

BILL ANALYSIS

S.B. 729
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Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Senate Bill 321 enacted by 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. S.B. 729 seeks to implement these changes to the cash balance benefit without amending the current benefit structure. The bill makes changes related to annual interest and gain sharing interest for certain payees under a domestic relations order, the participation of certain correctional officers in the enhanced cash balance benefit, annuity payment options, military service credit and state contributions for such service, and the mechanics and timing of the gain share interest calculation.

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 board of trustees of the Employees Retirement System of Texas in SECTIONS 4 and 6 of this bill.

ANALYSIS

S.B. 729 amends the Government Code to revise and clarify certain provisions relating to the cash balance benefit for new members of the Employees Retirement System of Texas (ERS) hired or taking office on or after September 1, 2022.

S.B. 729 makes statutory provisions relating to eligibility for ERS service credit as a custodial officer applicable to a cash balance group member.

S.B. 729 requires the ERS board of trustees to adopt rules to comply with the federal Uniformed Services Employment and Reemployment Rights Act of 1994, including rules governing how a cash balance group member may establish military service credit. The bill requires the state to contribute for such military service 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 an employee class member in the cash balance benefit group at the time the military service is established. The state's contribution must be paid from the fund from which the member receives compensation at the time the military 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.

S.B. 729 gives a retiring member who is in the cash balance benefit group the option of electing to receive an optional cash balance annuity as an alternative to receiving the standard cash

balance annuity and sets out provisions for that option in substantially the same manner as provisions authorizing other retiring ERS members to elect to receive an optional service retirement annuity. In doing so, the bill does the following:

- provides for the designation of a person to receive an optional cash balance annuity on the death of the person selecting the annuity, including the time at which such designation may occur;
- authorizes a person eligible to select an optional cash balance annuity to select one of the following options providing a beneficiary or designated person either a lifetime annuity or an annuity payable for a guaranteed period:
 - 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;
 - 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;
 - after the retiree's death, the reduced annuity is payable in the same amount throughout the life of the person designated by the retiree before retirement;
 - after the retiree's death, one-half of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement; or
 - after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement;
- increases the reduced annuity for a beneficiary of an optional lifetime annuity who predeceases the retiree to an amount equal to the standard cash balance annuity to which the retiree would have been entitled if the retiree had not selected the optional annuity, adjusted as appropriate for post-retirement increases in retirement benefits authorized by law since the retirement date;
- establishes that such an increase 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;
- requires the computation of an optional cash balance annuity to be made without regard to the gender of the annuitant or designated beneficiary;
- prohibits a person who selects one of the options providing a lifetime cash balance annuity from changing or revoking a beneficiary designation after the person's effective retirement date, except as authorized by statutory provisions regarding beneficiary changes after retirement or by the bill's provisions regarding the option to change back to a standard cash balance annuity;
- makes a beneficiary designation that names a former spouse as a beneficiary under one of the options providing a cash balance annuity for a guaranteed period invalid unless the designation is made after the date of the divorce; and
- establishes that an optional cash balance annuity is available to a member who is eligible to receive a certain enhanced annuity from the law enforcement and custodial officer supplemental retirement fund, but the same optional plan and beneficiary must be selected for the portion of the annuity payable from the fund and the portion payable from the member's individual account in the employees saving account.

S.B. 729 gives a cash balance group member who retired and selected an optional lifetime cash balance annuity the option of changing the annuity to a standard cash balance annuity and sets out provisions for that option in substantially the same manner as provisions authorizing other retired ERS members who selected an optional lifetime service retirement annuity to change to a standard service retirement annuity. In doing so, the bill does the following:

- conditions that option on the following:
 - a court ordering the change pursuant to a divorce decree; or
 - the retiree filing with ERS a request to change the annuity selection, if the retiree designated a person as beneficiary who was not at the time of designation and is not currently the retiree's spouse or dependent child or who is not currently the retiree's spouse or dependent child and has executed since the designation a

written, notarized instrument releasing ERS from any claim to the annuity by the beneficiary and transferring all of the beneficiary's interest in the annuity to the retiree;

- requires ERS to recompute the annuity as a standard cash balance annuity if the retiree files the request; and
- establishes that the increase in the annuity begins with the monthly payment made to the retiree for the month following the month in which the request is filed.

S.B. 729 authorizes a member who is eligible for a cash balance annuity to select a standard cash balance annuity or an optional cash balance annuity together with a partial lump-sum distribution and sets out provisions for the distribution in substantially the same manner as provisions authorizing ERS members who are eligible for an unreduced service retirement annuity to select the partial lump-sum option. In doing so, the bill does the following:

- caps the amount of the distribution at an amount equal to the sum of 36 months of a standard cash balance annuity computed without regard to the bill's partial lump-sum provisions;
- requires the cash balance annuity selected by the member to be actuarially reduced to reflect the lump-sum option selected by the member and to be actuarially equivalent to a standard or optional cash balance annuity, as applicable, without the partial lump-sum distribution;
- requires the annuity and lump sum to be computed to result in no actuarial loss to ERS;
- requires the lump-sum distribution to be made as a single payment payable at the time that the first monthly annuity payment is paid;
- requires the amount of the lump-sum distribution to be deducted from any amount otherwise payable under provisions relating to the cash balance benefit;
- establishes that the partial lump-sum option may be elected only once by a member and may not be elected by a retiree and that a member retiring under the proportionate retirement program is not eligible for the partial lump-sum option;
- requires ERS to provide written notice before a retiring member selects the lump-sum option, for which the member must acknowledge receipt in writing, of the amount by which the member's annuity will be reduced because of the selection;
- authorizes the ERS board of trustees to adopt rules for the implementation of the lump-sum option and to authorize its use for a death benefit annuity; and
- specifies that the lump-sum option does not apply to a disability retirement annuity.

S.B. 729 does the following with respect to provisions relating to the gain sharing interest adjustment for annuitants of a cash balance benefit:

- removes the specification that the gain sharing interest rate ERS must compute each fiscal year is the rate applicable to the subsequent fiscal year;
- specifies that the accumulated account balance of a member used for calculating the member's gain sharing interest is the member's accumulated account balance as of the end of the preceding fiscal year;
- replaces the requirement that ERS recalculate a cash balance annuity payment by multiplying the annuity by an amount equal to the gain sharing interest rate with a requirement for ERS to recalculate such a payment as follows:
 - by multiplying the annuity payment amount as of the end of the preceding fiscal year by the gain sharing interest rate; or
 - if the retiree or annuitant was not entitled to an annuity payment as of the end of the preceding fiscal year, by multiplying the retiree's or annuitant's first annuity payment amount by the gain sharing interest rate; and
- clarifies that provisions requiring ERS to deposit gain sharing interest and recalculate annuity payments apply to a retiree or annuitant who is receiving a standard cash balance annuity or an optional cash balance annuity, including an alternate payee under a qualified domestic relations order.

S.B. 729 requires payments of segregated amounts relating to a benefit payable to an alternate payee under certain domestic relations orders with respect to an ERS member or retiree in the cash balance benefit group to include the annual interest and gain sharing interest applicable to that benefit. This provision applies only to a domestic relations order entered on or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.