

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 292
By: Armbrister
State Affairs
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Committee Report (Substituted)

DIGEST AND PURPOSE

Every legislative session, an Employees Retirement System (ERS) Omnibus Bill is passed. C.S.S.B. 292 is an ERS Omnibus Bill that enhances the application and consistency of benefits for ERS members, provides cost of living adjustments for ERS annuitants, and contains general housekeeping provisions regarding ERS and makes clarifications in some of the statutes affecting ERS.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees provided for in Chapter 815 (Administration), Government Code, to administer the Employees Retirement System of Texas (board of trustees) in SECTION 6 (Section 813.513, Government Code), SECTION 31 (Section 13B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.) of this bill and SECTION 41 of this bill.

Rulemaking authority previously granted to the board of trustees is expanded in SECTION 17 (Section 815.102, Government Code) and SECTION 24 (Section 4, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.)) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 811.001(12) and (14), Government Code, to redefine “occupational death or disability” and “retiree.”

SECTION 2. Amends Section 813.201(b), Government Code, to delete text regarding August 31, 1997. Prohibits a member from accruing or establishing service credit in the employee class of membership when the total amount of service credit, multiplied by the percentage in effect for computing annuities under Section 814.103, 814.105, or 814.107, would exceed 100. Provides that, when the maximum amount of service credit is accrued or established by a member in the employee or elected class, member and state contributions cease, although the member retains membership subject to Section 812.005.

SECTION 3. Amends Section 813.504(a), Government Code, to authorize a person, rather than a member of the employee class, to reestablish service credit previously canceled in the retirement system under certain conditions.

SECTION 4. Amends Section 813.509, Government Code, as follows:

(a) Provides that a member is entitled to service credit in the retirement system for the member’s sick leave that has accumulated and is unused on the last day of employment if the member meets certain requirements.

(b) Provides that a death benefit designee under Section 814.301 or 814.302 of a member who holds a position included in the employee class of membership during the month that includes the member’s date of death is entitled to service credit in the Employees Retirement System of Texas (retirement system) for the member’s sick

leave that has accumulated and is unused on the member's date of death.

(c) Makes a nonsubstantive change.

(d) Makes a nonsubstantive change.

(e) Authorizes a death benefit designee under Section 814.302 to use the deceased member's sick leave credit under this section to qualify for making a death benefit plan selection under Section 814.302.

(f) Requires the disbursing officer of each department (except as provided by Subsection (g)), before the 11th day after the date of another employment termination described by Subsection (a) or the date of death of one or more employees of the department or agency, to certify to the retirement system the name of each person whose employment termination is described by Subsection (a) or who died during the preceding month and the amount of the person's accumulated sick leave on the date of death.

(g) Makes nonsubstantive changes.

(h) Makes conforming and nonsubstantive changes. Deletes text regarding a retiree or retiring member being a subject of the certification.

(i) Makes a nonsubstantive change.

(j) Provides that "sick leave" in this section does not include certain types of credit.

(k) Provides that, if a member returns to employment with the state before a certain date, the member is not entitled to service credit previously credited under this section.

SECTION 5. Amends Section 813.511, Government Code, as added by Chapter 1541, Acts of the 76th Legislature, Regular Session, 1999, to make conforming changes regarding annual leave.

SECTION 6. Amends Chapter 813F, Government Code, by adding Section 813.513, as follows:

Sec. 813.513. CREDIT PURCHASE OPTION. Authorizes an eligible member to establish a certain amount of equivalent membership service credit in either the elected or the employee class. Sets forth guidelines regarding establishing service credit under this section, including eligibility requirements. Requires the retirement system to grant the member, after the member makes the deposits required by this section, one month of equivalent membership service credit for each month of credit approved. Requires the retirement system to deposit the amount of the actuarial present value of the service credit purchased in the member's individual account in the employees saving account. Requires the board of trustees provided for in Chapter 815 (Administration), Government Code, to administer the Employees Retirement System of Texas (board) to adopt rules to administer this section, including certain stated rules.

SECTION 7. Amends Sections 814.107(b) and (f), Government Code, to set forth guidelines regarding the computation of the standard service retirement annuity and the combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer.

SECTION 8. Amends Section 814.108, Government Code, by adding Subsection (h) to provide that a beneficiary designation that names a former spouse as beneficiary for a guaranteed optional annuity is invalid unless the designation is made after the date of the divorce.

SECTION 9. Amends Section 814.1081(b), Government Code, to provide that the increase in the (rather than the right to receive payment of an) annuity under (rather than as adjusted as provided by) this section begins with the monthly (rather than the first) payment made to the retiree for the month following the month in which (rather than that becomes due after the date) a request is filed as provided by Subsection (a).

