

BILL NUMBER: AB 178 (Gorell) as amended June 19, 2012

SUMMARY

AB 178 changes the postretirement earnings limit from what is effectively one-half the average annual salary paid to active members to one-half of the median final compensation of all recently retired members. The bill excludes specified employees of a third party from the postretirement employment limitations. It also extends a very narrowly applied exemption for limited-term appointments for one year, and includes another very narrow appointment related to failing community college districts, with additional requirements for substantiating eligibility, while maintaining the current June 30, 2012, sunset date for all other exemptions. These changes would apply to the 2012-13 fiscal year. In addition, AB 178 allows service retired members who reinstate on or after July 17, 2012, to re-retire within one year of reinstating and requires those members to keep the same option and beneficiary or beneficiaries that were in effect before reinstatement, or to retain their unmodified benefit, for one year after reinstatement.

REASON FOR THE BILL

The current postretirement earnings limit does not adequately reflect the compensation last earned by members of the Defined Benefit (DB) program who have just retired. In addition, current law requires retired members who reinstate to wait one year before re-retiring, which hinders the willingness of retired members to reinstate to active membership if they elect to return to work.

ANALYSIS

Existing Law:

Existing law sets the DB Program postretirement earnings limit, which is adjusted annually by the board based on the percentage change in the average compensation earnable of active DB Program members. Currently, the postretirement earnings limit is \$31,020. Retired members who work for an employer, for a third party or as an independent contractor within the California public school system are subject to the limit and other postretirement requirements if they are performing activities defined as creditable service. DB members do not pay contributions for the compensation they earn from CalSTRS-covered activities after retirement, nor do their employers. (There are no limitations imposed on retired members who work for other employers, such as the public universities or private employers.) There were various exemptions to the limit, including an exemption for limited-term appointments by the State Superintendent of Public Instruction or a county superintendent of schools to assist schools that are either in specific financial or academic distress. Effective July 1, 2012, however, these exemptions are no longer available.

Members who exceed the earnings limit have their monthly benefits reduced for each dollar of compensation earned in excess of the limit. Retired members who are under age 60 have their benefits reduced by any amount earned for performing CalSTRS-

covered activities during the first six months of retirement, or until the member reaches age 60, whichever occurs first. There are no exemptions from the requirement for retired members who are under age 60.

Service retired members are currently allowed to terminate their retirement benefit and reinstate to active membership at any time after they retire. Those members must wait one year to re-retire. If a member had chosen a Member-Only benefit when retiring, he or she is not eligible to file a preretirement election of an option for one year after reinstatement. That member could file an option at retirement after having waited for one year to re-retire. If a member had retired with an option, that option automatically becomes a preretirement election of an option upon reinstatement.

This Bill:

By changing the earnings limit to one-half of the median final compensation of all recently retired members, AB 178 raises the limit to just over \$40,000. The bill also excludes an employee of a third party that does not participate in a California public pension system from the postretirement employment limitations if the employee is performing activities for a limited-term that are not normally performed by employees of an employer. The activities and timeframes subject to this exclusion need to be clarified in clean-up legislation next year.

In addition, AB 178 extends the limited-term appointment exemption for one year, and includes a new similar exemption for appointments by the Community College Chancellor. Based on prior experience, these exemptions would rarely be applied. In order to utilize the exemptions, the appointing authority must submit documentation to substantiate the retired member's eligibility, which must be received by the system before the member performs any activities listed as creditable service. The documentation must include certification that: the employer advertised the position to active or inactive members and was not able to find a qualified person; the employer made a good faith effort to hire a retired member who would reinstate; the salary being paid does not exceed what was advertised or is currently paid for that position; and the appointment terminates no later than June 30, 2013. The bill would make all of these changes applicable to the 2012-13 fiscal year, allowing the bill to bridge the gap between the sunset date of the exemptions and any pension reform changes adopted by the Legislature and Governor.

Allowing service retired members to re-retire within a year of reinstating would provide additional flexibility to members who wish to return to work after retiring. In order to protect the DB Program from adverse selection, the bill requires members who take advantage of this provision to keep the same option and beneficiary or beneficiaries that were in effect before reinstatement, or to retain their unmodified benefit, for one year after reinstatement. There are additional portions of existing law that need to be aligned with this intent through legislation next year.

LEGISLATIVE HISTORY

AB 2275 (Achadjian, 2012) extended the sunset dates for the postretirement earnings limit exemptions to June 30, 2014, and expanded eligibility, where applicable, to

members who retired on or before January 1, 2011. This bill was held in the Assembly Public Employees, Retirement and Social Security Committee.

AB 758 (Wieckowski, 2011) extended the sunset dates for the postretirement earnings limit exemptions to June 30, 2014, and expanded eligibility, where applicable, to members who retired on or before January 1, 2011. This bill was held in the Assembly Public Employees, Retirement and Social Security Committee.

AB 506 (Furutani, Chapter 306, Statutes of 2009) required retired members who are under the normal retirement age of 60 to have their retirement benefit reduced by the amount earned in CalSTRS-covered employment for the first six calendar months following their retirement effective date or until their 60th birthday, whichever is sooner; extended the sunset dates for the postretirement earnings limit exemptions to June 30, 2012, and expanded eligibility, where applicable, to members who retired on or before January 1, 2009; and stated that the vacant administrative position emergency exemption shall not apply to a retiree whose termination is the basis for the vacant administrator position.

AB 2390 (Karnette, Chapter 494, Statutes of 2008) extended the sunset dates of the postretirement earnings limit exemptions by one year to June 30, 2010; expanded eligibility for the exemptions, where applicable, by one year to members who retired on or before January 1, 2007; and permitted members who retired between June 1, 2007, and December 31, 2007, to purchase service credit for service performed in a publicly funded educational institution outside the United States.

