

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 2359
By: Ritter (Armbrister)
State Affairs
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Committee Report (Substituted)

DIGEST AND PURPOSE

The Employees Retirement System of Texas (ERS) administers a retirement system providing service, disability, and death benefits for state employees and public officers; two retirement systems providing service, disability, and death benefits for district and appellate judges; an insurance program for state officers and employees, including employees of most institutions of higher education; a program providing death benefits for the survivors of public service personnel; and programs providing deferred compensation benefits. C.S.H.B. 2359 clarifies existing law as amended by the 77th Texas Legislature and makes minor changes in the laws administered by ERS to attempt to make the benefits provided by ERS more uniform and consistent among programs and systems.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Employees Retirement System of Texas in SECTION 5 (Section 609.508, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 609.008, Government Code, to provide that interest earned on an employee's deferred amounts and investment income deposited in any of the deferred compensation trust funds as defined by Section 609.101, or to which Section 609.512 applies, is credited to the employee. Removes a specific reference to the TexaSaver trust fund.

SECTION 2. Amends Sections 609.011 and 609.012, Government Code, as follows:

Sec. 609.011. New heading: NOTIFICATION BY PLAN ADMINISTRATOR. (a) Removes a reference to a 457 plan and replaces it with "plan established under this chapter."

(b) Specifies that a plan administrator is not liable to a participating employee for a loss resulting from the failure to notify the employee under this section.

Sec. 609.012. New heading: TRANSFER FROM A PLAN VENDOR. Prohibits a vendor from charging a fee or penalty as the result of a plan administrator's transfer under this section. Makes conforming changes.

SECTION 3. Amends Section 609.502, Government Code, as follows:

(a) Provides that the board of trustees (board) of the Employees Retirement System of Texas (ERS) is the trustee and the plan administrator of a 401(k) plan and a 457 plan, collectively known as the TexaSaver program, established under this subchapter.

(b) Removes a provision establishing ERS as the administrator of a 457 plan, redesignates the text of Subsection (c) as (b), and redesignates subsequent subsections accordingly.

SECTION 4. Amends Section 609.505(a), Government Code, to authorize a third party administrator approved by the ERS board, in addition to the ERS board, to contract with a vendor qualified to participate in a deferred compensation plan, in accordance with rules adopted under

this subchapter.

SECTION 5. Amends Section 609.508, Government Code, as follows:

- (a) Created from existing text. Authorizes the ERS board to adopt rules, including plans and procedures, and orders necessary to carry out the purposes of this subchapter, including rules or orders relating to the regulation of the practices of agents employed by vendors and a participating employee's use and reimbursement of investment advisors participating in the program.
- (b) Authorizes the plan administrator of the TexaSaver 401(k) or the TexaSaver 457 plan to adopt rules and procedures to allow a participating employee, subject to applicable requirements of the Internal Revenue Code of 1986, to obtain a loan from the employee's account.

SECTION 6. Amends Sections 609.512(a) and (b), Government Code, to make conforming changes.

SECTION 7. Reenacts Section 615.023, Government Code, as amended by Chapter 1231 and repealed by Chapter 1438, Acts of the 77th Legislature, Regular Session, 2001, as follows:

- Sec. 615.023. PAYMENT TO SURVIVING MINOR CHILD. (a) Requires the state to pay to the duly appointed or qualified guardian or other legal representative of an eligible surviving minor child a certain amount.
- (b) Provides that a child's entitlement to assistance payable under this section ends on the child's 18th birthday. Requires, at that time, payments to any other surviving minor children to be adjusted, as necessary, to conform to the amounts payable under Subsection (a).
 - (c) Provides that a payment under this section is in addition to any payment made under Section 615.022.

SECTION 8. Amends Section 615.045(a), Government Code, to provide that records of certain individuals and survivors that are in the custody of ERS or an administering firm as defined by Section 1551.003, Insurance Code, rather than the Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Insurance Code), or another governmental agency acting with or on behalf of ERS are confidential and not subject to public disclosure, and provides that ERS is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general, because the records are exempt from the public information provisions of Chapter 552 (Public Information), except as otherwise provided by this section.

SECTION 9. Amends Section 659.102, Government Code, by amending Subsection (c) and adding Subsection (d), as follows:

- (c) Authorizes the inclusion of a qualified transportation benefit in the supplemental optional benefits program.
- (d) Provides that a qualified transportation benefit is a transportation benefit meeting the requirements of Section 132(f), Internal Revenue Code of 1986. Requires ERS to determine a fee or charge that may be paid as a qualified transportation benefit.

