

BILL ANALYSIS

C.S.H.B. 155

By: Pickett

Pensions & Investments

Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law there is a three year limit on reimbursement sought from recipients of public retirement systems and firefighter and police officer pension funds paying a retiree over or under the amount due them. Currently, some pension retirement systems, upon discovery of an error in payments made by their pension system, are not immediately sending out notice to the retiree of their error. This bill requires on discovery of an error made by a pension system in payment the system must send notice as soon as practicable to the retiree of their error. It also provides a procedure and time frame for instituting a correction.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

This bill amends the Government Code by requiring a public retirement system, upon discovery of an over payment or underpayment of retirement benefits to a payee, to give written notice of the error as soon as practicable, but not later than the 90th day after the date of discovery, to the person receiving the incorrect amount of money. The bill states that the notice must include the amount of the correction in overpayment or underpayment, how the amount of the correction was calculated, a brief explanation of the reason for the correction, a statement that the notice recipient may file a written complaint with the system if the recipient does not agree with the correction, instructions for filing a written complaint, and a payment plan option if no future payments are due.

The bill provides procedures for modifying payments to correct an over or under payment and a complaint process for those aggrieved by the correction. The public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits not later than the 90th day after the date the notice is mailed by certified mail if the system receives receipt confirmation on or before that date. If the system does not receive receipt confirmation on or before that date the system shall mail the notice a second time. The public retirement system may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the prescribed time.

If a notice recipient chooses, they may file a written complaint with the retirement system not later than the 20th day after receiving notice. The recipient shall include any available supporting documentation with the complaint. Not later than the 30th day after the date of receiving a complaint from the recipient, the retirement system shall respond in writing to the complaint by confirming the amount of the proposed correction or, if the retirement system determines the amount of the proposed correction is incorrect, by modifying the amount of the correction. If the retirement system modifies the amount of the correction, the response must include how the modified correction was calculated, a brief explanation of the reason for the modification, and a payment plan option if no future payments are due. The retirement system may not adjust future payments or recover any overpayment until the 20th day after the response to the complaint is received by the notice recipient if the notice recipient does not file an administrative appeal by that date or the date a final decision by the retirement system is issued, if the recipient files an administrative appeal before the 20th day after the date the notice recipient receives the response from the system. A person whose complaint is not resolved must exhaust all administrative procedures provided by the retirement system. A person aggrieved by the final administrative decision may appeal the decision to an appropriate district court not later than the 30th day after

the date a final administrative decision is issued by the retirement system. This Bill will not apply to a correction, adjustment, or recovery of an overpayment that commenced before the effective date of this act or an overpayment that was resolved by an agreement made before the effective date of this act.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 155 provides that a retirement system shall provide notice "as soon as practicable", whereas the original required the system to provide notice "immediately."

C.S.H.B. 155 changes the original by removing "governing body of the" from references to a retirement system.

C.S.H.B. 155 changes "may not correct" to "may not recover" in Section 1(b)(3).

The original bill stated that the governing body of the public retirement system shall adjust future payments or, if no future payments are due, recover an overpayment of benefits not later than the 90th day after the date the notice is delivered by certified mail, return receipt requested.

C.S.H.B. 155 states that the public retirement system shall begin to adjust future payments or, if no future payments are due, institute recovery of an overpayment of benefits not later than the 90th day after the date the notice is mailed by certified mail if the system receives receipt confirmation on or before that date. If the system does not receive receipt confirmation on or before that date, the system shall mail the notice a second time. The public retirement system may not recover an overpayment if the system did not adjust future payments or, if no future payments are due, institute recovery of the overpayment within the prescribed time.

The substitute allows a retirement system 30 days to respond to a complaint, whereas the original bill allowed 10 days to respond.

The substitute adds language stating that a retirement system may not adjust future payments or recover overpayments until the 20th day after the date the notice recipient receives the response, if the recipient does not file an administrative appeal by that date. Also, the retirement system may not adjust future payments or recover overpayment until the date a final decision by the retirement system is issued, if the recipient files an administrative appeal described in Subdivision (1) of the bill.

The substitute provides a 30 day time limit for an appeal of the administrative decision to district court. The substitute states that the procedures will not apply to a correction, adjustment, or recovery of an overpayment that commenced before the effective date of this act or an overpayment that was resolved by an agreement made before the effective date of this act.