

## **BILL ANALYSIS**

Senate Research Center  
87R19419 KFF-F

C.S.S.B. 321  
By: Huffman  
Finance  
4/19/2021  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Employees Retirement System of Texas (ERS) provides retirement benefits to over 117,000 people. Currently, the funded ratio for the ERS pension fund is 66.0 percent and the unfunded liability is approximately \$14.7 billion.

C.S.S.B. 321 would establish a new cash balance retirement plan for new state employees starting on or after September 1, 2022. The bill would also require the state to make annual amortization payments to the ERS trust fund in order to start paying down the existing unfunded liability. As a result of C.S.S.B. 321, the pension fund will become more stable and the funding period is lowered.

C.S.S.B. 321 amends current law relating to contributions to, benefits from, and the administration of the Employees Retirement System of Texas.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the board of trustees of the Employees Retirement System of Texas in SECTION 21 (Section 820.004, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 803.202, Government Code, by adding Subsection (c), to provide that a member of the Employees Retirement System of Texas (ERS) who is subject to Chapter 820 is eligible to participate in the program provided by Chapter 803 (Proportionate Retirement Program).

SECTION 2. Amends Chapter 805, Government Code, by adding Section 805.0015, as follows:

Sec. 805.0015. APPLICABILITY. Provides that Chapter 805 (Credit Transfer Between Employees Retirement System of Texas and Teacher Retirement System of Texas) does not apply to a member of ERS who is subject to Chapter 820.

SECTION 3. Amends Section 811.001, Government Code, by adding Subdivision (5-a) and amending Subdivision (16) to define "cash balance group member" and to redefine "service credit" in Subtitle B (Employees Retirement System of Texas).

SECTION 4. Amends Section 812.101(c), Government Code, to provide that for a law enforcement or custodial officer, the withdrawal of accumulated contributions under Subsection (a) (relating to the authority of a member of ERS to withdraw all of the member's accumulated contributions for service credited in the employee class of membership under certain circumstances) includes all of the officer's contributions made under certain sections, as applicable, including under Section 820.101(b).

SECTION 5. Amends Section 813.001, Government Code, to make conforming changes.

SECTION 6. Amends Subchapter A, Chapter 813, Government Code, by adding Section 813.0015, as follows:

Sec. 813.0015. PROVISIONS APPLICABLE TO CASH BALANCE GROUP MEMBERS. Provides that the following provisions of Chapter 813 (Creditable Service) do not apply to a cash balance group member:

(1) Sections 813.102 (Service Credit Previously Canceled), 813.104 (Alternative Payments and Methods to Establish or Reestablish Service Credit), 813.106 (Service Not Previously Established), 813.202 (Membership Service Not Previously Established), 813.402 (Credit for Year in Which Eligible for Office), 813.403 (Eligibility for Service Credit Previously Canceled), 813.404 (Contributions for Service Not Previously Established), 813.502 (Administrative Board Service), 813.504 (Eligibility for Service Credit Previously Canceled), 813.505 (Contributions for Service Not Previously Established), 813.506 (Custodial Officer Service), 813.509 (Credit for Accumulated Sick Leave), 813.511 (Credit for Accumulated Annual Leave), 813.513 (Credit Purchase Option), and 813.514 (Credit Purchase Option for Certain Service); and

(2) Subchapter D (Establishment of Military Service).

SECTION 7. Amends Section 813.401, Government Code, as follows:

Sec. 813.401. SERVICE CREDITABLE IN ELECTED CLASS. Provides that service creditable in the elected class of membership is:

(1) makes a nonsubstantive change to this subdivision; and

(2) for members other than cash balance group members:

(A) military service established as provided by Subchapter D; and

(B) equivalent membership service specifically made creditable in that class.

Makes nonsubstantive changes.

SECTION 8. Amends Section 814.001, Government Code, as follows:

Sec. 814.001. TYPES OF BENEFITS. (a) Creates this subsection from existing text. Provides that, except as provided by Subsection (b), the types of benefits payable by ERS are certain retirement, disability, and death benefits. Makes a nonsubstantive change.