SECTION 10. Amends Section 811.001(12), Government Code, to redefine "occupational death or disability."

SECTION 11. Amends Subchapter A, Chapter 811, Government Code, by adding Sections 811.007 and 811.008, as follows:

- Sec. 811.007. IMMUNITY FROM LIABILITY. Provides that the board, executive

director, and employees of ERS are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty in connection with any program or system administered by ERS.

Sec. 811.008. INSURANCE. Authorizes the ERS board, notwithstanding any other law, to self-insure or purchase any insurance in amounts the ERS board considers reasonable and prudent.

SECTION 12. Amends Section 812.003(a), Government Code, to delete "persons disqualified from membership under Section 812.004" from the exceptions to membership in the employee class of ERS.

SECTION 13. Amends Section 812.203, Government Code, as follows:

Sec. 812.203. BENEFITS AFFECTED. (a) Redesignated from former Subsection (d) requiring ERS to suspend annuity payments to a person for service that was credited in that class, until the person no longer holds that position, if a retiree takes the oath for a position included in the elected class of membership. Deletes former Subsection (c), relating to the time during which retirement benefits are suspended.

(b) Provides that time during which annuity payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit selection providing for a specific amount of benefits for a guaranteed number of months after retirement.

(c) Redesignated from former Subsection (e).

SECTION 14. Amends the heading to Section 813.104, Government Code, to read as follows:

Sec. 813.104. ALTERNATIVE PAYMENTS AND METHODS TO ESTABLISH OR REESTABLISH SERVICE CREDIT.

SECTION 15. Amends Section 813.104, Government Code, by adding Subsection (e), to authorize ERS to provide for the electronic filing of agreements to establish or reestablish service credit. Provides that in this subsection, "electronic filing" has the meaning assigned by Section 814.010(a).

SECTION 16. Amends Subchapter A, Chapter 814, Government Code, by adding Section 814.010, as follows:

Sec. 814.010. ELECTRONIC FILING OF BENEFICIARY DESIGNATION. (a) Defines "electronic filing."

(b) Authorizes a person entitled to designate a beneficiary under any system or program administered by ERS to make the designation by electronic filing under procedures adopted by ERS.

SECTION 17. Amends Section 814.104(b), Government Code, to remove from those peace officers eligible to retire and receive a service retirement annuity an employee of the Railroad Commission of Texas who is licensed by the Commission on Law Enforcement Officer Standards and Education and has served at least five years as an investigator for the oil field theft detection division.

SECTION 18. Amends Section 814.108(f), Government Code, to replace the term "sex" with "gender."

SECTION 19. Amends Section 814.203, Government Code, as follows:

Sec. 814.203. CERTIFICATION OF DISABILITY. Removes the condition that "a

member should be retired” from the medical board’s determination of factors in issuing a certification of disability.

SECTION 20. Amends Sections 814.207(a) and (e), Government Code, to make conforming and nonsubstantive changes.

SECTION 21. Amends Section 814.603, Government Code, as follows:

Sec. 814.603. New heading: SUPPLEMENTAL PAYMENTS . (a) Authorizes, rather than requires, ERS to make a supplemental payment as provided by this section, rather than Subsection (d), to persons whose annuities are described by Section 814.107, 814.207, 814.305, or 814.601(a) and that are based on service retirements, disability retirements, or deaths. Provides that a supplemental payment made under this section is in addition to the regular monthly annuity payment. Deletes text regarding a person who receives an annuity. Makes a conforming change.

(b) Requires the board of trustees (board) of ERS to determine the amount and timing of a supplemental payment and the manner in which the payment is made.

(c) Creates this subsection from the existing text of Subsection (b). Deletes former Subsection (c) authorizing the board to adopt rules to implement the payment, including rules that govern the timing of the supplemental payment described by Subsection (a). Deletes Subsection (d), requiring ERS to make a supplemental payment under this section in the fiscal year ending August 31, 1997, and authorizing the board by rule to authorize similar supplemental payments in succeeding fiscal years, if the payments are in compliance with Section 811.006.

SECTION 22. Amends Section 815.008(c), Government Code, to replace the term “chairman” with “presiding officer.”

