

BILL ANALYSIS

C.S.H.B. 407
By: Kuempel
Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas County and District Retirement System (TCDRS) is a voluntary, statewide retirement system that administers service retirement, disability retirement, and death benefits for employees and officers of counties and other political subdivisions, excluding cities and school districts. Each participating subdivision separately funds its benefits, with both employers and employees making contributions to TCDRS. The system receives no state funding.

C.S.H.B. 407 makes improvements to the administrative and operational side of the system and codifies current processes. In addition, the bill addresses benefit design, implementation of technology changes, online services, greater clarity, and an understanding of the TCDRS Act. The bill is designed to allow for more efficient planning and operating administration.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the board of trustees of the Texas County and District Retirement System in SECTIONS 1, 2, 3, 4, 12, 13, 15, 16, 17, 26, 32, and 34 of this bill.

It is the committee's opinion that rulemaking authority previously granted to Texas County and District Retirement System is transferred to the board of trustees of the Texas County and District Retirement System in SECTION 17 of this bill.

ANALYSIS

C.S.H.B. 407 amends the Government Code to redefine "actuarial equivalent" to include an alternative mortality table adopted by the Texas County and District Retirement System (TCDRS) board of trustees, on recommendation of the retirement system's actuary, as a basis in determining whether a benefit has the same present value as the benefit it replaces. The bill defines "accrued benefit" as the sum of a member's accumulated contributions and service credit calculated as of a specified date. The bill redefines "compensation" to clarify that compensation is the sum of payments made to an employee for performing personal services as certified by a participating subdivision, including nonmonetary compensation, on which employee contributions are based; to cap compensation at the existing limit or a lesser amount established by board rule; and to include in the term amounts by which payment for earnings is reduced because of employer pick-up of employee contributions to the retirement system, deferral of compensation under benefit plans or tax-sheltered annuity programs, the costs of benefits furnished under qualified cafeteria plans, and deductions for Federal Insurance Contribution Act taxes, federal income taxes, or other employee obligations. The bill makes a nonsubstantive change in the definition of "subdivision."

C.S.H.B. 407 authorizes the TCDRS board of trustees, by rule, to authorize the retirement system, in accordance with a retiree's voluntary election, to deduct qualified health insurance premiums from the retirement annuity otherwise distributable to a retiree who is an eligible public safety officer or who meets any expanded eligibility provision for a similar tax exemption

under subsequent federal legislation and to pay the deducted amount directly to the health plan provider, subject to the requirements of the Internal Revenue Code of 1986, or other applicable federal law, and the rules adopted by the board.

C.S.H.B. 407 requires the retirement system, on receiving a qualified domestic relations order incident to a divorce that awards a portion of a member's accrued benefit to a member's former spouse and that strictly follows the terms and format of the model qualified domestic relations order and any other requirements adopted by the board of trustees, to divide an accrued benefit into two separate benefits that, in combination at the time of division, are actuarially equivalent to the undivided accrued benefit. The bill establishes that, following a division, the portion of the accrued benefit awarded the alternate payee is considered the alternate payee's sole and separate property in which the member has no interest. The bill requires the board of trustees by rule to define and specify the rights and responsibilities of the alternate payee and the terms and features of the benefit awarded the alternate payee under the order. The bill prohibits the alternate payee from vesting in the accrued benefit before the member vests or to attain greater rights than are attained by the member or the member's beneficiary. The bill authorizes the board of trustees by rule to prescribe terms on which the interest awarded the alternate payee under a qualified domestic relations order may be transferred at the alternate payee's death. The bill grants the board of trustees sole authority and discretion to specify the terms and format that are required for a qualified domestic relations order incident to a divorce to be acceptable for the division of an accrued benefit; require strict compliance for qualification; to specify the dates on which a distribution to an alternate payee may or must begin; and to establish rules for the administration of the division of benefits after the divorce of a member. The bill makes the provisions relating to the division of benefits upon divorce of a member applicable to all domestic relations orders that the retirement system first determines to be qualified on or after September 1, 2009, and to those domestic relations orders determined to be qualified before September 1, 2009, that the system further determines can be construed to allow a division of a member's accrued benefits without harm or injury to the member's interest awarded under the original qualified order. The bill prohibits the actuarial equivalent value of the accrued benefit payable to an alternate payee from exceeding the actuarial equivalent value of the accrued benefit as if there had been no division and the accrued benefit had been payable to the member in the form of an annuity.