(b) Provides that a cash balance group member is not eligible for nonoccupational disability retirement benefits under Chapter 814 (Benefits).

SECTION 9. Amends Subchapter A, Chapter 814, Government Code, by adding Section 814.0015, as follows:

Sec. 814.0015. PROVISIONS APPLICABLE TO CASH BALANCE GROUP MEMBERS. Provides that the following provisions of Chapter 814 do not apply to a cash balance group member:

(1) Subchapters B (Service Retirement Benefits), D (Death Benefit Annuities), and G (Increases in Benefits); and

(2) Sections 814.202(a) (relating to the provision that a contributing member of ERS is eligible to retire for a nonoccupational disability if the member has a certain number of years in membership service credit at the time the member became permanently disabled), (e) (relating to prohibiting a member otherwise eligible from applying for or receiving a nonoccupational disability annuity if the member is eligible for a service retirement annuity under certain sections), and (f) (relating to prohibiting an application for a nonoccupational disability retirement

from being made after a certain date after the member ceased making contributions to ERS), 814.205 (Disability Retirement Benefits for Elected Class Service), 814.2055 (Average Monthly Compensation), 814.206 (Disability Retirement Benefits for Employee Class Service), 814.207 (Disability Retirement Benefits for Certain Peace Officers), and 814.211 (Refund at Annuity Discontinuance).

SECTION 10. Amends Section 814.009(a), Government Code, to authorize a person who receives an annuity under Subtitle B, rather than under Subchapter A (General Provisions) to, on a form prescribed by and filed with ERS, authorize ERS to deduct from the person's monthly annuity payment the amount of a fee for the person's membership in certain state employee organizations.

SECTION 11. Amends Section 814.0095(a), Government Code, to provide that except as provided by Section 814.0096(c) (relating to the requirement that the board of trustees charge an administrative fee to cover certain fees) person who receives an annuity under Subtitle B, rather than under Subchapter A is authorized to, on a printed or electronic form filed with ERS, authorize ERS to deduct from the person's monthly annuity payment the amount of a contribution to the state employee charitable campaign in the manner and for the same purposes for which a state employee is authorized to authorize deductions to that campaign under Subchapter I (Charitable Contributions), Chapter 659 (Compensation).

SECTION 12. Amends Sections 815.311(a) and (b), Government Code, as follows:

(a) Requires ERS to deposit in a member's individual account in the employees saving account certain amounts, as applicable, including, interest and gain sharing interest in accordance with Sections 820.102 and 820.103, respectively. Makes nonsubstantive changes.

(b) Creates exceptions under Section 820.102 and 820.103 to the provision that interest on money in an individual account in the employees saving account is earned monthly and is computed at the rate of two percent a year on the mean balance of the member's account for the fiscal year.

SECTION 13. Amends Section 815.314, Government Code, to create exceptions under Section 820.102 and 820.103 to the requirement that ERS deposit in the interest account all income, interest, and dividends from deposits and investments of assets of ERS.

SECTION 14. Amends Section 815.317(d), Government Code, to include Section 820.101(b), as a section under which member contributions to the fund are deducted as applicable.

SECTION 15. Amends Section 815.401(a), Government Code, to require a contributing member to pay the membership fee with the member's first contribution to ERS in each fiscal year in the manner provided by certain sections, as applicable, including as provided by Section 820.101, for payment of the member's contribution to ERS.

SECTION 16. Amends the heading to Section 815.402, Government Code, to read as follows:

Sec. 815.402. COLLECTION OF CERTAIN MEMBER CONTRIBUTIONS.

