

BILL ANALYSIS

C.S.S.B. 1671
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During a comprehensive review of Teacher Retirement System of Texas (TRS) policies and procedures, the TRS board of trustees and staff held several public meetings to consider updates to statutory provisions that which would allow TRS to operate more efficiently. C.S.S.B. 1671 seeks to implement the changes considered by the TRS board and staff by making several administrative changes, technical corrections, and clarification changes to the TRS statutes.

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.S.B. 1671 reenacts and amends Section 411.081(i), Government Code, as amended by Chapters 183 (H.B. 1830), 780 (S.B. 1056), 816 (S.B. 1599), and 1027 (H.B. 4343), Acts of the 81st Legislature, Regular Session, 2009, to add the Teacher Retirement System of Texas (TRS) to the noncriminal justice agencies and entities to which a criminal justice agency is authorized to disclose criminal history record information that is the subject of an order of nondisclosure.

C.S.S.B. 1671 amends the Government Code to entitle TRS to obtain from the Department of Public Safety (DPS), the FBI Criminal Justice Information Services Division, or another law enforcement agency criminal history record information maintained by such entity that relates to a person who is an employee or an applicant for employment with the retirement system; is a consultant, contract employee, independent contractor, intern, or volunteer for the retirement system or an applicant to serve in one of those positions; proposes to enter into a contract with or has a contract with the retirement system to perform services for or supply goods to the retirement system; or is an employee or subcontractor, or an applicant to be an employee or subcontractor, of a contractor that provides services to the retirement system.

C.S.S.B. 1671 prohibits criminal history record information obtained by TRS from being released or disclosed to any person except on court order, with the consent of the person who is the subject of that information, or to a federal agency as required by federal law or executive order. The bill requires TRS to destroy criminal history record information after the information is used for its authorized purposes. The bill authorizes TRS to provide a copy of the criminal history record information obtained from DPS, the FBI Criminal Justice Information Services Division, or other law enforcement agency to the individual who is the subject of the information. The bill establishes that the failure or refusal of an employee or applicant to provide the following on request constitutes good cause for dismissal or refusal to hire: a complete set of fingerprints, a true and complete name, or other information necessary for a law enforcement entity to obtain criminal history record information.

C.S.S.B. 1671 establishes that statutory provisions relating to open meetings do not prohibit the TRS board of trustees or a board committee from holding an open or closed meeting by

telephone conference call. The bill authorizes the board or a board committee to hold a meeting by telephone conference call only if a quorum of the applicable board or board committee is physically present at one location of the meeting. The bill establishes that a telephone conference call meeting is subject to the notice requirements applicable to other meetings and requires the notice to also specify the location of the meeting where a quorum of the board or board committee, as applicable, will be physically present and the intent to have a quorum present at that location. The bill requires the location where a quorum is physically present to be open to the public during the open portions of a telephone conference call meeting and requires the open portions of the meeting to be audible to the public at the location where the quorum is present and to be tape-recorded at that location. The bill requires the tape-recording to be made available to the public. The bill requires the meeting location to provide two-way communication during the entire telephone conference call meeting and requires the identification of each party to the telephone conference call to be clearly stated before the party speaks. The bill establishes that the authority provided by the bill's provisions is in addition to the authority provided by statutory open meetings provisions relating to other governmental bodies.

C.S.S.B. 1671 establishes that a board member who participates in a board or board committee meeting by telephone conference call but is not physically present at the meeting location is not considered to be absent from the meeting for any purpose. The bill establishes that the vote of a board member who participates in a board or board committee meeting by telephone conference call is counted for the purpose of determining the number of votes cast on a motion or other proposition before the board or board committee. The bill authorizes a board member to participate remotely by telephone conference call instead of by being physically present at the location of a board meeting for not more than one board meeting per calendar year. The bill establishes that a board member who participates remotely in any portion of a board meeting by telephone conference call is considered to have participated in the entire board meeting by telephone conference call. The bill establishes that, for purposes of the limit provided by these provisions, remote participation by telephone conference call in a meeting of a board committee does not count as remote participation by telephone conference call in a meeting of the board, even if a quorum of the full board attends the board committee meeting or notice of the board committee meeting is also posted as notice of a board meeting. The bill prohibits a person who is not a board member from speaking at the meeting from a remote location by telephone conference call except as provided for consultations between a governmental body and its attorney. The bill defines "board" for purposes of the bill's provisions relating to meetings held by telephone conference call.