SB 901 (Padilla, Chapter 353, Statutes of 2007) added a sunset date of June 30, 2009, to the remedial instruction exemption; extended the sunset date of the other existing postretirement earnings limit exemptions by 18 months to June 30, 2009; and pushed back the eligibility date for exemptions, where applicable, to include all members retired for service on or before January 1, 2006.

AB 2254 (Goldberg, Chapter 766, Statutes of 2006) included an exemption for retired members who are appointed as a trustee under the Immediate Intervention/Underperforming Schools Program or the High Priority Schools Grant Program.

AB 2554 (Pavley, Chapter 934, Statutes of 2004) extended the sunset date on the existing K-12 service-specific exemption to January 1, 2008; expanded eligibility for the exemptions, where applicable, to members who retired on or before January 1, 2004; expanded the K-12 exemption to include members providing instruction in special education and English language learner programs; and provided a two-year limit on the emergency administrator exemption.

AB 2982 (PER&SS, Chapter 375, Statutes of 2002), among other provisions, extended the sunset date on the existing emergency administrator and trustee exemptions to January 1, 2008.

SB 1983 (Soto, Chapter 903, Statutes of 2002), among other provisions, changed the calculation of the annual postretirement earnings limit to reflect increases in the average earnable salary of active members.

AB 141 (Knox, Chapter 22, Statutes of 2000) extended the current exemption from the earnings limit for retired members who are employed to fill an administrative position vacated due to circumstances beyond the control of the employer for the 1999-00 and 2000-01 school years through December 31, 2000; and provided that the extension could equal one-half of a full-time equivalent for the position.

SB 1666 (Alarcon, Chapter 70, Statutes of 2000) expanded the K-12 direct classroom instruction exemption to include supporting teachers participating in a teacher preparation program; required members to retire on or before January 1, 2000, to be eligible; and extended the exemption to July 1, 2005.

AB 1736 (Ducheny, Chapter 351, Statutes of 2000) exempted from the earnings limit members who retired on or before July 1, 2000, and return to service to provide direct remedial instruction in grades 2-12, inclusive.

AB 1733 (Wildman, Chapter 896, Statutes of 2000) temporarily eliminated the earnings limit for members who return to work more than one year after retirement and increased the limit for other retired members.

PROGRAM BACKGROUND

Although retirement has historically been perceived as the period in a person's life when work has ceased, and the retiree lives on income from resources accrued while employed, that model has changed over the years. According to a 2010 study by the Employee Benefit Research Institute, 23 percent of Americans reported that they have worked for pay since their retirement. This is substantially less than the 70 percent of Americans who say they expect to work after retirement, but still represents a meaningful change in how Americans spend their retirement.

Generally, a retired CalSTRS member may not return to full-time work in CalSTRS-covered employment unless the member is willing to reinstate as an active member. Various factors drive the existing structure of CalSTRS limits on postretirement earnings. The primary reason for restricting postretirement earnings is that federal regulations governing tax-qualified pension programs prohibit paying a pension to a person who is under the normal retirement age (age 60 for CalSTRS in 2012) unless the employment that brought about the pension has been terminated. The State Teachers' Retirement Plan addresses this prohibition by limiting the amount of money that can be earned by DB members after retirement from CalSTRS-covered service.

In the past, the Legislature created exemptions to this rule for specific programs to assist school districts, community college districts and county offices of education in meeting their needs for experienced educators by hiring retired members. In 2010-11, approximately 27,600 retired members (out of more than 220,000 retired members) were reported to have earned compensation for CalSTRS-covered activities during the year. Of the retired members who worked in 2010-11, only 1,100 retired members,

including those with exemptions, (approximately 4 percent) exceeded the earnings limit. The table below indicates how the exemptions were distributed in 2010-11.

Reason for Exemption	Number of Retired Members Who Worked in 2010-11
12-Month Break	7,825
Limited-Term Appointment	0
Emergency Administrator	33
Direct Classroom/Remedial Instruction	260
No Exemption	19,486
Total	27,604

FISCAL IMPACT

Program Cost – Any increases in benefits accrued from reinstatement would be offset by increased contributions. Continuing the limited-term appointment exemption would have no actuarial impact on the DB Program because the valuation of the DB Program does not assume that any member will work in excess of any earnings limit. The resulting reduction in a member’s benefit as a result of earnings in excess of the earnings limit would be an actuarial gain to the DB Program. Extending this exemption for a one-year period of time would result in the system foregoing that actuarial gain. Allowing for immediate reinstatement would also forego that actuarial gain.

Administrative Costs/Savings – Administrative costs due to system changes, potential increases in reinstatement and re-retirement applications, retroactive implementation of the limited-term exemption, and determination of specified third party activities are unknown. Required changes in the procedures would be incorporated into the training of affected staff and CalSTRS communications materials.

SUPPORT

Accrediting Commission for Community and Junior Colleges
 Association of California School Administrators
 California Association of School Business Officials
 California Charter Schools Association Advocates
 California County Superintendents Educational Services Association
 California School Boards Association
 California Speech-Language Hearing Association
 California Teachers Association
 Cerritos Community College District
 City College of San Francisco
 College of Marin
 Fillmore Unified School District
 Humboldt County Office of Education
 Inyo County Office of Education
 Los Angeles County Office of Education
 Orange County Department of Education
 Riverside County School Superintendents’ Association

San Bernardino Area Chamber of Commerce
San Bernardino Community College School District
San Mateo County Office of Education
Small School Districts Association
Shasta-Tehama-Trinity Joint Community College District

OPPOSITION

Lake County Office of Education (unless amended)

ARGUMENTS

Pro: Provides members with additional safeguards and flexibility if they find the need to return to work after retirement.

Con: Increases administrative complexity.

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