

BILL ANALYSIS

Senate Research Center

H.B. 3033
By: Naishtat et al. (Watson)
State Affairs
5/10/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3033 would protect the future health and sustainability of Austin's Employee Retirement System (system). The City of Austin (city) and the system have jointly determined that the changes will help ensure the affordability of future benefit plan designs and protect the fiscal soundness of the system.

The system currently has about 8,300 active employee members and pays benefits to approximately 4,300 retirees. Although the system is currently able to pay benefits to retirees and is not at immediate risk of insolvency, it is beginning to show the effects of reduced investment returns combined with the future projected costs of its current retirement and benefits package. The system has a funded ratio of 70 percent, meaning it has only 70 percent of the funds needed to pay benefits for current and future workers, below the recommended minimum ratio of 80 percent.

It is necessary to modify benefits for future employees to ensure that the system can fulfill its obligations to current members and retirees and sustainably provide benefits to future employees. The changes made by H.B. 3033 for future employees have already been approved by Austin's City Council and are agreed to by the system's 11-member pension board. Benefits for current employees and retirees are unaffected.

H.B. 3033 certifies changes in benefits for city employees hired on or after January 1, 2012, ensures that the system remains compliant with current and future Internal Revenue Service requirements for tax-qualified retirement plans, codifies prior benefit changes already authorized by statute, and updates the population bracket.

Currently, city employees can retire with full pension benefits at age 55 with 20 years of service, age 62 with five years of service, or at any age with 23 years of service. City workers on average retire at age 57 with 20 years of service, and the average retiree collects a pension of \$34,000 per year. About 20 percent of current retirees were younger than 50 when they retired. Under this legislation, employees starting service in 2012 and beyond would be eligible for retirement at age 65 with five years of service, or at age 62 with 30 years of service. These newly qualified employees would also be eligible for early retirement at age 55 with 10 years of service in exchange for reduced benefits.

H.B. 3033 would also lower the multiplier for benefit computation purposes from three percent to 2.5 percent of final average salary per year of credited service for future employees and change the design of permissive time purchases to prevent such purchases from being used to advance retirement eligibility.

This legislation would also modify the manner in which the retirees who later return to work for the city may continue receiving a retirement benefit when working. This would help protect the financing integrity of the system, ensuring that retirees who return to work for the city and receive a retirement benefit while making no contribution to the system are not displacing other employees who would otherwise be contributing to the system.

H.B. 3033 amends current law relating to retirement under public retirement systems for employees of certain municipalities.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), as follows:

Sec. 1. SCOPE. (a) Creates this subsection from existing text. Provides that a retirement system is established by this Act for employees of each municipality having a population of more than 760,000 and less than 860,000, rather than more than 600,000 and less than 700,000.

(b) Creates this subsection from existing text. Provides that any right or privilege accruing to any member of a retirement system established by this Act is a vested right according to the terms of this Act.

(c) Provides that this Act continues to apply to a municipality described by Subsection (a) and a retirement system established by this Act continues to operate regardless of any change in the municipality's population.

Deletes existing text providing that a retirement system is established by this Act for employees of each municipality having a population of more than 600,000 and less than 700,000; provided, however, that once such once such pension system becomes operative in any city, any right or privilege accruing to any member thereunder shall be a vested right according to the terms of this Act and the same shall not be denied or abridged thereafter through any change in population of any such city taking such city out of the population bracket as herein prescribed, and said pension system shall continue to operate and function regardless of whether or not any future population exceeds or falls below said population bracket.

SECTION 2. Amends Section 2, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), as follows:

Sec. 2. DEFINITIONS. Provides that the following words and phrases have the meanings assigned by this section unless a different meaning is plainly required by the context:

(1)-(4) Makes no changes to these subdivisions.

(5) Redefines "agency of the municipality."

(6)-(7) Makes no changes to these subdivisions.

(8) Redefines "average final compensation."

(9)-(11) Makes no changes to these subdivisions.

(12) Redefines "compensation."

(13)-(14) Makes no changes to these subdivisions.

(15) Redefines "current service annuity."

(16)-(18) Makes no changes to these subdivisions.

(18A) Defines "early retirement eligible member."

- (18B) Defines "early retirement annuity."
- (19)-(23) Makes no changes to these subdivisions.
- (23A) Defines "Group A."
- (23B) Defines "Group B."
- (25)-(26) Makes no changes to these subdivisions.
- (27) Redefines "life annuity."
- (28)-(29) Makes no changes to these subdivisions.
- (30) Redefines "member."
- (31) Makes no changes to this subdivision.
- (32) Redefines "normal retirement age."
- (33) Redefines "normal retirement date."
- (34) Redefines "prior service."
- (35) Redefines "prior service pension."
- (36)-(45) Makes no changes to these subdivisions.