SECTION 23. Amends Section 815.103, Government Code, by adding Subsection (f), to provide that Chapter 412 (State Office of Risk Management), Labor Code, does not apply to ERS. Authorizes the ERS board to acquire services described by that chapter in any manner or amount the ERS board considers reasonable.

SECTION 24. Amends Section 815.201, Government Code, as follows:

Sec. 815.201. New heading: PRESIDING OFFICER. Requires the board to elect a presiding officer from the membership of the board. Makes a conforming change.

SECTION 25. Amends Section 815.202(c), Government Code, to require that in order to be eligible to serve as the executive director, a person must be a citizen of the United States and have been a resident, rather than citizen, of the state for the three years immediately preceding the person's appointment and have executive ability and experience to carry out the duties of the office.

SECTION 26. Amends Section 815.207(b), Government Code, to make a conforming change.

SECTION 27. Amends Section 815.307, Government Code, to provide that a determination of whether the ERS board has exercised prudence with respect to an investment decision must be made taking into consideration the investment of all assets of the trust or all assets of the collective investment vehicle, as applicable, over which the ERS board has management and control, rather than considering the prudence of a single investment of the trust or the collective investment vehicle, as applicable. Deletes a provision that investment decisions are subject to the standard provided in the Texas Trust Code by Section 113.056(a), Property Code.

SECTION 28. Amends Section 815.503(a), Government Code, to provide that ERS is not required to accept or comply with a request for a record or information about a record or to seek

an opinion from the attorney general, because the records are exempt from the public access provisions of Chapter 552, except as otherwise provided by this section.

SECTION 29. Amends Section 815.511, Government Code, as follows:

(a) Authorizes a person aggrieved by a decision of ERS relating to any program or system administered by ERS under this code denying or limiting membership, service credit, or eligibility for or the amount of benefits payable under the program or system to appeal the decision to the ERS board.

(b) Authorizes the executive director of the ERS (executive director) or the executive director's designee to refer an appeal made under Subsection (a) to the State Office of Administrative Hearings (SOAH) for a hearing, or to employ, select, or contract for the services of an administrative law judge or hearing examiner not affiliated with SOAH to conduct a hearing. Provides that this subsection prevails over any other law to the extent of any conflict.

(c) Provides that an appeal under this section is considered to be a contested case under Chapter 2001 (Administrative Procedure). Provides that the appellant in a contested case under this section has the burden of proof on all issues, including issues in the nature of an affirmative defense.

(d) Authorizes the ERS board in its sole discretion to make a final decision on a contested case under this section. Authorizes the ERS board, notwithstanding any other law, in its sole discretion, to modify, refuse to accept, or delete any proposed finding of fact or conclusion of law contained in a certain proposal. Authorizes the ERS board to delegate its authority under this subsection to the executive director, and authorizes the executive director to delegate the authority to another employee of ERS.

(e) Authorizes ERS and a person aggrieved by a decision of ERS, notwithstanding Subsections (c) and (d), at any time, to informally negotiate an award of benefits. Prohibits negotiated benefits from exceeding the maximum benefits otherwise available or required by law.

(f) Entitles a person aggrieved by a final decision of ERS in a contested case under this section to judicial review under Chapter 2001. Provides that venue of the appeal is only in a district court in Travis County. Deletes much of the existing text of Subsection (b), and redesignates the remaining text of Subsection (b) as part of Subsection (f).

Deletes the existing text of Subsections (c) and (d).

SECTION 30. Amends Section 838.103(b), Government Code, to remove "currently contributes to the retirement system" from the eligibility requirements for an individual to establish military service credit.

SECTION 31. Amends Section 838.106(a), Government Code, to make a conforming change.

SECTION 32. Amends Section 840.303, Government Code, to make conforming changes.

SECTION 33. Amends Section 1551.063(a), Insurance Code, as effective June 1, 2003, to make conforming changes.

SECTION 34. Amends Section 1551.102(d), Insurance Code, as effective June 1, 2003, to include retirement under the optional retirement program with at least 10 years of eligible service, and a "disability" retirement annuity in relation to eligibility to participate in the group benefits program as provided by Subsection (a).

SECTION 35. (a) Conforms Section 1551.205, Insurance Code as effective June 1, 2003, to Section 30, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, and further

amends it, as follows:

(a) Creates the subsection from existing text. Prohibits the ERS board from contracting for or providing a coverage plan 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, rather than less extensive than the coverage provided for any physical illness.

