

BILL ANALYSIS

C.S.S.B. 522
By: Armbrister
Pensions & Investments
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Statewide Emergency Services Pension System is a voluntary, statewide retirement system that administers service retirement, disability retirement, and death benefits for volunteers and auxiliary personnel of emergency services departments, including volunteer fire departments and emergency medical services personnel. Currently, there are 176 participating departments serving more than 7,000 members, retirees, and their beneficiaries. The system has experienced significant funding problems as a result of the downturn in the stock market and the failure of the state to pay a portion of the contributions required by statute. The state board of trustees has almost no flexibility to adjust benefits or eligibility for benefits to address the underfunding.

As substituted, CSSB522 restates the law governing the pension system to modernize language, codify the statute in the Government Code, and give the state board the authority to make necessary adjustments to make the system actuarially sound.

RULEMAKING AUTHORITY

Rulemaking authority is delegated to the Texas Emergency Services Retirement System state board in added Government Code Sections 861.006, 862.004, 863.004, 864.001(a) and (b), 864.002(a) and (b), 864.004(c) and (d), 864.005(c), 864.006(b), 864.007, 864.013, 864.014, 864.015, 865.006(b), 865.014(b), (c), and (d), 865.016(c), and 865.017(a).

ANALYSIS

SECTION 1. Adds Subtitle H to Title 8 of the Government Code to restate the law governing the pension system.

Sec. 861.001 provides definitions. The substantive changes are in (1) defining an actuarially sound pension system for the purpose of describing this pension system; (5) adding support services to the definition of emergency services; (6) naming the Texas emergency services retirement fund; and (10) adding other kinds of training besides drills to the definition of qualified service, eliminating the requirement that a department have at least 10 active members, and changing the annual participation requirement in training to receive qualified service. Definitions are removed from the current law if they are not used in the substance of the revised law.

Secs. 861.002 – 861.004 add traditional provisions relating to powers and duties routinely granted to retirement systems and provide that assets are exempt from garnishment and taxation and other process and are unassignable.

Sec. 861.005 prohibits diversion of assets for other purposes.

Sec. 861.006 authorizes the state board to conform to qualification requirements of the Internal Revenue Code and authorizes the board to make tax-free transfers from the pension system for departing members.

Sec. 861.007 provides that any forfeiture may not be used to increase any other member's benefits.

Sec. 862.001 authorizes departments that perform emergency services to elect to participate in the pension system and authorizes revocation of participation within five years of joining, except for departments that begin participation after September 1, 2005.

Sec. 862.002 provides that each person who performs emergency service for a participating department is a member of the pension system, with certain exceptions for underage volunteers, probationary service, lack of certification of physical fitness, or retirement.

Sec. 862.003 is the procedure for determination of physical fitness or assignment to support duties.

Sec. 862.004 authorizes the state board to adopt rules for the holding of elections to participate or for the merger of existing pension plans into the system.

Sec. 863.001 provides that a member receives credit for each month of qualified service for which the system receives the required contributions.

Sec. 863.002 requires the pension system to grant credit for military services in accordance with federal law.

Sec. 863.003 provides that a member who leaves service except by retirement and later resumes service in the pension system may transfer previously accrued credit.

Sec. 863.004 authorizes the state board to grant credit for service performed for a participating department before participation began, the costs of which are determined on a basis that maintains the pension as actuarially sound.

Sec. 864.001 authorizes the state board to determine the service and any age required to receive a service retirement annuity, authorizes the state board to change the benefit formula for persons who have not retired, and deletes a specification that vested benefits cannot be forfeited.

Sec. 864.002 authorizes the state board to determine the multiplier or other formula to be used in computing a service retirement annuity, based on average monthly contributions.

Sec. 864.003 authorizes a member who performs service for more than one department to receive an annuity from each department, but if the member dies, the member's beneficiary must choose between an on-duty and off-duty death benefit.

Sec. 864.004 provides disability retirement benefits and is current law, except that a person temporarily disabled must be certified as permanently disabled within two years.

Sec. 864.005 requires medical reports and authorizes financial reports for disability retirees and provides for cessation of benefits in certain circumstances.

Sec. 864.006 provides an annuity and a lump-sum death benefit for the survivors of a member who dies while performing emergency service duties.

Sec. 864.007 authorizes the state board to provide the beneficiary of a deceased member whose death did not result from the performance of emergency service duties a lump-sum benefit.

Sec. 864.008 provides a death benefit annuity for the surviving spouses of certain members who die before retirement.

Sec. 864.009 provides a death benefit annuity for the surviving spouses of persons who die after retirement.

Sec. 864.010 directs the commissioner and governing bodies to continue to administer benefits for former employees of departments that are no longer participating in the pension system or have ceased to exist.

