

BILL ANALYSIS

C.S.H.B. 2432
By: Murphy
Pensions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that local public retirement systems lack transparency, do not have clear ethics guidelines in place, and are subject to insolvency because of current distribution rates to retirees who can push retirement benefits to an artificially high rate. C.S.H.B. 2432 seeks to address key issues, including transparency and ethics, affecting local public retirement systems that currently are not addressed at the local level.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the State Pension Review Board in SECTIONS 2, 4, and 5 of this bill.

ANALYSIS

C.S.H.B. 2432 amends the Government Code to establish conflict-of-interest provisions requiring a member of a public retirement system's governing body, an investment manager for such a system appointed by contract, and any other person providing asset management and investment services under contract to such a system to disclose certain business, commercial, or other relationships involving the person, or a member of the person's immediate family, in writing to the system not later than the 30th day after the date the person learns of the relationship. The bill makes the failure by a member of a system's governing body to disclose such a relationship a ground for removal from that governing body and requires the State Pension Review Board, if that board determines that such a person should be removed under these provisions, to notify the appropriate appointing officer that a ground for removal exists or, if the person was elected to the governing body, to notify the governing body's presiding officer or assistant presiding officer of the ground for removal. The bill authorizes an appointing officer or, in the case of an elected trustee, the governing body of a public retirement system, on receipt of notice of a ground of removal or on making the officer's or body's own determination, to remove the person from the governing body if the appointing officer or governing body determines a violation of the disclosure requirement has occurred.

C.S.H.B. 2432 establishes that if an investment manager for a public retirement system appointed by contract or a person providing asset management and investment services under contract to a system fails to make the required conflict-of-interest disclosure, the contract is voidable by the system and authorizes the system's governing body in those circumstances to enter an order declaring the person ineligible to contract for business relating to the management or investment of the system's assets.

C.S.H.B. 2432 requires a person involved in the governance of a public retirement system or the management and investment of system assets, at least annually on a date specified by the system, to file a statement with the system stating that the person is aware that the person is required to disclose material conflicts of interest and that the person is in compliance. The bill requires the State Pension Review Board by rule to adopt guidelines relating to the types of relationships that must be disclosed.

C.S.H.B. 2432 prohibits a person involved in the governance of a public retirement system or the management and investment of system assets or a member of such a person's immediate family from accepting any benefit with an aggregate value in any calendar year of more than \$1,000 from any individual who enters into or seeks to enter into a contract with a public retirement system. The bill exempts from this prohibition food, lodging, and transportation related to attending a conference in Texas that is attended or expected to be attended by at least 50 individuals representing more than one public retirement system.

C.S.H.B. 2432 prohibits a public retirement system from knowingly employing or contracting with, either directly or indirectly, a former member of the system's governing body before the first anniversary of the date the individual ceased to be a member of that governing body.

C.S.H.B. 2432 makes a person who commits theft in relation to a service provided by the person to a public retirement system liable to the system for a civil penalty of up to \$250,000 for each violation and authorizes an action to be brought against such person regardless of whether a criminal conviction of theft has been sought or obtained against the person. The bill makes a person who commits a breach of the person's fiduciary duty in relation to a service provided by the person to a public retirement system liable to the system for a civil penalty of up to \$2,000 in the aggregate for the violation and all violations of a similar nature. The bill requires the amount of a civil penalty imposed under these bill provisions to be in an amount that is reasonably related to the harm to the public retirement system and authorizes the attorney general to bring an action to impose and recover a civil penalty for such a violation made in relation to certain statewide public retirement systems. The bill authorizes a local prosecuting attorney to bring an action to impose or recover a civil penalty for such a violation made in relation to a public retirement system other than those specified statewide systems. The bill establishes that the civil penalty is in addition to any other remedy provided by law.

