

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 653
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Education
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

During the 2015-16 Interim, an investigative report by Dallas news station WFAA uncovered a practice known as "passing the trash," where educators caught engaging in inappropriate relationships with students are allowed or encouraged to obtain teaching jobs elsewhere. The WFAA report highlighted specific examples where school personnel were terminated from one district due to inappropriate relationships with students but allowed to teach at other districts. In some cases, school administrators worked to both conceal the offending educators' actions and their own inactions relating to their legal obligations. Interested parties further observe that the prevalence of electronic communications have enabled some inappropriate relationships. While student-teacher relationships, including sexual conduct, are prohibited, and must be reported to law enforcement and state regulatory authorities, interested parties note that specific gaps in statute preclude effective performance. These gaps allow the practice of "passing the trash" to continue and hinder the State Board for Educator Certification's (SBEC's) ability to effectively investigate reports of wrongdoing and enforce the law.

S.B. 653 proposes several reforms to eliminate the practice of "passing the trash." The bill strengthens specific reporting requirements applicable to school administrators and penalizes those that fail to follow those requirements. The bill also provides school districts with greater flexibility to terminate felons, including registered sex offenders. S.B. 653 strengthens SBEC's enforcement powers by providing enhanced investigative authority and broadening the agency's power to suspend or revoke teaching certificates. The bill further requires that school districts adopt and enforce a policy regarding electronic communications between students and educators. S.B. 653 strengthens state criminal laws to broadly prohibit educators from engaging in sexual contact with any student in Texas. Lastly, S.B. 653 revokes pensions for teachers convicted of harming students. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 653 amends current law relating to the eligibility of certain employees or annuitants convicted of certain felony offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 3 (Section 814.013, Government Code) of this bill.

Rulemaking authority is expressly granted to the board of trustees of the Teacher Retirement System of Texas in SECTION 4 (Section 824.009, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 42.01, Code of Criminal Procedure, by adding Section 12, as follows:

Sec. 12. Provides that, in addition to the information described by Section 1 (relating to the definition of "a judgment"), the judgment should reflect affirmative findings entered under Article 42.0192.

SECTION 2. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.0192, as follows:

Art. 42.0192. FINDING REGARDING OFFENSE RELATED TO PERFORMANCE OF PUBLIC SERVICE. (a) Requires the judge, in the trial of an offense described by Section 814.013 or 824.009, Government Code, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the offense committed was related to the defendant's employment described by Section 814.013(b) or Section 824.009(b), Government Code, while a member of the Employees Retirement System of Texas (ERS) or the Teacher Retirement System of Texas (TRS).

(b) Requires a judge who makes the affirmative finding to make the determination and provide the notice required by Section 814.013(l) or 824.009(l), Government Code, as applicable.

SECTION 3. Amends Subchapter A, Chapter 814, Government Code, by adding Section 814.013, as follows:

Sec. 814.013. CERTAIN EMPLOYEES AND ANNUITANTS INELIGIBLE FOR RETIREMENT ANNUITY; RESUMPTION OR RESTORATION OF ELIGIBILITY.

(a) Defines "qualifying felony" to include certain offenses punishable as a felony or a federal offense that contains elements that are substantially similar to the elements of a listed felony offense.

(b) Provides that this section applies only to a person who is a member or an annuitant of ERS and is or was an employee of the Texas Juvenile Justice Department (TJJD) in one of TJJD's institutional schools.

(c) Provides that, except as provided by Subsection (e), a person is not eligible to receive a service retirement annuity from ERS if the person is convicted of a qualifying felony the victim of which is a student.

(d) Requires ERS to suspend payments of an annuity to a person who is not eligible to receive a service retirement annuity under Subsection (c), as determined by ERS, on receipt by ERS of certain notice or information relating to conviction for a qualifying felony.

(e) Provides that a person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2) (relating to certain conditions entitling a person to compensation), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and

(2) is authorized to resume receipt of annuity payments on payment to ERS of an amount equal to the contributions refunded to the person under Subsection (g).

(f) Requires the school at which the person was employed to, not later than the 30th day after the date of a person's conviction for a qualifying felony, provide written notice of the conviction to ERS. Requires that the notice comply with rules adopted by the board of trustees of ERS under Subsection (k).

(g) Provides that a person who is not eligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the person's retirement annuity contributions, including interest earned.

