

# CALIFORNIA STATE TEACHERS' RETIREMENT SYSTEM

## BILL ANALYSIS

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### **Assembly Bill 205**

Assembly Member Goldberg (As amended 6/3/03)

### **Position**

Support

### **Proponents:**

California Alliance for Pride and Equality (Sponsor); ACLU; California School Employees' Association; California State Employees' Association; American Federation of State, County, and Municipal Employees; Gray Panthers; National Association of Social Workers

### **Opponents:**

Committee on Moral Concerns; Campaign for California Families; Capitol Resource Institute; Concerned Women for America; Traditional Values Coalition

## **SUMMARY**

Assembly Bill 205 extends the rights, protections, benefits, responsibilities, obligations and duties of current, former and surviving married spouses to current, former and surviving registered domestic partners in California. This bill requires that registered domestic partners be treated as if federal law recognizes the partnership as California does, and that any formal, same-sex union created in another state be recognized as a registered domestic partnership in California. It also outlines the criteria for establishing a new domestic partnership and the requirements and methods for terminating an existing partnership.

## **LEGISLATIVE HISTORY**

Chapter 373, Statutes of 2002 (AB 2777—Nation) authorizes the Board of Supervisors of Los Angeles, Santa Barbara and Marin Counties to provide domestic partners of county employees the same survivor benefits received by spouses of eligible county employees.

Chapter 893, Statutes of 2001 (AB 25—Migden) establishes domestic partnerships for opposite-sex couples where only one partner is over the age of 62 and is eligible to receive social security old-age benefits, and extends to domestic partners various rights and privileges provided to married couples.

Chapter 588, Statutes of 1999 (AB 26—Migden) establishes requirements for domestic partnerships between two adults of the same sex who meet specified criteria and provides for their registration with the Secretary of State. Authorizes state and local employers to offer health care coverage and other benefits to domestic partners who have submitted certificates of eligibility or Declarations of Domestic Partnerships

Proposition 22, 2000 (Approved by California voters by a majority of 61.4 percent) added a provision to the Family Code restricting the type of marriage recognized in California as only those between a man and a woman. This was intended to prevent California from having to recognize same-sex marriages that take place in other states, should other states redefine marriage to include same-sex unions. As of the year 2000, no other state recognized a civil contract or any other relationship between people of the same sex as a marriage. Proposition 22 followed similar resolutions passed by the United States Congress and signed by President Clinton.

## **SUMMARY OF AMENDMENTS**

The June 2, 2003 amendments require the Secretary of State to establish the cost for preparing and sending the mailings and notices to current and potential registered domestic partners.

The June 3, 2003 amendments:

- Acknowledge that the California State Legislature does not have the authority to extend the federal law related to marriage to registered domestic partners;
- Clarify that the intent of AB 205 is not to amend or modify the California Constitution;
- Simplify the language related to 'spouses in a civil marriage' by changing the reference simply to "spouses";
- Remove reference to the validity of a registered domestic partnership in the case where one or both of the partners has changed sex.

## **CURRENT PRACTICE**

### **Survivor Benefits**

The California State Teachers' Retirement System (CalSTRS) pays lifetime, monthly family and survivor allowances to members' spouses and their eligible dependent children. Upon a member's death, the member's surviving spouse can elect to receive either a monthly benefit or a lump-sum payment. If there are eligible dependent children, they also receive a monthly allowance if the surviving spouse elects to receive a survivor benefit, equal to 10 percent of final compensation per child, up to five children. If there is no surviving spouse, CalSTRS pays a lump-sum payment to the member's named beneficiary, regardless of the relationship of the beneficiary to the member. If the member does not name a beneficiary and there is no surviving spouse, the member's estate receives the benefit.

Current law requires a marriage to be at least 12 months in length for the spouse of a member to be eligible to receive a survivor benefit. AB 106 (Corbett & Dutton), however, deletes this requirement in the case of a member's death that is the result of an accident or illness that was not diagnosed at the time of marriage. In the event that a member dissolves or annuls his/her marriage, a court may order a settlement that establishes benefits for the former nonmember spouse.

### **Disability Benefits**

CalSTRS provides monthly disability allowances and disability retirement benefits to eligible members and their dependent children/stepchildren. In the event of a qualifying disability, the disabled member receives a monthly benefit, which is increased by 10 percent of final compensation for each eligible dependent child (up to four children) of the member. When the member receiving a disability allowance reaches normal retirement age, the monthly disability allowance converts to a service retirement allowance and the member continues receiving a monthly benefit.

### **Domestic Partners**

The Teachers' Retirement Law (TRL) does not include a domestic partner, as defined in Chapter 588, within the definition of a spouse. However, members may name whomever they choose as their beneficiary or option beneficiary, including a domestic partner. The named beneficiary or option beneficiary receives the member's benefit if there are no community rights of a former marriage or a person contesting any distribution of the benefit in question.

## **DISCUSSION**

According to the author, hundreds of provisions of state law that provide certain privileges and responsibilities to married couples do not apply to domestic partners. The author believes that granting these rights and responsibilities to registered domestic partners and their children furthers California's interests in promoting stable and lasting family relationships and protects family members from the economic and social consequences of abandonment, separation, the death of loved ones and other life crises.

