

BILL ANALYSIS

Senate Research Center
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S.B. 1691
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

The Teacher Retirement System of Texas (TRS) was created in 1937 and is established by Section 67, Article XVI, Texas Constitution. Constitutional provisions include the establishment of a trust and a board of trustees to administer the system, a requirement that assets of the trust be held for the exclusive benefit of the members, and a requirement that financing of benefits be based on sound actuarial principles.

Although the payment of current benefits is not in jeopardy, the system currently has an "infinite" funding period according to the TRS outside consulting actuary. This refers to the necessary amortization period for assets to fund liabilities. Benefit increases, even if only for current retirees, cannot be passed until such time that the fund can amortize liabilities within a 31-year period. As such, it is estimated that an increase for retirees to adjust for cost of living is not expected within the next decade unless there are sufficient changes in contributions to the system or to the structure of future liabilities.

As proposed, S.B. 1691 attempts to address actuarial soundness and lessen the escalating pressure on TRSCare by making changes that should encourage employees to retire later. It also includes a variety of provisions intended to improve efficiencies in system administration of TRS and clarify the board's authority to manage and protect pension assets.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the board of trustees of the Teacher Retirement System is rescinded in SECTION 5 (Section 22.004, Education Code) of this bill.

Rulemaking authority is expressly granted to the Texas Education Agency in SECTION 7 (Section 22.102, Education Code) of this bill.

Rulemaking authority is expressly granted to the board of trustees of the Teacher Retirement System in SECTION 21 (Section 825.506, Government Code) of this bill.

Rulemaking authority previously granted to the Teacher Retirement System is modified in SECTION 34 (Section 1579.102, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.012(b), Education Code, to provide that an employee of a home-rule school district does not qualify for membership in the Teacher Retirement System of Texas (TRS). Deletes existing text requiring home-rule employees to be qualified under TRS to the same extent as independent school district employees.

SECTION 2. Amends Section 12.057(b), Education Code, to require an employee of an independent school district who is employed on a campus or program granted a charter under this subchapter, rather than Section 12.052, 12.052(a)(1), or 12.053, and who qualifies for membership in TRS to be covered under TRS in the same manner and to the same extent as a qualified employee of the independent school district who is employed on a regularly operating campus or in a regularly operating program.

SECTION 3. Amends Section 12.1057(a), Education Code, to require an employee of an open-enrollment charter school operating under a charter granted by the State Board of Education who

qualifies for membership in TRS to be covered under TRS to the same extent a qualified employee of a school district is covered.

SECTION 4. Amends Subchapter D, Chapter 12, Education Code, by adding Section 12.1164, as follows:

Sec. 12.1164. NOTICE TO TEACHER RETIREMENT SYSTEM OF TEXAS. (a) Requires the commissioner of education (commissioner) to notify TRS in writing of the revocation, denial of renewal, or surrender of a charter under this subchapter not later than the 10th business day after the date of the event.

(b) Requires the commissioner to notify TRS in writing that an open-enrollment charter school is no longer receiving state funding not later than the 10th business day after the date on which the funding ceases.

(c) Requires the commissioner to notify TRS in writing that an open-enrollment charter school has resumed receiving state funds not later than the 10th business day after the date on which funding resumes.

SECTION 5. Amends Sections 22.004 (a), (b), (c), (i), and (j), Education Code, as follows:

(a) Requires a district to participate in the uniform group coverage program established under Chapter 1579 (Texas School Employees Uniform Group Health Coverage), rather than Article 3.50-7, Insurance Code, as provided by Subchapter D (Participating Entities), rather than Section 5, of that chapter, rather than article.

(b) Requires group health coverage provided by a district that does not participate in the program described by Subsection (a) to meet the substantive coverage requirements of Chapter 1251 (Group and Blanket Health Insurance), Subchapter A (Exclusion From or Denial of Coverage Prohibited), Chapter 1364, and Subchapter A (Coverage For In Vitro Fertilization Procedures), Chapter 1366, rather than Article 3.51-6, Insurance Code. Deletes existing text requiring the board of trustees of TRS to adopt certain rules.