C.S.H.B. 2432 requires a public retirement system, other than a statewide public retirement system, to file with the sponsoring authority not later than the 90th day after the end of the fiscal year under which the system operates a report regarding annuities the retirement system began paying during the preceding fiscal year and the amounts of which were calculated based at least in part on a member's final average salary or on a member's average salary during a particular period of employment. The bill defines "sponsoring authority" as the governing body of a municipality or other political subdivision that participates, or has an agency or instrumentality of the political subdivision that participates, in a public retirement system. The bill sets out the required contents of the report and establishes that information included in the report that, if in the custody of the public retirement system would be considered confidential and not subject to disclosure under applicable provisions of the state public information law, while in the custody of the sponsoring authority is considered confidential and not subject to disclosure in a manner that could reasonably be expected to identify an individual. The bill authorizes the report to be combined with any other report that a public retirement system is required to provide to a sponsoring authority. The bill exempts a public retirement system that is not designed to be funded on an actuarial basis from these provisions relating to the report.

C.S.H.B. 2432 requires the governing body of a public retirement system to require that all records, including documents used to prepare or explain the system's annual financial report, be retained in compliance with the records retention schedule adopted by the Texas State Library and Archives Commission applicable to all local governments and be made available to the State Pension Review Board on request.

C.S.H.B. 2432 requires the State Pension Review Board by rule to adopt guidelines for the procurement of investment managers and other persons who provide a public retirement system with asset management and investment services and authorizes the board to require a public retirement system to provide the board with a statement, not later than the 30th day after the date of the procurement, detailing the system's method of selecting that investment manager or other

person providing asset management and investment services.

C.S.H.B. 2432 makes a contract with an investment manager or other person to provide asset management and investment services to a public retirement system subject, at the State Pension Review Board's request, to review by the board regarding the fees charged and paid by the system and the services rendered to the system in consideration for the fees.

C.S.H.B. 2432 exempts the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and the Judicial Retirement System of Texas Plan Two from the bill's provisions.

C.S.H.B. 2432 requires the State Pension Review Board, not later than January 1, 2014, to adopt rules for the bill's provisions relating to the required conflict-of-interest disclosures and to the procurement of investment managers or other persons to provide asset management and investment services to a public retirement system. The bill specifies that a person required to disclose an applicable relationship is not required to do so before the 30th day after the date the review board adopts its initial rules.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2432 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 552.0038(c), (h), and (i), Government Code, are amended to read as follows:

(c) Records of individual members, annuitants, retirees, beneficiaries, alternate payees, program participants, or persons eligible for benefits from a retirement system under a retirement plan or program administered by the retirement system that are in the custody of the system or in the custody of an administering firm, a carrier, or another governmental agency, including the comptroller, acting in cooperation with or on behalf of the retirement system are confidential and not subject to public disclosure. ~~[The retirement system, administering firm, carrier, or governmental agency is not required to accept or comply with a request for a record or information about a record or to seek an opinion from the attorney general because the records are exempt from the provisions of this chapter, except as otherwise provided by this section.]~~

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

(h) ~~[The retirement system has sole discretion in determining whether a record is subject to this section.]~~ For purposes of this section, a record includes any identifying information about a person, living or deceased, who is or was a member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system under any retirement plan or program administered by the retirement system.

(i) To the extent of a conflict between this section and any other law with respect to the confidential information held by a public retirement system or other entity described by Subsection (c) concerning an individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits from the retirement system:

(1) [;] the prevailing provision is the provision that provides the greater substantive ~~[and procedural]~~ protection for the privacy of information concerning that individual member, annuitant, retiree, beneficiary, alternate payee, program participant, or person eligible for benefits; and

(2) a procedural provision of this chapter prevails.

No equivalent provision.