Sec. 864.011 provides that the cashing or depositing of the first annuity payment is conclusive evidence of the amount of the annuity and that the payee is retired.

Sec. 864.012 provides for multiple beneficiaries for lump-sum death benefits and provides for common law in cases in which there has been no disposition by will.

Sec. 864.013 authorizes the state board to provide a cost-of-living increase and to increase contributions, if necessary .

Sec. 864.014 a uthorizes the state board to make lump-sum payments instead of paying annuities if cost-efficient or necessary for actuarial soundness.

Sec. 864.015 authorizes the state board to maintain the benefit design in effect on August 31, 2005, even if it is not actuarially sound.

Sec. 864.016 provides hearing and appeal procedures for claims at the local and state level and prohibits a decision of the state board from being appealed to a court.

Sec. 865.001 states the composition and terms of office of the state board, authorizes the governor to appoint the three members of the state board required to have specific expertise without consulting the state firemen's and fire marshal's association, and authorizes the governor to request new lists from the association for the other board members.

Sec. 865.002 prohibits certain persons from becoming members of the state board or acting as general counsel to the state board.

Sec. 865.003 provides that state board trustees receive no compensation but may be paid for actual and necessary expenses.

Sec. 865.004 provides that a vote by a majority of the state board trustees present at a meeting is necessary for a decision but requires a concurrence by a majority of the board membership for specified major changes in plan design..

Sec. 865.005 provides grounds for removal of state board trustees.

Sec. 865.006 authorizes the state board to acquire necessary services and adopt necessary rules, including rules to prorate service requirements for a member who performs service for less than a calendar year and rules to determine the computation of qualified service.

Sec. 865.007 authorizes the state board to administer all assets of the pension system and accept gifts.

Sec. 865.008 authorizes the state board to invest assets of the pension system under the constitutional prudent person standard and provides that a single investment does not determine prudence.

Sec. 865.009 creates the pension system trust fund with the comptroller.

Sec. 865.010 provides general duties of the commissioner, including oversight of benefits and revenues and action to recover benefits fraudulently acquired.

Sec. 865.011 authorizes the commissioner to examine and require records of local boards and requires an annual report on the status of the fund to the legislature.

Sec. 865.012 provides for the composition, powers, and duties of local boards and provides that local board trustees do not receive compensation but may be reimbursed by participating departments for actual and necessary expenses.

Sec. 865.013 provides that a local board monitors the timely submission of contributions to the commissioner.

Sec. 865.014 requires monthly contributions on behalf of participating departments at a minimum and perhaps maximum rate determined by the state board and authorizes the state board to require monthly contributions for administrative expenses from political subdivisions not participating in the pension system but having members or retirees of the system.

Sec. 865.015 directs the state to contribute up to one-third of the aggregate annual contributions by participating departments, but eliminates the presumption that maximum state statutory contributions make the pension system actuarially sound.

Sec. 865.016 provides an administrative penalty for failure of a local board to timely file a required report.

Sec. 865.017 provides for benefit payment interruptions in cases of lack of cooperation in providing information or required reports.

Sec. 865.018 requires the biennial certification of the actuarial and financial soundness of the fund.

Sec. 865.019 provides for confidentiality of information about members, retirees, and beneficiaries in the same manner and to the same extent as other public retirement systems.

SECTION 2. Repeals Article 6243e.3, Vernon's Texas Civil Statutes.

SECTION 3. Provides an effective date of September 1, 2005.

EFFECTIVE DATE

Provides an effective date of September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute amends added Sec. 864.001, Government Code, to authorize the state board to change the benefit formula for persons who have not retired and deletes a specification that vested benefits cannot be forfeited.

The substitute adds new Sec. 864.015, Government Code, to authorize the board to maintain the benefit design in effect on August 31, 2005, even if it is not actuarially sound. The substitute also renumbers added Sec. 864.015, Government Code, in the engrossed version as Sec. 864.016.

The substitute amends added Sec. 865.001, Government Code, to authorize the governor to appoint the three members of the state board of trustees required to have specific expertise without consulting the state firemen's and fire marshal's association and to authorize the governor to request new lists from the association for the other board members.

The substitute amends added Sec. 865.014, Government Code, to authorize the state board to set a maximum local contribution rate as well as a minimum one.

The substitute amends added Sec. 865.015, Government Code, to eliminate the presumption that payment of maximum required statutory state contributions makes the pension fund actuarially sound.

The substitute does not remove any provisions of SB 522, as engrossed, except as described above.

RULEMAKING AUTHORITY IN SUBSTITUTE

The substitute does not remove any rulemaking authority in SB 522, as engrossed, and adds additional rulemaking authority in Sections 864.001(b) and 864.015 as described above.