

BILL NUMBER: SB 1220 (Torres) as amended April 10, 2014

SUMMARY

SB 1220 makes various technical, conforming, or minor changes to the Teachers' Retirement Law to facilitate efficient administration of the State Teachers' Retirement Plan (Plan), which includes the Defined Benefit (DB) Program, the Defined Benefit Supplement (DBS) Program and the Cash Balance (CB) Benefit Program.

BOARD POSITION

Sponsor. This bill will make various technical, conforming, or minor amendments necessary for continued effective administration of the California State Teachers' Retirement System.

REASON FOR THE BILL

SB 1220 will help ensure continued effective and efficient plan administration for CalSTRS internal and external customers.

SUMMARY OF AMENDMENTS

The April 10, 2014 amendments:

- Make a correction to the definition of "base allowance,"
- Clarify the definition of "employer" in relation to a joint powers authority,
- Correct references to the definition of "credited service,"
- Make minor changes to the definition of three-year non-consecutive final compensation,
- Clarify the definition of CalSTRS members subject to PEPRA,
- Add written employment agreements into the provisions that restrict employers from paying the member's portion of contributions to the DB Program,
- Correct drafting errors in the amendments to the benefit calculations for members who retire after receiving a disability allowance,
- Correct various drafting errors, including renumbering errors, related to the option reorganization,
- Insert an omitted section related to the option change window period for same-sex spouses and correct the end date of the window period,
- Clarify that when a member has elected a compound option under the DB Program, and also elects a DBS annuity, the DBS annuity is subject to specified age restrictions ,
- Simplify the definition of "vendor" as it relates to 403bCompare, and
- Insert omitted grammatical changes in the definition of "creditable service" for the CB Benefit Program.

PROGRAM BACKGROUND & ANALYSIS:

Supplemental Base Allowance

Background

Existing law provides for periodic increases to a member's benefit to mitigate inflation and ensure adequate purchasing power. Several sections inconsistently refer to a member's benefit prior to an annual benefit adjustment and after modification for an option as the "initial," "base," or "original" allowance. These inconsistent references have caused confusion for members who believe they should receive a supplemental benefit based on their allowance at retirement rather than their allowance after an option change and the death of his or her option beneficiary.

Proposed

This measure adds a definition for the term "base allowance" and replaces "initial monthly" and "original" with "base allowance" to reduce inconsistent use of terms to refer to a monthly allowance under the DB Program prior to an annual benefit adjustment and after modification for an option.

Sections affected: 22106.1, 22106.2, 24412, 24415

Break in Service

Background

Traditionally, the school year lasts from September to June of the following year. Existing law defines the school year as the fiscal year or academic year but does not provide any additional definition of "school year" or "academic year." Under existing law, as long as a member who is employed on a full-time basis begins creditable service at the beginning of the school year, July and August are not considered a break in service, even if no service is performed during those months. However, members who work in school districts with nontraditional school years could be considered to have had a break in service.

Proposed

This measure replaces "July and August" with a general reference to the months not recognized as part of the school term for the purpose of excluding those months from the definition of a break in service, if a member started performing service at the beginning of, and completed, the school year. CalSTRS will be able to ensure members with traditional and nontraditional school years are treated consistently when calculating final compensation, since months that are not part of the school term will no longer be considered a break in service.

Section affected: 22109.5

PEPRA Conforming Bill Clean-Up

Background

Chapter 559, Statutes of 2013 (AB 1381, PER&SS), made various technical corrections and conforming changes that aligned the Teachers' Retirement Law with the provisions

of the Public Employees' Pension Reform Act of 2013 (PEPRA). Minor grammatical and drafting errors remained in the language when it was chaptered.

Proposed

This measure makes minor punctuation corrections and specifies the Consumer Price Index for all Urban Consumers used to adjust the compensation cap for members subject to PEPRA (2% at 62) is the U.S. City Average.