(h) Provides that benefits payable to an alternate payee under Chapter 804 (Domestic Relations Orders and Spousal Consent) who is recognized by a

domestic relations order established before September 1, 2017, are not affected by a person's ineligibility to receive a retirement annuity under Subsection (c).

(i) Authorizes a court, on conviction of a person for a qualifying felony, in the interest of justice and in the same manner as in a divorce proceeding, to award half of the service retirement annuity forfeited by a person as the separate property of an innocent spouse if the annuity is partitioned or exchanged by written agreement of the spouses as provided by Subchapter B (Marital Property Agreement), Chapter 4 (Premarital and Marital Property Agreements), Family Code. Prohibits the amount awarded to the innocent spouse from being converted to community property.

(j) Provides that ineligibility for a retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(k) Requires the board of trustees of ERS to adopt rules and procedures to implement this section.

(l) Requires a court to notify ERS of the terms of a person's conviction for a qualifying felony.

SECTION 4. Amends Subchapter A, Chapter 824, Government Code, by adding Section 824.009, as follows:

Sec. 824.009. CERTAIN EMPLOYEES AND ANNUITANTS INELIGIBLE FOR RETIREMENT ANNUITY; RESUMPTION OR RESTORATION OF ELIGIBILITY.

(a) Defines "qualifying felony" to include certain offenses punishable as a felony or a federal offense that contains elements that are substantially similar to the elements of a listed felony offense.

(b) Provides that this section applies only to a person who is a member or an annuitant of TRS and is or was an employee of the public school system.

(c) Provides that, except as provided by Subsection (e), a person is not eligible to receive a service retirement annuity from TRS if the person is convicted of a qualifying felony the victim of which is a student.

(d) Requires TRS to suspend payments of an annuity to a person who is not eligible to receive a service retirement annuity under Subsection (c), as determined by TRS, on receipt by TRS of certain notice or information relating to conviction for a qualifying felony.

(e) Provides that a person whose conviction is overturned on appeal or who meets the requirements for innocence under Section 103.001(a)(2), Civil Practice and Remedies Code:

(1) is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and

(2) is authorized to resume receipt of annuity payments on payment to TRS of an amount equal to the contributions refunded to the person under Subsection (g).

(f) Requires the school at which the person was employed to, not later than the 30th day after the date of a person's conviction for a qualifying felony, provide written notice of the conviction to TRS. Requires that the notice comply with rules adopted by the board of trustees of TRS under Subsection (k).

(g) Provides that a person who is not eligible to receive a service retirement annuity under Subsection (c) is entitled to a refund of the person's retirement annuity contributions, including interest earned on those contributions.

(h) Provides that benefits payable to an alternate payee under Chapter 804 who is recognized by a domestic relations order established before September 1, 2017, are not affected by a person's ineligibility to receive a retirement annuity under Subsection (c).

(i) Authorizes a court, on conviction of a person for a qualifying felony, in the interest of justice and in the same manner as in a divorce proceeding, award half of the service retirement annuity forfeited by a person as the separate property of an innocent spouse if the annuity is partitioned or exchanged by written agreement of the spouses as provided by Subchapter B, Chapter 4, Family Code. Prohibits the amount awarded to the innocent spouse from being converted to community property.

(j) Provides that ineligibility for a retirement annuity under this section does not impair a person's right to any other retirement benefit for which the person is eligible.

(k) Requires the board of trustees of TRS to adopt rules and procedures to implement this section.

(l) Requires a court to notify TRS of the terms of a person's conviction for a qualifying felony.

SECTION 5. Provides that Section 12, Article 42.01, Code of Criminal Procedure, and Article 42.0192, Code of Criminal Procedure, as added by this Act, apply only to a judgment of conviction entered on or after the effective date of this Act.

SECTION 6. (a) Requires the board of trustees of ERS to, not later than December 31, 2017, adopt the rules necessary to implement Section 814.013, Government Code, as added by this Act.

(b) Requires the board of trustees of TRS to, not later than December 31, 2017, adopt the rules necessary to implement Section 824.009, Government Code, as added by this Act.

SECTION 7. Makes application of Sections 814.013 and 824.009, Government Code, as added by this Act, prospective to the effective date of the rules adopted in accordance with those sections.

SECTION 8. Effective date: September 1, 2017.