

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1176
By: Armbrister
State Affairs
4/27/2005
Committee Report (Substituted)

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

In the 1990s, the legislature enhanced benefits in the Employees Retirement System of Texas because of the success of its investments and additional funding appropriated for the insurance program.

C.S.S.B. 1176 makes provisions that seek to tighten benefits in order to control costs while the Employees Retirement System continues to serve its core constituency – active state officers and employees and retired state officers and employees.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1402, as follows:

Sec. 411.1402. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: EMPLOYEES RETIREMENT SYSTEM OF TEXAS. (a) Entitles the Employees Retirement System of Texas (retirement system) to obtain criminal history record information maintained by the Department of Public Safety (DPS) that relates to a person who is an applicant for employment with, or who is employed by, the retirement system.

(b) Authorizes criminal history record information obtained by the retirement system under Subsection (a) to be used only to evaluate an applicant for employment with, or a current or former employee of, the retirement system.

(c) Prohibits the retirement system from releasing or disclosing information obtained under Subsection (a) except on court order.

(d) Requires the retirement system to destroy all criminal history record information obtained under Subsection (a) after the expiration of any probationary term of a person's employment or not later than the 180th day after the date of receipt of the information.

SECTION 2. Amends Section 609.001(2-a), Government Code, to redefine "institution of higher education."

SECTION 3. Amends Section 811.001, Government Code, by adding Subdivision (8-a), to define "good cause."

SECTION 4. Amends Section 812.003, Government Code, as follows:

Sec. 812.003. MEMBERSHIP IN EMPLOYEE CLASS. (a) Makes a conforming change.

(b) Makes no changes.

(c) Makes no changes.

(d) Provides that membership in the employee class begins on the 91st day after the first day a person is employed or holds office. Deletes text of existing Subsection (d) relating to persons whose office holding or employment begins on or after September 1, 2005.

(e) Redesignates text of existing Subsection (f).

(f) Redesignates text of existing Subsection (g). Makes conforming changes.

Deletes existing text of Subsection (h), providing an expiration date.

SECTION 5. Amends Section 812.005(a), Government Code, by deleting the provision that a person's membership in the retirement system is terminated by transfer of the person's accumulated contributions under Section 815.502(c).

SECTION 6. Amends Section 813.102(b), Government Code, to authorize a member to reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from a membership class, plus interest computed on the basis of the state fiscal year at an annual rate of ten, rather than five, percent from the date of withdrawal to the date of redeposit.

SECTION 7. Amends Section 813.504, Government Code, by deleting the provision that a person is authorized to reestablish service credit previously canceled in the retirement system if the person is a former member of the employee class and a participant in the optional retirement program. Makes nonsubstantive changes.

SECTION 8. Amends Section 813.513(a), Government Code, to authorize an eligible member to establish not more than 36, rather than 60, months of equivalent membership service credit.

SECTION 9. Amends Section 813.514(c), Government Code, by deleting existing text authorizing a member to establish not more than three months of equivalent membership service credit under this section.

SECTION 10. Amends Subchapter A, Chapter 814, Government Code, by adding Section 814.011, as follows:

Sec. 814.011. LUMP-SUM PAYMENT IN LIEU OF ANNUITIES. Authorizes the retirement system to elect to make a lump-sum payment to a retiree or beneficiary in lieu of annuity payment if the actuarial present value of the annuity at the time of retirement or death does not exceed \$20,000. Provides that payment of a lump sum under this section does not affect eligibility for any other program administered by the retirement system.

SECTION 11. Amends Section 814.1042, Government Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Requires all documentation required to establish the amount of service performed for a governmental employer to be received by the retirement system on or before August 31, 2005.

(c) Prohibits service described by this section from counting toward the 10 years of service credit used to determine eligibility for participation under Chapter 1551 (Texas Employees Group Benefits Act), Insurance Code, but authorizes service to be used to determine eligibility under Section 814.104(a)(2) regardless of the age of the member.

(d) Provides that this section expires August 31, 2005, provided, however, that this section will remain in full force and effect for any member who has Texas governmental employer service that has been certified by the retirement system as provided by Subsection (b). Authorizes the member to maintain the service credit without expiration, and requires the service credit to be considered by the retirement system for the purpose

of determining eligibility to receive a service retirement annuity as provided by Subsection (a).

SECTION 12. Amends Section 814.202, Government Code, by amending Subsections (a), (b), and (e), and adding Subsection (f), as follows:

(a) Specifies that a member who was contributing to the retirement system at the time the member became permanently disabled for the further performance of duty is eligible to retire for a nonoccupational disability if the member has a certain amount of service credit.

