

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

BILL ANALYSIS

BILL NUMBER: AB 2970 (Pavley) (As Introduced 02/24/06)

SUMMARY:

Assembly Bill 2970 expands eligibility for retired members of the Defined Benefit (DB) Program to obtain exemptions to the California State Teachers' Retirement System (CalSTRS) post-retirement earnings limit. Specifically, it:

- Adds four new types of employment allowed an exemption:
 1. Providing support to the California Peer Assistance and Review Program for teachers;
 2. Providing services to pupils enrolled in an English language learner program;
 3. Serving as a K-12 Principal or Assistant Principal;
 4. Serving as a school nurse in grades K-12;
- Removes the requirement that a member retire on or before 1/1/04, to be eligible for these four and the existing K-12 service-specific exemptions and replaces it with the requirement that a member wait a period of 30 days after retiring before returning to work under this exemption;
- Extends the K-12 service-specific exemptions from 1/1/08, until 1/1/12.

PURPOSE OF THE BILL:

According to the sponsor, there is a shortage of highly-qualified classroom teachers and school-site administrators. Allowing school districts to employ retired teachers eases the burden the teacher shortage places on schools and helps schools comply with the No Child Left Behind Act, which requires schools to employ fully-credentialed, experienced teachers and administrators. The sponsor believes the CalSTRS earnings limit restricts the availability of retired teachers and prevents schools from hiring the experienced educators they need.

BOARD POSITION:

Oppose, unless amended to:

- Retain the post-retirement earnings limit for retired members under age 60 who do not wait a period of 12 months;
- Eliminate the post-retirement earnings limit for all retired members at or above age 60;
- Provide an exemption to the post-retirement earnings limit for retired members under age 60 who do not perform creditable service for a period of at least 12 months after retiring for service;
- Require employer contributions for all post-retirement employment otherwise creditable to the CalSTRS DB Program.

LEGISLATIVE HISTORY:

SB 1124 (Torlakson), creates a new service category under the K-12 service-specific exemption to the CalSTRS post-retirement earnings limit for retired members who abstain from performing CalSTRS-covered employment for a period of 6 months and return to work to serve as a mentor in a high-priority school.

Chapter 934, Statutes of 2004 (AB 2554—Pavley), extends the sunset date on the existing K-12 service-specific exemption to 1/1/08 and extends the date a member must retire by to qualify for this exemption to 1/1/04; expands the K-12 exemption to include members providing instruction in special education and English language learner programs; provides a two-year limit on the emergency administrator or trustee exemption.

Chapter 70, Statutes of 2000 (SB 1666—Alarcon), expands the K-12 direct classroom instruction exemption to the post-retirement earnings limit to include supporting teachers participating in a teacher preparation program; requires members to retire on or before 1/1/00; extends the exemption to 7/1/05.

Chapter 948, Statutes of 1996 (AB 1068—Mazzoni), creates an exemption to the post-retirement earnings limit for a member who retires on or before 7/1/96, and returns to work to provide direct instruction to pupils in K-12; effective 7/1/96 through 7/1/99.

Chapter 394, Statutes of 1995 (AB 948—Gallegos), creates an exemption to the post-retirement earnings limit for a retired member appointed as a trustee or administrator by the superintendent of public instruction, or who fills an administrative position left vacant due to emergency; effective 7/1/95 through 7/1/00.

PROGRAM BACKGROUND:

When a member of the DB Program retires and performs service creditable to the State Teachers' Retirement Plan (Plan) without an approved exemption in place, the member is subject to an annual post-retirement earnings limit (\$27,940 in 2005-06). Members who earn in excess of this limit experience a dollar-for-dollar reduction in their retirement allowances. Members who perform creditable service after retirement, and the school employers that employ them, do not pay contributions on compensation. In addition, retired members do not earn service credit for the service they perform while retired. However, a retired member may cancel his or her retirement benefit, reinstate to active service and work and earn compensation without limitation; both the employer and employee pay contributions on the employee's compensation and the a member realizes an increased benefit upon his or her subsequent retirement.

The post-retirement earnings limit is imposed on retired educators to limit the actuarial impact on the DB Program and to comply with federal Internal Revenue Service (IRS) rules and regulations. The IRS does not allow CalSTRS to distribute retirement benefits to members who are actively working for CalSTRS-covered employers, unless the member has reached normal retirement age or experienced an undefined "break in service." This restriction forces CalSTRS to utilize two safeguards for members receiving a retirement allowance while actively employed in covered employment:

- Members do not perform service creditable to the Plan for a period of at least 12 consecutive months after retirement; or
- Members must have retired prior to the date the service-specific exemptions were proposed in legislation.

Over the years, exemptions to the CalSTRS post-retirement earnings limit have been established based on needs identified by various stakeholders in the education community, primarily to fill specific staffing needs. Through extensive review and analysis, these exemptions have been

crafted in a way that maintains the federal tax compliant status of the Teachers' Retirement Plan and provides a ready pool of experienced educators.

The DB Program currently provides K-12 service-specific exemptions to the post-retirement earnings limit, until 1/1/08, for members who retired on or before 1/1/04, and:

1. Provide direct K-12 classroom instruction;
2. Support the Beginning Teacher Support and Assessment Program;
3. Support student teachers, the Pre-Internship Teaching Program, an alternative certification program or the School Paraprofessional Teacher Training Program;
4. Provide instruction or pupil services in a special education program; or
5. Provide instruction in an English language learner program.

In addition, the DB Program provides exemptions to retired members who:

1. Abstain from performing CalSTRS-covered employment for a period of at least 12 months after retiring; this exemption ends 1/1/08;
2. Are appointed as a trustee or administrator by a superintendent of public instruction, or who fill an administrative position left vacant due to emergency for up to one-half of the full-time position; this exemption ends 1/1/08; or
3. Retired on or before 1/1/04, and are hired to provide direct 2-12 remedial instruction.