C.S.H.B. 407 removes a provision prohibiting credited service attributable to service with a subdivision that has been canceled because of a withdrawal from being used to determine eligibility for a later retirement unless it is reestablished. The bill provides for a direct trustee-to-trustee transfer of a non-periodic distribution if a person eligible to receive such non-periodic distribution elects to have all or a portion of the distribution paid directly to an eligible retirement plan in the same manner as direct trustee-to-trustee transfers of withdrawals of accumulated contributions are allowed. The bill requires the board of trustees to adopt rules to administer the provisions relating to the withdrawal of accumulated contributions as necessary to maintain the retirement system as a qualified plan under provisions of the Internal Revenue Code of 1986. The bill authorizes the rules to include the adoption of definitions and limitations relating to distributions, eligible recipients, and eligible retirement plans.

C.S.H.B. 407 specifies that a person who has withdrawn the person's accumulated contributions resumes membership in the retirement system without repayment of the amount distributed if the person becomes an employee of any participating subdivision in the same way that a person who has retired with a service retirement annuity and a break in service of at least one month resumes membership with cancellation of that annuity in a similar circumstance. The bill establishes that a person who resumes employment with the same subdivision from which the person was previously employed with a break in service of less than one month is considered not to have been eligible for a withdrawal and not to have retired with respect to that subdivision. The bill requires the person returning to work for the same subdivision to return any amounts distributed.

C.S.H.B. 407 prohibits a member from being credited in the retirement system with more than one month of credited service for a specific calendar month, regardless of the number of employers of the member, the positions held, or the types of service.

C.S.H.B. 407 removes accumulated interest from the composition of service credit.

C.S.H.B. 407 specifies that the governing body of a participating subdivision by order may authorize the establishment of credited service and prior service credit in the retirement system for service performed in a public hospital, utility, or other public facility or governmental function during a time the facility was operated or function was performed by a unit of government other than the subdivision and before the date that the public hospital, utility, or other public facility or governmental function was taken over by the subdivision, regardless of the effective date of the subdivisions participation in the retirement system by removing provisions that made the period of service performed in a public hospital, utility, or other public facility, or governmental function that could be established as credited service and prior service credit contingent on the effective date of the subdivision's participation in the retirement system. The bill removes a provision authorizing a governing body to limit, by order, the allocated prior services credit percentage to zero or to any percentage that is a multiple of five percent.

C.S.H.B. 407 removes a provision requiring the retirement system to credit a member with one month of current service for each month for which the required contributions are made, reported, and certified by the employing subdivision, and it provides that current service is service performed and credited as provided by law and in accordance with board of trustees rule.

C.S.H.B. 407 authorizes an eligible member to establish credited service in the retirement system for qualified active duty military service that is not otherwise creditable in accordance with the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the Internal Revenue Code. The bill establishes that a member eligible to establish credited service for non-USERRA active duty military service is one who is vested, based on credited service only in this system and without regard to non-USERRA military service that may be established in the retirement system, in a service retirement annuity that may begin at the age of 60. The bill limits the amount of credited service under this provision that an eligible member is authorized to establish to not more than five years. The bill authorizes the board of trustees to adopt rules for the administration of crediting service for qualified military service, including rules that modify the terms of this bill for the purpose of compliance with the provisions of USERRA.

C.S.H.B. 407 clarifies the prohibition against double crediting of service by removing a provision prohibiting credited service from being established for any month of service that is credited under another provision, retirement system, or program and instead permits only one month of credited service to be established in the retirement system for any calendar month for all service that is creditable under the retirement system.

C.S.H.B. 407 authorizes the board of trustees, by rule, to authorize the retirement system, on application by a member and for the sole purpose of determining eligibility for retirement from the system, to recognize service performed under another system participating in the proportionate retirement program that would have been recognized by the system if the service had not been canceled by a withdrawal of contributions.

C.S.H.B. 407 prohibits the effective date of a member's disability retirement from preceding the later of the date the member became disabled or the date the member terminated employment with all participating subdivisions, rather than the termination date. The bill authorizes the board of trustees, by rule, to authorize a retiring member to designate an effective service or disability retirement date that is not more than six months before the date the retirement system receives the retirement application. The bill prohibits such a rule from suspending another requirement provided by provisions relating to a retirement's effective date.