SECTION 17. Amends Section 815.402(a), Government Code, as follows:

(a) Requires each department or agency of the state, except as provided by Section 813.201 (Current Service), each payroll period, to cause to be deducted from the compensation of each member, other than a cash balance group member, rather than from each member's compensation, a contribution of:

(1) makes no change to this subdivision;

(2) for service by a member who is not a member of the legislature rendered on or after September 1, 2017, the lesser of:

(A) 9.5 percent of the compensation, rather than of the member's annual compensation; or

(B) a percentage of the compensation, rather than a percentage of the member's annual compensation, equal to 9.5 percent reduced by one-tenth of one percent for each one-tenth of one percent that the state contribution rate for the fiscal year to which the service relates is less than the state contribution rate established for the 2017 fiscal year; or

(3) makes no change to this subdivision.

SECTION 18. Amends Section 815.403(a), Government Code, as follows:

(a) Requires the state, during each fiscal year, to contribute to ERS:

(1) an amount equal to 9.5 percent, rather than 7.4 percent, of the total compensation of all members of ERS for that year; and

(2) - (5) makes no changes to these subdivisions.

SECTION 19. Amends Sections 815.406(a) and (c), Government Code, as follows:

(a) Requires the state to pick up the employee contribution required of each of its employees by Section 815.402 or 820.101, as applicable, for all compensation earned, rather than all compensation earned after December 31, 1987.

(c) Makes a conforming change to this subsection.

SECTION 20. Amends Subchapter E, Chapter 815, Government Code, by adding Section 815.407, as follows:

Sec. 815.407. LEGACY PAYMENTS. Requires the state each fiscal year, in addition to the contributions required by Subtitle B, to make a payment in the amount of \$350 million to ERS to amortize ERS's unfunded actuarial liabilities.

SECTION 21. Amends Subtitle B, Title 8, Government Code, by adding Chapter 820, as follows:

## CHAPTER 820. CASH BALANCE BENEFIT

### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 820.001. DEFINITION. Defines "accumulated account balance."

Sec. 820.002. APPLICABILITY. Provides that this chapter applies only to a member who is first hired or first takes office in a position included in the employee or elected class of membership:

(1) on or after September 1, 2022; or

(2) before September 1, 2022, if the member:

(A) no longer holds a position in the employee or elected class of membership; and

(B) is authorized to withdraw, but has not withdrawn, the member's accumulated contributions under Subchapter B (Withdrawal of Contributions), Chapter 812 (Membership).

Sec. 820.003. CONFLICT OF LAW. Provides that this chapter prevails to the extent of a conflict between this chapter, including a rule adopted by ERS under authority of this chapter, and any other law.

Sec. 820.004. RULES. Authorizes the board of trustees to adopt rules necessary to implement this chapter.

#### SUBCHAPTER B. CASH BALANCE BENEFITS

Sec. 820.051. APPLICATION FOR CASH BALANCE BENEFIT. (a) Authorizes a member to apply for a cash balance annuity by filing an application for retirement with the board of trustees.

(b) Prohibits an application for a cash balance annuity from being made after the date the member wishes to retire, or more than 90 days before the date the member wishes to retire.

Sec. 820.052. ELIGIBILITY FOR CASH BALANCE BENEFIT. Provides that a member:

(1) who has service credit in the employee class of membership is eligible to retire and receive a cash balance annuity if the member:

(A) is at least 65 years old and has five years of service credit in that class; or

(B) has at least five years of service credit in that class and the sum of the member's age and amount of service credit in that class, including months of age and credit, equals or exceeds the number 80;

(2) who:

(A) has at least 20 years of service credit as a law enforcement or custodial officer is eligible to retire regardless of age and receive a cash balance annuity in an amount computed and funded as provided by Section 820.053; or

(B) is at least 55 years old and has at least 10 years of service credit as a law enforcement or custodial officer is eligible to retire and receive a cash balance annuity in an amount computed and funded as provided by Section 820.053; or

(3) who has a service credit in the elected class of membership is eligible to retire and receive a cash balance annuity if the member:

(A) is at least 60 years old and has eight years of service credit in that class; or

(B) is at least 50 years old and has 12 years of service credit in that class.

