

BILL ANALYSIS

C.S.H.B. 4368
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2019, an actuarial valuation of data showed the funded ratio of the Austin Police Retirement System was 58.4 percent, and the period to amortize the unfunded actuarial accrued liability was "never." The fund was estimated to run out of money in about 50 years. In budget decisions made in 2020, the Austin City Council included a placeholder for an unspecified increase in contributions to the retirement system contingent on passage of pension reform legislation in 2021. The funding gap known at the time was for a needed 10 to 12 percent increase in contributions. In the same budget, the city council reduced funding to the police department, which ultimately could result in contribution decreases to the retirement system. The retirement system also experienced a record number of retirements in 2020, which has a negative impact on the actuarial funding status. C.S.H.B. 4368 seeks to resolve the issue by, among other things, establishing a new tier of benefits for members hired after a certain date, increasing member contributions, and revising city contributions to pay down the unfunded liability.

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

ANALYSIS

C.S.H.B. 4368 amends Vernon's Texas Civil Statutes to revise provisions relating to the police retirement system in a municipality having a population of more than 750,000 and less than 850,000. The bill establishes that each member of the retirement system is either a group A member or group B member as follows:

- a member is a group A member if the member was:
 - retired or employed by the city or the system on December 31, 2021;
 - a vested--noncontributory member as of December 31, 2021, who has not withdrawn the member's accumulated deposits; or
 - formerly employed by the city or the system before December 31, 2021, returned to employment with the city or system on or after January 1, 2022, and did not withdraw the member's accumulated deposits from the system or withdrew the member's accumulated deposits from the system but reinstated all of the previously forfeited creditable service; and
- a member is a group B member if the member:
 - first became employed by the city or the system on or after January 1, 2022; or
 - was formerly employed by the city or the system before December 31, 2021, returned to employment with the city or system on or after January 1, 2022, and

while the member was separated from service, withdrew the member's accumulated deposits from the system and has not reinstated all of the member's previously forfeited creditable service.

It is the duty of the system's board of trustees to determine the membership group to which each police officer or employee of the retirement system properly belongs.

C.S.H.B. 4368 redefines "average final compensation," as that term is defined for retirement system purposes, to specify that the duration of the period of membership service on which that compensation is based is 60 months for a group B member. For a group A member, the duration remains 36 months.

C.S.H.B. 4368 changes the amount of the monthly life annuity payment to which a system member is entitled on retirement by requiring the payment to be equal to one-twelfth of the following amounts:

- for a group A member, the product of 3.2 percent of a member's average final compensation multiplied by the number of months of creditable service; or
- for a group B member, the product of 2.5 percent of a member's average final compensation multiplied by the number of months of creditable service.

The bill removes provisions authorizing the retirement benefit percent used to calculate the monthly payment amount to be changed by board rule under certain conditions and repeals provisions establishing the board's power to authorize an annual cost of living adjustment.

C.S.H.B. 4368 revises eligibility requirements for service retirement as follows:

- the eligibility requirements are unchanged for a group A member, who continues to be eligible for service retirement if the member has attained the age of 55 years and completed at least 20 years of creditable service with the city, or has completed 23 years of creditable service, excluding any military service; and
- a group B member is eligible for service retirement if the member has attained the age of 50 years and completed at least 25 years of creditable service with the city, excluding any military service.

The bill makes related changes to provisions establishing the creditable service on which a disability retirement benefit is based for a member whose disability is a direct or proximate result of the performance of the member's employment duties with the system or the city. The bill repeals provisions authorizing the age and length-of-service requirements for service retirement to be changed by board rule under certain conditions.

C.S.H.B. 4368 changes the age at which the system is required to send certain members notice regarding the requirement under federal law to retire and begin receiving a monthly retirement benefit, and the age at which mandatory distributions may begin, from 70-1/2 years of age to the applicable age for minimum distributions required under specified provisions of the Internal Revenue Code of 1986.

C.S.H.B. 4368 revises provisions relating to member contributions to the retirement system by doing the following:

- increasing the minimum member contribution rate for pay periods beginning on or after January 1, 2022, from at least 13 percent of the basic hourly earnings of the member to at least 15 percent of the basic hourly earnings of the member, subject to an adjustment under the bill's provisions;
- capping the member contribution rate for such pay periods at 17 percent;
- clarifying that, if the deposit rate for members has been increased to a rate above the established rate by a majority vote of the active--contributory members, the rate may be decreased to a rate not lower than the established rate; and
- establishing that in no event will an increase to the member contribution rate that is made solely due to an adjustment under the bill's provisions be decreased by a majority vote of the members.

C.S.H.B. 4368 changes the city contribution from 21 percent of the basic hourly earnings of each member employed by the city to the following amounts, subject to adjustments in accordance with the bill's provisions or additions for proportionate retirement program participation, as applicable:

- for each pay period that begins on or after January 1, 2022, and before January 1, 2023, an amount equal to the sum of the following:
 - the city contribution rate, as determined in the initial risk sharing valuation study required by the bill multiplied by the pensionable payroll for the applicable pay period; and
 - 1/26 of the city legacy contribution amount for the 2022 calendar year, as determined in the initial risk sharing valuation study; and
- for each pay period that begins on or after January 1, 2023, an amount equal to the sum of the following:
 - the city contribution rate for the applicable calendar year, as determined in a subsequent risk sharing valuation study and adjusted under the bill's provisions, as applicable, multiplied by the pensionable payroll for the applicable pay period; and
 - 1/26 of the city legacy contribution amount for the applicable calendar year, as determined in the initial risk sharing valuation study.

