

## **BILL ANALYSIS**

H.B. 2559  
By: Truitt  
Pensions, Investments & Financial Services  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

The Employees Retirement System of Texas (ERS) was created by a constitutional amendment in 1947. ERS provides a service retirement program, administers the Texas Employees Group Benefits Program, provides a 401(k) and 457 deferred compensation program, and provides a cafeteria plan pursuant to Section 125 of the Internal Revenue Code. ERS also serves as the state's social security administrator.

H.B. 2559 clarifies a number of ERS issues within the Government Code and Insurance Code to enhance the efficient delivery of high quality benefits at the lowest practical cost for active and retired state employees, state judges, elected state officials, and law enforcement officers; reduce administrative overhead; clarify the authority of ERS in certain legal actions; address issues relating to member benefits; and clean up redundant or outdated law.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 12 of this bill.

### **ANALYSIS**

H.B. 2559 amends the Government Code to authorize the supplemental optional benefits program as designated by the Employees Retirement System of Texas (ERS) to include a group coverage plan for permanent life insurance, catastrophic illness insurance, or disability insurance.

H.B. 2559 establishes that venue for any action by or against ERS, the trustees, officers, or employees of ERS, or an administrator, carrier, or other governmental agency acting in cooperation with or on behalf of ERS is in Travis County, and that the statute of limitations for such action is two years unless otherwise specifically provided by the law.

H.B. 2559 establishes that if ERS has not paid benefits as of the fourth anniversary of the death of a member or annuitant, and a claim for benefits is not pending with ERS based on the death of the member or annuitant, the accumulated contributions of the deceased member or the balance of the reserve for the deceased annuitant reverts to the benefit of ERS. The bill requires ERS to transfer the reverted funds to the state contribution account.

H.B. 2559 authorizes a person to select an optional service retirement annuity under ERS that provides that, after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement. The bill adds the three-fourths reduced annuity option to the list of options a retiree may change. The bill specifies that under certain guaranteed optional annuities a beneficiary designation of a former spouse is invalid unless the designation is made after the date of the divorce.

H.B. 2559 prohibits a member otherwise eligible to receive a disability retirement annuity from receiving the annuity if the member is still earning a salary or wage from the employment for which the member is claiming disability or is on leave without pay from the employment for which the member is claiming disability. The bill establishes that for purposes of disability retirement benefits, a member is incapacitated for the further performance of duty if the member has demonstrably sought and been denied workplace accommodation of the disability in accordance with applicable law, and the member is physically or mentally unable to continue to hold the position occupied or to hold any other position offering comparable pay. The bill requires the employee's education, training, and experience to be considered when making a determination of incapacity. The bill, for the purposes of certifying disability, defines "comparable pay" as 80 percent or more of the member's final state employment base pay before deductions of taxes or deferred compensation under state and federal law, including any longevity or hazardous duty pay, but excluding the monetary value of any insurance or retirement benefits. The bill authorizes comparable pay to be adjusted by ERS to account for adjustments in state pay rates.

H.B. 2559 authorizes the executive director of ERS or the executive director's designee to issue a subpoena that conforms to the Texas Rules of Civil Procedure, including a preappeal investigative subpoena or any subpoena otherwise authorized by the Texas Rules of Civil Procedure, that the executive director or designee determines necessary to protect the interests of a program or system administered by ERS. The bill makes conforming changes to the Insurance Code to accommodate the changes made to the Government Code by the bill.

H.B. 2559 reenacts Section 815.307, Government Code, as amended by Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th Legislature, Regular Session, 2003, relating to the duty of care regarding the assets of the ERS and reenacts Section 840.303, Government Code, as amended by Chapters 1103 (H.B. 2240) and 1111 (H.B. 2359), Acts of the 78th Legislature, Regular Session, 2003, relating to the duty of care regarding the assets of the Judicial Retirement System of Texas Plan Two.

H.B. 2559 authorizes the executive director to cause an action for interpleader, rather than a suit, concerning a claim to be filed on behalf of ERS in a district court in Travis County to protect the system from double or multiple liability if the executive director determines that a claim may expose ERS to such a liability. The bill prohibits a person from pursuing a counterclaim or other cause of action against ERS or its trustees, officers, employers, carriers, or administering firms in connection with the transactions and occurrences related to the interpleader action. The bill makes a person who files suit against ERS or its trustees, officers, employees, carriers, or administering firms liable for the costs and attorney's fees incurred in the person's pursuit of a counterclaim or other cause of action. The bill makes conforming changes to the Insurance Code to accommodate the changes made to the Government Code by this bill.

H.B. 2259 establishes that if ERS has not received a demand for a refund of the accumulated contributions of a member in accordance with provisions relating to the withdrawal of contributions before the seventh anniversary of the member's last day of service, ERS is authorized to refund the accumulated contributions to the member or the member's heirs. The bill establishes that if the member or the member's heirs cannot be found, the member's accumulated contributions revert to ERS. The bill requires ERS to credit any amounts that revert to ERS to the state contribution account. The bill authorizes the board of trustees of ERS to adopt rules to implement and administer the disposition of unclaimed contributions of former members.

H.B. 2559 requires the Judicial Retirement System of Texas Plan Two to refund any contributions, interest, or membership fees used to establish service credit that is not used in computing the amount of the annuity at the time a service retirement, disability retirement, or death benefit annuity becomes payable. The bill establishes that, for the purpose of establishing service credit for an office included in membership of the Judicial Retirement System of Texas Plan Two, the term of a member leaving judicial office ends December 31 regardless of the date

on which the member's successor takes the oath of office.

H.B. 2559 amends the Insurance Code to authorize a person who is the surviving spouse of an individual or surviving dependent of an annuitant to secure group health coverage without evidence of the person's insurability if the individual or annuitant was eligible to participate in the group benefits program of the Texas Employees Group Benefits Act but was not participating at the time of the individual's death. The bill requires a surviving spouse or surviving dependent seeking group coverage to apply for the coverage not later than the 30th day after the date on which the individual who was eligible to participate in the group benefits program dies and to pay for the coverage at the group rate.

H.B. 2559 authorizes ERS to deposit to the credit of the fund any unclaimed money on a finding that a good faith effort has been made to locate the person entitled to the money, except in the circumstances where the amount payable escheats to the credit of the employees life, accident, and health insurance and benefits fund.

H.B. 2559 repeals the following sections in the Government Code:

- Section 812.006
- Section 833.1035(c)
- Section 833.104
- Section 835.1015(c)
- Section 838.1035(c)
- Section 838.104
- Section 840.1025(c)
- Section 840.1027(c)

H.B. 2559 repeals Section 1551.221, Insurance Code.

**EFFECTIVE DATE**

September 1, 2009.