BILL NUMBER: AB 1875 (Chávez) as amended April 11, 2016

SUMMARY

AB 1875 allows CalSTRS Defined Benefit (DB) Program members and Cash Balance (CB) Benefit Program participants to designate a specific type of trust established for a disabled individual (often called a "special needs trust") to be an option beneficiary or annuity beneficiary and receive a benefit for the duration of the disabled individual's lifetime.

BOARD POSITION

Neutral. The board's policy is to adopt a neutral position on legislation which does not significantly or adversely impact the benefits or services provided through the funds administered by CalSTRS or the administration of the retirement plans. It is generally the board's policy to oppose special interest legislation to benefit only one individual or a small group of individuals within a larger group; however, in this case, an inequity exists which the legislation would correct.

REASON FOR THE BILL

Special needs trusts shield the assets and income of disabled individuals from disqualifying them from eligibility for public benefits and services. Since trusts currently are prohibited from being named as an option or annuity beneficiary, a member or participant who wishes to provide a lifetime benefit to a disabled person cannot do so without jeopardizing that individual's eligibility for other public benefits.

SUMMARY OF AMENDMENTS

The April 11, 2016, amendments:

- Correct statutory references.
- Add the beneficiary of a trust to the list of individuals who may elect a payee to receive the payments issued for the month of the beneficiary's death and any contributions and interest remaining in the account.

ANALYSIS

Existing Law:

CalSTRS DB Program members and CB Benefit Program participants can elect to receive an actuarially reduced lifetime benefit and, in exchange, can name an option beneficiary or annuity beneficiary who will receive a lifetime allowance upon the member's or participant's death. However, the beneficiary must be a person, and election of a trust as an option beneficiary is prohibited.

This Bill:

AB 1875 allows a member or participant to change an existing beneficiary designation without penalty for the purpose of designating a trust as a beneficiary. This would allow individuals already receiving a benefit, or individuals whose designated beneficiaries establish trusts in the future, to make that change.

This bill requires that the beneficiary of the trust be considered the designated beneficiary for the purpose of determining eligibility for, and the amount and determination of, benefits. This allows for the establishment of option factors that are tied to the life expectancy of a person.

AB 1875 requires a member or participant to provide specified documentation if a trust is designated, including a certification that the trust meets relevant requirements. Trustees acting at the time of the death of the member or participant would be required to provide a similar certification. These requirements relate to Section 1.401(a)(9)-4 of Title 26 of the Code of Federal Regulations. Those regulations require that specific documentation and certifications must be provided to CalSTRS.

The member or participant must provide either:

- A copy of the trust instrument and an agreement that if the trust instrument is amended at any time in the future, the member or participant will, within a reasonable time, provide a copy of each such amendment; or
- A list of all of the beneficiaries of the trust with certification that the list is correct and complete, and if the trust instrument is amended at any time in the future, the member or participant will, within a reasonable time, provide corrected certifications to the extent that the amendment changes any information previously certified, as well as an agreement to provide a copy of the trust instrument to CalSTRS upon demand.

After the death of the member or participant, by October 31 of the calendar year immediately following the calendar year in which the member or participant died, the trustee of the trust must provide either:

- A final list of all beneficiaries of the trust as of September 30 of the calendar year following the calendar year of the member's or participant's death; certify that, to the best of the trustee's knowledge, this list is correct and complete; and agree to provide a copy of the trust instrument to CalSTRS upon demand; or
- A copy of the actual trust document for the trust that is named as a beneficiary of the member or participant as of the member's or participant's date of death.

This bill also requires that a designated trust satisfies the requirements of Section 1.401(a)(9)-4 of Title 26 of the Code of Federal Regulations. In addition to the documentation requirements described earlier, this section entails the following:

- The trust is a valid trust under state law or would be but for the fact that there is no corpus.
- The trust is irrevocable or will, by its terms, become irrevocable upon the death of the member or participant.
- The beneficiaries of the trust are identifiable from the trust instrument.

This bill requires that a designated trust satisfy the requirements of subparagraph (A) or (C) of paragraph (4) of subdivision (d) of Section 1396p of Title 42 of the United States Code. This provision restricts the types of allowable trusts to one of the following types, containing the assets of an individual who is disabled for Supplemental Security Income purposes, that is established for the disabled individual's sole benefit:

Special needs trusts
These trusts contain the assets of a disabled individual under age 65 and are established through the actions of a parent, grandparent, legal guardian or court. The trust must provide that the state will receive all amounts remaining in the trust upon the death of the individual up to an amount equal to the total medical assistance paid.

