

BILL ANALYSIS

Senate Research Center

S.B. 729
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Finance
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 321 from the 87th Legislature provided important provisions to reform the Employees Retirement System (ERS) pension fund. Since passage, ERS has identified technical changes needed to ensure that the new cash balance benefit structure is implemented as intended. These changes do not amend the current benefit structure.

Specifically, S.B. 729 amends the Qualified Domestic Relations Order (QDRO) that allows ex-spouses of Group 4 retirees to receive annual and gain sharing interest of their share, which ensures Group 4 participants have equivalent QDRO provisions compared to ERS Groups 1, 2, and 3. The bill also corrects a provision that may have prevented certain correctional officers from participating in the enhanced cash balance benefit. It restores the ability for future Group 4 retirees to select optional annuities, like survivor annuities and a partial lump-sum on retirement. It also ensures Group 4 has equivalent payment options just like ERS Groups 1, 2, and 3. It clarifies that Group 4 members are eligible for the Uniformed Services Employment and Reemployment Rights Act (USERRA), like those in Groups 1, 2, and 3. In addition, the new language allows ERS to bill the member's employing agency for the state contribution for the time of deployment. Finally, it clarifies the mechanics and timing of the gain share interest calculation.

S.B. 729 amends current law relating to the cash balance benefit under 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 4 (Section 820.021, Government Code) and SECTION 7 (Section 820.0537, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 804.003, Government Code, by amending Subsections (j) and (k) and adding Subsection (k-1), as follows:

(j) Creates an exception under Subsection (k-1).

(k) Creates an exception under Subsection (k-1).

(k-1) Requires that payment of segregated amounts by a public retirement system, or applicable carrier if under the optional retirement program, under Subsections (j) (relating to requiring that the public retirement system pay the segregated amounts without interest and pay benefits if a domestic order is determined to be a qualified domestic relations order) and (k) (relating to requiring that the public retirement system pay the segregated amounts without interest or pay benefits if the issue of whether a domestic order is a qualified domestic order is not resolved within a certain time) related to a benefit payable with respect to a member or retiree subject to Chapter 820 (Cash Balance Benefit) include annual interest provided by Section 820.102 (Annual Interest Adjustment) and gain sharing interest provided by Section 820.103 (Gain Sharing Interest Adjustment).

SECTION 2. Amends Section 813.0015, Government Code, as follows:

Sec. 813.0015. PROVISIONS APPLICABLE TO CASH BALANCE GROUP MEMBERS. Deletes existing text providing that Section 813.506 (Custodial Officer Service) does not apply to a cash balance group member.

SECTION 3. Amends Section 814.008(a), Government Code, to authorize a retiree receiving an optional cash balance annuity described by Section 820.0535(c)(1), (c)(2), or (c)(5) to change the designated beneficiary as provided by Section 814.008 (Change of Beneficiary After Retirement) for the benefits payable after the retiree's death.

SECTION 4. Amends Chapter 820, Government Code, by adding Subchapter A-1, as follows:

SUBCHAPTER A-1. MILITARY SERVICE CREDIT

Sec. 820.021. CREDITABLE MILITARY SERVICE. Requires the board of trustees of the Employees Retirement System of Texas (board of trustees) to adopt rules to comply with the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. Section 4301 et seq.), including rules governing how a member subject to this chapter is authorized to establish military service credit under this subchapter.

Sec. 820.022. STATE CONTRIBUTIONS FOR MILITARY SERVICE. (a) Requires the state to contribute for military service established under this subchapter an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class who is subject to this chapter at the time the service is established under this subchapter.

(b) Requires that the state's contribution under Subsection (a) be paid from the fund from which the member receives compensation at the time the service is established or, if the member does not hold a position at the time the service is established, from the fund from which the member received compensation when the member most recently held a position.

SECTION 5. Amends Chapter 820, Government Code, by adding Subchapter A-2, as follows:

SUBCHAPTER A-2. REESTABLISHING PREVIOUSLY CANCELED SERVICE CREDIT

Sec. 820.031. REESTABLISHING PREVIOUSLY CANCELED SERVICE CREDIT WITHOUT PURCHASE. (a) Authorizes a cash balance group member who has withdrawn contributions and canceled service credit in a class of membership to reestablish the canceled service credit in the Employees Retirement System of Texas (ERS) for the purposes described by Subsection (c) by submitting a request to ERS in a form and manner prescribed by ERS.

(b) Requires ERS to grant the canceled service credit of a member who submits a request as provided by Subsection (a) after ERS verifies that the member is a cash balance group member.

