

BILL NUMBER: AB 738 (Hagman) as amended January 5, 2012

SUMMARY

AB 738 prohibits a person elected to office that is less than full time 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, 2013.

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, because, while county superintendent positions are full time, current law does not designate the positions as full time.

SUMMARY OF AMENDMENTS

The January 5, 2012 amendments change the date when a person is elected to office would be subject to the provisions of this measure from January 1, 2012 to January 2, 2013.

The January 4, 2012 amendments limit the bill only to those elected to office on less than a full time basis, and requires designation of an elective or appointive office as full time be enacted by law.

PURPOSE OF THE BILL

AB 738 will help ensure that a person cannot receive retirement benefits based on being elected into a part time office.

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 (DB) 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.

Current law allows an employee of the California public school system to participate in Cash Balance (CB) Benefit Program, a hybrid retirement plan, which employers may offer to employees hired, as follows:

- School district or county office of education:
 - On an hourly or daily basis; or

- In a contract position for less than 50 percent for each full-time position.
- Community college district:
 - On a part-time or temporary basis not subject to mandatory membership in the DB Program; or
 - For not more than 67 percent of a full-time position.
- Governing body of a school district or community college district as a trustee.

This Bill:

This measure prohibits a person elected to a state or local office that is less than full time 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, 2013. The person would not acquire any retirement right or benefit for serving in that elective office. This restriction would also apply to a person who is appointed to fill the term of a person who was elected. The measure defines “full time” as providing service for a minimum of five days and 40 hours per week, or otherwise requiring the person to devote his or her time and attention to the duties of the office and prohibits any outside employment that would interfere with those duties. The designation of an elective or appointive office as full time must be enacted by law. This bill will prohibit a school board trustee from accruing Cash Balance benefits for their school board service.

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 because the positions are not designated as full time in existing law. 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.

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."

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 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 Cash Balance benefit liabilities offset by reduction in Cash Balance 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 that is less than full time.

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.

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