BILL NUMBER: SB 765 (Portantino) as amended August 17, 2023

SUMMARY

SB 765 increases the CalSTRS annual postretirement earnings limit from one-half to 70% of the median final compensation of all members who retired for service during the fiscal year ending in the previous calendar year. The bill also modifies the process for obtaining an already-available exemption from the CalSTRS 180-calendar day separation-from-service requirement. The bill makes these provisions effective from July 1, 2024, through June 30, 2026, and requires CalSTRS to submit a report to the appropriate policy committees of the Legislature on postretirement work.

RECCOMENDATION

Neutral. This bill does not significantly or adversely impact the benefits or services provided through the funds administered by CalSTRS or the administration of the retirement plans.

REASON FOR THE BILL

According to the author, SB 765 would bolster the California teacher pipeline by raising the CalSTRS compensation cap to 70% on retirees' earnings and streamlining the 180-day sit out requirements before a retiree may return to an education position, under certain circumstances.

ANALYSIS

Existing Law:

Retired members of the Defined Benefit Program may perform retired member activities within the California public school system as an employee, an independent contractor or an employee of a third party, subject to various statutory requirements. To ensure that a bona fide separation from service has occurred, retired members who return to work within 180 calendar days following their retirement effective date will have their CalSTRS retirement benefit reduced dollar for dollar. After 180 calendar days, members can earn compensation up to an annual postretirement earnings limit that is equivalent to one-half of the median final compensation of all members who retired for service during the fiscal year ending in the previous calendar year. Retired members are not subject to any limit for compensation earned outside of CalSTRS-covered employment.

Current law provides for one narrow exemption to the 180-calendar day separation-from-service requirement if the appointment is necessary to fill a critically needed position, the governing body of the employer approves the appointment through a resolution adopted at a public meeting, the member did not receive any financial inducement to retire, and the member's termination of service was not the cause of the need to acquire their services. The employer must submit the required documentation to CalSTRS substantiating a member's eligibility for the exemption before the member begins working. While there have been several historical exemptions to the annual postretirement earnings limit, none remain in effect, and there have been no successful legislative efforts to create additional exemptions to either limit since the passage of the California Public Employees' Pension Reform Act of 2013 (PEPRA).

Currently, retired members seeking to return to service and earn compensation above the earnings limit can choose to terminate their retirement and reinstate to active membership. If a member reinstates, they will pay contributions on compensation earned and will accrue service credit. The compensation and additional service credit will be used to calculate the member's benefit when they re-retire.

This Bill:

Effective July 1, 2024, through June 30, 2026, SB 765 increases the annual postretirement earnings limit from one-half to 70% of the median final compensation of all members who retired for service during the fiscal year ending in the previous calendar year.

For the same time period, SB 765 also modifies the process for obtaining the already-available exemption to the 180-calendar day separation-from-service requirement for both the Defined Benefit and Cash Balance Benefit programs by removing the requirement that the exemption be approved by the employer's governing body in a public meeting as reflected in a resolution not placed on a consent calendar, as specified. The bill also adds requirements that the employer certify it did not have a reduction-in-force layoff within the prior 18 months and that the employer provide the exclusive representative with copies of completed documentation submitted to CalSTRS.

On or before February 1, 2027, SB 765 requires CalSTRS to submit a report to the appropriate policy committees of the Legislature on the following information by school year:

- Total number of requests received for exemptions to the 180-calendar day separation-from-service requirement.
- Total number of retired members working with this exemption.
- Total number of retired members performing retired member activities.
- Total number of retired members who exceed the annual postretirement earnings limit.
- The compensation paid to each retired member performing retired member activities.

