

# CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

## BILL ANALYSIS

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**BILL NUMBER:** Assembly Bill 456 (Torrico), As Amended 7/7/05

### **SUMMARY:**

Assembly Bill 456 imposes criminal penalties on California State Teachers' Retirement System (CalSTRS) members, beneficiaries, participants and those who assist them, for making false material statements or representations in order to receive CalSTRS benefits. Also establishes a crime for a person to accept a benefit payment from CalSTRS with the knowledge he or she is not entitled to the benefit.

### **PURPOSE OF THE BILL:**

According to the sponsor, AB 456 gives retirement systems greater power to stop fraud and ensure no one receives benefits fraudulently or takes advantage of system disability programs.

### **BOARD POSITION:**

Support, if amended to clarify what constitutes knowledge that a material statement or material representation is false. It is the policy of the Teachers' Retirement Board (Board) to support legislation that preserves the assets and minimizes the liabilities of the funds administered by CalSTRS.

### **LEGISLATIVE HISTORY:**

Assembly Bill 5X (Torrico), imposes criminal or civil penalties on CalSTRS members, beneficiaries, participants and those who assist them, for making false material statements or representations in order to receive CalSTRS benefits, and establishes a crime for a person to accept a benefit payment from CalSTRS with the knowledge he or she is not entitled to the benefit.

Chapter 376, Statutes of 1987 (SB 1130—McCorquodale), authorizes the Board to correct errors or omissions due to inadvertence, oversight, mistake of fact or law or other cause by the Board, the System, employers, members or their beneficiaries.

### **PROGRAM BACKGROUND:**

CalSTRS provides retirement, disability and survivor benefits to certificated public school employees, their families and beneficiaries under the Defined Benefit, Defined Benefit Supplement and Cash Balance Benefit Programs. The Teachers' Retirement Law (TRL) allows benefit overpayments to a member or beneficiary to be collected through deductions from subsequent benefit payments, whether the overpayment was due to an error on the part of CalSTRS or the employer, or inaccurate was information provided by the benefit recipient. In some instances, CalSTRS will file a civil law suit in order to collect overpayments.

CalSTRS continually reviews its administrative practices as specified in the TRL, while considering the best interests of the membership and financial liabilities to the Teachers' Retirement Fund. As part of its efforts to meet or exceed industry best practices, CalSTRS

conducts continuing qualification reviews in which disability benefit recipients provide documentation to substantiate their claim of disability. CalSTRS identifies overpayments and individuals improperly receiving benefits through internal audits and audits of school employers. In addition, CalSTRS uses Social Security Administration records to identify deceased members and beneficiaries to ensure benefits are not paid improperly.

The False Claims Act establishes civil and criminal penalties for submitting false claims to a political subdivision of the State. A civil action under the False Claims Act provides for recovery of litigation costs, up to three times restitution for damages and civil damages of up to \$10,000 for each false claim. Typically, in cases where fraud is suspected, CalSTRS auditors stop the audit and the auditor consults the Chief Auditor and General Counsel. If the Chief Auditor and General Counsel agree that an investigation is necessary, the case is referred to the county district attorney. In instances where fraud is clearly evident, the case is forwarded to the State Attorney General for prosecution.

## **ANALYSIS:**

### Assembly Bill 456:

- Establishes a crime, punishable as a misdemeanor, for a person to make or present false material statements and representations in connection with CalSTRS, CalPERS and 1937 Act retirement system benefits and applications;
- Establishes a crime, punishable as a misdemeanor, for a person to aid or abet someone in making a false material statement or representation for the purposes of receiving a CalSTRS benefit;
- Establishes a crime, punishable as a misdemeanor, for a person to knowingly accept, with the intent to keep for personal benefit, a payment from the System with the knowledge one was not entitled to the benefit;
- Provides that a conviction is punishable by up to one year in a county jail, by a fine of not more than \$20,000, or both;
- Specifies, but does not limit, the types of false statements subject to prosecution;
- Allows the court in a criminal action to order restitution for damages to the pension system; and
- Specifies restitution must be made prior to imposition of criminal penalties.

AB 456 prohibits a benefit applicant or recipient from making a “knowingly false material statement” but does not address insignificant statements the person knows to be false or impose penalties on those who make a material false statement that he or she did not know to be false. The Penal Code, on which AB 456 was based, defines “knowingly” as “...only a knowledge that the facts exist, which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of such act or omission.” Therefore, a benefit applicant or recipient who makes a statement he or she did not know to be false cannot be considered to have violated the law. The False Claims Act defines “knowingly,” with respect to an individual providing information to a government entity, as (1) having actual knowledge of the information, (2) acting in deliberate ignorance of the truth or falsity of the information or (3) acting in reckless disregard of the truth or falsity of the information. Staff recommends amendments to provide a similar definition in order to clarify which acts should be prosecuted and which should not. If AB 456 is enacted as amended, CalSTRS may consider legislation to define terms such as “knowingly,” specify legal duties and provide additional guidance to System staff who encounter instances of suspected fraud.

Unlike the California Public Employees' Retirement System (CalPERS), which employs investigative staff to do this work, CalSTRS has neither an investigative unit, nor staff dedicated to investigating specific fraudulent acts. AB 456 does not require CalSTRS to investigate instances where false information has been provided for the purpose of receiving a benefit. If enacted in its current form, CalSTRS will continue to report cases of suspected fraud to the appropriate authorities.

The CalPERS Investigation Unit focuses on cases of suspected industrial disability benefit fraud, mostly by its safety members. In addition to surveillance, the unit provides support to benefit program staff involved in litigations. Several other public agencies have established and maintain units for the purpose of evaluating and investigating cases of alleged disability benefit fraud. These public agencies include the California Highway Patrol, the Department of Insurance, the State Compensation Insurance Fund and the Los Angeles City Police Department.

### **FISCAL IMPACT:**

**Benefit Program cost/savings:** Unknown potential cost savings by discouraging individuals who would otherwise consider committing fraud in order to receive or increase benefit to which they are not entitled.

**Administrative costs/savings:** Minor and absorbable.

### **SUPPORT/OPPOSITION**

**Support:** CalPERS (Sponsor); CFT; CSEA; Santa Clara County Board of Supervisors; California Independent Public Employees Legislative Council; California State Association of Counties; AFSCME, AFL-CIO; Riverside Sheriffs' Association; Peace Officers Research Association of California; San Bernardino Employees Association; Independent Employees of Merced County; Organization of SMUD Employees; Santa Rosa City Employees Association; Eastern Municipal Water District; California Professional Firefighters

**Opposition:** None known

### **ARGUMENTS**

#### **Pro:**

AB 456 may:

- Discourage fraudulent benefit claims;
- Reduce instances of benefit payments to ineligible members or beneficiaries;
- Reduce System liabilities.

#### **Con:**

AB 456 may:

- Encourage CalSTRS to hire investigators or establish an investigative unit when no such need exists.