HOUSE RESEARCH ORGANIZATION bill analysis	4/2/2003	HB 258 Pickett, et al. (CSHB 258 by Rose)

SUBJECT: Public retirement system benefit adjustments to correct payment errors

COMMITTEE: Pensions and Investments — committee substitute recommended

VOTE: 5 ayes — Ritter, Telford, Grusendorf, Pena, Rose

0 nays

2 absent — McClendon, Martinez Fischer

WITNESSES: *(On original bill:)*
For — Deborah Ingersoll, El Paso Pension Widows

Against — Gerald Brown, Dallas Police and Fire Pension System; Jon Lowe, Fire and Police Pension Fund, San Antonio

On — Virginia R. Smith, State Pension Review Board

BACKGROUND: Government Code, sec. 802.102 states that a governing body of a public retirement system must have the accounts of the system audited at least annually by a certified public accountant in accordance with generally accepted auditing standards.

DIGEST: CSHB 258 would amend the Government Code by adding sec. 802.1024, stipulating that if an error occurred in a public retirement system resulting in a beneficiary receiving more or less money than entitled, the system's governing board would have to correct the error in a practicable manner and adjust future payments so that the beneficiary received the amount to which he or she was actuarially entitled. If no future payments were due the beneficiary, an overpayment could be collected within a three-year period in the same manner as any other debt collection.

The governing board could correct only those overpayments the occurred no more than three years before the governing board discovered them. A public retirement system could not recover any overpayment made more than three years prior to discovery, unless the beneficiary had accepted payment that any reasonable person should have known was not due.

The bill would make conforming changes to articles 6243n, 6243n-1, and 6243o of the Civil Statues, covering retirement systems in municipalities with populations of 460,000 to 500,000, police retirement systems in municipalities with populations of 460,000 to 500,000, and police and fire fighter retirement systems in municipalities with populations of 750,000 to 1,000,000, respectively.

CSHB 258 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. It would apply to overpayments or underpayments made before or after the effective date, except that it would not affect an overpayment that had been resolved before the effective date.

SUPPORTERS SAY:

CSHB 258 would set a reasonable three-year limit on overpayment adjustments sought by public retirement systems from beneficiaries. The absence of such a limit, under current law, allows retirement systems to demand huge payments from beneficiaries many years after the occurrence of accounting errors, which could be financially disastrous for retirees on fixed incomes. The three-year time limit is reasonable and adequate, as evidenced by the fact that Internal Revenue Service also must operate within a three-year window.

The need for this bill arose in August of 2002 when the El Paso Firemen and Policemen Retirement Fund asked 15 beneficiaries — 14 widows and one retiree — to repay a total of $750,000 to the fund. The City of El Paso, which at that time administered the now independent fund, made mistakes over a period of 15 years that led to these overpayments. One instance involved a 68-year-old woman who began receiving her deceased husband's pension in September 1991, only to receive a bill for close to $43,000 from the pension board eleven years later. If her pension had been garnished to repay the fund, it would have been five years before she received another pension check. The bill would aim not simply to correct the El Paso situation but to offer reasonable relief for similar instances in the future.

CSHB 258 appropriately would apply mostly to smaller public retirement systems and independent pension funds of fire fighters and police officers that may not have adequate procedures in place to verify that annuity payments are correct, such as regular audits and reviews of accounts and calculations.

Larger retirement systems have such systems in place. The Employees Retirement System of Texas, in fact, has an error rate of less than .001 percent overall.

The bill would address possible fraud by excluding from the three-year limit overpayments that a reasonable person should know were not due.

OPPONENTS SAY:

A public retirement system should be able to recover any overpayment regardless of when it occurred. If a beneficiary was overpaid, it is an unjust enrichment. The person who got this "windfall" should have to return the money.

This bill arose from a competency issue with a governing board. The beneficiaries involved should seek an administrative remedy with the governing board or an equitable remedy through the courts. However, it would be inappropriate for the Legislature to enact a statute designed to address the grievances of a handful of El Paso citizens, as this bill aims to do.

NOTES:

The committee substitute differs from the bill as filed by changing the period for recouping an overpayment from two years to three years and excluding from the three-year limit overpayments that any reasonable person should have known were not due. The committee substitute also would cover underpayments and overpayments made both before and after the bill's effective date, rather than just after as in the bill as filed, except for overpayment that had been resolved prior to the effective date.

A companion bill, SB 1560 by Madla, has been referred to the Senate State Affairs Committee.