Among other things, AB 205:

- Extends the rights, benefits, protections, responsibilities, obligations and duties that are enjoyed by and imposed upon current, former and surviving spouses to the current, former and surviving members of a registered domestic partnership;
- Affords the legal equality of registered domestic partners to spouses;
- Affords the legal equality of the termination or dissolution of a registered domestic partnership to the annulment, dissolution or legal separation of a marriage;
- Provides that California law will treat registered domestic partners as if federal law recognized the union as California does;
- Requires California to recognize as valid any legal union formed in another state;
- Requires the superior courts have jurisdiction over the termination or dissolution of registered domestic partnerships;
- Establishes criteria for determining whether a registered domestic partnership shall be terminated or dissolved;
- Prohibits a registered domestic partner from entering into another registered domestic partnership until the previous partnership is legally terminated and six months have passed;

- Requires the Secretary of State mail informational documents to current registered domestic partners informing them of the changes and inform all who seek a registered domestic partnership in the future of the new laws;
- Requires state agencies to update their forms to include domestic partnership and domestic partners when referring to marriage or married spouses.

Specifically, AB 205 affects the following CalSTRS programs:

### **Survivor Benefits**

- If a CalSTRS member dies and has a Declaration of Domestic Partnership on file with the Secretary of State, the surviving domestic partner would have the same opportunity as the surviving spouse of a married member to receive a survivor benefit of either a lump-sum payment or a monthly allowance;
- If the member's registered domestic partner has children, he or she would be considered to be the stepchildren of the member and are, therefore, eligible to receive a monthly allowance if the surviving domestic partner decides to take the survivor benefit;
- If the member dies and leaves dependent children, those children become the custody of the registered domestic partner and would also be eligible to receive a monthly allowance if the surviving domestic partner decides to take the survivor benefit.

### **Disability Benefits**

- A CalSTRS member who receives a disability allowance would also receive an additional 10 percent for each dependent child, including the children of the member's registered domestic partner who are the stepchildren of the member.

### **Nonmember Spouse Rights/Benefits**

- A nonmember/nonparticipant spouse or nonmember/nonparticipant domestic partner would have the right to separate Defined Benefit, Defined Benefit Supplement and/or Cash Balance Benefit Program accounts and may receive annuities and benefits from these accounts;
- A nonmember/nonparticipant spouse or nonmember/nonparticipant domestic partner would have various rights with respect to the member or participant's accounts through community property laws.

### **Actuarial Impact**

One of the key components in estimating the cost to the System for extending benefits to registered domestic partners is estimating the number of CalSTRS members and participants who would actually enter into registered partnerships with the Secretary of State. Currently, there are 17,000 registered domestic partnerships in the State of California, out of a general population of more than 34 million. At this time, the System Actuary could not obtain accurate data on the number of CalSTRS members or participants who are members of registered domestic partnerships, nor are there any reliable estimates on the rate at which this number might increase in the future.

The System Actuary arrived at an estimate of the number of CalSTRS members and participants in registered domestic partnerships based on an assumption that teachers register at the same rate

as the general California adult population, which is 25 million (the number of adults 18 and older in California). Under this assumption, CalSTRS members and participants would register at the ratio of 17,000 to 25 million. This suggests that about 300 CalSTRS members and participants would have registered domestic partners. The Actuary also assumed a growth rate of 4.25 percent per year in the number of registered CalSTRS members and participants, which is equal to the CalSTRS assumption for future total CalSTRS payroll growth and includes the future expected increase in CalSTRS active membership.

### **Federal Laws**

CalSTRS complies with federal tax regulations to maintain its status as a qualified pension fund. Under these laws, the System withholds federal taxes from benefit payments at a rate of 20 percent for members' surviving spouses and 10 percent for all other beneficiaries. Because AB 205 does not intend to, and cannot, extend the rights under federal law related to spouses to domestic partners, the 10 percent tax-withholding rate would continue to be applied to benefits paid to surviving domestic partners because federal law considers domestic partners beneficiaries other than spouses.

Federal law permits a surviving spouse to rollover the death benefit to an Individual Retirement Account. Federal law does not allow the rollover of benefits to a domestic partner because it does not recognize same-sex unions. Because this is a federal law and CalSTRS needs to maintain its status as a qualified pension fund, CalSTRS would comply with these rollover restrictions.

Legislative intent language notes that, while AB 205 provides that California will treat registered domestic partnerships as if federal law recognized the union with the same validity, federal law does not extend the 1,049 federal rights and benefits associated with marriage to domestic partnerships. In addition, rights available to spouses derived from the California Constitution and initiative statutes are not extended to domestic partners through this bill. CalSTRS implementation will require a careful review of federal and state laws as they apply to the Plan.

### **Teachers' Retirement Law**

Under AB 205, domestic partners will have the same rights, benefits, protections, responsibilities, obligations and duties as married spouses, whether or not CalSTRS changes the TRL to conform to the provisions of this bill. Although not necessary to have the provisions of AB 205 apply to CalSTRS programs, the System would seek to amend its codes after the bill is chaptered through subsequent legislation in order to maintain consistency.

## **FISCAL IMPACT**

Benefit Program Cost – Based on the System Actuary's assumption that 300 CalSTRS members and participants are registered as domestic partners, with a 4.25 percent annual growth in this group, the Actuary estimates that the total present value cost of extending benefits to domestic partners, their dependent children and dependent parents to be approximately \$37 million over the next 30 years, or \$2.5 million annually.

Administrative Costs –One-time cost of \$70,000 to modify the START database, with minor and absorbable costs to update information on the CalSTRS Web site.

## **BOARD POSITION**

Support. This bill is consistent with Board's policy to provide financially sound retirement and survivor benefits to California's educators and their families. In addition, the fiscal impact of this bill to the System would be relatively minor.