C.S.H.B. 407 grants the board of trustees the sole authority and discretion to specify the terms and format that are required for a domestic relations order to be acceptable for purposes of changing a beneficiary or dividing benefits, to require strict compliance for qualification, and to define the terms and features of the benefit awarded an alternate payee under the order. The bill authorizes the board, rather than the retirement system to establish, by rule, requirements for forms, documentation, and procedures necessary or desirable for the administration of changing beneficiaries or dividing benefits. The bill authorizes the division of either a standard or an optional retirement annuity, rather than an annuity computed on the joint lives of the retiree and the designated beneficiary, in accordance with the terms of a model qualified domestic relations order adopted by board rule.

C.S.H.B. 407 removes a provision requiring all defined contribution plans of the employer and of entities required to be aggregated with the employer to be treated as one defined contribution plan for the purpose of determining whether a retiring member or retiree benefits exceed the statutory limit. The bill removes a provision prohibiting an employer from providing deferred benefits under a plan other than the retirement system under certain circumstances.

C.S.H.B. 407 removes the application deadline requiring an eligible member to file an application with the retirement system on or before the member's effective retirement date as a condition for receiving a retirement annuity for service or for disability retirement.

C.S.H.B. 407 includes any optional group term life benefit among the benefits that are payable on a member's death but that are prohibited from being paid to a person convicted of causing that death. The bill establishes that the retirement system is not liable for any benefit paid to a convicted person before the date the system receives actual notice of the conviction, and that any payment made before that date is a complete discharge of the system's obligations with regard to that benefit payment. The bill establishes that the convicted person holds all payments received in constructive trust for the rightful recipient. The bill requires the retirement system to pay in a lump sum, rather than in 60 monthly payments, the actuarial equivalent of the remainder of any annuity or payments that otherwise would have been payable to the convicted person to the person entitled to the benefit or to the decedent's estate, if an annuity is in pay status.

C.S.H.B. 407 requires a county that began participation in the retirement system before January 1, 1992, and has not adopted the provisions relating to an annually determined contribution rate plan to contribute to its account in the subdivision accumulation fund at the same rate of current service compensation as the employee contribution rate for the county. The bill requires the governing body of the county to adopt an order to reduce the amortization period to the maximum period established by the board if in any year the retirement system's actuary determines that the county's contributions to the subdivision accumulation fund will not finance the county's obligations to the fund within the closed or open amortization period recommended by the actuary and adopted by the board of trustees for all subdivisions. The bill requires the actuary to determine appropriate remedies for review and adoption by the county. The bill requires an order to first be approved by the board of trustees and to require a reduction in the employee contribution rate to a rate not less than four percent of current service compensation, additional employer contributions under a supplemental contribution rate, a reduction in the percentage for determining multiple matching credits in five percent increments for contributions made after the effective date of the reduction, or any combination of these actions. The bill establishes that an order takes effect on the first day of the calendar year that begins after the date the retirement system's actuary makes a determination. The bill sets the supplemental contribution rate at the rate of the county's contribution to its account in the subdivision accumulation fund, in addition to the required contributions, that the retirement system's actuary determines and certifies is required to amortize the county's obligations to the subdivision accumulation fund within the established amortization period. The bill prohibits a county that has not adopted the provisions relating to an annually determined contribution rate plan from adopting additional options and from increasing service credits or benefits otherwise allowable, except for an increase in the rate of employee contributions or an increase in the percentage of

multiple matching credits to a rate or percentage that does not exceed the rate or percentage in effect on January 1, 2010.

C.S.H.B. 407 makes the provisions relating to an annually determined contribution rate plan applicable to each subdivision that participates in the retirement system regardless of when it began participating by removing a provision that specified a start date after December 31, 1991, with the exception of a non-adopting county described above.

C.S.H.B. 407 requires a governing body of a subdivision to select a percentage for determining multiple matching credits of zero or a multiple of five percent up to a maximum of 150 percent, eliminating certain existing options and restrictions on the selection of such a percentage. The bill requires the subdivision to provide current service credits. The bill specifies that the governing body of a subdivision is authorized to adopt any benefit increase or additional benefit, option, right, or feature with the approval of the board of trustees rather than only those enumerated in existing statute.

C.S.H.B. 407 authorizes the board of trustees to initiate or commission an audit or investigation of activities, functions, or operations of the retirement system as the board determines appropriate, in addition to the required annual audit of the accounts of the retirement system. The bill establishes that audit working papers prepared, maintained, or assembled by the retirement system or an agent of the system are not a record of the board of trustees, and are confidential and excepted from disclosure as public information, but that an audit report, in its final form, is a record of the board and public information unless made confidential under another law. The bill establishes that a review or investigation initiated by the director on the director's own motion concerning internal processes and procedures of the retirement system for internal management purposes only is confidential and excepted from disclosure as public information. The bill defines "audit" and "audit working paper."