C.S.S.B. 1671 excepts the name of an applicant for the position of TRS executive director, chief investment officer, or chief audit executive from disclosure under certain provisions of the state's open records law, except that the TRS board of trustees is required to give public notice of the names of three finalists being considered for one of those positions at least 21 days before the date of the meeting at which the final action or vote is to be taken on choosing a finalist for employment.

C.S.S.B. 1671, in a provision relating to benefits payable with respect to a member or retiree of a public retirement system under a qualified domestic relations order, adds as an alternative to specifying the social security number of the member or retiree and of each alternate payee covered under the order the option of providing an express authorization for the parties to use an alternate method acceptable to the public retirement system to verify the social security number of the member or retiree and each alternate payee. The bill adds the condition, for a domestic relations order to be a qualified domestic relations order, that the order, if required by the public retirement system, conform to a model order adopted by that retirement system. The bill authorizes a public retirement system to assess administrative fees on a party who is subject to a domestic relations order for the review of the order and, as applicable, for the administration of payments under an order that is determined to be qualified. The bill authorizes the retirement system to deduct fees from payments made under the order in addition to other methods of collecting fees that a retirement system is authorized to establish.

C.S.S.B. 1671 establishes that provisions relating to the purpose of TRS do not prohibit comments by a TRS employee on federal laws, regulations, or other official actions or proposed actions affecting or potentially affecting TRS that are made in accordance with policies adopted by the board.

C.S.S.B. 1671 changes the frequency with which TRS must provide to the comptroller of public accounts certain identifying information of each TRS member, for purposes of assisting the comptroller in identifying persons entitled to unclaimed property reported to the comptroller, from not later than June 1 of each year to not later than June 1, 2016, and every fifth year thereafter.

C.S.S.B. 1671 requires a TRS member to notify the retirement system in writing of membership service that has not been properly credited by TRS on an annual statement, to provide verification and make deposits as required before the service may be credited, and to notify the retirement system of the service in writing on or before the last day of the fifth school year after the end of the school year in which the service was rendered for the service to be credited.

C.S.S.B. 1671 replaces the additional reemployed veteran's credit that a person can establish in TRS for the person's active duty service in the United States armed forces with a USERRA credit and changes the qualification requirements for establishing such credit from qualifying under the federal Veteran's Reemployment Rights Act to qualifying under the federal Uniformed Services Employment and Reemployment Rights Act of 1994. The bill removes a provision requiring a person to deposit with TRS for each year of service claimed a fee of five percent, compounded annually, of the required contribution from the date of the person's first eligibility to establish the credit to the date of deposit. The bill adds, in a provision authorizing TRS to grant the person service credit for the period of active duty in the armed forces as if the person had been employed in a position eligible for membership and credit with TRS, the condition that the person establish credit by making the required deposits, or, if the person has not made the required deposits, the condition that TRS consider the period of active duty for the purpose of determining whether the person meets the length-of-service eligibility requirements for retirement or other benefits administered by TRS as if the person had established the credit.

C.S.S.B. 1671, in a provision authorizing an eligible TRS member to establish equivalent membership service credit for employment with an out-of-state public school system and specifying that an eligible member is one who has at least five years of service credit in TRS for actual service in public schools, adds the condition that the member's service include at least one year of service credit completed after the relevant out-of-state service.