(b) Prohibits the ERS board from contracting for or providing a coverage plan that excludes from participation in the network a general hospital that is located in a county, all or part of which is located within the geographical service area of the health coverage plan, in which at least two, but not more than four, general hospitals are located, and agrees to provide medical and health care services under the plan subject to the same terms and conditions as other hospital providers under the plan.

(b) Repealer: Section 30 (making the same changes regarding serious mental health coverage as above), Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001.

SECTION 36. Amends Section 1551.209, Insurance Code, as effective June 1, 2003, as follows:

Sec. 1551.209. New heading: **COVERAGE EXEMPT FROM INSURANCE LAW.** Provides that a coverage plan provided under this chapter is exempt from any other insurance law, including common law, that does not expressly apply to the plan or this chapter. Deletes references to self-funded plans.

SECTION 37. Conforms Section 1551.351(d), Insurance Code, as effective June 1, 2003, to Section 33, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, and further amends it to make conforming changes.

SECTION 38. Amends Section 1551.355(b), Insurance Code, as effective June 1, 2003, to make conforming changes.

SECTION 39. Conforms Section 1551.356, Insurance Code, as effective June 1, 2003, to Section 29, Chapter 1231, Acts of the 77th Legislature, Regular Session, 2001, and further amends it as follows:

(a) Created from existing text.

(b) Provides that a person has no standing to appeal a determination of the executive director under this subchapter or to pursue a private cause of action against the state, the ERS board, ERS, the executive director, an administering firm, or an employee of any of those persons based on a determination or the implementation by the ERS board or executive director of the type or scope of plan design features under the group benefits program.

SECTION 40. Amends Section 1551.357, Insurance Code, as effective June 1, 2003, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Makes conforming changes.

(d) Provides that the appellant in a contested case under this subchapter has the burden of proof on all issues, including issues in the nature of an affirmative defense.

SECTION 41. Amends Section 1551.359, Insurance Code, as effective June 1, 2003, as follows:

Sec. 1551.359. New heading: **JUDICIAL REVIEW.** Entitles a person aggrieved by a final decision of ERS in a contested case under this subchapter to judicial review of the decision. Provides that venue of appeal under this subchapter is only in a district court in

Travis County.

SECTION 42. (a) Provides that the change in law made by this Act to Section 1551.102(d), Insurance Code, applies only to a person who was not participating in the program provided by Chapter 1551, Insurance Code, as an annuitant on the effective date of this Act.

(b) Provides that the changes in law made by this Act to Section 815.511, Government Code, and Sections 1551.355 and 1551.357, Insurance Code, as effective June 1, 2003, prevail over any other Act of the 78th Legislature, Regular Session, 2003, regardless of the relative dates of enactment, that purports to deprive ERS of the powers described by the above statutes, and provides that to that extent that other Act has no effect.

(c) Provides that the changes in law made by this Act to Section 815.511, Government Code, and Section 1551.359, Insurance Code, prevail over any other Act of the 78th Legislature, Regular Session, 2003, regardless of the relative dates of enactment, that purports to establish venue for judicial review of a final decision in a contested case by the ERS board, and provides that to that extent that other Act has no effect.

(d) Makes application of the changes in law made by this Act to Section 811.001(12), Government Code, prospective.

SECTION 43. Repealers:

- (1) Section 609.515 (Fiduciary Insurance), Government Code.
- (2) Section 805.002(e) (regarding reinstatement of service credit), Government Code.
- (3) Section 812.004 (Temporary Employees Over 65), Government Code.
- (4) Section 813.504(b) (Eligibility for Service Credit Previously Canceled), Government Code.
- (5) Section 814.1041 (Temporary Service Retirement Option for Members Affected by Privatization or Other Reduction in Workforce), Government Code.
- (6) Section 815.211 (Fiduciary Insurance), Government Code.
- (7) Section 815.502 (Transfer of Accumulated Contributions in Certain Circumstances), Government Code.
- (8) Section 840.210 (Fiduciary Insurance), Government Code.
- (9) Section 1551.054 (Liability Insurance), Insurance Code, as effective June 1, 2003.
- (10) Section 3(b), Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962 (Article 6228a-5 (relating to a state agency's sponsorship of a certain program), V.T.C.S.).

SECTION 44. Provides that, to the extent of any conflict, this Act prevails over another Act of the 78th Legislature, Regular Session, 2003, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 45. Effective date: September 1, 2003.