Pooled trusts
A pooled trust holds the assets of individual account holders, with separate accounts maintained for each beneficiary. The pooled trust must be maintained by a nonprofit association. Accounts are established through the actions of the individual, parent, grandparent, legal guardian or court. The trust must provide that the trust will pay the state the amount remaining up to an amount equal to the total amount of medical assistance paid.

In addition, this bill allows a trustee or the beneficiary of a trust to name a payee to receive payments issued for the month of the trust beneficiary's death and any contributions and interest remaining in the member's account, unless the terms of the trust specify otherwise.

Finally, AB 1875 provides that the board is not required to determine the powers of a trustee or the validity of a trust and, provided the board acts in good faith, immunizes the board, system and plan from liability.

LEGISLATIVE HISTORY

AB 4083 (Bannai, Chapter 1153, Statutes of 1974) added language that allowed for designation of a trust, eleemosynary, parochial institution or other public entity as a beneficiary. Designation of those entities was restricted to payments including specific lump-sum payments only, such as the death benefit.

H.R. 2264 (Federal Omnibus Budget Reconciliation Act of 1993) established rules for the treatment of funds and other assets of an individual placed in trust by or on behalf of an individual (or the individual's spouse) for purposes of Medicaid eligibility.

PROGRAM BACKGROUND

Under federal law, a parent, grandparent, legal guardian or court can establish a special needs trust for a disabled individual to shield the assets and income of the trust from disqualifying him or her from eligibility for public benefits, such as Medi-Cal or Supplemental Security Income, and from barring the disabled person from accessing support services that require eligibility for those benefits. Currently, a member or participant who wishes to provide a lifetime benefit to a disabled person cannot do so without jeopardizing that individual's eligibility for other public benefits. However, federal regulations permit tax-qualified plans, such as CalSTRS, to allow an irrevocable trust as a designated beneficiary when certain documentation requirements are met.

Trust law and trust agreements are complex and evolving, with the attendant risk of improper payments, either by paying an ineligible trust or by failing to appropriately terminate benefits at the death of the beneficiary. Currently, CalSTRS administers payments to individuals and processes death notifications based on those individuals' social security or taxpayer identification numbers. However, if a benefit is paid to a trust, the payment would necessarily be associated with the trust's taxpayer identification number. To minimize the risk of overpayment following the death of a trust beneficiary, CalSTRS would administer the trust as payee as well as monitor the individual who is beneficiary to the trust.

In addition, recent legislation implemented the federal Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 (ABLE Act) in California. The ABLE Act introduced a new type of account established under Internal Revenue Code section 529A. These accounts are tax-favored savings accounts that may accept contributions and make distributions to pay for certain qualifying disability expenses. Assets in the account up to $100,000 do not count toward determining eligibility for federal welfare benefit programs. ABLE accounts are an alternative to, but not necessarily a replacement for, more expensive and more complicated special needs trusts. It is possible that ABLE accounts could be a savings vehicle of choice, instead of special needs trusts, for some members, participants and beneficiaries.

OTHER STATES' INFORMATION

Colorado: In 2015, Colorado passed Senate Bill 15-097, allowing Colorado Public Employees' Retirement Association members to elect a special needs trust as a beneficiary. To date, one person has reportedly elected a trust as beneficiary.

Texas: Texas Municipal Retirement and Teachers' Retirement systems allow trusts (not just special needs trusts) to be payees generally and have for many years. Texas Teachers' Retirement System reportedly receives an estimated 10 requests to review elected trusts each year.

FISCAL IMPACT

Program Costs/Savings – None.

Administrative Costs/Savings – This bill would introduce complexity to the beneficiary election and payment process, resulting in a new ongoing workload for CalSTRS staff. Costs associated with a semi-automated tracking process and the development of forms, publications, web content, new processes and staff training would be minor.

SUPPORT

None known.

OPPOSITION

None known.

ARGUMENTS

Pro: Expands and improves benefits and services.

Remedies an inequity with respect to providing financially for special needs beneficiaries while preserving their access to other public benefits and services.

Con: Increases administrative complexity.

Likely affects a very small population.

Creates the risk that trusts may be paid improperly.

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