C.S.S.B. 1671, in a provision authorizing an eligible TRS member to establish equivalent membership service credit for developmental leave that is creditable in TRS, establishes that a member eligible to establish credit for such leave is one who has at least five years of service credited in TRS before the developmental leave occurs; has, at the time the required deposits for the credit are paid, at least one year of membership service credit in TRS following the developmental leave; and has at least five years of service credited in TRS at the time the required deposits for the credit are paid. The bill removes a provision requiring such a member to be an employee of a public school at the time the credit is sought. The bill requires the notice of intent to take developmental leave filed by the member with TRS and the certification filed by the member's employer that the leave meets certain requirements to be in the form required by TRS and establishes that leave is not creditable in TRS if the member does not submit notice of intent and does not obtain the certification.

C.S.S.B. 1671 authorizes a member to establish developmental leave credit by depositing with TRS, for each year of certified developmental leave, the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of the service credit, based on rates and tables recommended by TRS' actuary and

adopted by the board of trustees. The bill removes a requirement for a member, in order to establish such developmental leave credit, to deposit for each year of developmental leave claimed, an amount equal to the sum of the rate of member contributions required during the year of leave, times the member's annual rate of compensation during the member's most recent year of creditable service that preceded the year of leave plus the amount that the state would have contributed had the member performed membership service during the year of leave at the member's annual rate of compensation during the most recent year of service that preceded the leave.

C.S.S.B. 1671 increases the amount of the reinstatement fee, for a member who terminated the member's TRS membership and becomes eligible to reinstate the canceled service credit, from six percent to eight percent, compounded annually, of the amount withdrawn or refunded from the date of withdrawal or refund to the date of redeposit.

C.S.S.B. 1671 authorizes TRS to deduct the amount of a person's indebtedness to the retirement system from an amount payable by TRS to the person or the person's estate and the distributees of the estate. The bill authorizes TRS to deduct the amount of the payment from any amount payable by the retirement system to a person who received the payment or to that person's estate and distributees of the estate if the retirement system makes a payment to a participant who is deceased and the payment is not payable.

C.S.S.B. 1671 entitles a beneficiary designated after retirement to receive, on the retiree's death, monthly payments of the survivor's portion of the retiree's optional retirement annuity for the remainder of the beneficiary's life if the beneficiary designated at the time of the retiree's retirement is a trust and the beneficiary is the sole beneficiary. The bill adds the revocation of a beneficiary designation and the ineligibility of a person to receive benefits to the conditions under which certain death benefits become payable and rights to elect survivor benefits, if applicable, become available to one of the classes of eligible persons designated to receive benefits in the absence of a beneficiary.

C.S.S.B. 1671 renders a person ineligible to receive a death benefit payable on the death of a member or an annuitant if the person is found not guilty by reason of insanity of causing the death of the member or annuitant or is the subject of an indictment, information, complaint, or other charging instrument alleging that the person caused the death of the member or annuitant and the person is determined to be incompetent to stand trial.

C.S.S.B. 1671 makes certain provisions relating to the conditions under which a member is eligible to retire and receive a standard service retirement annuity applicable only to a TRS member who becomes a member on or after September 1, 2007, rather than on or after September 1, 2006. The bill, in a provision requiring the TRS board of trustees to extend the tables used in determining a death benefit annuity, requires the board to extend the tables to ages earlier than indicated in the tables rather than to ages earlier than 55 years. The bill removes provisions requiring different extensions of different tables. The bill exempts a retiree whose effective date of retirement is on or before January 1, 2011, from the provisions disqualifying a retiree from an entitlement to service or disability retirement benefit payments, as applicable, for any month in which the retiree is employed in any position by a Texas public educational institution.

