

**SUBJECT:** Revising ERS retirement and benefit plans

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

**VOTE:** 7 ayes — Eiland, Flynn, Griggs, Krusee, McClendon, Rodriguez, Straus  
0 nays

**SENATE VOTE:** On final passage, May 4 — 28-2 (Barrientos, Shapleigh)

**WITNESSES:** (*On House companion bill, HB 2617 by Eiland:*)  
For — None  
  
Against — None  
  
On — Ann Fuelberg, ERS

**BACKGROUND:** Texas Constitution, Art. 16, sec. 67, requires the Legislature to establish the Employees Retirement System of Texas (ERS) to provide benefits for officers and employees of the state and any state-compensated officers and employees of appellate courts and judicial districts as authorized by law.

Government Code, ch. 811-815, governs the administration of ERS as well as required benefits for ERS participants. Under sec. 812.003, membership in ERS begins on the 91st day after the person is employed or holds office. The 78th Legislature in 2003 added this provision, which expires on September 1, 2005. An ERS member may purchase service credit for the 90-day waiting period.

Government Code, sec. 813.102 allows an ERS member who has withdrawn contributions and canceled service credit to buy back these credits by paying ERS a lump sum amount equal to the amount withdrawn plus an annual rate of 5 percent from the time of withdrawal to the time of deposit.

Government Code, sec. 813.513, allows ERS members to purchase up to

60 months of equivalent service credit based on the actuarial value as determined by ERS.

Insurance Code, sec. 1551.108 allows an individual with at least 10 years of ERS service credit as a legislative employee to remain eligible for participation in the group benefits program.

DIGEST:

CSSB 1176 would amend statutes governing retirement eligibility and benefits for active and retired members of ERS. The bill would:

- continue the 90-day waiting period for ERS membership;
- beginning September 1, 2006, raise the interest rate for purchasing refunded service from 5 to 10 percent and prohibit former employees who participated in the optional retirement program from purchasing credits;
- reduce the amount of additional service credit that a member could purchase from 60 to 36 months and specify that this service credit could be purchased only in order to become eligible to retire;
- reduce pension benefits for members who worked part-time during the last three consecutive months of employment before retiring so that benefits were computed based on the part-time salary;
- allow ERS to make a lump sum payment to a retiree or beneficiary if the actuarial value of the annuity did not exceed \$20,000;
- restrict disability and death benefit retirement eligibility to members who are currently contributing to ERS; and
- allow ERS to reduce annuities for nonoccupational disability retirement based on actuarial tables adopted by the ERS board for members who retired before they reached the eligible age.

The bill would specify that the ERS medical board was not subject to subpoena regarding findings it made in assisting the executive director, and its members could not be held liable for any opinions, conclusions, or recommendations made as part of their service on the medical board.

The bill would authorize ERS to obtain criminal history records on ERS job applicants, establish a definition of "good cause" in statutes governing ERS, require a member pursuing an appeal through district court to prosecute the case within one year unless good cause for further delay could be shown, allow ERS to make mailings on behalf of nonprofit organizations representing ERS retirees, and prohibit payment of death benefits to a beneficiary who was convicted of causing the death of an

ERS participant.

An ERS retiree who at the time of retirement had at least 25 years of service credit and had served as the executive head of a legislative agency could elect to retire as a member of the elected class. The retiree would have to make this election in writing before September 1, 2008. All of the person's service credits, including those earned after the election was filed, would be considered as if they were performed as part of the elected class.

Former legislative employees who qualify for group health insurance coverage under Insurance Code, sec. 1551.108, on becoming eligible to retire, would qualify for the state contribution for health insurance. This section would take effect March 1, 2008, and expire August 31, 2008.

The bill would take effect September 1, 2005, and its provisions would apply to actions taken on or after that date, unless otherwise specified by the bill.

**SUPPORTERS  
SAY:**

CSSB 1176 would contribute to the soundness of the ERS pension fund by scaling back benefits that were enhanced during the 1990s when successful investments and state appropriations supported such enhancements. In the current market environment, ERS needs to tighten benefits in order to control costs while still serving its core constituency.

The bill would point ERS in the direction of becoming actuarially sound, meaning that the fund could cover current and future benefits for the next 31 years. According to ERS, the bill would reduce the total contribution necessary to make the fund actuarially sound from 13.13 percent to 12.89 percent. The current employee contribution of 6 percent combined with a projected increase in the state contribution to 6.45 would bring the total contribution to 12.45 percent, close to what is needed to make the fund actuarially sound. Under state law, retirees cannot receive a benefit increase, known as a "13th check," unless the ERS fund is determined to be actuarially sound.

Employees subject to the 90-day wait still would be able to purchase the service credits once they become eligible for ERS membership so that the date of their eligibility for retirement would not be delayed.

**OPPONENTS  
SAY:**

The 90-day wait for ERS eligibility was meant to be a temporary measure to address severe state budget problems and should not be made

permanent. Salaries for state employees are significantly lower than for private sector employees, and the state should maintain its long-standing commitment to addressing this discrepancy by providing health and retirement benefits from the first date of employment.

The changes in the bill would increase certain costs and eliminate benefits for ERS members without achieving the goal of making the fund actuarially sound. The state should increase its share of contributions so that the fund reaches this threshold and retirees become eligible for such pension enhancements as a "13th check."

**NOTES:**

The committee substitute removed a section of the Senate-passed version that would have allowed an eligible employee to make a one-time election to withdraw from the optional retirement program and renew active participation in ERS and a section regarding service credit eligibility. It added the provision regarding eligibility for health insurance payments for former legislative employees who become eligible for retirement.

According to the actuarial impact statement, under CSSB 1176 the state contribution rate required to achieve 31-year funding for ERS would decrease from 7.044 percent to 6.821 percent in fiscal 2006 and from 7.120 percent to 6.894 percent in fiscal 2007. The current state contribution rate is the constitutional minimum of 6 percent, and the conference committee on SB 1, the general appropriations bill for fiscal 2006-07, has proposed a state contribution rate of 6.45 percent.

The House companion bill, HB 2617 by Eiland, was left pending in the Pensions and Investments Committee on April 28.