Sections affected: 22119.3, 24214.5, Section 1 of Chapter 559 of the Statutes of 2013

Creditable Service

Background

Existing law defines creditable service for the DB and CB Benefit programs by providing a list of activities that are considered creditable service when they are performed for an employer in a position requiring a credential, certificate, or permit:

- Pursuant the Education Code,
- Under standards adopted by the Board of Governors of the California Community Colleges,
- Under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment, or
- Pursuant to a contract between a community college district and the U.S. Department of Defense.

Proposed

This measure clarifies the definition of creditable service by making minor grammatical changes and specifying that the clause related to state apportionment is only meant to be applicable to charters schools. This measure also repeals an obsolete occurrence of section 22119.5.

Sections affected: 22119.5, 26113

Credited Service

Background

Existing law defines "credited service" as service for which the required contributions have been paid. However, for 2% at 62 members there is a limit on creditable compensation, and no contributions are paid to CalSTRS on compensation in excess of the limit.

Proposed

This measure defines "credited service" for 2% at 62 members so that service for which compensation is in excess of the limit and no contributions are paid is deemed to be credited service.

Section affected: 22121

Definition of Employer

Background

In the mid-1970s, the Government Code was amended to add the ability for two or more public agencies to join together and operate collectively, under a joint powers authority (JPA), to provide more effective and efficient government services or to solve a service delivery problem. Because JPAs are not explicitly included in the current definition of employer in the Teachers' Retirement Law, it creates an ambiguity as to whether they may report contribution data to CalSTRS.

Proposed

This measure specifies that JPAs are among the entities considered to be employers if:

- The JPA is formed pursuant to the Joint Exercise of Powers Act,
- All entities included in the JPA are entities at which creditable service subject to coverage by the plan is performed, and
- The JPA reports through a single county office of education, with that county superintendent having responsibility for specified activities, including reporting and remitting contributions.

This measure also specifies that the definition of employer shall be in compliance with the requirements defining a governmental plan specified in Section 414(d) of the Internal Revenue Code.

Section affected: 22131

Final Compensation

Background

Final compensation is generally the highest average annual compensation earnable for any period of three consecutive school years. However, final compensation may be the highest average annual compensation earnable during any period of 12 consecutive months, if a member not subject to PEPRA (2% at 60) has 25 or more years of service credit. Existing law inconsistently references the time periods used to calculate final compensation. The following situations show where confusion can arise.

One-Year Final Compensation: Generally, CalSTRS calculates final compensation using the member's compensation earnable from one school year. For members with one-year final compensation, 12 months of compensation is needed to calculate the average. In a 10-month school year when the school year does not begin in September, CalSTRS uses the 10 months of compensation earnable and two months of the earnable from the previous school year to accumulate the 12 months needed due to the current definition of break in service.

Mid-Year Retirement: The statutory definitions of "final compensation" and "compensation earnable" establish the school year as the period of time used to determine compensation earnable. For members who retire at the end of the school year and earned their highest salary that year, CalSTRS uses the compensation earnable for the final full school year. However, when a member is eligible for one-year final compensation, retires mid-year and earns his or her highest salary during the last partial year of employment, CalSTRS calculates the annual earnable for the partial year

and combines it with the annual earnable from a portion of the previous school year, to reflect one full year of compensation.

Three-Year Non-Consecutive Final Compensation: Final compensation is usually based on three consecutive school years for 2% at 60 members with fewer than 25 years of service credit and all 2% at 62 members. However, members who experienced a salary reduction due to a decrease in state school funding may use any three highest years.

Proposed

This measure inserts a reference to the section defining “compensation earnable,” in all sections that define final compensation to make clear the period of time used to determine “compensation earnable” is the school year. This measure makes the references to the period of time used to calculate final compensation consistent by referring to months in each section. This measure requires employer certification that a member’s salary was reduced because of a reduction in school funds in order to use three non-consecutive years to calculate final compensation. This measure also makes clarifying changes and references to reduce confusion.

Sections affected: 22134, 22134.5, 22135, 22136, 22516, 24600

Members Subject to PEPRA

Background

PEPRA allows an individual who was employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, to be excluded from PEPRA if he or she was subject to concurrent membership for which creditable service was performed in the previous six months. However, the exclusion from PEPRA in the Teachers’ Retirement Law applies only to individuals who become members of the DB Program within those six months.