SECTION 1. Section 802.002(a), Government Code, is amended to read as follows:

(a) Except as provided by Subsection (b), the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and the Judicial Retirement System of Texas Plan Two are exempt from Sections 802.004, 802.005, 802.006, 802.007, 802.101(a), 802.101(b), 802.101(d), 802.102, 802.103(a), 802.103(b), 802.103(d), 802.202, 802.203, 802.204, 802.2041, 802.2042, 802.205, 802.206, and 802.207. The Judicial Retirement System of Texas Plan One is exempt from all of Subchapters B and C except Sections 802.104 and 802.105. The optional retirement program governed by Chapter 830 is exempt from all of Subchapters B and C except Section

802.106.

SECTION 2. Subchapter A, Chapter 802, Government Code, is amended by adding Sections 802.004 through 802.007 to read as follows:

Sec. 802.004. DISCLOSURE OF CERTAIN POTENTIAL CONFLICTS OF INTEREST REQUIRED; ANNUAL FILING.

Sec. 802.005. PROHIBITION AGAINST ACCEPTANCE OF CERTAIN BENEFITS.

Sec. 802.006. PROHIBITED EMPLOYMENT AND CONTRACTS.

Sec. 802.007. CIVIL PENALTY. (a) In this section, "theft" means the conduct prohibited by Section 31.03, Penal Code.

(b) A person who commits theft in relation to a service provided by the person to a public retirement system is liable to the system for a civil penalty in an amount not to exceed \$250,000 for each violation. An action may be brought under this subsection regardless of whether a criminal conviction under Section 31.03, Penal Code, has been sought or obtained against the person.

(c) A person who commits a breach of the person's fiduciary duty in relation to a service provided by the person to a public retirement system is liable to the system for a civil penalty in an amount not to exceed:

- (1) \$500 for each violation; or
- (2) \$10,000 in the aggregate for all violations of a similar nature.

(d) The amount of a civil penalty imposed under this section must be in an amount that is reasonably related to the harm to the public retirement system.

(e) The attorney general may bring an action to impose and recover a civil penalty for a violation of this section made in relation to:

- (1) the Employees Retirement System of Texas, including a retirement system administered by that system;
- (2) the Teacher Retirement System of Texas;
- (3) the Texas Municipal Retirement System;
- (4) the Texas County and District

SECTION 2. Subchapter A, Chapter 802, Government Code, is amended by adding Sections 802.004 through 802.008 to read as follows:

Sec. 802.004. DISCLOSURE OF CERTAIN POTENTIAL CONFLICTS OF INTEREST REQUIRED; ANNUAL FILING.

Sec. 802.005. PROHIBITION AGAINST ACCEPTANCE OF CERTAIN BENEFITS.

Sec. 802.006. PROHIBITED EMPLOYMENT AND CONTRACTS.

Sec. 802.007. CIVIL PENALTY. (a) In this section, "theft" means the conduct prohibited by Section 31.03, Penal Code.

(b) A person who commits theft in relation to a service provided by the person to a public retirement system is liable to the system for a civil penalty in an amount not to exceed \$250,000 for each violation. An action may be brought under this subsection regardless of whether a criminal conviction under Section 31.03, Penal Code, has been sought or obtained against the person.

(c) A person who commits a breach of the person's fiduciary duty in relation to a service provided by the person to a public retirement system is liable to the system for a civil penalty in an amount not to exceed \$2,000 in the aggregate for the violation and all violations of a similar nature.

(d) The amount of a civil penalty imposed under this section must be in an amount that is reasonably related to the harm to the public retirement system.

(e) The attorney general may bring an action to impose and recover a civil penalty for a violation of this section made in relation to:

- (1) the Employees Retirement System of Texas, including a retirement system administered by that system;
- (2) the Teacher Retirement System of Texas;
- (3) the Texas Municipal Retirement System;
- (4) the Texas County and District

Retirement System; and
(5) the Texas Emergency Services Retirement System.

(f) A local prosecuting attorney may bring an action to impose or recover a civil penalty for a violation of this section made in relation to a public retirement system other than a system described by Subsection (e).

(g) A penalty under this section is in addition to any other remedy provided by law.