(b) Provides that a member who was contributing to the retirement system at the time the member became permanently incapacitated for the further performance of duty, who meets the requirements provided by Section 811.001(12), and who has service credit in either membership class is eligible to retire for an occupational disability regardless of age or amount of service credit.

(e) Prohibits a member otherwise eligible from applying for or receiving a nonoccupational disability annuity if the member is eligible for a service retirement annuity under Section 814.102 (Eligibility of Elected Members for Service Retirement) or 814.104(a)(2) or (b) (relating to eligibility of a member for service retirement), rather than 814.104.

(f) Prohibits an application for a nonoccupational disability retirement from being made after the second anniversary of the date the member ceased making contributions to the retirement system.

SECTION 13. Amends Section 814.203, Government Code, to provide that a decision that a member is physically or mentally incapacitated for the further performance of duty must be supported by substantial and objective medical evidence. Provides that a certification of incapacity under this section is admissible in a contested case under Section 815.511 (Administrative Decision; Appeal and Negotiation) without qualifying the medical board appointed by the board of trustees as experts.

SECTION 14. Amends Section 814.206, Government Code, by adding Subsection (f), to provide that a standard disability retirement annuity under this section is reducible, under actuarial tables adopted by the board of trustees, for a member who retires before reaching an applicable age.

SECTION 15. Amends Section 814.301(a), Government Code, to specify that a contributing member, rather than a member, with ten years of service credit is eligible to select a death benefit plan for the payment of a death benefit annuity.

SECTION 16. Amends Section 814.302(a), Government Code, to make a conforming change.

SECTION 17. Amends Section 815.103(a), Government Code, to require the board of trustees to hold all retirement system assets in trust for the exclusive benefit of the members and annuitants of the system and administer all operations funded by trust assets for the same purpose.

SECTION 18. Amends Section 815.109, Government Code, to provide that errors in the records of the retirement system are required to be corrected in accordance with Section 802.1024 (Correction of Errors).

SECTION 19. Amends Section 815.204, Government Code, by adding Subsection (d), to provide that the medical board is not subject to subpoena regarding findings it makes in assisting the executive director under this section and prohibits its members from being held liable for any opinions, conclusions, or recommendations made under this section.

SECTION 20. Amends Sections 815.504(a), (c), and (d), Government Code, as follows:

- (a) Authorizes the retirement system to photograph, microphotograph, or film any record in its possession or preserve the record through electronic document imaging.
- (b) Makes conforming and nonsubstantive changes.
- (c) Makes conforming and nonsubstantive changes.

SECTION 21. Amends Subchapter F, Chapter 815, Government Code, by adding Sections 815.5111, 815.513, and 815.514, as follows:

Sec. 815.5111. DILIGENT PROSECUTION OF SUIT. Requires the plaintiff to prosecute with reasonable diligence any suit brought under Section 815.511(f). Requires the court, if the plaintiff does not secure proper service of process or does not prosecute the suit within one year after it is filed, to presume that the suit has been abandoned. Requires the court to dismiss the suit on a motion for dismissal made by or on behalf of the retirement system unless the plaintiff, after receiving appropriate notice, shows good cause for the delay.

Sec. 815.513. EXCLUSIVE REMEDIES. Provides that the remedies provided by this chapter are the exclusive remedies available to a member, retiree, beneficiary, or alternate payee.

Sec. 815.514. MAILINGS ON BEHALF OF NONPROFIT ASSOCIATION. Authorizes the retirement system to make mailings on behalf of a nonprofit association of active or retired state employees described by Section 814.009 (Deduction From Annuity), for purposes of association membership and research only, to persons identified in information contained in records that are in the custody of the system. Requires the nonprofit association requesting a mailing to pay the expenses of the mailing.

SECTION 22. Amends Section 838.108(b), Government Code, to provide that a member is eligible to establish service credit under this section only for the purpose of becoming eligible to retire, or retiring, under Section 839.101(a)(3). Deletes existing text providing that a member is eligible to establish service credit if the member has 120 months of actual membership service.

SECTION 23. Amends Section 840.001(a), Government Code, to require the board of trustees to hold all retirement system assets in trust for the exclusive benefit of the members and annuitants of the system and administer all operations funded by trust assets for the same purpose.

SECTION 24. Amends Section 1551.003, Insurance Code, by adding Subdivision (9-a), to define "good cause."

SECTION 25. Amends Section 1551.063(c), Insurance Code, to authorize the board of trustees to release the records to certain entities, including a governmental entity having a legitimate need for the information to perform the functions of the board of trustees and an authorized medical provider of the participant, in order to accomplish the purposes of this chapter.