SECTION 3. Amends Section 3, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), as follows:

Sec. 3. ESTABLISHMENT AND APPLICABILITY. Requires that, subject to the authority granted the retirement board in Section 7(d) of this Act:

- (1) members who retired, and the beneficiaries of members who died, prior to October 1, 2011, rather than October 1, 1999, continue to receive the same retirement allowances or benefits they were entitled to receive prior to that date, together with any benefit increase authorized under this Act;
- (2) members of the retirement system on or before December 31, 2011, be enrolled as members of Group A; and
- (3) persons that first become members of the retirement system on or after January 1, 2012, be enrolled in Group B.

SECTION 4. Amends Subsections (b), (c), and (e), Section 5, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), as follows:

(b) Provides that membership in the retirement system consists of Groups A and B, each of which consists of the following groups:

- (1) the active-contributory members group, which consists of all members, other than those on authorized leave of absence, who are making deposits;
- (2) the active-noncontributory members group, which consists of all employees on approved medical leave of absence and all employees of an employer, other than inactive-contributory members, who have been active-contributory members but who are no longer so because they are not regular full-time employees;

(3) the inactive-contributory members group, which consists of all members who are on an authorized leave of absence and who continue to make deposits into the retirement system during their absence;

(4) the inactive-noncontributory members group, which consists of all members whose status as an employee has been terminated before retirement or disability retirement but who are still entitled to or who may become entitled to, or whose beneficiary may become entitled to, benefits from the retirement system; and

(5) the retired members group, which consists of all members who have retired and who are receiving or who are entitled to receive a retirement allowance.

(c) Provides that a member, rather than an active-noncontributory member, becomes an active-contributory member immediately on resuming employment as a regular full-time employee or on returning from an approved medical leave of absence, as applicable. Provides that a member who resumes regular full-time employment is assigned to the group for which the member is qualified under Subdivisions (23A) (defining "Group A") and (23B) (defining "Group B"), Section 2.

(e) Authorizes any person who has ceased to be a member and has received a distribution of the person's accumulated deposits to have the person's membership service, rather than the person's membership service or prior service, in the original group in which the membership service was earned reinstated if the person is reemployed as a regular full-time employee and deposits into the system the accumulated deposits withdrawn by that person, together with an interest payment equal to the amount withdrawn multiplied by an interest factor, rather than authorizes any person who has ceased to be a member and has received a distribution of the person's accumulated deposits to have the person's membership service or prior service reinstated if the person is reemployed as a regular full-time employee for a continuous period of 24 months and deposits into the system within a reasonable period established by the retirement board on a uniform and nondiscriminatory basis the accumulated deposits withdrawn by that person, together with an interest payment equal to the amount withdrawn multiplied by an interest factor.

SECTION 5. Amends Section 6, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), by amending Subsections (c) and (f), and adding Subsections (e-1) through (e-3), as follows:

(c)(1)-(4) Makes no changes to these subdivisions.

(5) Prohibits a member from establishing creditable service in the retirement system for uniformed service for more than the greater of the creditable service required under the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), as amended, or 48 months of creditable service in the retirement system for uniformed service under this subsection. Provides that a member is not precluded from purchasing qualified military service to which the member is entitled solely because the member, before beginning a leave of absence for qualified military service, purchased creditable service for military service performed before becoming employed by the employer.

(6) Makes no changes to this subdivision.

(e-1) Authorizes an active contributory member that is eligible for retirement to file a written application to convert to creditable service at retirement all or part of the member's sick leave accrued with the employer that is eligible for conversion. Requires that the application be approved by the retirement board. Prohibits the member from converting sick leave for which the member is entitled to be paid for by the employer. Authorizes sick leave hours to be converted in pay period increments for the purpose of increasing creditable service that is used in the calculation of benefits. Prohibits sick leave hours from being used to reach retirement eligibility. Requires both the employer

and the member to make the equivalent amount of retirement contributions that would have been made had the sick hours been exercised and used as sick leave hours.

(e-2) Authorizes nonqualified permissive creditable service to be purchased only as provided by this subsection. Authorizes a member to purchase nonqualified permissive creditable service:

(1) only to the extent permitted under both this subsection and Section 415(n) of the United States Internal Revenue Code of 1986 (26 U.S.C. Section 1 et seq.) (code);

(2) in an amount that for each purchase, is not less than one month; and when all amounts purchased under this subsection are combined, not more than sixty months; and

(3) only if the member has reinstated all prior membership service in Groups A and B if the member was initially enrolled as a member of Group A, but ceased to be a member of Group A, by first reinstating all prior membership service in Group A, next reinstating all prior membership service in Group B, and then purchasing the nonqualified permissive creditable service; Group B, if the member was initially enrolled as a member of Group B, by first reinstating all prior membership service in Group B, and then purchasing the nonqualified permissive creditable service.

