BILL ANALYSIS

C.S.H.B. 2829
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In the ongoing administration of the Austin Fire Fighters Relief and Retirement Fund, issues arise that need to be addressed by changes to the fund's governing statute.

C.S.H.B. 2829 addresses key issues, including the need to provide additional flexibility for the fund's board of trustees in granting a cost-of-living adjustment for retirees in their annuities, the need to incorporate a prudent investor standard with respect to the investment of plan assets, and the need for the board of trustees to adopt an investment policy.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.B. 2829 amends the law relating to the firefighters relief and retirement fund in cities with populations of more than 600,000 but less than 700,000 to require that nominations for election to the fund's board of trustees be received between September 1 and September 15, rather than between October 1 and October 15. The bill requires the fund's board of trustees to adopt rules and perform reasonable activities it considers necessary or desirable to maintain the qualified status of the fund under federal law, in addition to rules for the efficient administration of the fund.

C.S.H.B. 2829 makes information contained in records in the custody of the fund concerning an individual member, retiree, annuitant, or beneficiary confidential and prohibits the disclosure of such information in a form identifiable with a specific individual unless the information is disclosed to the individual or the individual's attorney, guardian, executor, administrator, conservator, or other person who the fund's administrator determines is acting in the interest of the individual or the individual's estate; a spouse or former spouse of the individual after the administrator of the fund determines that the information is relevant to the spouse's or former spouse's interest in member accounts, benefits, or other amounts payable by the fund; a governmental official or employee after the administrator of the fund determines that disclosure of the information requested is reasonably necessary to the performance of the requestor's official duties; or a person authorized by the individual in writing to receive the information. The bill authorizes the disclosure of such information if the information is disclosed pursuant to a subpoena and the fund's administrator determines that the individual will have a reasonable opportunity to contest the subpoena. The bill establishes that these provisions do not prevent the disclosure of the status or identity of an individual as a member, former member, retiree, deceased member or retiree, or beneficiary of the fund. The bill authorizes a determination and disclosure of such information in these circumstances to be made without notice to the individual member, retiree, annuitant, or beneficiary. The bill defines "spouse."

C.S.H.B. 2829 establishes that the three percent factor that is applied to a member's average monthly compensation for purposes of determining a service retirement annuity may be changed to some other percent if the change applies to one or any combination of the groups listed in the provision. The bill requires the board's actuary, in determining whether to approve an increase in the three percent factor, to take into consideration whether the fund has reserves sufficient to enable the payment of a cost-of-living adjustment to all current members and survivors at a level that is equal to the average percentage increase in the Consumer Price Index for All Urban Consumers as determined by the U.S. Department of Labor for the 10 annual periods preceding the proposed effective date of the change.

C.S.H.B. 2829 establishes that, for purposes of a surviving spouse's entitlement to a monthly benefit from the fund, and with respect to an informal marriage established in Texas, a surviving spouse is considered married to a retiree as of the date a declaration of informal marriage was recorded in accordance with certain provisions of the Family Code.

C.S.H.B. 2829 entitles a person receiving a retirement or survivor's benefit each calendar year to a cost-of-living adjustment of that person's benefit based on a collective adjustment amount allocated among persons eligible for an adjustment in a manner and in an amount determined by the board of trustees. The bill provides for the cost-of-living adjustment to take effect at any time during a given calendar year, as determined by the board of trustees, and the bill prohibits a cost-of-living adjustment from reducing a persons' benefit to an amount less than the person received when the benefit first was paid to that person. The bill establishes that the collective adjustment amount is an amount equal to the actuarial value, as determined by the board's actuary based on the interest and mortality assumptions adopted by the board of trustees for the most recent actuarial valuation of the fund, of the percentage increase in the Consumer Price Index for All Urban Consumers as determined by the U.S. Department of Labor for the applicable determination period immediately preceding the date the cost-of-living adjustment is to take effect, multiplied by the total amount of benefits payable in the month immediately preceding the date an adjustment is to take effect to persons who are eligible to receive an adjustment and, if applicable, is reduced by an amount that the board's actuary determines is necessary to maintain the fund's financial stability or is increased in accordance with the provisions below. The bill establishes that the applicable determination period is the shorter of 12 months or the period since the last adjustment. The bill prohibits the board's actuary, in determining whether to reduce the collective adjustment amount, from taking into consideration the cost of future adjustments.

