

**Bill Number: AB 738 (Hagman) as introduced on February 17, 2011.**

**SUMMARY**

AB 738 prohibits a person elected to office from becoming a member of a pension system by virtue of the position into which he or she was first elected on or after January 1, 2012.

**PURPOSE OF THE BILL**

AB 738 will help ensure that a person cannot receive retirement benefits based on being elected into an office that includes membership in a public retirement system without having any other service that would qualify him or her for the benefits from that public retirement system.

**BOARD POSITION**

**Oppose, unless amended** to exclude county representatives. CalSTRS members elected to county superintendent positions would be prevented from receiving benefits for their service as superintendent.

**LEGISLATIVE HISTORY**

Chapter 678, Statutes of 1998 (AB 1166--House) made technical changes to retirement law administered by the CalPERS and CalSTRS, as specified. Specifically, clarified the effective date when elective or appointed officials serving on boards or commissions are excluded from participation in CalPERS.

Chapter 378, Statutes of 1996 (AB 2743--Ackerman) prevented elected or appointed city or county officers, as defined, from qualifying for membership in CalPERS. Reduced the number of persons eligible to elect optional membership in the system by excluding certain persons who served as city and county officers, defined in the bill as: "elected or appointed officers of a county superintendent of schools, school district, or community college district, or of a (PERS) contracting agency, who serve on public commissions, boards, councils, or similar legislative or administrative bodies."

**ANALYSIS:**

**Existing Law:**

Under current law, a person who is an employee of the California public school system, prekindergarten through community college, is a member of the Defined Benefit Program. However, existing law excludes from mandatory DB membership, the following:

- A person employed less than 50 percent of full-time
- A person employed as a substitute teacher

- A person employed on a part-time basis, and who performs less than 60 hours of creditable service in a pay period if employed on an hourly basis or less than 10 days of creditable service if employed on a daily basis.

**This Bill:**

This measure prohibits a person elected to a state or local office from becoming a member of a pension system by virtue of the position into which he or she was first elected on or after January 1, 2012.

It appears the measure is intended to be directed at elected members of governing bodies, such as city councils and county boards of superintendents. However, as drafted it also applies to the 53 county superintendents of schools who are elected by voters, rather than appointed by the county board of education. Under AB 738, a CalSTRS member elected as county superintendent would not be able to earn service credit for his or her work as superintendent. While the member would have membership based on prior creditable service, he or she would not be able to earn service credit for his or her service as superintendent under CalSTRS or any other retirement system. Presumably, the person would instead make contributions to Social Security. However, he or she would be subject to the Windfall Elimination Provision, which would reduce his or her Social Security benefit. A CalSTRS member might be discouraged from seeking election to a county superintendent position because he or she would not be able to earn service credit for the work he or she performs in that position. In addition, this measure would create an inequity because a person elected to the position of superintendent would not be able to receive creditable service for his or her work, but a person appointed to an identical position would have that work credited toward retirement.

**PROGRAM BACKGROUND**

A person who is employed to perform full-time creditable service is a member of the Defined Benefit Program. This includes the work of a superintendent but not members of the school board. A member of a school board may participate in the Cash Balance Benefit (CB) Program for his or her trustee service if the district makes CB available to its eligible academic employees.

**FISCAL IMPACT**

Benefit Program Cost – Reduction in benefit liabilities offset by reduction in contributions.

Administrative Costs/Savings – None.

**SUPPORT**

None known

**OPPOSITION**

None known.

**ARGUMENTS**

Pro: Reduces the likelihood that a person would receive retirement benefits solely for service in an elected position.

Con: Adversely affects current CalSTRS members who might be elected into office as county superintendent, since that service would not be credited for determining retirement benefits.

**LEGISLATIVE STAFF CONTACT**

Sal Sanchez  
Legislative Analyst,  
CalSTRS Legislative Affairs,  
414-1984  
ssanchez@calstrs.com

Mary Anne Ashley  
Assistant Director,  
Governmental Affairs and Program Analysis,  
414-1981  
mashely@calstrs.ca.gov

Berman Obaldia  
Director,  
Governmental Affairs and Program Analysis,  
414-1977  
bobaldia@calstrs.com