

**SUBJECT:** State health benefit programs and retirement systems

**COMMITTEE:** Pensions and Investments — committee substitute recommended

**VOTE:** 8 ayes — Greenberg, Tillery, Bonnen, Clark, George, Rangel, Salinas, Telford

0 nays

1 absent — Williams

**SENATE VOTE:** On final passage, April 21 — voice vote

**WITNESSES:** (*On House companion bill, HB 2520:*)  
For — Gary Anderson, Texas Public Employee Association

Against — None

On — Sheila Beckett, Employees Retirement System

**BACKGROUND:** The Employees Retirement System (ERS) has more than 155,317 active members and about 39,247 retirees and assets with a market value of more than \$22.6 billion. Established by constitutional amendment in 1947, ERS provides retirement, death, and disability benefits to state employees and elected officials. It administers the Texas Employees Uniform Group Insurance Program (UGIP), which provides life, accident, and health benefits for state employees, elected officials, judges, and retirees. In addition, it administers the two judicial retirement programs, JRS I and JRS II, and the supplemental retirement programs for state law enforcement and custodial officers.

Chapter 803 of the Government Code applies to retirement systems for ERS, Texas Retirement System, JRS I and II, the Texas County and District Retirement System and the Texas Municipal Retirement System.

DIGEST: CSSB 1130 would do the following:

**ERS Administration.**

- ! specifically prohibit from public access under the Open Records Act records of members and beneficiaries of the retirement systems under chapter 803 and records of ERS members, annuitants, administrators, carriers, or governmental agencies cooperating with ERS. Records could be confidentially released to the members or authorized representatives, to another governmental agency having a legitimate need for the information to perform the purposes of the retirement system, or to a party in response to a subpoena;
- ! specifically authorize ERS to accept gifts of money or property from any public or private source on behalf of the retirement system;
- ! specify procedures and definitions for the administration of ERS, including compensating employees for overtime;
- ! require ERS to submit group health benefit coverages for competitive bidding at least every six years;
- ! authorize ERS and a person aggrieved by a decision concerning the retirement or group benefits system to informally negotiate an award of benefits;
- ! authorize ERS to refer an appeal of a board decision to the State Office of Administrative Hearings or to another administrative law judge or hearings officer;
- ! authorize the ERS board to modify or delete a proposed finding of fact or conclusion of law submitted by an administrative law judge or make alternative finds or conclusions;
- ! specifically define “securities” for purposes of the board’s investment authority to mean any investment instrument as defined by the Texas Securities Act;
- ! make changes to the participation of vendors and investment products used in the state’s deferred compensation plans;
- ! delegate to ERS all purchasing functions using funds other than general revenue funds for fiduciary duties of the retirement system and require ERS to use a procurement method that provides the best value.

**Retirement systems, death benefits, and funds.**

- ! authorize certain employees before retiring to select a partial lump-sum payment, not to exceed the sum of 36 months of a standard retirement annuity, in addition to a standard or optional retirement annuity;
- ! authorize a transfer of an amount equal to the portion of the actual value of a lump-sum payment that represents the percentage of the amount of service credit transferred for people who transferred their service credit between ERS and TRS and elected to receive a partial lump-sum payment from a system from which the person is retiring;
- ! define “custodial officers” under the ERS system, who come under rules encouraging early retirement for people whose duties are hazardous, to include employees of the Board of Pardons and Paroles or parole officers or caseworkers of the Texas Department of Criminal Justice;
- ! allow ERS members to withdraw all accumulated contributions for service credit if the member does not resume work 30 days after the date of employment termination, instead of one calendar month following the month in which the employment was terminated;
- ! require ERS to refund any contributions, interest, or membership fees used to establish service credit that are not used in computing the amount of an annuity at the time that a retirement or death benefit annuity becomes payable;
- ! authorize, after August 31, 1997, members to accrue a maximum amount of service credit equal to 100 when the total service credit is multiplied by the percentage in effect for computing annuities, replacing the current maximum of 50 years of service credit;
- ! authorize employees who retire during the effective date of retirement to receive service credit for accumulated annual leave, in the amount of one month of service credit for every 20 days, and one month for the remaining fraction;
- ! authorize employees to use accumulated, unused annual leave to satisfy service requirements for retirement;
- ! raise the service credit computation for eligibility to retire from a specified five years of service credit to *at least* five years of service credit and would allow service credit in the optional retirement system to count in the determination for ERS retirement, including disability retirement;
- ! add Texas Department of Health employees to the agency employees eligible for early retirement due to privatization or other reductions in workforce that occur before September 1, 2001, and make other related

changes;