(c) Requires the cost of the coverage provided under the program described by Subsection (a) to be paid by the state, the district, and the employees in the manner provided by Subchapter F (Contributions), Chapter 1579, rather than Article 3.50-7, Insurance Code. Makes conforming changes.

(i) Makes conforming changes.

(j) Makes a conforming change.

SECTION 6. Amends Subchapter A, Chapter 22, Education Code, by adding Section 22.007, as follows:

Sec. 22.007. INCENTIVES FOR EARLY RETIREMENT. Prohibits a district from offering or providing a financial or other incentive to an employee of the district to encourage the employee to retire.

SECTION 7. Amends Chapter 22, Education Code, by adding Subchapter D, as follows:

SUBCHAPTER D. COMPENSATION SUPPLEMENTATION

Sec. 22.101. DEFINITIONS. Defines "cafeteria plan," "employee," "participating charter school," and "regional education service center."

Sec. 22.102. AUTHORITY TO ADOPT RULES; OTHER AUTHORITY. (a) Authorizes the Texas Education Agency (TEA) to adopt rules to implement this subchapter.

(b) Authorizes TEA to enter into interagency contracts with any other agency of this state for the purpose of assistance in implementing this subchapter.

Sec. 22.103. DISTRIBUTION BY AGENCY. Requires TEA, subject to the availability of funds, to deliver each month to each district, including a district that is ineligible for state aid under Chapter 42 (Foundation School Program), each other educational district that is a member of TRS, each participating charter school, and each regional education service center state funds in an amount, as determined by TEA, equal to the product of the number of employees employed by the district, school, or service center multiplied by the amount specified in the General Appropriations Act for purposes of this subchapter and divided by 12. Requires TEA to distribute funding to only one entity for employees who are employed by more than one entity listed in this section.

Sec. 22.104. FUNDS HELD IN TRUST. Provides that all funds received by a district, other educational district, participating charter school, or regional education service center under this subchapter are held in trust for the benefit of the employees on whose behalf the district, school, or service center received the funds.

Sec. 22.105. RECOVERY OF DISTRIBUTIONS. Entitles TEA to recover from a district, other educational district, participating charter school, or regional education service center any amount distributed under this subchapter to which the district, school, or service center was not entitled.

Sec. 22.106. DETERMINATION BY AGENCY FINAL. Provides that a determination by TEA under this subchapter is final and prohibits such a determination from being appealed.

Sec. 22.107. DISTRIBUTION BY SCHOOL. Requires each district, other educational district that is a member of TRS, participating charter school, and regional education service center to distribute to its employees the funding received under this subchapter each month. Requires an individual to meet the definition of an employee under Section 22.101 for that month to receive the monthly distribution.

Sec. 22.108. USE OF SUPPLEMENTAL COMPENSATION. Authorizes an employee to use a monthly distribution received under this subchapter for any employee benefit, including depositing the amount of the distribution into a cafeteria plan, if the employee is enrolled in a cafeteria plan, or using the amount of the distribution for health care premiums through a premium conversion plan. Authorizes the employee to take the amount of the distribution as supplemental compensation.

Sec. 22.109. SUPPLEMENTAL COMPENSATION. Requires an amount distributed to an employee under this subchapter to be in addition to the rate of compensation that the district, other educational district, participating charter school, or regional education service center paid the employee in the preceding school year or that the district, school, or service center would have paid the employee in the preceding school year if the employee had been employed by the district, school, or service center in the same capacity in the preceding school year.

SECTION 8. Amends Section 821.003, Government Code, to provide that TRS is a public entity, rather than an agency of the state.

SECTION 9. Amends Section 822.201(c), Government Code, to provide that any amount received by an employee under Subchapter D, Chapter 22, Education Code, former Article 3.50-8, Insurance Code, former Chapter 1580, Insurance Code, or Rider 9, page III-39, Chapter 1330, Acts of the 78th Legislature, Regular Session, 2003 (General Appropriations Act), is excluded from salary and wages.