No equivalent provision.

Retirement System; and
(5) the Texas Emergency Services Retirement System.

(f) A local prosecuting attorney may bring an action to impose or recover a civil penalty for a violation of this section made in relation to a public retirement system other than a system described by Subsection (e).

(g) A penalty under this section is in addition to any other remedy provided by law.

Sec. 802.008. ANNUAL REPORT ON CERTAIN ANNUITIES PAID BY LOCAL RETIREMENT SYSTEMS. (a) In this section:

(1) "Statewide retirement system" has the meaning assigned by Section 804.001.

(2) "Sponsoring authority" means the governing body of a municipality or other political subdivision that participates, or has an agency or instrumentality of the political subdivision that participates, in a public retirement system.

(b) Except as provided by Subsection (f), in addition to other reports required by law, a public retirement system, other than a statewide public retirement system, not later than the 90th day after the end of the fiscal year under which the system operates, shall file with the sponsoring authority a report regarding annuities:

(1) the retirement system began paying during the preceding fiscal year; and

(2) the amounts of which were calculated based at least in part:

(A) on a member's final average salary; or

(B) on a member's average salary during a particular period of employment.

(c) The report required by this section must include:

(1) if the amount of an annuity was calculated based on a salary that was increased as a result of overtime pay or any other amount received by the member as payment for time worked in excess of the member's normal work schedule:

(A) the amount by which the annuity was increased; and

(B) a calculation of the amount that the member's annuity would have been had the member's annuity excluded the amounts earned for time worked in excess of the member's normal work schedule; and

(2) the number of annuitants whose annuities meet the terms of Subdivision (1) and the aggregate amount by which the amounts of the annuities paid exceed the amount described by Subdivision (1)(B).

(d) Information included in the report required by this section that, if in the custody of the public retirement system would be considered confidential and not subject to disclosure under Section 552.0038, while in the custody of the sponsoring authority is considered confidential and not subject to disclosure in a manner that could reasonably be expected to identify an individual.

(e) The report required by this section may be combined with any other report that a public retirement system is required to provide to a sponsoring authority.

(f) This section does not apply to a public retirement system that is not designed to be funded on an actuarial basis.

SECTION 3. Section 802.103, Government Code, is amended.

SECTION 3. Same as introduced version.

SECTION 4. Subchapter C, Chapter 802, Government Code, is amended.

SECTION 4. Same as introduced version.

SECTION 5. Chapter 810, Government Code, is amended by adding Section 810.002 to read as follows:

Sec. 810.002. DETERMINATION OF CERTAIN PUBLIC RETIREMENT SYSTEM BENEFITS. (a) In this section "public retirement system" has the meaning assigned by Section 802.001.

(b) Notwithstanding any other law, if benefits provided under a public retirement system's defined benefit plan are calculated based in part on a member's final average salary, the determination of that salary may not include overtime pay or any other amounts received by the member as payment for time worked in excess of the member's normal work schedule.

No equivalent provision.

SECTION 6. (a) Not later than January 1, 2014, the State Pension Review Board shall adopt rules as required by Sections 802.004 and 802.2041, Government Code, as added

SECTION 5. Same as introduced version.

by this Act.

(b) Notwithstanding Section 802.004, Government Code, as added by this Act, a person is not required to comply with that section before the 30th day after the date the State Pension Review Board adopts initial rules under that section.

SECTION 7. (a) Section 810.002, Government Code, as added by this Act, applies only to a member of a public retirement system who:

(1) is hired on or after the effective date of this Act; and

(2) was not a member of the system on the date the member was hired.

(b) A member of a public retirement system who was hired before the effective date of this Act or who was a member of a public retirement system on the date the member was hired is subject to the law in effect on the date the member was hired, and that law is continued in effect for that purpose.

SECTION 8. This Act takes effect September 1, 2013.

No equivalent provision.

SECTION 6. Same as introduced version.