C.S.H.B. 407 removes references to the interest fund, renaming the fund as the income fund.

C.S.H.B. 407 replaces the annual allocation from the net investment income or loss for the year to the supplemental death benefits fund with an allocation to the optional group term life fund and requires the board of trustees, after making the specified allocations to the current service annuity fund, the optional group term life fund, the general reserves account of the endowment fund, and the employees savings fund, to allocate to the accounts of subdivisions participating in the system positive or negative amounts as determined by board rule prescribing the allocation methodology for the accounts, rather than allocating amounts derived by applying a positive or negative rate as determined by the board to the January 1 balance.

C.S.H.B. 407 authorizes the governing body of a participating subdivision, after timely notice to the board of trustees, to increase or reduce the rate of its member contributions effective with the first pay period beginning in the following calendar year rather than effective on the first day of any calendar year.

C.S.H.B. 407 authorizes the board of trustees to authorize a subdivision to remit to the retirement system contributions, deposits, and other payments on the basis of a period that is less than a month, including weekly, biweekly, or another semi-monthly period. The bill requires a subdivision authorized to remit amounts more frequently than monthly to make reports and filings and perform other actions accordingly and requires the retirement system to credit payments accordingly. The bill authorizes the board of trustees to make the authorization to remit payments on the basis of a period that is less than a month applicable by rule to all subdivisions similarly situated or by order applicable to designated subdivisions. The bill establishes that such a rule is amendable or revocable in the manner provided for adoption, amendment, or repeal of rules generally. The bill establishes that an order is revocable wholly or partly by subsequent board order. The bill requires the board to adopt rules, applicable to a subdivision electing or designated to remit payments more frequently than monthly, to alter the

periods required for submission of payments and reports, including the period when a late penalty begins to accrue or is deducted from a subdivision's account in the subdivision accumulation fund, in a manner consistent with the periods provided by the retirement system. The bill prohibits a participant from receiving less credited service, service credit, or benefits, due to an authorization to remit payments more frequently than monthly than the participant would have received on a monthly basis.

C.S.H.B. 407 makes the requirement for a non-adopting county to contribute to its account in the subdivision accumulation fund at the same rate of current service compensation as the employee contribution rate for the county applicable only to employer contributions to the TCDRS that become due on or after January 1, 2010, and obligates such county to make employer contributions to the TCDRS before that date at the rate that is in effect on August 31, 2009.

C.S.H.B. 407 repeals the following sections in the Government Code:

- Section 843.0031(a)
- Sections 843.502(d) and (e)
- Sections 844.605, 844.606, 844.607, 844.608, and 844.609
- Section 845.115(f)

C.S.H.B. 407 repeals Section 95, Chapter 873 (H.B. 1587), Acts of the 80th Legislature, Regular Session, 2007.

EFFECTIVE DATE

January 1, 2010, except for provisions relating to the subdivision of benefits on the divorce of a member, the provisions relating to plan funding by a non-adopting county, and the provisions relating to allocations of the net investment income and loss, which take effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 407 differs from the original by removing an exception in the original that authorized the board of trustees to adopt a rate of interest other than the specified annual interest rate of seven percent.

C.S.H.B. 407 differs from the original by requiring the board of trustees, after making the specified allocations to the current service annuity fund, the optional group term life fund, the general reserves account of the endowment fund, and the employees savings fund, to allocate to the accounts of subdivisions participating in the system positive or negative amounts as determined by board rule prescribing the allocation methodology for the accounts, rather than allocating amounts derived by applying a positive or negative rate as determined by the board to the January 1 balance under existing law as in the original.

C.S.H.B. 407 omits a provision in the original requiring the board of trustees, at times the board considers appropriate during any year and before determining the positive or negative allocations to the endowment fund and to the subdivision accounts in the subdivision, to consider all existing economic and financial circumstances and the probable income and stability of the trust and authorizing the board to adopt differing rates of interest to be credited to the retirement system's funds.

C.S.H.B. 407 differs from the original by making the requirement for a non-adopting county to contribute to its account in the subdivision accumulation fund at the same rate of current service compensation as the employee contribution rate for the county applicable only to employer

contributions to the TCDRS that become due on or after January 1, 2010, and obligating such county to make employer contributions to the TCDRS before that date at the rate that is in effect on August 31, 2009, whereas the original made no such requirement.