SECTION 10. Amends Section 823.006, Government Code, as follows:

Sec. 823.006. New heading: LIMITS ON ANNUAL CONTRIBUTIONS FOR PURCHASE OF SERVICE CREDIT. Authorizes TRS, notwithstanding any other

provision of this subtitle, to limit the purchase of service credit to the extent required by applicable limits on the amount of annual contributions a participant may make to a qualified plan under Sections 401(a) and 415(c), Internal Revenue Code of 1986. Deletes existing definitions of "nonqualified service" and "permissive service credit." Deletes existing text relating to the purchase of permissive service credit.

SECTION 11. Amends Section 823.401(d), Government Code, to authorize a member to establish credit under this section by depositing with TRS for each year of service credit the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit under this section, based on rates and tables recommended by the TRS's actuary and adopted by the board of trustees of TRS (board of trustees). Deletes existing text relating to the computation of a member's contribution to TRS.

SECTION 12. Amends Section 824.503(d), Government Code, to provide that a benefit under Subsection (c) (relating to the death of a retiree's designated beneficiary) is payable to the person or persons designated as the beneficiary of the beneficiary and, if such person has not been designated or does not survive, then to the persons entitled to distribution of the deceased beneficiary's estate.

SECTION 13. Amends Section 825.101, Government Code, to provide that, notwithstanding any other law, the board of trustees has exclusive control over all assets held in trust by TRS and all operations funded by trust assets. Requires the board of trustees to administer TRS for the sole and exclusive benefit of the members and participants.

SECTION 14. Amends Section 825.103, Government Code, by adding Subsections (c), (d), and (e), as follows:

(c) Provides that Chapter 412 (State Office of Risk Management), Labor Code, does not apply to TRS. Authorizes the board of trustees to acquire services described by that chapter in any manner or amount the board considers reasonable. Requires the State Office of Risk Management to provide services for TRS as requested by TRS, and authorizes TRS to use the services of the State Office of Risk Management to obtain insurance and perform risk management and workers' compensation claim services. Requires the State Office of Risk Management to pay to TRS any amounts collected on behalf of TRS through subrogation of claims, regardless of the budget biennium in which the office receives the amounts. Requires the State Office of Risk Management to pay these amounts directly to TRS instead of to the general revenue fund.

(d) Provides that, notwithstanding any other law, TRS has exclusive authority over the purchase of goods and services using money other than money appropriated from the general revenue fund, including specifically money from trusts under the administration of TRS. Provides that Subtitle D (State Purchasing and General Services), Title 10, Government Code, does not apply to TRS with respect to that money. Requires TRS to acquire goods or services by procurement methods approved by the board of trustees or the board's designee. Provides that, for purposes of this subsection, goods and services include all professional and consulting services and utilities as well as supplies, materials, equipment, skilled or unskilled labor, and insurance. Requires the Texas Building and Procurement Commission to procure goods or services for TRS at the request of TRS, and authorizes TRS to use the services of that commission in procuring goods or services.

(e) Provides that Chapters 2054 (Information Resources) and 2055 (Electronic Government Program Management) do not apply to TRS. Requires the board of trustees to control all aspects of information technology and associated resources relating to TRS, including computer and data management operations, procurement of hardware, software, and middleware, location, operation, and replacement of computers and systems, data processing, security, and disaster recovery. Requires the Department of Information Resources to assist TRS at the request of TRS, and authorizes TRS to use the services of that department in procuring goods and services.

SECTION 15. Amends Section 825.112, Government Code, as follows:

Sec. 825.112. New heading: INSURANCE. Authorizes the board of trustees, notwithstanding any other law, to self-insure or purchase any insurance, rather than liability insurance, including fiduciary and liability coverage for trust assets or for the trustees, employees, and agents of the board of trustees, in amounts the board of trustees considers reasonable and prudent. Deletes existing text relating to intentional fraud of a policy of insurance purchased under this section.

