

CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

BILL ANALYSIS

BILL NUMBER: Assembly Bill 5X (Torrico), As Amended 5/19/05

SUMMARY:

Assembly Bill 5X imposes criminal and civil 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 5X 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 456 (Torrico), imposes criminal 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 information was 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 disability claim. 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 5X:

- Establishes a crime for a person to make a false material statement or representation in connection with CalSTRS, CalPERS and 1937 Act retirement system benefits and applications;
- Establishes a crime 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 for a person to knowingly accept, with the intent to keep for personal benefit, a payment from the System with the knowledge that he or she was not entitled to the benefit;
- Provides that a misdemeanor violation is punishable by up to one year in a county jail, by a fine of not more than \$5,000, or both;
- Provides that a felony violation is punishable by imprisonment in state prison for a term of two, three or four years, by a fine of not more than \$50,000, or by both imprisonment and fine;
- Specifies, but does not limit, the types of false statements subject to prosecution;
- Allows the court in a criminal or civil action to order restitution for damages to the pension system;
- Specifies restitution must be made prior to imposition of criminal penalties; and
- Requires civil action for a violation to occur within three years of the offense.

AB 5X 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 5X 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 5X 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 5X 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 from discouraging individuals who would otherwise consider committing fraud in order to receive or increase a benefit to which they are not entitled.

Administrative costs/savings: Minor and absorbable.

SUPPORT/OPPOSITION

Support: CalPERS (Sponsor); CFT

Opposition: None known

ARGUMENTS

Pro:

AB 5X may:

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

Con:

AB 5X may:

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