- ! authorize members with at least five years of service credit to establish up to an additional five years of service credit for retirement eligibility for service performed for a Texas governmental employer;
- ! change the minimum retirement date for peace officers, who now can retire only at the age of 50, to the earlier of either the age of 50 or the age at which the sum of the officer's age and amount of service credit equals the number 80;
- ! authorize spouses to select a death benefit plan for employees who died and had at least three years of service credit and would have been eligible to retire;
- ! cease the contribution requirement for judicial members who accrue 20 years of service credit yet still consider them as contributing members of JRS II;
- ! lower from 21 to 18 the age at which a minor child is considered eligible for survivor benefits upon the death of certain law enforcement officers and firefighters;
- ! repeal provisions authorizing certain members to establish credit for service previously canceled;
- ! increase the monthly retirement and death benefit annuities by percentages varying with the date of retirement or death and require certain supplemental payments and the recomputation of annuities under JRS II; and
- ! authorize a supplemental "13th check" annuity payment for retirees in fiscal year 2000.

**Texas Employees Uniform Group Insurance Program (UGIP).**

- ! require ERS to place sufficient reserves in a contingency fund for self-funded UGIP plans equal to at least 60 days of claims and administrative expenses;
- ! replace specific requirements relating to unrestricted balances in the UGIP with provisions requiring ERS to select an actuary to offer advise;
- ! require ERS to report annually by January 1 to the governor, the lieutenant governor, the speaker, and the Legislative Budget Board information concerning UGIP coverages and the effectiveness and efficiency of managed care cost containment practices and fraud detection and prevention procedures;

- ! require UGIP participation by the officers, employees and their eligible dependents of the Texas Municipal Retirement System and the Texas County and District Retirement System and certain employees and officers of the Texas Turnpike Authority;
- ! remove provisions requiring the review and recommendations of the Texas Department of Insurance (TDI) of the types and sufficiency of coverage under UGIP and TDI's role in the bidding process for carriers;
- ! authorize former members of a state board or commission or governing board of an institution of higher education to remain eligible for coverage under UGIP as long as no lapse in coverage occurred after the end of the former member's term;
- ! require all employees to participate in the premium conversion benefit portion of the cafeteria benefit plan;
- ! establish an employees' health care stabilization trust fund outside the general revenue fund, composed of legislative transfers, gifts, grants and fund interest, for appropriations to stabilize the cost of state and participant contributions for health care coverage.

The bill would take effect September 1, 1999, except for provision relating to payments of accelerated benefits, the use of viatical settlements and payment increases in annuity benefits, which would take effect January 1, 2000. Options for lump-sum payments, as added by this bill, would apply to retirements that occur on or after January 1, 2000.

Provisions in this bill relating to temporary service retirement options for certain agencies would prevail over any other legislation enacted this session.

**SUPPORTERS  
SAY:**

CSSB 1130 would make improvements to the administration and benefits of programs administered by ERS that would benefit both the state and state employees without cost. The benefits to employees and retirees would be completely paid by the surplus in the retirement fund, which should rightfully be given back to state employees and retirees.

The ERS fund has no unfunded liability, and additional future costs are not expected to occur, or if they occur, to be insignificant and easily absorbed by the fund. The JRS II plan future costs would not be increased by the judicial contribution limitation of 20 years, because few judges remain in state employment that long.

By creating additional options for retiring employees, such as the use of accumulated leave time for retirement, shortening the period in which employees could access their accumulated retirement contributions, and allowing for limited lump-sum payments after retirement, employees could better plan for their retirement and pay for post-employment concerns, such as paying off a mortgage, and state managers would be given increased flexibility in staffing empty agency positions.

