

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

BILL ANALYSIS

Bill Number: AB 1044 Assembly Member Aghazarian (As Amended 8/22/05)

SUMMARY

Assembly Bill 1044 requires public officials elected, reelected or appointed to an unexpired term of office on or after January 1, 2006 that are convicted of specified felonies arising out of their official duties, to forfeit any California State Teachers' Retirement System (CalSTRS) benefits or other public retirement system benefits that accrue for elected service performed on or after January 1, 2006, unless the governing body of their public agency employer authorizes benefit payments.

PURPOSE OF THE BILL

The author believes that elected officials convicted of crimes shown to be an abuse of their official powers should be treated in the same manner as judges, who forfeit their public pension system benefits under the same circumstances.

BOARD POSITION

Support. The Teachers' Retirement Board (Board) supports this measure because it preserves the assets and minimizes the liabilities of the funds administered by CalSTRS.

ANALYSIS

Assembly Bill 1044:

- Requires an elected official who first takes office on or after January 1, 2006, and is convicted of a felony involving a bribe, embezzlement, extortion or theft of public money, perjury, or conspiracy to commit these crimes as a result of his or her official duties to forfeit all rights and benefits under any CalSTRS benefit programs that accrue during his or her term of office.
- Requires the elected official's employer to notify CalSTRS of the person's conviction.
- Requires CalSTRS to return the elected official's employee contributions made during his or her term of office without interest.
- Allows the governing body of the elected official's employer to elect to continue to provide the retirement benefits that would otherwise be forfeited.
- Forfeiture provisions also applies to any person appointed to service for the period of an elected public officers' unexpired term of office.

Currently, the only two groups of elected public officials can accrue a CalSTRS benefit: 1) 52 County Superintendents of Schools elected to office by County Voters; and 2) a small number of elected school board trustees whose districts offers the Cash Balance Benefit Program. Staff

believes that implementation of AB 1044 would have a minor impact on CalSTRS given the small population of elected officials who receive a CalSTRS benefit for service performed during their term of office, and the distribution of member contributions could be executed manually.

Because AB 1044 only provides for forfeiture of public pension benefits earned by elected officials through service in terms of office beginning on or after the effective date of the measure, it is unlikely that a court would find an impairment of vested benefits is unlikely to exist, but could be challenged in court.

Notwithstanding the provision that allows the governing body of an employer to grant clemency and continue to provide retirement benefits to their employee, granting an employer such power without providing statutory guidance on the procedures it must follow, or what information it may consider in order to reach a decision may violate the person's due process rights.

LEGISLATIVE HISTORY

AB 2692 (Dutton—2004) would have required an elected official who is convicted of specific felonies arising out of his or her official duties to forfeit retirement system benefits, rights and membership associated with that elected service. It was held in the Assembly Rules Committee.

Chapter 993, Statutes of 1988 (AB 1562, Johnson) requires judges to forfeit their retirement system benefits following a conviction, plea of guilty or no contest for a felony violation of state or federal law relating to community moral standards or their service in office.

PROGRAM BACKGROUND

Existing law, which applies to members of the California Public Employees Retirement System (CalPERS) and the Legislators Retirement System (LRS) requires the suspension of benefits for members indicted for certain offenses related to the abuse of public funds, perjury, or conspiracy to commit such crimes that are fugitives from justice. In addition, existing law requires judges who are members of the Judges Retirements System (JRS) I and II convicted of a felony offense involving either moral turpitude or that was committed in the course of their duties to forfeit all benefits under JRS, and provides for the return of his or her accumulated contributions. No similar provisions apply to CalSTRS members.

FISCAL IMPACT

Benefit Program Cost – Nominal savings as the Teachers Retirement Fund would realize a net reduction in liability from convicted officials who forfeit their benefit.

Administrative Costs/Savings – Minor and absorbable as few elected officials are convicted of the specified crimes.

SUPPORT

CalPERS Board of Administration, Peace Officers Research Association of California (PORAC), American Federation of State, County and Municipal Employees (AFSCME), East Bay Municipal Utility District (EBMUD), Association of California Water Agencies (ACWA).

OPPOSITION

None Known

ARGUMENTS

Pro: Provides a possible deterrent for those who would consider committing these acts while holding elected office.

Con: Provides unequal treatment under the law—Appointed state and local government officials and other public employees are not required to forfeit public pension benefits for committing similar crimes. In addition, private sector employees do not forfeit their pension benefits or pension rights upon conviction for the same type of criminal acts because they are protected by the federal Employee Retirement Income Security Act (ERISA).