ANALYSIS:

AB 2970 establishes four new employment categories under the CalSTRS earnings limit exemption provided to retired members who perform the following duties in a K-12 school:

- Support in the Peer Assistance and Review Program for Teachers;
- Provide services to students enrolled in an English language learner program;
- Serve as a principal or assistant principal; and
- Serve as a school nurse.

These new exemptions continue the practice of establishing exemptions for specific situations, based on individual needs, which complicates administration of the DB Program by placing additional administrative burdens on school employers and adding to CalSTRS' existing workload to manually process the required certifications.

AB 2970 also eliminates the requirement that members receiving any of the service-specific exemptions retire prior to 1/1/04, in order to be eligible for the K-12 service-specific exemption. The requirement to retire on or before 1/1/04, to be eligible for the exemption preceded the introduction of the bill reauthorizing these exemptions. This deleted provision, which makes the exemption applicable only to members who retired prior to the date the exemption was proposed, prevents educators from receiving a retirement benefit when they otherwise intended to stay in the classroom. Although it would be appropriate to retain the requirement and amend the date to 1/1/06, the bill replaces the 1/1/04, retirement date with the requirement that a member's retirement effective date be at least 30 days prior to the date on which he or she returns to work. The majority of teachers retire at the end of the school year and a 30-day waiting period is meaningless if retired members are allowed to return to work immediately at the beginning of the

next school year (which generally begins more than 30 days later) without penalty. According to CalSTRS' outside tax counsel, implementing a 30 day waiting period is not sufficient to meet IRS guidelines that require a true termination of employment.

AB 2970 has an effective date of 1/1/07, and extends all of the K-12 service-specific exemptions to 1/1/12. The 1/1/07, effective date falls in the middle of the school year, which is difficult to implement and administer because employment contracts begin, and earnings are measured for purposes of tracking those who exceed the CalSTRS earnings limit, on July 1 of each year. Changes to the CalSTRS corporate database to accommodate an extension of the exemption to 1/1/12, would be minimal.

CalSTRS staff presented an overview of the post-retirement earnings limits at the September 2005 Benefits and Service Committee meeting. The overview provided information about what the limit is, why it exists and the exemptions from the limit that currently exist. Although the committee agreed with the overall premise of the CalSTRS post-retirement earnings limit policy, the committee directed CalSTRS staff to obtain additional information regarding post-retirement earnings, including the reason why members are returning to work after retirement, where the retired members are employed and if there is any justification to establish a separate earnings limit for community college educators. CalSTRS staff presented the Benefits and Service Committee with answers to these questions at the April 2006 meeting and also offered alternatives and a recommendation for addressing post-retirement employment. The Committee endorsed staff's recommendation to permit more members to retire and return to work without an earnings limit and simplify administration of the program for school employers and CalSTRS, while avoiding an increase in DB Program net liabilities.

The Board directed CalSTRS staff to seek amendments to AB 2970 that would accomplish the following:

- Allow the current service-specific exemptions to sunset, as currently scheduled on 1/1/08;
- Retain the post-retirement earnings limit for retired members under age 60 who do not wait a period of 12 months;
- Eliminate the post-retirement earnings limit for all retired members at or above age 60;
- Provide an exemption to the post-retirement earnings limit for retired members under age 60 who do not perform creditable service for a period of at least 12 months after retiring for service;
- Require employer contributions for all post-retirement employment otherwise creditable to the CalSTRS DB Program, including service provided as an independent contractor or through a third-party.

The current provisions of the bill could encourage members to retire earlier than they otherwise would, because members could earn a full retirement benefit and continue to receive a full-time salary. This earlier retirement would increase the cost of the DB Program, with no offsetting increase in contributions. In contrast, the recommended amendments would limit any such incentive to those retiring after age 60, and the resulting increased cost would be more than offset by contributions imposed on those who employ retired members, either directly or indirectly.

Existing law does not require employers that hire retired teachers and administrators to fill credentialed positions that would otherwise be filled by active educators to make contributions of 8.25 percent to CalSTRS. If employers were unable to hire retired teachers and administrators, they would be forced to employ active educators and required make contributions on their earnings. The exemption proposed by CalSTRS would require employers who hire retired members in credentialed positions either directly or indirectly to make the normal employer contribution of 8.25 percent of the retired member's creditable compensation. In the 2004-2005 fiscal year, this would have represented approximately \$24 million dollars in employer contributions to the DB Program, based on a total of 25,777 retired members working in credentialed positions.

This possible change would be easier for employers and CalSTRS staff to explain and administer and for members to understand. It would also be applicable to all types of credentialed employment, which would allow employers to identify the shortages within their own districts and hire retired educators based on the district's needs. Finally, according to CalSTRS' tax counsel, this would be in compliance with federal tax regulations. The costs associated with this change would be more than offset by the funds generated from the employer contributions.

FISCAL IMPACT:

Benefit Program cost/savings: The costs associated with adding the four proposed employment categories to the K-12 service-specific exemption are nominal. However, the cost to the Teachers' Retirement Fund (Fund) for allowing retired members to return to work after a 30-day waiting period is expected to be in the tens of millions of dollars over a 30-year period.

Administrative costs/savings: The cost to modify the corporate data base to eliminate the 1/1/04, retirement date and accommodate a 30-day waiting period after retirement is estimated to be \$38,000.00. Pursuant to Board policy, CalSTRS seeks an appropriation from the Teachers' Retirement Fund to cover these implementation costs.

SUPPORT:

LAUSD (Sponsor)

OPPOSITION:

Teachers' Retirement Board