C.S.H.B. 4368 requires the retirement system to cause the system's actuary to prepare an initial risk sharing valuation study that is dated as of December 31, 2020, and subsequent risk sharing valuation studies for each calendar year beginning after that date. The bill sets out requirements for those studies, including requirements for the studies to determine city and member contribution rates, requirements regarding the actuarial principals to be used, and a requirement for the initial study to do the following:

- project the corridor midpoint for the next 30 calendar years beginning with the 2022 calendar year; and
- include a schedule of city legacy contribution amounts for 30 calendar years beginning with the 2022 calendar year.

The bill defines, among other terms, "corridor midpoint" and "city legacy contribution amount." The bill provides for a three-year phase-in period for the legacy contribution payments. The bill authorizes the city and the board to agree on a written transition plan for resetting the corridor midpoint under certain circumstances and authorizes the board by rule to adopt actuarial principles other than those set out by the bill, provided that the principles are consistent with actuarial standards of practice, are approved by the system's actuary, and do not operate to change the city legacy contribution amount. The bill provides for the following:

- adjustments to the city contribution rate if the estimated rate is lower than the corridor midpoint;
- adjustments to the city contribution rate if the estimated rate is equal to or greater than the corridor midpoint;
- an addition to the member contribution rate if the estimated city contribution rate is greater than the maximum city contribution rate; and
- a process for experience studies and changes to actuarial assumptions that gives the city an avenue to be involved with the determination of those assumptions and provides for the use of a third-party actuary to resolve differences between the system's actuary and the city's actuary, if applicable.

C.S.H.B. 4368 changes the specified rate at which the city is required to contribute additional amounts for proportionate retirement program participation to 0.737 percent of the basic hourly earnings of each member employed by the city for all pay periods commencing on or after October 1, 2020, subject to adjustment.

C.S.H.B. 4368 revises the composition of the retirement system's board of trustees by doing the following:

- decreasing from five to four the number of police officer members serving on the board;

- adding one citizen member appointed by the city council, who must be a legally qualified voter of the city and a resident for the preceding five years; and
- specifying that the citizen member appointed by the city council and the citizen member appointed by the board must not be city employees or system members at the time of appointment or during any time serving as a trustee on the board and must have demonstrated experience in the field of finance or investments.

The bill requires a vacancy occurring by the death, resignation, or removal of the citizen member appointed by the city council to be filled by appointment by the city council. These provisions of the bill relating to the board composition take effect January 1, 2022.

C.S.H.B. 4368 repeals a provision relating to the manner in which the actuarial equivalent for optional forms of annuity payment for disability retirement is computed.

C.S.H.B. 4368 repeals the following provisions of Article 6243n-1, Vernon's Texas Civil Statutes:

- Section 5.04(b);
- Sections 6.01(c), (d), and (e);
- Section 6.02(b); and
- Section 7.02(b).

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4368 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes provisions absent from the original revising the composition of the retirement system's board effective January 1, 2022.

The substitute revises certain details of the descriptions of group A and group B members.

The original revised the board's authority to change the retirement benefit percent used to calculate the amount of the monthly life annuity payment, to make an annual cost of living adjustment, or to change the age and length-of-service requirements for service retirement, whereas the substitute removes the board's authority to make those changes and adjustments entirely. The substitute also does not include provisions from the original that authorized an additional benefit payment in lieu of the annual adjustment.

The original changed the age at which the system is required to send certain members notice regarding the requirement under federal law to retire and begin receiving a monthly retirement benefit, and the age at which mandatory distributions may begin, to age 72 or a later age as required under specified provisions of the federal Internal Revenue Code, whereas the substitute changes it to the applicable age for minimum distributions required under those provisions.

The substitute includes revisions absent from the original relating to changes that may be made to the member contribution rate by a majority vote of members.

The substitute revises the original's provisions relating to an initial risk sharing valuation study and subsequent risk sharing valuation studies in the following ways:

- clarifies that the initial study must be based on the actuarial assumptions that were used by the system's actuary in the valuation completed for the year ended December 31, 2020;

- omits the requirement that each study determine whether any increase to the corridor midpoint is to be made for any change in the estimated city contribution rate due to the covered payroll of the system growing at a rate different than that assumed in the most recently completed risk sharing valuation; and
- includes a requirement for each study to determine the member contribution rate for the following calendar year.

With respect to the adjustments to the city contribution rate if the estimated city contribution rate is equal to or greater than the corridor midpoint, the substitute does not include a requirement from the original for the city and the board to enter into discussions to determine additional funding solutions if the estimated rate is greater than the maximum city contribution rate for the corresponding calendar year. However, the substitute does include provisions providing for an addition to the member contribution rate in such a circumstance, subject to a 17 percent cap on that rate.

The substitute includes provisions absent from the original relating to the following:

- a three-year phase-in period for legacy contribution payments; and
- a process for experience studies and changes to actuarial assumptions that gives the city an avenue to be involved with the determination of those assumptions and provides for the use of a third-party actuary to resolve differences between the system's actuary and the city's actuary, if applicable.