The provision requiring all employees to participate in premium conversion would result in savings to the state and to employees. The state would save about \$1.1 million per year from reducing the taxable wages of state employees by the amount of premiums converted and the avoidance of having to pay social security taxes on these premiums. Employees as well would save money by not having to pay social security or federal income taxes on a portion of their wages.

The percentage-based annuity increases, as proposed in the bill, would bring retirees up to 100 percent of the consumer price index increase since their retirement, giving retirees the purchase power they had at retirement.

The bill would add a definition of securities to conform with the traditional usage of the term regarding investments. Because such a definition is missing from the law, the definition used by attorney general in a recent opinion concerning Teacher Retirement System investments (JC-0043), which was based on the Texas Business and Commerce Code, if applied to ERS would require the divestment of almost \$4 billion in an otherwise healthy and actuarially sound fund.

The confidentiality protections put in place by this bill would make sure that member's medical records were not released to the public or to unauthorized entities during an audit or other investigation or use by another state agency.

The provisions relating to early retirement options for employees whose jobs are terminated due to privatization would fairly recognize the loyalty and career aspirations of state employees whose jobs and benefit levels change for reasons beyond their control. Many state jobs are being shifted to county and local government responsibility, such as the transfer of state administration of many mental health and mental retardation services to local community centers. Employees in these situations may remain employed in the same job,

even in the same facility, but be employed by a local employer whose benefit plans are substantially lower than the state's benefits.

Removing TDI from overseeing UGIP health benefit coverage would not reduce employee benefit levels or eliminate impartial oversight. ERS would be newly required to report annually to the governor, the lieutenant governor, the speaker and the LBB regarding health benefit coverage activities. Also, after ERS was removed from the requirement two sessions ago to conform with state health insurance mandates, the relevance of having TDI overseeing health benefit coverage was reduced.

The bill would clarify the calculations to be used for appropriately establishing a contingency reserve for the UGIP self-funded plans. Such clarification would be fiscally responsible and a pragmatic step that would benefit employees in the long-run by providing a reserve to stabilize the cost and availability of health benefits against unforeseen downturns in the economy or increases in costs. A recent report by the State Auditor's Office found the calculation of reserve funds, as currently required in state law, to be questionably low. Outside experts have advised the state that a more safely financed amount would be about 16 to 18 percent of expected claims costs, which would be implemented under the bill.

OPPONENTS  
SAY:

Adding to the membership of the Law Enforcement and Correctional Officers Supplemental Retirement Program would increase long-term costs of the program by approximately \$1 million per year. Also, ending contributions after 20 years by members of JRS II could lead to additional state contributions in the future.

Removing TDI from its role in reviewing and recommending UGIP benefit coverages, and from its involvement in bidding process with carriers, could eliminate a source of impartial oversight on the activities of ERS and the level and types of benefits provided under UGIP.

OTHER  
OPPONENTS  
SAY:

All state agency employees should be able to access an early retirement option if their jobs are eliminated by privatization. Under this bill and current law, only the employees of the Texas Workforce Commission, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, and the Texas Department of Health would be eligible.

While the contingency reserve fund clarification is necessary and essential, the state should pay for its anticipated costs. The security of state-provided health benefits should not occur at the expense of state employees. Provisions in this bill that require ERS to set aside a contingency reserve for self-funded plans, would increase to 16 percent from 10 percent the reserve level now required, a difference of approximately \$35 million. Unless sufficient money is appropriated to cover this change this session, ERS would have to increase co-payments or reduce benefits to meet the new reserve requirement.

NOTES:

Major provisions added by the committee substitute to the Senate-passed version of the bill include:

- ! adding parole officers and caseworkers to the retirement system;
- ! adding TDH employees to the list of employees authorized to take early retirement due to privatization and related changes;
- ! adding confidentiality protections for system records under the Open Records Act;
- ! adding a definition of “securities;”
- ! limiting JRS II contributions to 20 years;
- ! defining ERS purchasing authority using funds other than general revenue;
- ! authorizing a “13th check” annuity payment in fiscal 2000; and
- ! authorizing higher education boards to pay from local funds part or all of the contributions the state would pay for former board members.