SECTION 16. Amends Section 825.208, Government Code, as follows:

Sec. 825.208. COMPENSATION OF EMPLOYEES; PAYMENT OF EXPENSES. (a) Requires the board of trustees, notwithstanding any other law, to approve the rate of compensation of all persons it employs and the amounts necessary for other expenses for operation of the retirement system. Prohibits the rates and amounts from exceeding those paid for similar services for the state if expenditures are paid from money appropriated from the general revenue fund rather than from trust funds.

(b) Provides that TRS is exempt from Chapter 660 (Travel Expenses) and Subchapter K (Promotions, Reclassifications, and Other Adjustments to Salary), Chapter 659, to the extent the board of trustees determines an exemption is necessary for the performance of fiduciary duties.

(c) Authorizes the board of trustees to compensate employees of TRS, whether subject to or exempt from the overtime provisions of the Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), at the rate equal to the employees' regular rate of pay for work performed on a legal holiday or for other compensatory time accrued, when taking compensatory time off would be disruptive to TRS's normal business functions.

SECTION 17. Amends Section 825.308, Government Code, to include employer contributions under Section 825.4092 amongst the amounts TRS is required to deposit in the state contribution account.

SECTION 18. Amends Section 825.403, Government Code, by adding Subsections (k) and (l), as follows:

(k) Requires reporting entities and the commissioner to inform TRS of changes in status of a school district or charter school that affect the reporting responsibilities of the entity.

(l) Requires the commissioner to notify TRS in writing of changes in charter and funding status of certain open-enrollment charter schools.

SECTION 19. Amends Subchapter E, Chapter 825, Government Code, by adding Section 825.4092, as follows:

Sec. 825.4092. EMPLOYER CONTRIBUTIONS FOR EMPLOYED RETIREES. (a) Provides that this section applies to an employer who employs a retiree.

(b) Requires the employer, during each payroll period in which a retiree is employed, to contribute a certain amount based on the retiree's salary to TRS for each retiree.

(c) Prohibits the employer from deducting any part of the amount required to be paid under Subsection (b) from the compensation of the employed retiree.

(d) Requires the employer, each payroll period, for each retiree who is enrolled in the Texas Public School Employees Group Benefits Program under Chapter 1575 (Texas Public School Employees Group Benefits Program), Insurance Code, to contribute to the trust fund established under that chapter any difference between the contribution amount the retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program, as

determined by TRS. Requires the amount of the required contribution to be prorated among the employers if the retiree is employed by more than one employer during a month.

(e) Provides that contributions under this section are subject to the requirements of Section 825.408 (Interest in Contributions and Fees; Deposits in Trust).

SECTION 20. Amends Sections 825.410(a) and (h), Government Code, as follows:

(a) Authorizes payments to establish special service credit as authorized under this subtitle, other than service credit that is authorized to only be determined and paid for at the time of retirement such as unused leave as authorized by Section 823.403, to be made in a lump sum by a monthly payroll deduction of a certain amount. Deletes existing text relating to payments to establish special service credit as authorized by certain sections.

(h) Makes a conforming change.

SECTION 21. Amends Section 825.506, Government Code, by adding Subsection (c), to provide that it is intended that TRS administer the benefit plan in a manner that satisfies the required minimum distribution provisions of Section 401(a)(9), Internal Revenue Code of 1986. Authorizes the board of trustees to adopt rules to administer the distribution requirements, including distribution when a participant dies before the entire interest is distributed.

SECTION 22. Amends Section 825.507(b), Government Code, to include a local criminal law enforcement agency that requests a record for a law enforcement purpose amongst the entities to whom TRS is authorized to release records of a participant. Makes nonsubstantive changes.

SECTION 23. Amends the heading to Section 825.512, Government Code, to read as follows:

Sec. 825.512. INVESTMENT PRACTICES AND PERFORMANCE REPORTS.