(e-3) Provides that nonqualified permissive creditable service purchased by members of Group B is not included in the creditable service required to qualify a member for normal or early retirement eligibility.

(f) Provides that the full actuarial cost of noncontributory creditable service purchased as provided by Subsections (e), (e-1), (e-2), and (e-3) of this section is payable by the member purchasing the credit. Makes a nonsubstantive change.

SECTION 6. Amends Section 7, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), by amending Subsections (a), (l), and (z), and adding Subsections (a-1) and (ii), as follows:

(a) Provides that a member who retires on or after the member's normal retirement date for the group in which the member is enrolled, or a member of Group B eligible for early retirement who retires, and applies in writing for a retirement allowance, except as provided by Subsection (b) of this section, shall receive the life annuity (modified cash refund) or the early retirement annuity to which the member is entitled. Provides that an annuity begins on the last day of the month after the month in which the member retired. Provides that, unless Section 8 of this Act applies, or the member is an early retirement eligible member of Group B, a member whose employment by the employer terminates before the member's normal retirement date is entitled to a distribution of the member's accumulated deposits in a single lump sum. Provides that, on receiving that distribution, a member is not entitled to any other benefit under this Act. Provides that, if a member has at least five years of creditable service and does not withdraw the member's accumulated deposits, the member is entitled to a life annuity (modified cash refund) beginning on the first day of the month after the month in which the member's normal retirement date occurs. Makes nonsubstantive changes.

(a-1) Provides that, if not already nonforfeitable, a member's retirement benefit becomes nonforfeitable at normal retirement age.

(l) Authorizes a member to file a written designation, which, if approved by the retirement board, is required to entitle the member, on retirement, to receive the actuarial equivalent of the life annuity in the form of one of the following options:

(1)-(5) Makes no changes to these subdivisions.

(6) Option VI. Equivalent Benefit Plan. Authorizes a member selecting this option to elect to receive either a life annuity or one of the actuarially-equivalent annuities described by Subdivisions (1)-(5) and a lump-sum payment upon retirement. Requires the annuity requested by a member, if the member requests a lump-sum payment, to be actuarially reduced as a result of the lump-sum payment. Prohibits the lump-sum payment from exceeding an amount equal to the total amount of 60 monthly life annuity payments. Authorizes active contributory members that reach normal retirement age to upon retirement elect to participate in a backward deferred retirement option program "Backward DROP" that permits a minimum participation period of one month and a maximum participation period of sixty months. Provides that this deferred retirement option is subject to retirement board policies issued in compliance with the code. Provides that no interest will be paid on, or added to, any Backward DROP payment.

(z) Requires that the reduced annuity of a retired member who selected the optional lifetime retirement annuity, if the person designated in writing by the member under Option I, Option II, or Option III, or, excluding a Joint and Last Survivor Option, any retirement option that includes a Joint and Survivor Option, predeceases the retired member, be increased to the standard service retirement annuity that the retiree would have been entitled to receive if the retired member had not selected Option I, Option II, or Option III.

(ii) Provides that if a member dies while performing qualified military service, the beneficiaries of the member are entitled to any additional benefits (other than benefit accruals relating to the qualified military service) that would have been provided if the member had returned from the military leave of absence and then terminated employment on account of death.

SECTION 7. Amends Section 9, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), by amending Subsections (a) and adding Subsections (c) through (g), as follows:

(a) Prohibits the annual benefit provided with respect to any member, notwithstanding any other provisions of this Act, from exceeding the benefits allowed for a governmental defined benefit plan qualified under Section 401, rather than Section 415, of the code. Requires the maximum benefits allowed under this section to increase each year to the extent permitted by annual cost-of-living increase adjustments announced by the Secretary of the Treasury under Section 415(d) of the code and requires the increased benefit limits to apply to members who have terminated employment, including members who have commenced to receive benefits, before the effective date of the adjustment.

(c) Provides that a member who retires after reaching normal retirement age and continues or resumes employment with an employer in a position that is required to participate in another retirement system maintained by the employer continues to be eligible to receive the retirement allowance provided under this Act.

(d) Requires the retirement board to suspend the retirement allowance of a retired member who resumes employment with an employer within the period of time prescribed by the retirement board in the board's policy, or who resumes employment after retirement as a regular full-time employee of an employer. Requires the retirement board to reinstate the member's retirement allowance as provided under Subsection (f).