C.S.S.B. 1671 reenacts and amends Section 824.602(a), Government Code, as amended by Chapters 674 (S.B. 132) and 1359 (S.B. 1691), Acts of the 79th Legislature, Regular Session, 2005, to prohibit TRS from withholding a monthly benefit if the retiree is employed in a Texas public educational institution in one or more positions on as much as a full-time basis, if the retiree has been separated from service with all Texas public educational institutions for at least 12 full consecutive months after the retiree's effective retirement date, rather than if the work occurs in not more than six months of a school year that begins after the retiree's effective retirement date. The bill removes the prohibition against TRS withholding a monthly benefit

payment if the retiree is employed in a Texas public educational institution in the following capacities:

- in a position as a classroom teacher on as much as a full-time basis, if the retiree is certified to teach the subjects assigned, is teaching in an acute shortage area as determined by the board of trustees of a school district, and has been separated from service with all public schools for at least 12 months;
- in a position as a principal, including as an assistant principal, on as much as a full-time basis, if the retiree has retired without reduction for retirement at an early age, is certified to serve as a principal, and has been separated from service with all public schools for at least 12 months;
- as a bus driver for a school district on as much as a full-time basis, if the retiree's primary employment is as a bus driver; or
- as a faculty member, during the period beginning with the 2005 fall semester and ending on the last day of the 2015 spring semester, in an undergraduate professional nursing program or graduate professional nursing program and if the retiree has been separated from service with all public schools for at least 12 months.

C.S.S.B. 1671, in a provision prohibiting TRS from withholding a monthly benefit of a disability retiree employed in a Texas public educational institution in a position other than as a substitute for a period not to exceed three consecutive months, removes the specification that the three consecutive months be three consecutive months of the school year. The bill makes conforming changes to reflect the removal of this specification. The bill includes a retiree whose effective date of retirement is on or before January 1, 2011, in a provision establishing that employment of certain retirees does not entitle such retirees to additional service credit and exempting such reemployed retirees from having to make a contribution to TRS from compensation for that employment.

C.S.S.B. 1671, in a provision relating to the gubernatorial appointment of TRS trustees from various slates of nominees, removes the requirement for nomination of such persons by written ballot. The bill adds instructions on how to request a paper ballot or vote in another matter established by the TRS board of trustees, including by telephone or other electronic means, to the items the board is required to send to each retiree for purposes of nominating candidates for appointment of a retired TRS member to the board. The bill requires the governor, if only two persons are nominated to the board on any of the three slates of nominees, to appoint a member of the board to the applicable trustee position from the slate of two nominated persons. The bill requires the governor, if only one such person is nominated on any slate, to appoint that person to the applicable trustee position. The bill requires the governor, if no such member or retiree is nominated on a slate, to appoint to the applicable trustee position a person who otherwise meets the qualifications required for the position.

C.S.S.B. 1671 changes the frequency with which the board of trustees is required to redesignate its actuary after advertising for and reviewing proposals from providers of actuarial services from at least once every three years to at least once every four years. The bill establishes that the prohibition against a TRS employee's advocacy of increased benefits or attempts to influence legislative action or inaction and the prohibition against the use of system assets to advocate or influence the outcome of an election or the passage or defeat of any legislative measure do not prohibit comments from a TRS employee or the use of system assets by such employee to comment on federal laws, regulations, or other official actions or proposed actions affecting or potentially affecting the retirement system that are made in accordance with policies adopted by the board.

C.S.S.B. 1671 prohibits TRS, if deductions for member contributions were previously required but not paid, from providing benefits based on the service or compensation unless the deposits required for membership fees and contributions have been fully paid. The bill requires a person's

employer at the time an unreported service was rendered or compensation was paid to verify the service or compensation and requires the person to submit the verification to the retirement system not later than five years after the end of the school year in which service was rendered or compensation was paid. The bill requires the person, so as to establish the service or compensation credit, to deposit with TRS the actuarial present value, at the time of deposit, of the additional standard retirement annuity benefits that would be attributable to the purchase of service or compensation credit, based on rates and tables recommended by TRS's actuary and adopted by the TRS board of trustees. The bill, in a provision requiring proof of service to be made before service is granted or payment for the credit is required if deductions were previously required but not paid, specifies that the proof of service required is proof of service satisfactory to TRS. The bill prohibits a person who does not obtain proof of service from establishing the service or compensation credit.

C.S.S.B. 1671 makes provisions relating to an employing school district's failure to remit all required member and employer deposits applicable to an employer, rather than to an employing school district and to such an employer's governing body if the governing body is not a school district board of trustees.