SECTION 10. Amends Section 814.201, Government Code, by amending Subsection (c) and adding Subsection (d) to prohibit an application for an occupational disability retirement annuity from being made after a certain date except under certain conditions. Makes a nonsubstantive change.

SECTION 11. Amends Section 814.202, Government Code, by adding Subsection (e), to prohibit a member who is otherwise eligible from applying for or receiving a nonoccupational disability annuity if the member is eligible for a service retirement annuity under Section 814.102 or 814.104.

SECTION 12. Amends Chapter 814C, Government Code, by adding Section 814.2055, as follows:

Sec. 814.2055. AVERAGE MONTHLY COMPENSATION. Defines “average monthly compensation” for the purposes of Sections 814.206 and 814.207.

SECTION 13. Amends Sections 814.206(a) and (b), Government Code, to set forth guidelines regarding the computation for a standard disability retirement annuity for service credited in the employee class of membership. Deletes text regarding disabling injury or disease. Prohibits a standard disability retirement annuity under this section from being more than 100 percent of the average monthly (rather than the applicable rate of) compensation or, if occupational, not less than 35 percent of the average monthly compensation (rather than the applicable rate) or \$150 a month, whichever is greater.

SECTION 14. Amends Section 814.207, Government Code, by amending Subsections (b), (c), and (e), and adding Subsection (f), as follows:

(b) Makes conforming changes.

(c) Makes a conforming change.

(e) Makes conforming changes.

(f) Prohibits an annuity increase under Subsection (e) from being payable before the first month following the month in which the satisfactory evidence is received by the retirement system under Subsection (e).

SECTION 15. Amends Section 814.401, Government Code, by adding Subsection (e) to provide that a beneficiary designation that names a former spouse as beneficiary is invalid unless the designation is made after the date of the divorce.

SECTION 16. Amends Section 814.505, Government Code, by adding Subsection (i) to make a conforming change regarding designation of a former spouse as beneficiary.

SECTION 17. Amends Section 815.102, Government Code, to authorize the board of trustees to adopt rules for hearings on contested cases or disputed claims. Provides that rules adopted under this section related to a hearing on a contested case or disputed claim control over rules adopted under Section 2003.050.

SECTION 18. Amends Section 815.103, Government Code, by adding Subsection (e) to provide that Chapter 2260C does not apply to the retirement system and that the acceptance of benefits by the retirement system under a contract does not waive immunity from suit or immunity from liability.

SECTION 19. Amends Section 815.318, Government Code, to require the retirement system, rather than the board of trustees, to transfer from the interest account to the employees saving account amounts of interest computed under Section 815.311 at certain times. Makes conforming changes.

SECTION 20. Amends Section 815.402(a), Government Code, to require each department or agency of the state, except as provided by Section 813.201, each payroll period, to cause certain amounts to be deducted from each member's compensation as a retirement contribution.

SECTION 21. Amends Section 815.503, Government Code, to provide that records of members, annuitants, retirees, beneficiaries, and alternate payees under retirement plans administered by the retirement system that are in the custody of certain entities are confidential and not subject to public disclosure and are exempt from the public access provisions of Chapter 552, excepts as otherwise provided by this section. Makes conforming changes. Authorizes such records to become part of the public record under certain conditions. Authorizes the retirement system to require a person to provide the person's social security number as the system considers necessary for certain purposes.

SECTION 22. Amends Section 840.402, Government Code, to make a conforming change.

SECTION 23. Amends Sections 3(a)(2) and (8), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.), to redefine "annuitant" and "dependent."

SECTION 24. Amends Section 4, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.), to make a conforming change. Requires the trustee to have the full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including appointment of an advisory committee for the program provided by this Act under the terms provided by Section 815.509, Government Code.

SECTION 25. Amends Section 4(B)(c), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.), to delete text referencing Subsection (a-1). Provides that standing to pursue an administrative appeal under this section is limited to employees, participants, annuitants, and covered dependents participating in the Texas employees uniform group insurance program or, after the death of an employee, participant, annuitant, or covered dependent, to the person's (rather than the participant's) estate, personal representative, heirs at law, or designated beneficiary.

SECTION 26. Amends Section 5(j), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.), to prohibit the trustee from contracting for or providing a plan of coverage that provides coverage for serious mental illness that is less extensive than the minimum coverage for serious mental illness required by Section 3, Article 3.51-14, Insurance Code. Deletes text regarding any physical illness.

SECTION 27. Amends Section 10, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.) by amending Subsection (c) and adding Subsection (d), as follows:

(c) Provides that, if a participant's records have become part of the public record of a proceeding and the records are not the subject of a protective order, the participant is considered to have waived the privacy of the participant's records.

