

BILL ANALYSIS

Senate Research Center

H.B. 155
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, public retirement systems and firefighter and police pension funds have up to three years to recoup funds from retirees if the system or fund inadvertently pays them in excess. As a result, such systems and funds do not have an obligation to report the discovery of an error in payments to a retiree in a timely manner. Delayed notification of overpayment or underpayment can create problems for an individual's personal financial accounting.

H.B. 155 requires notice to be sent to a retiree in a public retirement system as quickly as possible, but not later than 90 days, once an error of overpayment or underpayment is recognized by a pension system. This bill details specific information to be included in this notice. This bill also provides a procedure and time frame for instituting a correction for such payment issues and prohibits a public retirement system from collecting overpayment if the procedure is not followed. Finally, this bill establishes a complaint system for retirement beneficiaries who receive notice of inaccurate payment.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 802.1024, Government Code, by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2), as follows:

(a) Requires a public retirement system (system), rather than the governing body of the system, to correct an error in the records of a system that results in a person receiving more or less money than the person is entitled to receive under this subtitle (Provisions Generally Applicable to Public Retirement Systems) and, so far as practicable, to adjust any future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid. Makes a conforming change.

(a-1) Requires the system as soon as practicable, but not later than the 90th day after the date of discovery of an error described by Subsection (a), to give written notice of the error to the person receiving an incorrect amount of money. Requires the notice to include certain information.

(a-2) Requires the system, except as provided by this subsection and Section 802.1025, to begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits under Subsection (a) not later than the 90th day after the date the notice required by Subsection (a-1) is delivered by certified mail, return receipt requested. Requires the system to mail the notice a second time by certified mail, return receipt requested, if the system does not receive a signed receipt evidencing delivery of the notice on or before the 30th day after the date the notice is mailed. Requires the system, except as provided by Section 802.1025, to begin to adjust future payments or, if no future payments are due, to institute recovery of an overpayment of benefits, not later than the 90th day after the date the second notice is mailed.

(b) Prohibits a system, except as provided by Subsection (c), from recovering an overpayment if the system did not adjust future payments, or if no future payments are

due, from instituting recovery of the overpayment within the time prescribed by Subsection (a-2) or Section 802.1025. Makes a conforming change.

SECTION 2. Amends Subchapter B, Chapter 802, Government Code, by adding Section 802.1025, as follows:

Sec. 802.1025. COMPLAINT PROCEDURE. (a) Authorizes the notice recipient to file a written complaint with the system not later than the 20th day after the date of receiving notice under Section 802.1024(a-1) or, if applicable, the second notice under Section 802.1024(a-2). Requires the recipient to include any available supporting documentation with the complaint.

(b) Requires the system, not later than the 30th day after the date of receiving a complaint under Subsection (a), to respond in writing to the complaint by confirming the amount of the proposed correction or, if the system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. Requires the response to include certain information if the system modifies the amount of the correction.

(c) Prohibits the system, if a complaint is filed under this section, from adjusting future payments to recover an overpayment under Section 802.1024 until a certain date based upon when the recipient files an administrative appeal, subject to Subsection (d).

(d) Requires the system to discontinue the adjustment of future payments or the recovery of the overpayment beginning with the first pay cycle occurring after the date the complaint is received by the system if the system has begun the adjustment of future payments or the recovery of an overpayment under Section 802.1024(a-2). Prohibits the system from recommencing the adjustment of future payments or the recovery of an overpayment until the date described by Subsection (c)(1) or (2), as applicable. Requires the system to pay a person the appropriate amount not later than the 30th day after the date of the resolution if a complaint is resolved in favor of the person filing the complaint.

(e) Requires a person whose complaint is not resolved under this section to exhaust all administrative procedures provided by the system. Authorizes a person aggrieved by a final administrative decision to appeal the decision to an appropriate district court not later than the 30th day after the date such a decision is issued by the system.

SECTION 3. (a) Provides that the change in law made by this Act applies to an underpayment or overpayment of benefits by a system regardless of when the payment was made, except as provided by Subsection (b).

(b) Makes application of the change in law made by this Act to a correction, adjustment or recovery of an overpayment, prospective.

SECTION 4. Effective date: upon passage or September 1, 2007.