Sec. 820.053. CASH BALANCE BENEFITS FOR MEMBERS. (a) Provides that the state match for the cash balance benefit for:

(1) service credited to the employee class of membership is an amount computed by multiplying the member's accumulated account balance by 150 percent;

(2) service credited to the employee class of membership by a member eligible to retire under this chapter as a law enforcement or custodial officer is an amount computed by multiplying the member's accumulated account balance by:

(A) except as provided by Paragraph (B), 150 percent; and

(B) for the portion of the accumulated account balance, including interest, attributable to service as a law enforcement or custodial officer, 300 percent, paid from the law enforcement and custodial officer supplemental retirement fund; and

(3) service credited to the elected class of membership is an amount computed by multiplying the member's accumulated account balance by 150 percent.

(b) Requires ERS to compute a member's cash balance annuity under this section by taking the sum of the member's accumulated account balance and the state match computed under Subsection (a) and annuitizing that amount over the life expectancy of the member as of the effective date of the member's retirement using mortality and other tables adopted by the board for that purpose under Section 815.105 (Adopting Tables).

Sec. 820.054. DEATH AND DISABILITY BENEFITS. (a) Provides that a member who qualifies for an occupational disability retirement benefit under Chapter 814 or the beneficiary of a member described by Section 820.002(1) is entitled to a cash balance annuity under Section 820.053.

(b) Authorizes the board of trustees to enter into contracts to provide additional death and disability benefits under this chapter.

#### SUBCHAPTER C. CONTRIBUTIONS AND INTEREST

Sec. 820.101. COLLECTION OF MEMBER CONTRIBUTIONS. (a) Requires each department or agency of the state, each payroll period, to cause to be deducted from the compensation of a member subject to this chapter a contribution of six percent of the compensation of the member.

(b) Requires each department or agency of the state that employs a law enforcement or custodial officer who is a member subject to this chapter, in addition to the contribution under Subsection (a), to deduct an additional two percent contribution from the member's compensation, to be deposited in the law enforcement and custodial officer supplemental retirement fund.

Sec. 820.102. ANNUAL INTEREST ADJUSTMENT. Requires ERS, each fiscal year, to deposit for a member subject to this chapter an amount equal to four percent of the member's accumulated account balance deposited into the member's individual account in the employees saving account.

Sec. 820.103. GAIN SHARING INTEREST ADJUSTMENT. (a) Requires ERS, each fiscal year and subject to Subsection (b), to compute the gain sharing interest rate applicable to the subsequent fiscal year by:

(1) determining the average return on the investment of ERS's cash and securities during the preceding five fiscal years, expressed as a percentage rate;

(2) subtracting four percentage points from the percentage rate determined under Subdivision (1); and

(3) multiplying the sum determined under Subdivision (2) by 50 percent.

(b) Requires ERS, each fiscal year, subject to Subsection (c), in addition to the amount deposited under Section 820.102, to deposit into each member's and retiree's individual account in the employees saving account an amount equal to the gain sharing interest rate determined under Subsection (a) for the fiscal year multiplied by the member's or retiree's, as applicable, accumulated account balance.

(c) Prohibits the gain sharing interest rate applied under Subsection (b) from being less than zero or more than three percent.

(d) Provides that Subsection (b) applies only to a retiree who is receiving a cash balance annuity under Section 820.053.

SECTION 22. Amends Section 1551.102(b), Insurance Code, to include an individual who receives or is eligible to receive an annuity under Subchapter B, Chapter 820, Government Code, among the individuals eligible to participate in a certain group benefits program.

SECTION 23. Provides that ERS is required to implement a provision of this Act only if the legislature appropriates money specifically for that purpose. Provides that if the legislature does not appropriate money specifically for that purpose, ERS is authorized, but not required to, implement a provision of this Act using other appropriations available for that purpose.

SECTION 24. Effective date: upon passage or September 1, 2021.