SECTION 24. Amends Section 825.512(e), Government Code, to delete the requirement that TRS's annual investment performance report be in a form recommended by the evaluating firm.

SECTION 25. Amends Subchapter F, Chapter 825, Government Code, by adding Sections 825.519 and 825.520, as follows:

Sec. 825.519. ELECTRONIC INFORMATION. Authorizes TRS to provide confidential information electronically to members or other participants or employers and receive information electronically from those persons, including by use of an electronic signature or certification in a form acceptable to TRS. Provides that an unintentional disclosure to, or unauthorized access by, a third party related to the transmission or receipt of information under this section is not a violation by TRS of any law, including a rule relating to the protection of confidential information.

Sec. 825.520. IMMUNITY FROM LIABILITY. Provides that the trustees, executive director, and employees of TRS are not liable for any action taken or omission made or suffered by them in good faith in the performance of any duty in connection with any program or system administered by TRS.

SECTION 26. Amends Section 1575.004, Insurance Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Redefines "retiree."

(d) Authorizes an individual who qualifies as a retiree under Subsection (a)(1)(B) only at the time of retirement, but does not enroll in the group program at that time, or who ceases participation in the group program before qualifying as a retiree under another provision of this section, to choose on qualifying as a retiree under another provision of this section to participate in the group program. Requires an election under this subsection to be made in accordance with rules adopted by TRS.

(e) Sets forth guidelines for determining if a person meets the requirements for eligibility that existed on August 31, 2004.

SECTION 27. Amends Section 1575.052(b), Insurance Code, to make no substantive changes.

SECTION 28. Amends Section 1575.204, Insurance Code, as follows:

Sec. 1575.204. PUBLIC SCHOOL CONTRIBUTION. (a) Creates subsection from existing text.

(b) Requires each public school that employs a retiree who is enrolled in the group program, each state fiscal year, to contribute to the fund the difference, if any, between the contribution amount that the retiree is required to pay for the retiree and any enrolled dependents to participate in the group program and the full cost of the retiree's and enrolled dependents' participation in the group program, as determined by TRS.

SECTION 29. Amends Section 1575.211(c), Insurance Code, to provide that a retiree who is eligible to participate under Section 1575.004(a)(1)(B) (Definition of a Retiree) only and who elects to participate is, except as provided by this subsection, required to pay during the period of participation the total cost, as determined by TRS, attributable to the participation of that individual and the dependents of that individual until the individual is otherwise eligible.

SECTION 30. Amends Section 1579.253(b), Insurance Code, to make a conforming change.

SECTION 31. Amends Section 1575.303, Insurance Code, by adding Subsection (c), to provide that the retired school employees group insurance fund is held in trust for the benefit of participants of the program and is prohibited from being diverted.

SECTION 32. Amends Subchapter A, Chapter 1579, Insurance Code, by adding Sections 1579.005-1579.007, as follows:

Sec. 1579.005. CONFIDENTIALITY. (a) Provides that Section 825.507 (Record Confidentiality), Government Code, applies to records relating to an employee or dependent under the program and in the custody of TRS or in the custody of an administrator, carrier, agent, attorney, consultant, or governmental body acting in cooperation with or on behalf of TRS.

(b) Authorizes TRS to disclose to a health coverage or benefit provider information in the records of an individual that the system determines is necessary to administer the program.

Sec. 1579.006. EXEMPTION FROM PROCESS. (a) Sets forth certain rights, benefits, and payments that are exempt from execution, attachment, garnishment or any other process.

(b) Prohibits the items listed in Subsection (a) from being assigned except for direct payment to benefit providers as authorized by the trustee by contract, rule, or otherwise.

Sec. 1579.007. EXEMPTION FROM STATE TAXES AND FEES. Provides that a premium or contribution on a policy, insurance contract, or agreement authorized by this chapter is not subject to any state tax, regulatory fee, or surcharge, including a premium or maintenance tax or fee.