Proposed

This measure clarifies the definition of CalSTRS members subject to PEPRA by specifying that this definition excludes individuals who are employed to perform creditable service within six months of performing service in a concurrent retirement system even if they do not become members of the DB Program within those six months.

Section affected: 22146.2

System’s Headquarters Office

Background

CalSTRS has the authority to select, purchase, or acquire in the name of the State Teachers’ Retirement Plan, an office building in the greater metropolitan Sacramento area, including the City of Sacramento, the County of Sacramento, and the eastern part of Yolo County, for the purposes of establishing a permanent headquarters facility for the system. In 2009, when construction of the current headquarters building was completed, CalSTRS staff moved into the new headquarters. Many sections of law

continue to refer to Education Code section 22375, which authorizes the headquarters office. Chapter 558, Statutes of 2013 (AB 1379, PER&SS), defined “system’s headquarters office” and removed references to section 22375 in multiple sections of law. However, the removal of the reference was chaptered out, or omitted, in some sections of law.

Proposed

This measure removes unnecessary references to Education Code section 22375.

Sections affected: 22662, 22663, 22664, 22801, 22826, 23828, 23104, 24306.7

DBS Program Contributions

Background

Under existing law, contributions on creditable compensation are credited to the DBS Program for compensation that is:

- For creditable service that exceeds one year in a school year;
- Paid for a limited number of times as specified by law, a collective bargaining agreement, or an employment agreement (not applicable to 2% at 62 members);
or
- Determined to have been paid to enhance a member’s benefits (not applicable to 2% at 62 members).

Proposed

This measure inserts a reference into section 22905 related to the provision of law listing the sound principles that support the integrity of the Teachers’ Retirement Fund that are part of the definition of “creditable compensation.”

Section affected: 22905

Prohibition of Employer-Paid Member Contributions

Background

Written employment agreements were unintentionally excluded from the provisions in which employers are restricted from paying the member’s portion of contributions to the DB Program.

Proposed

This measure clarifies that written employment agreements are to be included in the provisions in which employers are restricted from paying the member’s portion of contributions to the DB Program.

Section affected: 22909

Disability Eligibility

Background

A retired member may terminate his or her retirement and reinstate to active, creditable service. After at least one year of additional active service, the member, if eligible, may

apply for disability benefits. Termination of the retirement benefit is required prior to applying for a subsequent disability benefit.

Proposed

This measure clarifies that a member cannot currently be receiving a retirement benefit when he or she subsequently applies for a disability benefit.

Sections affected: 24001, 24101

Service Retirement Benefit Effective Date

Background

Members currently may submit an application for service retirement during a period that begins six months prior to the chosen retirement date, as long as the effective date is after creditable service has been terminated. A member may backdate the effective date of his or her service retirement to any date on or after January 1, 2012, or on or after January 1, 2014, in the case of service retirement during evaluation of a disability, regardless of the amount of time that has passed since that date. When the law was changed to allow backdating, the phrase "retiring on and after January 1" was used. However, the term "retiring" is not clearly defined and may cause confusion.

Proposed

This measure removes the unclearly defined term, "retiring," and clarifies that the limit on backdating applies to a member who submits an application to retire on and after the applicable date.

Sections affected: 24201.5, 24204

Career Factor and Longevity Bonus

Background

CalSTRS 2% at 60 members with 30 years of service credit by December 31, 2010, are eligible for the longevity bonus when they retire for service, which adds a flat dollar amount to their monthly benefit based on the total years of service. In addition, 2% at 60 members retiring with 30 or more years of service are eligible for the career factor, which provides an additional two-tenths of a percent of salary, up to the total maximum of 2.4 percent.

Proposed

This measure adds references to code sections authorizing retirement that were previously left out of the provisions of law pertaining to the longevity bonus and the career factor.

