SUBJECT: Retirement benefits for employees of third-party education contractors

COMMITTEE: Pensions and Investments — favorable, without amendment

VOTE: 4 ayes — Ritter, McClendon, Martinez Fischer, Pena

0 nays

3 absent — Telford, Grusendorf, Rose

WITNESSES: For — Trish Conradt, Texas Retired Teachers Association; Eric Hartman, Texas Federation of Teachers; David Pore, Association of Texas Professional Educators

Against — Ray Freeman, JR3 Education Associates

On — Ronnie Jung, Teacher Retirement System

BACKGROUND: Government Code, chapter 824 governs benefits payable by the Teacher Retirement System (TRS). Subchapter G addresses the loss of benefits on resumption of service. Under sec. 824.601, if a retired teacher returns to work at a public educational institution, generally that member must forfeit TRS benefits. Sec. 824.602(5) allows an exception for a full-time classroom teacher if that person teaches in an acute shortage area as determined by the school district and has been separated from service with all public schools for at least 12 months.

Attorney General Opinion GA-0018, issued in February 2003, states: "Former teachers who accept temporary employment with third-party contractors who provide educational services to school districts do not thereby forfeit retirement benefits as a matter of law. Such teachers are not 'professional employee[s] of a school district' for the purposes of the Education Code's limited grant of immunity for personal liability."

DIGEST: HB 2169 would specify that a retiree employed by a third-party entity would be considered an employee of a public educational institution for purposes of

Government Code, chapter 824, subchapter G, unless the retiree did not perform duties or provide services for the institution.

The bill would define "third-party entity" as an entity retained by a public educational institution to provide personnel to perform duties that an employee of the institution otherwise would perform.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003. The changes would apply beginning with the 2003-04 school year.

SUPPORTERS SAY:

HB 2169 would address concerns about third-party contractors that are encouraging active classroom teachers who are near retirement to retire and then return to the classroom, not as employees of a school district, but as employees of the third-party entities.

Under current law, an individual teacher or school district employee cannot retire and resume work immediately as a direct employee of the district while retaining TRS pension benefits. Generally, to retain benefits, the educator must have a 12-month break in service before returning to work full-time. Through an employee lease agreement with a third-party contractor, however, the teacher could return to the classroom immediately. Retired or retiring teachers find this arrangement appealing because they can receive their TRS pensions as well as a salary, although the salary is lower for the same job and no additional years of TRS service can accrue.

Within the past few years, education contractors have exploited statutory return-to-work provisions to entice teachers to retire and "double dip." Through these contracts, retired teachers can receive their monthly retirement benefits and a reduced salary (85 percent, on average) from third-party contractors. These contractors, who hire only retirees, are encouraging teachers to retire early. This employee leasing practice could harm the TRS fund significantly by altering retirement patterns, because teachers and other educators have an inducement to retire earlier than they would otherwise. If everyone retired who was eligible under TRS, it would cost the fund between $5 billion and $6 billion. One third-party contractor has expanded from 200 teachers to 500 in less than a year.

More teachers are retiring under the "rule of 80," a criterion that combines age with years of experience. Under this rule, more teachers retire before age 65 and thus rely on the TRS health plan rather than Medicare. Any significant increase in TRS Care enrollment further increases concerns about the health insurance plan's solvency.

Teachers hired through education contractors are at-will employees and lose contract rights afforded to teachers whom school districts hire directly. They also forfeit their statutory immunity from liability and surrender other benefits assigned through the Education Code, such as entitlement to a planning period, duty-free lunch, and personal leave time.

HB 2169 would eliminate concerns about rehiring teachers through third-party entities by declaring them employees of school districts. Education contractors are no panacea to the teacher shortage and raise legitimate labor issues. This bill would protect the rights of rehired teachers as well as the solvency of the TRS pension fund.

OPPONENTS SAY:

HB 2169 would eliminate important options that school districts exercise to retain experienced teachers at lower costs and that retired teachers exercise to earn more money. Third-party contractors have combined the best practices of public institutions and private businesses to develop solutions to the education system's fiscal and personnel crises. "Outsourcing" employees is an effective business practice. By specifying that employees of third-party entities would be considered employees of school districts, HB 2169 would reduce retired teachers' incentive to work for education contractors, stripping school districts of critical personnel and financial options.

Through third-party entities, school districts can rehire teachers for 15 to 18 percent less money, eliminating the potential need for reductions in force. Through the contractors' employee leasing arrangements, retired teachers can remain in their chosen profession and make more money, all at a savings to public education systems. Third-party education contractors are responsible employers who take out Social Security and provide workers' compensation benefits and professional liability insurance. They also allow their employees to invest in 401(k) plans.

Third-party entities are not jeopardizing the stability of the TRS fund by lowering the age at which teachers retire. The majority of educators employed by these contractors have not retired at the earliest available opportunity.

NOTES: SB 1243 by Armbrister, containing language identical to that in HB 2169, has been referred to the Senate State Affairs Committee.