have otherwise done so.

The El Paso situation, while unfortunate, and trying to devise a solution to that situation could cause bigger problems for other systems. Most systems already have adequate reporting and complaint procedures in place.

The notification requirements in the bill would be overly burdensome. Retirement systems communicate regularly with their annuitants and should be able to notify and respond to complaints through the same channels.

NOTES:

The committee substitute increased from 10 to 30 days the amount of time in which the system would have to respond to a complaint and changed other time limits in the bill.