Sections affected: 24203.5, 24203.6

Benefit Calculations

Background

Members receiving a disability retirement benefit may terminate the disability benefit and later retire for service. Upon subsequent service retirement, the member may be eligible for the longevity bonus, but the law omits that benefit enhancement from the service retirement calculation.

When a member terminates a disability allowance and subsequently retires for service, the service retirement benefit may or may not correctly reflect service credit granted for the following, depending on how many years of creditable service are performed before the subsequent retirement, because of discrepancies in the law,:

- Unused sick leave,
- Educational leave,
- Permissive service credit purchased by the member,
- Out-of-state service purchased by the member, and
- Service credit redeposited by the member.

Existing law does not consistently allow a member who service retires after receiving a disability allowance to elect an option on or before the effective date of a member's retirement. This affects members retiring in any situation, including after terminating a disability allowance, regardless of whether the member performed creditable service after the disability or the amount of time that elapses between the disability allowance and the retirement.

The age factor and the exclusion of the children's portion of the disability allowance are missing from the calculation of service retirement when a member moves directly from disability allowance to service retirement.

In addition, existing law inconsistently applies the longevity bonus and career factor when a member moves from disability allowance to service retirement.

Proposed

This measure:

- Includes a reference to the longevity bonus for members who terminate a disability retirement and subsequently service retire;
- Clarifies the language that provides additional service credit to certain, eligible members who retire after receiving a disability allowance;
- Corrects an inconsistency in the provisions allowing members to elect an option after terminating a disability allowance and retiring for service, by adding the ability to elect an option when members terminate disability and go immediately to service retirement;
- Adds a reference to the age factor where it is missing;
- Clarifies the children's portion of the disability allowance is excluded from retirement benefit determinations; and
- Clarifies the longevity bonus and career factor can be used as appropriate.

Sections affected: 24210, 24211, 24212, 24213

Option Change Window Period for Same-Sex Spouse

Background

The federal Defense of Marriage Act (DOMA) amended the Dictionary Act's definition of "spouse" and "marriage" to refer only to heterosexual unions. As a result, the federal Treasury Regulations used the terms "spouse" and "marriage" only in reference to opposite-sex couples.

In California, married heterosexual spouses, registered domestic partners, and married same-sex spouses have historically received the same treatment, except in specific situations detailed under the Treasury Regulations. As a result, same-sex spouses and registered domestic partners were considered as "non-spouse beneficiaries" for taxes and survivor benefits. Therefore, members who wanted to designate their same-sex spouse or registered domestic partner as their DB option beneficiary or DBS joint and survivor annuity beneficiary were prevented from electing certain options and annuities.

On June 26, 2013, the Supreme Court issued a decision in the case of *United States v. Windsor* in which it held that section 3 of DOMA amending the Dictionary Act's definition of "spouse" and "marriage" to refer only to heterosexual unions is unconstitutional. To comply with the decision, government benefit providers are to treat heterosexual married couples and same-sex married couples equally in all areas of benefit administration, including taxes and survivor benefits.

Proposed

This measure opens a window period in which members who were married to a same-sex spouse and who elected an option prior to June 26, 2013, can change their option election if they were prevented from selecting the option of their choice due to the federal age restrictions previously in place that applied to same-sex spouse beneficiaries.

Sections affected: 24347, 24348

Option Reorganization

Background

The DB Program offered seven survivor benefit options that were available to members prior to January 1, 2007, and now offers four options that are available starting January 1, 2007. Members who had elected one of the old options had a window period during which they could change their option and elect one of the new choices. The provisions governing these options are found in Chapter 28, sections 24300 through 24313 of the Education Code. The order of these sections does not provide for ease of understanding, and clarification is needed on the treatment of options during the first year after termination of a service retirement benefit due to changes made by Chapter 135, Statutes of 2012 (AB 178, Gorell).