Discussion

Although the impact of postretirement work to the overall health of CalSTRS' funded status has been relatively minor to date, policy changes that could encourage an increase in postretirement work raise concerns. When hiring a retired member, contributions are not remitted to CalSTRS, and employers generally do not provide health care or other benefits that would typically be provided to an active employee. The annual postretirement earnings limit mitigates the potential incentive for employers to utilize retired members as a cost-saving measure by capping the compensation a member can earn. While this financial incentive is somewhat offset by the likelihood that retired members would be compensated at a higher level due to their experience and seniority, employers could still be incentivized to prioritize hiring of retired members to the detriment of efforts to attract and hire new teachers.

Although the risk is low, to the extent that such practices create a trend of retired members filling positions normally staffed by contributing members, contribution rates and the CalSTRS Funding Plan could be affected. To the extent that members are encouraged to retire earlier with the intention of returning to work, benefit liabilities could increase and the system's funded status could be impacted.

Additionally, policies that allow a member to receive a salary and pension benefit simultaneously, could be seen as potentially adverse and could raise reputational risks for CalSTRS. Protections against such practices were a key focus of PEPRA, and policies that allow members to circumvent these protections could provide fuel for critics seeking to undermine defined benefit pensions.

PROGRAM BACKGROUND

The annual postretirement earnings limit is $50,655 for the 2023-24 fiscal year. CalSTRS has observed that the population of retirees returning to perform postretirement work is relatively small, and the number working in excess of the annual postretirement earnings limit represents an even smaller portion, as detailed in the table below.

Fiscal year	Number of retired members working after retirement	Percent of retired members working after retirement exceeding the earnings limit
2018-19	24,514	1.27%
2019-20	23,104	1.29%
2020-21	14,010	1.69%
2021-22	18,790	3.68%*

* In January and February 2022, respectively, Executive Orders N-3-22 and N-4-22 temporarily suspended the annual postretirement earnings limit and the 180-calendar day separation-from-service requirement for most retired members.

In the 2021-22 fiscal year, there were 587 members who exceeded the annual postretirement earnings limit and were exempted under the Executive Orders in place at the time. There were 363 retired members who were exempted from the 180-calendar day separation-from-service requirement. Of those, 209 submitted requests through the existing process set in statute, and 154 were exempted under the Executive Orders.

Under current law, CalSTRS sends two letters to retired members informing them of the earnings limit: one when they begin accruing earnings and one when they are mid-way to the earnings limit. CalSTRS staff annually reviews retired members' reported postretirement earnings and sets up collection accounts for any excess earnings. This process usually takes place in late fall to ensure employers have time to complete reporting for the school year.

FISCAL IMPACT

Program Costs/Savings – To the extent there is a trend of retired members returning to work in CalSTRS-covered positions, could impact the system's funded status as CalSTRS would not receive contributions for compensation paid. To the extent early retirements are encouraged, could increase benefit liabilities.

Administrative Costs/Savings – No technology changes identified. A significant increase in requests for exemption to the 180-calendar day separation-from-service requirement is anticipated, requiring reallocation of existing staff resources.

SUPPORT

State Superintendent of Public Instruction, Tony Thurmond (sponsor)
California School Boards Association (co-sponsor)
Alameda County Office of Education
Association of California School Administrators
Ball/Frost Group LLC
California Association of School Business Officials
California Association of Suburban School Districts
California Charter Schools Association
California County Superintendents
California Federation of Teachers AFL-CIO
California School Boards Association
Central Valley Education Coalition
Long Beach Unified School District
Los Angeles County Office of Education
Los Angeles County Superintendent of Schools, Dr. Debra Duardo
Los Angeles Unified School District
Orange County Department of Education
Riverside County Office of Education
Riverside County Superintendent of Schools
San Diego Unified School District
School Employers Association of California

OPPOSITION

None known.

ARGUMENTS

Pros: Could incentivize retired members to fill critically needed teaching positions.

Cons: Could increase benefit liabilities to the extent the bill encourages members to retire earlier than originally planned with the intent of returning to work.

Could affect long-term funding to the extent there is a reduction in the number of contributing members.

Could raise reputational risk for the system.