SECTION 33. Amends Section 1579.052, Insurance Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Makes conforming changes.

(e) Requires TRS to take the actions it considers necessary to devise, implement, and administer the uniform group coverage program.

SECTION 34. Amends Section 1579.102, Insurance Code, to require the coverage provided under the catastrophic care coverage plan to be prescribed by TRS by rule and provide coverage at least as extensive as the coverage provided under the TRS-Care 1, rather than TRS-Care 2, plan operated under Chapter 1575.

SECTION 35. Amends Subchapter F, Chapter 1579, Insurance Code, by adding Sections 1579.254 and 1579.255, as follows:

Sec. 1579.254. CONTRIBUTIONS HELD IN TRUST FOR FUND. Requires a participating entity to hold contributions required by this subchapter in trust for the Texas school employees uniform group coverage trust fund and its participants. Prohibits a participating entity from diverting the contributions for any other purpose.

SECTION 1579.255. INTEREST ASSESSED ON LATE PAYMENT OF CONTRIBUTIONS BY PARTICIPATING ENTITIES. (a) Requires a participating entity that does not remit to TRS all contributions required by this subchapter before the seventh day after the last day of the month to pay to the Texas school employees uniform group coverage trust fund the contributions and interest on the unpaid amounts at the annual rate of six percent compounded monthly.

(b) Authorizes TRS, on request, to grant a waiver of the deadline imposed by this section based on a participating entity's financial or technological resources.

SECTION 36. Amends Section 1581.702, Insurance Code, to make a conforming change.

SECTION 37. Repealer:

(1) Sections 22.004(d) and (e) (relating to reports and comparisons regarding group health benefits for school employees), Education Code;

(2) Section 823.401(i) (relating to contributions for out-of-state service), Government Code;

(3) Section 824.202(c) (relating to determining eligibility for service retirement), Government Code;

(4) Chapters 1577 (Required Availability of Insurance for School District Employees and Retirees) and 1580 (Active Employee Health Coverage or Compensation Supplementation), Insurance Code;

(5) Section 57 (relating to certain state funds appropriated for each school district by TRS), Chapter 201, Acts of the 78th Legislature, Regular Session, 2003;

(6) Chapter 313 (relating to a health reimbursement arrangement program for active school employees), Acts of the 78th Legislature, Regular Session, 2003; and

(7) Section 1.01 (relating to certain state funds appropriated for each school district by TRS), Chapter 366, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 38. Transfers the functions and duties of TRS with respect to the compensation supplementation program established under Chapter 1580, Insurance Code, and other applicable law, and any appropriation relating to that program to TEA. Provides that a reference in law to TRS with respect to the compensation supplementation program means TEA.

SECTION 39. Requires a member of TRS entering into an agreement with TRS for the purchase in installments of out-of-state service credit, after September 1, 2005, to pay the actuarial present value, at the time of deposit, of the additional benefits. Provides that, unless terminated before

all payments are made, an agreement existing as of September 1, 2005, between an individual and TRS for the purchase in installments of out-of-state service credit, is unaffected by this Act.

SECTION 40. Makes application of the changes in law made by the repeal of Section 824.202(c), Government Code, prospective.

SECTION 41. Provides that the changes in law made by this Act to the laws that affect employer contributions apply to any retiree of TRS employed by an employer as defined by Section 821.001, Government Code, during any month after the effective date of this Act.

SECTION 42. Requires an individual who retired after August 31, 2004, and before September 1, 2005, and qualified as a retiree under Section 1575.004(a)(1)(B), Insurance Code, whether or not the retiree enrolled in the group program at that time, or ceased to participate in the group program before qualifying as a retiree under another provision of Section 1575.004, Insurance Code, as of September 1, 2005, to be eligible under Section 1575.004(a)(1)(D), Insurance Code, as amended by this Act, if the individual satisfies the requirements of that paragraph as amended by this Act.

SECTION 43. Effective date: September 1, 2005.