Proposed

This measure comprehensively reorganizes the sections of Chapter 28 of the Teachers' Retirement Law, aligns references to the new section numbers, and clarifies the provisions of law related to survivor benefit options, including:

- For retired members whose option beneficiary predeceases him or her, amending former section 24306 to correspond to and consolidate language that was found in section 24300 as follows:
 - For a member who elects Option 4 or 5, the retirement allowance adjusted for the specified option will be payable to the member and will start to accrue the day after the option beneficiary's death.
 - For a member who elects Option 4 or 5 within Option 8, the retirement allowance adjusted for the specified option will be payable to the member and will start to accrue the day after the option beneficiary's death.
 - For a member who elects Option 6 or 7, or elects Option 6 or 7 within Option 8, the member may designate a new beneficiary for that portion of the retirement allowance within the same option designated for the prior beneficiary.
 - For a member who elects one of the four joint and survivor options in effect since January 1, 2007, the retired member may designate a new beneficiary for that portion of the retirement allowance within the same option designated for the prior beneficiary.
 - A new option beneficiary cannot be an existing option beneficiary for that member designated under Option 8 or the Compound Option.
- Specifying in various sections that if, before a new election becomes effective, the member reinstates or the retired member or new option beneficiary dies, the new election is void.
- Amending section 24307 to remove a redundant requirement that a spouse's or registered domestic partner's signature be included on a form to elect a preretirement option within 30 days of the member's signature.
- Amending section 24307 to list requirements for a member who terminates a service retirement allowance:
 - If the member retires again within one year, he or she is required to keep the option and beneficiary or the unmodified election in place at the time the termination of benefits became effective.
 - If a member's option beneficiary predeceases the member within a year of the termination of benefits, the option and beneficiary will be removed from that portion of the benefit with modification by an option factor; the member cannot elect a new option or beneficiary until one year from the termination effective date.
 - If a final decree of dissolution of marriage or a judgment of nullity is entered or an order of separate maintenance is made within one year of the termination of benefits, CalSTRS will remove or change the option election in accordance with the court order; any additional changes cannot be made until one year from the termination effective date.

This measure also repeals an obsolete occurrence of section 24305.3.

Sections affected: 22655, 24105, 24107, 24205, 24300, 24300.1, 24300.2, 24300.5, 24300.6, 24301, 24302, 24303, 24304, 24305, 24305.3, 24305.5, 24306, 24306.5, 24306.7, 24307, 24308, 24309, 24310, 24311, 24312, 24312.1, 24313, 24402, 25015,

DBS Joint and Survivor Annuity with a DB Compound Option

Background

CalSTRS administers five DBS joint and survivor annuities that were available prior to 2007 and five new annuities that replaced them on January 1, 2007. The current population of members could have one of the annuities available prior to January 1, 2007, or if their initial election was on or after that date, they could have elected one of the new annuities. Members with the old annuities were given a window period during which they could elect one of the new annuities.

Members may designate any person as their option beneficiary under the DB Program, and if the member elects to receive a DBS benefit as a joint and survivor annuity, that designation also applies to the DBS annuity. However, under the new options that took effect January 1, 2007, new federal rules placed restrictions on the amount of age difference there could be between beneficiaries who are not spouses and the member. Under the compound option, the age restriction applies to non-spousal beneficiaries who are either more than 19 years younger than the member under the 75 percent beneficiary annuity type or more than 10 years younger than the member under the 100 percent beneficiary annuity type in the DBS Program.

If a member elected a preretirement compound option election prior January 1, 2007, and retires subsequent to January 1, 2007, Internal Revenue Code Section 401(a)(9) age restrictions will not apply to DB compound option election once the member retires. However, age restrictions will apply to the member's DBS joint and survivor annuity election when a member has elected a compound option under the DB Program.

Proposed

This measure clarifies that when a member has elected a compound option under the DB Program, and also elects a DBS annuity, the DBS annuity is subject to specified age restrictions imposed by federal law.

Section affected: 25015

403bCompare

Background

Chapter 1095, Statutes of 2002 (AB 2506, Steinberg), assigned CalSTRS the responsibility of administering an impartial website information bank that required vendors wishing to sell 403(b) products in the state of California to register with the website and provide certain information on their company and the products offered. The website, known as 403bCompare, provides CalSTRS members and participants, classified employees and eligible state employees the ability to review and compare information about tax-deferred retirement investment 403(b) products provided by the registered vendors.