C.S.S.B. 1671 authorizes TRS to release records of a participant, including a participant to which provisions relating to a proportionate retirement program apply, if an executor or administrator of a deceased participant's estate has not been named, to a person or entity who the executive director of TRS's board of trustees determines is acting in the interest of the deceased participant's estate, or an heir, legatee, or devisee of the deceased participant.

C.S.S.B. 1671, in a provision requiring TRS at least annually to acquire and maintain records identifying members and the types of positions they hold as members, adds the position of peace officer to the identified types of positions. The bill requires the records for each member identified as a peace officer to specify whether the member is an employee of an institution of higher education or of a public school that is not an institution of higher education. The bill requires an employer to provide the required information in the form and manner specified by TRS.

C.S.S.B. 1671 amends the Insurance Code to redefine "dependent" by replacing references to being "mentally retarded" with references to having a "mental disability" for purposes of the Texas Public School Retired Employees Group Benefits Act, the Texas School Employees Uniform Group Health Coverage Act, and the State University Employees Uniform Insurance Benefits Act. The bill establishes that an employing public school and its governing body, rather than an employing school district and its trustees, hold contributions in trust for the retired school employees group insurance fund and its participants and are prohibited from diverting the contributions for any other purpose. The bill requires an employing public school, rather than an employing school district, that does not remit to a trustee all contributions before the seventh day after the last day of the month to pay contributions and interest on the unpaid amounts at the annual rate of six percent compounded monthly. The bill redefines "dependent" with respect to a child dependent for purposes of the State University Employees Uniform Insurance Benefits Act.

C.S.S.B. 1671 authorizes The University of Texas System and The Texas A&M University System to establish premium discounts, surcharges, rebates, or a revision in otherwise applicable copayments, coinsurance, or deductibles, or any combination of those incentives, for an individual who participates in system-approved programs promoting disease prevention, wellness, and health.

C.S.S.B. 1671 establishes that provisions limiting the amount of system contributions for basic employee and dependent coverage for an employee designated by The University of Texas System or The Texas A&M University System as working less than 40 hours a week do not prohibit either system from contributing, from money not appropriated from the general revenue fund, amounts in excess of the specified limits for an individual who is a tenured faculty member

and with whom the system has entered into a phased retirement agreement under which the individual works less than 40 hours a week for a specified period at the end of which the individual will retire.

C.S.S.B. 1671 establishes that each individual automatically enrolled in the employees uniform insurance benefits program for full-time employees of The University of Texas System or The Texas A&M University System is considered to have authorized a deduction from the participant's monthly compensation in an amount equal to the difference between the total cost for basic coverage and the amount contributed by the system.

C.S.S.B. 1671 requires a TRS member who seeks credit for membership service for service rendered before September 1, 2011, but not properly credited to a member's annual statement to notify the retirement system not later than the last day of the fifth school year after the end of the school year in which the service was rendered, or August 31, 2016, whichever is later. The bill makes provisions of law as amended by Section 10, Chapter 1359 (S.B. 1691), Acts of the 79th Legislature, Regular Session, 2005, relating to the establishment of and required deposit for out-of-state service credit, applicable to a person who was a member of TRS on December 31, 2005, and to out-of-state service performed before January 1, 2006.

C.S.S.B. 1671 entitles a person who resumed employment after retirement and whose benefit payments were suspended under provisions relating to loss of monthly benefits as those provisions existed before amendment by the bill to the resumption of monthly benefit payments if the person meets the requirements of the bill's provisions. The bill requires TRS to resume making monthly benefit payments to such a person on the first payment date occurring on or after the bill's effective date. The bill establishes that a person who is entitled to the resumption of monthly benefit payments is not entitled to recover benefit payments not made during the period the person's benefit was suspended.