(e) Requires the retirement board to suspend the retirement allowance of a retired member who resumes employment with an employer in a position that is not required to participate in another retirement system maintained by an employer, and who is not a regular full-time employee of an employer, if the member works for, or is compensated by, an employer for more than 1,508 hours in any rolling 12-month period after the

member resumes employment with the employer. Requires the retirement board to reinstate the member's retirement allowance as provided under Subsection (f).

(f) Authorizes a member whose retirement allowance is suspended under Subsections (d) or (e) to apply in writing for reinstatement of the retirement allowance when the member retires again. Requires the retirement system to calculate the reinstated retirement allowance based on the member's total creditable service, reduced actuarially to reflect the gross amount of total retirement allowance paid to the member prior to suspension of the retirement allowance.

(g) Requires the retirement system and the employer to adopt and amend procedures for the exchange of information in order to implement the provisions of this section.

SECTION 8. Amends Section 10(a), Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), as follows:

(a) Requires each active-contributory member to make deposits to the retirement system at a rate equal to eight percent, rather than seven percent, of the member's base compensation, pay, or salary, exclusive of overtime, incentive, or terminal pay or at a higher contribution rate approved by a majority vote of regular full-time employee members. Requires that deposits be made by payroll deduction each pay period. Requires the employee, if a regular full-time employee works at least 75 percent of a normal 40-hour work week but less than the full 40 hours, to make deposits as though working a normal 40-hour work week even though the rate of contribution may exceed eight percent of the employee's actual compensation, pay, or salary, and requires that the employee's average final compensation be computed on the basis of the compensation, pay, or salary for a normal 40-hour work week. Prohibits any deposits from being made or membership service credit from being received for periods during which an employee's authorized normal work week is less than 75 percent of a normal 40-hour work week. Requires a person who is eligible for inactive-contributory membership status and who chooses to be an inactive-contributory member to make deposits to the retirement system each pay period in an amount that is equal to the amount of the member's deposit for the last complete pay period that the member was a regular full-time employee. Authorizes the regular full-time employee members to increase, by a majority vote of all such members voting at an election to consider an increase in contributions, each member's contributions above eight percent or above the higher rate in effect and approved by majority vote in whatever amount the retirement board recommends. Requires each employer to contribute amounts equal to eight percent of the compensation, pay, or salary of each active-contributory member and each inactive-contributory member employed by the employer, exclusive of overtime, incentive, or terminal pay, or a higher contribution rate agreed by the employer. Requires the employer, if a regular full-time employee of the employer works at least 75 percent of a normal 40-hour work week but less than the full 40 hours, to make contributions for that employee as though that employee works a normal 40-hour work week even though the rate of contribution may exceed eight percent of that employee's actual compensation, pay, or salary. Authorizes the governing body of the city to authorize the city to make additional contributions to the system in whatever amount the governing body may determine. Requires, rather than authorizes, the board of each other employer, if the governing body authorizes additional contributions to the system by the city for city employees, to increase the contributions for such employer's respective employees by the same percentage. Requires employer contributions to be made each pay period. Makes conforming changes.

SECTION 9. Amends Section 12, Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.), by adding Subsection (d-1) and amending Subsection (e), as follows:

(d-1) Requires members of the retirement system that are enrolled in Group A to have the rights and be entitled to the benefits provided under this Act for members of Group A. Requires members of the retirement system that are enrolled in Group B to have the

rights and be entitled to the benefits provided under this Act for members of Group B. Prohibits a member from being a member of both Group A and Group B.

(e) Authorizes a distributee, notwithstanding any provision of this Act to the contrary that would otherwise limit a distributee's election, to elect, at the time and in the manner prescribed by the retirement board, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. Provides that for purposes of this subsection:

(1) an eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include:

(A) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made over the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary;

(B) any series of payments for a specified period of ten years or more;

(C) any distribution to the extent such distribution is required under Section 401(a)(9) of the code; or

(D) the portion of any distribution that is not includable in gross income unless the distributee directs that the eligible rollover distribution be transferred directly to a qualified trust that is part of a defined contribution plan that agrees to separately account for the portion that is includable in gross income and the portion that is not, or to an individual retirement account or individual annuity, rather than the portion of any distribution that is not includable in gross income determined without regard to the exclusion for net unrealized appreciation with respect to employer securities.

(2) Redefines "eligible retirement plan."

(3) Redefines "distributee."

(4) Makes no changes to this subdivision.

SECTION 10. Repealer: Section 9(p), Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.).

Repealer: Section 10(g), Chapter 451, Acts of the 72nd Legislature, Regular Session, 1991 (Article 6243n, V.T.C.S.).

SECTION 11. Effective date: upon passage or October 1, 2011.