

BILL ANALYSIS

C.S.S.B. 1570
By: Flores
Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

It has been suggested that the ability of certain corrections employees who commit certain felonies to continue to collect their retirement annuity is problematic. C.S.S.B. 1570 seeks to prevent corrections officers who participate in criminal activities involving prison gangs from continuing to profit from their employment after conviction of a qualifying felony by making such corrections officers ineligible to collect their service retirement annuity.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the governing body of a public retirement system in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 1570 amends the Government Code to establish that certain members of a public retirement system are not eligible to receive a service retirement annuity under the retirement system if the member is convicted of a qualifying felony for conduct arising directly from the member's service as a corrections officer. The bill defines "qualifying felony" as any felony involving an incarcerated member of a criminal street gang and makes the bill's provisions applicable only to a person who is a member of the employee class of the Employees Retirement System of Texas (ERS) because the person serves as a corrections officer for the Texas Department of Criminal Justice (TDCJ) or the Texas Juvenile Justice Department (TJJJ) or who is otherwise eligible for membership in a public retirement system wholly or partly because the person served as a corrections officer for TDCJ or TJJJ.

C.S.S.B. 1570 requires the retirement system, on receipt of notice an applicable court is required to send of a person's conviction for a qualifying felony, of any similar notice of a conviction of a qualifying felony from a U.S. district court or U.S. attorney, or of any other information that the retirement system determines by rule is sufficient to establish a conviction of a qualifying felony, to suspend payments of a service retirement annuity to a person the retirement system determines is ineligible to receive the annuity. The bill establishes that a person whose conviction is overturned on appeal or who meets the requirements for innocence under statutory provisions relating to wrongful imprisonment:

- is entitled to receive an amount equal to the accrued total of payments and interest earned on the payments withheld during the suspension period; and
- may resume receipt of annuity payments on payment to the retirement system of an amount equal to the contributions refunded to the person under the bill's provisions.

C.S.S.B. 1570 entitles a member who is ineligible to receive a service retirement annuity under the bill's provisions to a refund of the member's service retirement annuity contributions, including interest earned on those contributions. Such a refund is subject to an award of all or part of the member's service retirement annuity contributions to a former spouse, including as a just and right division of the contributions on divorce, payment of child support, or payment of spousal maintenance or contractual alimony or other order of a court. The bill establishes that benefits payable to an alternate payee under statutory provisions relating to domestic relations orders and spousal consent who is recognized by a qualified domestic relations order established before the bill's effective date are not affected by a member's ineligibility to receive a service retirement annuity under the bill's provisions.

C.S.S.B. 1570 authorizes a court, on conviction of a member for a qualifying felony and in the same manner as in a divorce or annulment proceeding, to make a just and right division of the member's service retirement annuity by awarding to the member's spouse all or part of the community property interest in the annuity forfeited by the member. The bill requires a court, on such a conviction and if the member's service retirement annuity was partitioned or exchanged by written agreement of the spouses before the member's commission of the offense, to award the annuity forfeited by the member to the member's spouse as provided in the agreement.

C.S.S.B. 1570 establishes that ineligibility for a service retirement annuity does not impair a person's right to any other retirement benefit for which the person is eligible. The bill requires the governing body of a public retirement system to adopt rules and procedures to implement the bill's provisions relating to certain corrections employees who are ineligible for a retirement annuity. The bill establishes that, if the spouse of a member convicted of a qualifying felony is convicted of the felony as a party to the offense or of another qualifying offense arising out of the same criminal episode, the spouse forfeits the member's service retirement annuity and service retirement contributions to the same extent as the member.

C.S.S.B. 1570 amends the Code of Criminal Procedure to require a judge, in a trial of a qualifying felony, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the defendant is:

- a member of the employee class while a member of ERS because the person serves as a corrections officer for TDCJ or TJJD; or
- otherwise eligible for membership in a public retirement system wholly or partly because the person served as a corrections officer for TDCJ or TJJD.

The bill requires a judge who makes the affirmative finding to make the determination and provide the notice required under the bill's provisions relating to certain corrections employees who are ineligible for a retirement annuity. The bill establishes that a judgment under statutory provisions relating to judgment and sentence should reflect affirmative findings entered pursuant to the bill's provisions relating to a finding regarding an offense related to conduct of certain corrections employees.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

C.S.S.B. 1570 differs from the engrossed in minor or nonsubstantive ways by conforming to certain bill drafting conventions.