C.S.S.B. 1671 requires employer verification of service or compensation for unreported service rendered or unreported compensation paid before the bill's effective date to be received by TRS not later than August 31, 2016. The bill authorizes a person to establish service credit by paying the deposits and fees required under the bill's provisions relating to developmental leave, cancelation of credit by membership termination, collection of member's contributions, and out-of-state service credit, as those provisions existed before amendment or repeal by the bill, if the person otherwise meets all eligibility requirements under those provisions as amended by the bill; the service for which credit is sought to be established was rendered, or the compensation for which credit is sought was paid, before the bill's effective date; and the person makes payment for the service credit, or enters into an installment agreement for payment, not later than August 31, 2013. The bill authorizes a person who has an installment agreement that is terminated after August 31, 2013, before the person has made all of the payments to establish credit only as provided by provisions relating to developmental leave, cancelation of credit by membership termination, collection of member's contributions, out-of-state service credit, and by the provision making the establishment of and required deposit for out-of-state service credit applicable to a person who was a member of TRS on December 31, 2005, and to out-of-state service performed before January 1, 2006.

C.S.S.B. 1671 authorizes the amount of the state contribution to TRS for the state fiscal year ending August 31, 2012 to be less than the amount contributed by members during that fiscal year. The bill authorizes the state, for the state fiscal year ending August 31, 2013, to contribute an amount to the retired school employees group insurance fund that is less than one percent of the salary of each active employee. The bill establishes that to the extent of any conflict, the bill's provisions prevail over another act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes. The bill makes conforming and nonsubstantive changes.

C.S.S.B. 1671 redefines "school year," for purposes of the Government Code's general

provisions relating to TRS, applicable beginning with the 2012-2013 school year.

C.S.S.B. 1671 repeals the following provisions of the Government Code:

- Section 823.401(i), relating to determination of the amount of a member's contribution to TRS for equivalent out-of-state service
- Section 823.402(g) and (h), relating to the establishment of credit for developmental leave
- Section 823.501(e), relating to service credit canceled by a withdrawal of contributions
- Section 824.602(c), (d), (m), (p), and (q), relating to the prohibition against TRS withholding a monthly benefit payment for certain retirees employed in a Texas public educational institution
- Section 825.3021, relating to the appraisal and sale of real property by TRS

C.S.S.B. 1671 repeals Section 57, Chapter 1359 (S.B. 1691), Acts of the 79th Legislature, Regular Session, 2005, relating to the establishment of out-of-state service credit.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1671 contains a provision not included in the original changing the frequency with which the Teacher Retirement System of Texas (TRS) must provide to the comptroller of public accounts certain identifying information of each TRS member, for purposes of assisting the comptroller in identifying persons entitled to unclaimed property, from not later than June 1 of each year to not later than June 1, 2016, and every fifth year thereafter.

C.S.S.B. 1671 contains a provision not included in the original redefining "dependent" with respect to a child dependent for purposes of provisions relating to uniform insurance benefits for employees of The University of Texas System and The Texas A&M University System and replacing references to being "mentally retarded" with references to having a "mental disability."

C.S.S.B. 1671 contains a provision not included in the original authorizing The University of Texas System and The Texas A&M University System to establish premium discounts, surcharges, rebates, or a revision in otherwise applicable copayments, coinsurance, or deductibles, or any combination of those incentives, for an individual who participates in system-approved programs promoting disease prevention, wellness, and health.

C.S.S.B. 1671 contains a provision not included in the original establishing that provisions limiting the amount of system contributions for basic employee and dependent coverage for an employee designated by The University of Texas System or The Texas A&M University System as working less than 40 hours a week do not prohibit either system from contributing, from money not appropriated from the general revenue fund, amounts in excess of the specified limits for a tenured faculty member with whom the system has entered into a phased retirement agreement.

C.S.S.B. 1671 contains a provision not included in the original establishing that each individual automatically enrolled in the uniform program for full-time employees of The University of Texas System or The Texas A&M University System is considered to have authorized a deduction from the participant's monthly compensation in an amount equal to the difference between the total cost for basic coverage and the amount contributed by the system.