(d) Authorizes the trustee to require an individual to disclose the individual's social security number as the trustee considers necessary for certain purposes.

SECTION 28. Amends the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.) by adding Section 10A, as follows:

Sec. 10A. EXCLUSIVE REMEDY. Provides that the remedies provided under this Act are

the exclusive remedies available to an employee, participant, annuitant, or dependent.

SECTION 29. Amends Section 13A, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.), as follows:

Sec. 13A. New heading: ADMINISTRATIVE PROCESS AND SANCTIONS FOR INSURANCE PROGRAM VIOLATIONS. (a) Authorizes the Employees Retirement System of Texas to impose one or more sanctions described by this section against certain employees, participants, annuitants, or dependents. Deletes text regarding notice and hearing as provided by this section and the trustee expelling certain persons from participation in the Texas employees uniform group insurance program.

(b) Authorizes the retirement system (rather than the trustee) to perform certain functions on receipt of a complaint or on its own motion if it determines that an employee, participant, annuitant, or dependent has engaged in conduct described by Subsection (a) of this section.

(c) Authorizes an expulsion under Subsection (b) of this section to be permanent or for a specified period. Authorizes a rescission of coverage under Subsection (b) of this section to be from the date of inception of the coverage or from the date of the prohibited conduct. Deletes text regarding fraud.

(d) Authorizes a person to appeal a determination made under Subsection (a) or (b) of this section only to the board of trustees. Makes conforming changes. Provides that Section 4B of this Act applies to an appeal to the board of trustees under this subsection. Provides that the appellant has the burden of proof and any sanction imposed is stayed during an appeal under this subsection. Provides that, if a person fails to make a timely appeal, any sanction relates back to the date of the retirement system's determination. Deletes text regarding a trustee issuing a decision that a person has committed fraud.

(e) Makes conforming changes. Deletes text regarding a time period determined by the trustee of not more than five years from the date of expulsion.

SECTION 30. Amends the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.) by adding Section 13A-1, as follows:

Sec. 13A-1. MISCONDUCT INFORMATION. Provides that this section applies to certain entities. Authorizes a person to collect from, furnish to, or exchange with another person information, including certain specific information, to the extent the person considers necessary for certain purposes. Provides that a person who acts under this section is immune from suit and criminal or civil liability unless the person acts with malice or intent to defraud.

SECTION 31. Amends Section 13B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.), by adding Subsection (e), to authorize the board of trustees to adopt rules for the use of a debit card or other similar technology for claims administration under this section.

SECTION 32. Amends Section 615.001, Government Code, to redefine "minor child."

SECTION 33. Amends Section 615.023(b), Government Code, to provide that a child's entitlement to assistance payable under this section ends on the child's 18th (rather than 21st) birthday.

SECTION 34. Amends Section 615.042(a), Government Code, to make conforming changes.

SECTION 35. Amends Section 615.043, Government Code, to make conforming changes.

SECTION 36. Amends Section 615.044, Government Code, to authorize an eligible survivor or the eligible survivor's legal representative (rather than person) whose claim for payment is denied to appeal the denial to the board of trustees of the Employees Retirement System of Texas (rather than certain district courts). Deletes text regarding payment to a surviving spouse, minor child, dependent parent or sibling, or the person's legal representative. Sets forth guidelines regarding an appeal under this section. Deletes text requiring appeals to be made by a certain date. Provides that judicial review of a decision under this section is under the substantial evidence rule as provided by Chapter 2001. Deletes text regarding trial de novo.

SECTION 37. Amends Chapter 615C, Government Code, by adding Section 615.045, as follows:

Sec. 615.045. RECORDS. (a) Provides that records of individuals listed by Section 615.003 and of survivors eligible under this chapter that are in the custody of certain entities are confidential, not subject to public disclosure, and exempt from the public information provisions of Chapter 552, except as otherwise provided by this section.

(b) Authorizes records to be released under certain conditions to certain individuals and entities.

(c) Provides that the records of individuals listed by Section 615.003, and of eligible survivors, remain confidential after release to a person as authorized by this section. Authorizes the records of individuals listed by Section 615.003, and of eligible survivors, to become part of the public record of an administrative or judicial proceeding related to an appeal filed under this chapter, unless the records are closed to public access by a protective order issued under applicable law.

SECTION 38. Amends Section 615.074(a), Government Code, to provide that an eligible surviving dependent who is a minor is entitled to continue health insurance coverage until the dependent either turns 18 years old or becomes eligible for group health insurance through another employer, whichever happens earlier.

SECTION 39. Reenacts Section 814.1041, Government Code, as amended by Chapters 1013 and 1541, Acts of the 76th Legislature, Regular Session, 1999, regarding the temporary service retirement option for members affected by privatization or other reduction in workforce.