SECTION 26. Amends Section 1551.101(e), Insurance Code, to set forth eligibility requirements for participation in the group benefit plan, including eligibility for membership in the retirement system after any waiting period provided by law before membership in that retirement system.

SECTION 27. Amends Subchapter E, Chapter 1551, Insurance Code, by adding Section 1551.220, as follows:

Sec. 1551.220. BENEFICIARY CAUSING DEATH OF PARTICIPANT OR BENEFICIARY OF PARTICIPANT. (a) Prohibits a benefit payable on the death of a participant or the beneficiary of a participant in the group benefits program from being paid to a person convicted of causing that death but provides that it instead is payable as if the convicted person had predeceased the decedent.

(b) Provides that the retirement system is not required to change the recipient of benefits under this section unless it receives actual notice of the conviction of a beneficiary. Authorizes the retirement system, however, to delay payment of a benefit payable on the death of a participant or beneficiary of a participant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(c) Provides that, for the purposes of this section, a person has been convicted of causing the death of a participant or beneficiary of a participant if certain circumstances apply to the person.

SECTION 28. Amends Section 1551.259(a), Insurance Code, to require that the amount of insurance coverage be paid to a person surviving the death of a member in a certain order of precedence, beginning with the beneficiary designated by the participant in a signed and witnessed document mailed before the death of the participant, rather than received before the death by the employing state agency.

SECTION 29. Amends Subchapter G, Chapter 1551, Insurance Code, by adding Section 1551.3195, as follows:

Sec. 1551.3195. AMOUNT OF CONTRIBUTION FOR ANNUITANTS WHO WERE PART-TIME EMPLOYEES. Provides that an annuitant who as an employee received the benefits of a state contribution under Section 1551.319(b) (providing that part-time employees receive the benefits of one-half the amount as full-time employees) for coverage during any portion of the annuitant's last employment by a state agency is not eligible to receive more than the state contribution provided under Section 1551.319(b) unless the annuitant was designated by the annuitant's employer as a full-time employee during the three-consecutive-month period immediately before retirement.

SECTION 30. Amends Section 1551.351(d), Insurance Code, to provide that any sanction imposed is not stayed during an appeal under this subsection. Deletes existing text relating to the failure to make a timely appeal.

SECTION 31. Amends Subchapter H, Chapter 1551, Insurance Code, by adding Section 1551.361, as follows:

Sec. 1551.361. DILIGENT PROSECUTION OF SUIT. Requires the plaintiff to prosecute with reasonable diligence any suit brought under Section 1551.359 (Judicial Review). Requires the court, if the plaintiff does not secure proper service of process or does not prosecute the suit within one year after it is filed, to presume that the suit has been abandoned. Requires the court to dismiss the suit on a motion for dismissal made on or [sic] behalf of the retirement system unless the plaintiff, after receiving appropriate notice, shows good cause for the delay.

SECTION 32. Provides that a retiree of the Employees Retirement System of Texas, who at the time of retirement, had at least 25 years of service credit in the retirement system and has served as the executive head of a legislative agency is eligible to make an election to retire as a member of the elected class of membership. Requires the election to be made in writing to the retirement system before September 1, 2008. Requires the retirement system, after the filing of such an election, to consider all the service credit established by the person who makes the election, including service credit established after the date the election is filed, as if it were performed as a member of the elected class of membership.

SECTION 33. (a) Makes application of Section 814.202, Government Code, as amended by this Act, prospective.

(b) Makes application of Sections 814.301 and 814.302, Government Code, as amended by this Act, prospective.

(c) Makes application of Section 1551.351(d), Insurance Code, as amended by this Act, prospective.

SECTION 34. Repealer:

- (1) Section 813.103 (Loan to Establish Service), Government Code;
- (2) Section 813.507 (Service of Persons Who Became Highway Department Employees), Government Code;
- (3) Section 813.508 (Service of Certain Mental Health and Mental Retardation Employees), Government Code;
- (4) Section 813.510 (Credit for Certain Agricultural Service), Government Code;
- (5) Section 814.202(d) (Eligibility for Disability Retirement), Government Code.

SECTION 35. (a) Effective date: September 1, 2005, except as provided by Subsections (b) and (c).

(b) Provides that the change in law made by this Act to Section 813.513(a), Government Code, and Section 1551.3195, Insurance Code, as added by this Act, takes effect January 1, 2006.

(c) Provides that the change in law made by this Act to Section 813.102(b), Government Code, takes effect September 1, 2006.