(c) Authorizes service credit established under this section to be used only to determine whether the cash balance group member is eligible to retire and receive a cash balance annuity under this chapter. Provides that the service credit does not affect eligibility for any other purpose, including for purposes of determining eligibility to participate in the group benefits program established under Chapter 1551 (Texas Employees Group Benefits Act), Insurance Code.

Sec. 820.032. PURCHASE OF PREVIOUSLY CANCELED SERVICE CREDIT. (a) Authorizes a cash balance group member who has withdrawn contributions and canceled service credit in a class of membership to purchase the canceled service credit in ERS for the purposes described by Subsection (c) by:

(1) submitting a request to ERS in a form and manner prescribed by ERS; and

(2) depositing with ERS in a lump sum the total amount of money withdrawn from a membership class not later than the first day of the 24th month after the month in which the person is reemployed or again holds office.

(b) Requires ERS, on receipt of the cash balance group member's deposit, to credit the member's individual account in the employees saving account with that amount and apply annual and gain sharing interest beginning the first day of the month following the date of the deposit, as provided by Sections 820.102 and 820.103.

(c) Authorizes service credit purchased under this section to be used only:

(1) to determine whether the cash balance group member is eligible to retire and receive a cash balance annuity; and

(2) for purposes of determining eligibility to participate in the group benefits program established under Chapter 1551, Insurance Code.

(d) Authorizes ERS to charge a reasonable administrative fee to purchase service credit under this section.

SECTION 6. Amends Section 820.052, Government Code, as follows:

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

(1) makes no changes to this subdivision;

(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 Subchapter B (Cash Balance Benefits), rather than Section 820.053 (Cash Balance Benefits for Members); or

(B) makes a conforming change to this paragraph; or

(3) makes no changes to this subdivision.

SECTION 7. Amends Subchapter B, Chapter 820, Government Code, by adding Sections 820.0535, 820.0536, and 820.0537, as follows:

Sec. 820.0535. OPTIONAL CASH BALANCE BENEFITS. (a) Authorizes a retiring member, instead of the standard cash balance annuity payable under Section 820.053, to elect to receive an optional cash balance annuity under this section.

(b) Requires a person who selects an optional lifetime cash balance annuity to designate, before the selection becomes effective, one beneficiary to receive the annuity on the death of the person making the selection. Authorizes a person who selects an optional cash balance annuity payable for a guaranteed period to designate, before or after retirement, one or more beneficiaries to receive the annuity on the death of the person making the selection.

(c) Authorizes a person eligible to select an optional cash balance annuity under this section to select an option that provides that:

(1) after the retiree's death, the reduced annuity is payable in the same amount throughout the life of the beneficiary designated by the retiree before retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of the beneficiary designated by the retiree before retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to one or more beneficiaries or, if one does not exist, to the retiree's estate;

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to one or more beneficiaries or, if one does not exist, to the retiree's estate; or

(5) after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of the beneficiary designated by the retiree before retirement.

(d) Requires that the reduced annuity, if a beneficiary designated by a retiree under Subsection (b) predeceases the retiree and the retiree has elected an optional lifetime annuity, be increased to the standard cash balance annuity that the retiree would have been entitled to receive if the retiree had not selected the optional annuity. Requires that the standard cash balance annuity be adjusted as appropriate for post-retirement increases in retirement benefits authorized by law since the date of retirement.

(e) Provides that any increase in an annuity under Subsection (d) begins with the payment for the month following the month in which the designated beneficiary dies, and the increased annuity is payable to the retiree for the remainder of the retiree's life.

(f) Requires that the computation of an optional cash balance annuity be made without regard to the gender of the annuitant or designated beneficiary.

(g) Prohibits a person who selected an optional cash balance annuity described by Subsection (c)(1), (c)(2), or (c)(5) of this section, except as provided by Section 814.008 or 820.0536, from changing or revoking a beneficiary designation after the person's effective date of retirement.

(h) Provides that a beneficiary designation that names a former spouse as a beneficiary for a guaranteed optional cash balance annuity described by Subsection (c)(3) or (c)(4) is invalid unless the designation is made after the date of the divorce.

(i) Provides that an optional retirement annuity provided by this section is available to a member eligible to receive an enhanced service retirement annuity described by Section 820.053(a)(2)(B) (relating to providing that the state match for the cash balance benefit for service credited as a law enforcement or custodial officer is a certain amount), but the same optional plan and beneficiary is required to be selected for the portion of the annuity payable from the law enforcement and custodial officer supplemental retirement fund and the portion payable from the member's individual account in the employees saving account.

Sec. 820.0536. CHANGE IN OPTIONAL CASH BALANCE ANNUITY SELECTION.