SECTION 40. Repealers: Section 813.511 (Certain Out-of-State Service), Government Code, as added by Chapter 226, Acts of the 76th Legislature, Regular Session, 1999;

Section 814.1042 (Service for Certain Governmental Employers), Government Code, as added by Chapter 264, Acts of the 76th Legislature, Regular Session, 1999;

Section 814.1043 (Temporary Service Retirement Option for Members Employed at South Texas Hospital), Government Code;

Section 815.401 (Collection of Membership Fees), Government Code;

Section 840.101 (Collection of Membership Fees), Government Code;

Section 4B(a-1) (Regarding adjudication of claims), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.); and

Section 18 (Effective date), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.).

SECTION 41. Sets forth guidelines regarding annuity payments and adjustments. Authorizes the board of trustees of the Employees retirement System of Texas to adopt rules to implement this section. Prohibits an adjustment under this section from causing a reduction in the amount of an annuity payable immediately before December 31, 2001. Requires adjustments made under this section and rules adopted by the board of trustees under this section to comply with Section 401(a) of the Internal Revenue Code of 1986, as amended, and rules adopted under that section and Section 811.006 (Action Increasing Amortization Period), Government Code.

SECTION 42. Authorizes certain persons, notwithstanding Section 813.509(a), Government Code, as amended by this Act, to use service credit in the retirement system that was canceled and reestablished before September 1, 2001, to qualify for the 10 years of membership service required under Section 813.509(a), Government Code, as amended by this Act.

SECTION 43. Provides that the change in law made by this Act to Section 3(a)(2), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.), does not apply to certain persons. Provides that the participation in the uniform group insurance program of a person described in this section is prospective.

SECTION 44. Provides that the change in law made by this Act to Section 3(a)(8)(B), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.) applies only to a dependent not covered by a basic health benefits plan under Article 3.50-2, Insurance Code, on August 31, 2001.

SECTION 45. Provides that, except as provided by this section, this Act takes effect September 1, 2001. Provides that Section 813.513, Government Code, as added by this Act, takes effect January 1, 2002.

SUMMARY OF COMMITTEE CHANGES

Omits original SECTIONS 1 - 4.

Adds new SECTIONS 1 - 3.

SECTION 4. Redesignates original SECTION 1 as SECTION 4 and amends text to provide that a member is entitled to service credit in the retirement system for the member's sick leave that has accumulated and is unused on the last day of employment if the member meets certain requirements. Deletes original proposed text regarding the satisfaction of service requirements. Authorizes a death benefit designee under Section 814.302 to use the deceased member's sick leave credit under this section to qualify for making a death benefit plan selection under Section 814.302. Makes conforming changes regarding employment termination. Deletes text regarding death benefit selection and a member's application for retirement. Deletes text regarding a retiree or retiring member being a subject of the certification. Makes conforming and nonsubstantive changes. Provides that "sick leave" in this section does not include certain types of credit. Provides that, if a member returns to employment with the state before a certain date, the member is not entitled to service credit previously credited under this section.

SECTION 5. Omits text from original SECTION 5 defining "dependent." Redesignates original SECTION 2 as SECTION 5. Amends text to delete original proposed text regarding the satisfaction of service requirements. Authorizes a death benefit designee under Section 814.302 to use the deceased member's annual leave credit under this section to qualify for making a death benefit plan selection under Section 814.302. Makes conforming changes. Deletes text regarding death benefit selection and a member's application for retirement.

Omits original SECTIONS 6 - 9.

Adds new SECTIONS 6 - 10.

SECTION 11. Redesignates text from original SECTION 3 as SECTION 11. Amends text to prohibit a member otherwise eligible from applying for a nonoccupational disability annuity under certain conditions.

Adds new SECTIONS 12 - 13.

SECTION 14. Redesignates text from original SECTION 4 as SECTION 14. Amends text by amending Subsections (b), (c), and (e) to make conforming changes.

Adds new SECTIONS 15 - 22.

SECTION 23. Redesignates original SECTION 5 as SECTION 23 and amends text to redefine "annuitant."

Adds new SECTIONS 24 - 30.

SECTION 31. Redesignates text from original SECTION 6 as SECTION 31. No changes in text.

Adds new SECTIONS 32 - 36.

SECTION 37. Redesignates original SECTION 7 as SECTION 37. Makes a nonsubstantive change.

SECTION 38. Redesignates original SECTION 8 as SECTION 38. No changes in text.

Adds new SECTIONS 39 - 40.

SECTION 44. Redesignates text from original SECTION 9 as SECTION 44 regarding Section 3(a)(8)(B) Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, V.T.I.C.). Omits original text regarding effective date.

Adds new SECTION 45, with some redesignated text from original SECTION 9 regarding effective date.