C.S.H.B. 2829 authorizes the board of trustees to increase the collective adjustment amount under these provisions if the board's actuary has advised the board of trustees that the increase would not impair the financial stability of the fund and the increase has been approved by the affirmative vote of a majority of the board of trustees. The bill removes the provision prohibiting the portion of an adjustment that exceeds one percent of a person's benefit from being made unless the board's actuary advises the board that the increase would not impair the fund's financial stability and removes a similar provision prohibiting an adjustment of one percent or less of a person's benefit from being made unless the board's actuary advised the board of trustees that the adjustment would not impair the fund's financial stability. The bill requires the board's actuary, in determining whether an adjustment would impair the fund's financial stability, to take into consideration the cost of future adjustments.

C.S.H.B. 2829 authorizes the board of trustees in its sole discretion to invest, reinvest, or change the fund's assets. The bill requires the board of trustees to invest the funds in whatever instruments or investments the board considers prudent. The bill requires the board of trustees, in making investments for the fund, to discharge its duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use in the conduct of an enterprise of a similar character and with similar aims. The bill removes the provision relating to permitted investments.

C.S.H.B. 2829 requires the board of trustees, as soon as practicable after September 1, 2009, to adopt and maintain a written investment policy regarding the investment of fund assets. The bill prohibits the board of trustees from amending the adopted investment policy unless the proposed amendment is approved by the affirmative vote of a majority of the members of the board at not fewer than three regular meetings of the board. The bill removes the provision relating to limitations on investments.

C.S.H.B. 2829 repeals Sections 9.04(c) and (d), Chapter 183 (S.B. 598), Acts of the 64th Legislature, Regular Session, 1975 (Article 6243e.1, Vernon's Texas Civil Statutes), relating to the board's determination of the amount of an adjustment and to an increase in certain retirement or survivor benefits.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2829 differs from the original by expanding the definition of "spouse" in the original to require that, in the case of an informal marriage in Texas, the marriage be evidenced by a declaration of informal marriage recorded in accordance with state law.

C.S.H.B. 2829 adds a provision not in the original requiring the firefighters relief and retirement fund board of trustees to adopt rules and perform reasonable activities it considers necessary or desirable to maintain the qualified status of the fund under federal law. The substitute requires the board's actuary, in determining whether to approve an increase in the three percent factor, to take into consideration whether the fund has reserves sufficient to enable the payment of a cost-of-living adjustment to all current members and survivors, rather than to all persons entitled to an adjustment as in the original, at a specified level relative to the average percentage increase in the Consumer Price Index for All Urban Consumers (CPI-U) for the preceding 10 years.

C.S.H.B. 2829 differs from the original by providing that a person receiving a retirement or survivor's benefit is entitled each year to a cost-of-living adjustment, rather than to an annual cost-of-living adjustment, whereas the original specifies that the entitlement to an annual cost-of-living adjustment is applicable for a person receiving a retirement or survivor's benefit in the month immediately preceding the date an adjustment is to take effect.

C.S.H.B. 2829 differs from the original in the computation of the collective adjustment amount that is the basis for an annual cost-of-living increase; the substitute provides that the collective amount is equal to the actuarial value, as determined by the board's actuary based on the interest and mortality assumptions adopted by the board for the most recent actuarial valuation of the fund, of the percentage increase in the CPI-U for the applicable determination period immediately preceding the date the cost-of-living adjustment is to take effect, multiplied by the total amount of benefits payable in the month immediately preceding an adjustment's effective date to persons who are eligible to receive an adjustment, whereas the original provides that the collective amount is equal to the percentage increase in the CPI-U for that same determination period multiplied by the total amount of benefits payable to persons who are eligible to receive an adjustment. The substitute adds provisions not in the original specifically providing for increases in the collective amount and the conditions under which the board may increase that amount, whereas the original refers only to reductions and adjustments without specific reference to increases.

C.S.H.B. 2829 differs from the original by establishing that the applicable determination period is the shorter of 12 months or a period since the last adjustment, rather than the shorter of 12 months or a period determined by the board of trustees, as in the original.