(a) Authorizes a person who retired and selected an optional cash balance annuity described by Section 820.0535(c)(1), (c)(2), or (c)(5) to change the optional annuity to a standard cash balance annuity if:

(1) pursuant to a divorce decree, a court orders the change in the annuity to a standard cash balance annuity; or

(2) the retiree files with ERS a request to change the annuity and, in connection with a divorce between the retiree and the beneficiary designated by the retiree under Section 820.0535(b), the beneficiary has executed a written, notarized instrument that:

(A) releases ERS from any claim to the annuity by the beneficiary; and

(B) transfers all of the beneficiary's interest in the annuity to the retiree.

(b) Requires ERS, if a retiree files a request as provided by Subsection (a), to recompute the annuity as a standard cash balance annuity. Provides that the increase in the annuity under this section begins with the monthly payment made to the retiree for the month following the month in which a request is filed as provided by Subsection (a).

Sec. 820.0537. PARTIAL LUMP-SUM CASH BALANCE OPTION. (a) Authorizes a member who is eligible for a cash balance annuity to select a standard cash balance annuity under Section 820.053 or an optional cash balance annuity under Section 820.0535, together with a partial lump-sum distribution.

(b) Prohibits the amount of the lump-sum distribution under this section from exceeding the sum of 36 months of a standard cash balance annuity computed without regard to this section.

(c) Requires that the cash balance annuity selected by the member be actuarially reduced to reflect the lump-sum option selected by the member and be actuarially equivalent to a standard or optional cash balance annuity, as applicable, without the partial lump-sum distribution. Requires that the annuity and lump sum be computed to result in no actuarial loss to ERS.

(d) Requires that the lump-sum distribution be made as a single payment payable at the time that the first monthly annuity payment is paid.

(e) Requires that the amount of the lump-sum distribution be deducted from any amount otherwise payable under this chapter.

(f) Provides that the partial lump-sum option under this section is authorized to be elected only once by a member and is prohibited from being elected by a retiree. Provides that a member retiring under the proportionate retirement program under Chapter 803 (Proportionate Retirement Program) is not eligible for the partial lump-sum option.

(g) Provides that, before a retiring member selects a partial lump-sum distribution under this section:

(1) ERS is required to provide written notice to the member of the amount by which the member's annuity will be reduced because of the selection; and

(2) the member is required to acknowledge receipt of the notice in writing.

(h) Authorizes the board of trustees to adopt rules for the implementation of this section and to authorize the option to be used for a death benefit annuity. Provides that this section does not apply to a disability retirement annuity.

SECTION 8. Amends Section 820.054(a), Government Code, as follows:

(a) Provides that a member subject to this chapter, a retiree receiving a cash balance annuity under this chapter, or the beneficiary of a member or retiree described by this subsection, who qualifies for a death or survivor benefit annuity or a disability retirement annuity under Chapter 814 (Benefits), notwithstanding any other law, is entitled to a cash balance annuity under this subchapter, rather than Section 820.053, instead of the annuity otherwise provided under Chapter 814.

SECTION 9. Amends Sections 820.103(a), (b), and (d), Government Code, as follows:

(a) Requires ERS, each fiscal year and subject to Subsection (b), to compute the gain sharing interest rate, rather than the gain sharing interest rate applicable to the subsequent fiscal year, by:

(1)-(2) makes no changes to these subdivisions; and

(3) multiplying the resulting difference, rather than the sum determined, under Subdivision (2) by 50 percent.

(b) Requires ERS, subject to Subsection (c), each fiscal year, to:

(1) in addition to the amount deposited under Section 820.102, deposit into each member'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 accumulated account balance as of the end of the preceding fiscal year; and

(2) recalculate the annuity payment of a retiree or annuitant under this chapter by:

(A) multiplying the annuity payment amount as of the end of the preceding fiscal year by the gain sharing interest rate, rather than multiplying the annuity by an amount equal to the gain sharing interest rate, determined under Subsection (a); or

(B) if the retiree or annuitant was not entitled to an annuity payment as of the end of the preceding fiscal year, multiplying the retiree's or annuitant's first annuity payment amount by the gain sharing interest rate determined under Subsection (a).

Makes nonsubstantive changes.

(d) Provides that Subsection (b) applies only to a retiree or annuitant who is receiving a cash balance annuity under Section 820.053 or 820.0535, including an alternate payee under Section 804.005 (Payment in Certain Circumstances in Lieu of Benefits Awarded by Qualified Domestic Relations Order).

SECTION 10. Makes application of Section 804.003, Government Code, as amended by this Act, prospective.

SECTION 11. Authorizes a person who is a cash balance group member on the effective date of this Act, notwithstanding Section 820.032, Government Code, as added by this Act, to purchase canceled service credit under that section not later than the first day of the 24th month after the month in which this Act takes effect.

SECTION 12. Effective date: upon passage or September 1, 2023.