Existing law outlines the definition of a vendor who would be able to register an investment product on the website as "a public retirement system, broker-dealer, registered investment company, nonbank custodian, or life insurance company qualified to do business in California that provides 403(b) products." The 403(b) product marketplace was dominated by insurance companies when this definition was first

enacted, but that is no longer the case. However, registration on the website continues to be limited to the five types of entities included in the provision of law over 10 years ago.

An additional issue arises with the definition of a nonbank custodian as “a fund custodian, other than a bank, that meets the criteria of a trustee specified in Section 408(a)(2) of the Internal Revenue Code”. This statute was added to the Education Code in 2003, yet the ambiguity has prevented any group from successfully qualifying to participate on the website under this definition.

Proposed

This measure simplifies the definition of “vendor” to include any organization qualified to do business in California that offers 403(b) products, rather than limiting the definition to the five types of entities specified in existing law, and deletes two unnecessary definitions of 403(b) vendor types.

Section affected: 25100

Cash Balance Benefit Program Termination Requirements

Background

Existing law allows DB members and CB participants to refund their contributions and interest once they terminate their creditable service. Under the DB Program, if no contributions have been reported for 12 months, the member is considered to have terminated his or her employment. However, if the member has performed creditable service in the previous 12 months, the employer, or employers, must certify that employment has been terminated. Under the CB Benefit Program, every employer the participant has ever worked for must certify the termination of employment when the participant applies for a retirement or termination benefit.

Proposed

This measure allows a CB participant to apply for a retirement or termination benefit without requiring employer certification that employment has been terminated if no contributions are reported by the employer within the previous 12 months, consistent with the requirements in the DB Program.

Sections affected: 26803, 27201

Waiver Authority Exemption

Background

The State Board of Education has the authority to waive portions of the Education Code, so they do not apply to school districts that request a waiver. However, there are several provisions of the Education Code that cannot be waived. Part 13 of the Education Code, which governs the DB and DBS programs, is included among those provisions that cannot be waived. Part 13.5, which relates to health care benefits programs, and Part 14, which relates to the CB Benefit Program, were added to the Education Code after the enactment of the waiver authority.

Proposed

This measure adds Parts 13.5 and 14 to the provisions of law that cannot be waived by the State Board of Education.

Section affected: 33050

LEGISLATIVE HISTORY

AB 1381 (PER&SS, Chapter 559, Statutes of 2013) Made various technical corrections and conforming changes that align the Teachers' Retirement Law with the provisions of PEPRA, as enacted in AB 340 (Furutani).

AB 340 (Furutani, Chapter 296, Statutes of 2012) Made various changes to the CalSTRS benefit structure that affect 2% at 62 members, including reducing the age factor, increasing minimum and normal retirement age, eliminating the career factor, requiring final compensation be calculated based on the highest average annual compensation earnable over three consecutive school years, reducing the limit on compensation that counts toward retirement benefits, limiting the type of compensation that counts toward retirement benefits, eliminating the Replacement Benefits Program, and requiring the contribution rate to equal 50 percent of the normal, ongoing cost of benefits. Also made other changes that apply to all CalSTRS members, including prohibiting the purchase of nonqualified service, requiring that a conviction for a work-related felony result in the forfeiture of benefits, expanding the separation from service requirement or zero-dollar limit to all members who retire on or after January 1, 2013, adding a narrow exemption to the separation from service requirement, extending the narrow exemption to the annual postretirement earnings limit to June 30, 2014, and prohibiting retroactive benefit enhancements.

AB 1389 (Budget, Chapter 751, Statutes of 2008) Increased the targeted non-vested purchasing power benefit from 80 percent to 85 percent but gave the Teachers' Retirement Board authority to adjust that target between 80 and 85 percent based on long-term actuarial projections. Reduced state General Fund payments into the SBMA by \$66 million in 2008–09, \$70 million in 2009–10, \$71 million in 2010–11, and \$72 million in 2011–12 and thereafter.

SB 973 (Kuehl, Chapter 418, Statutes of 2005) Made various technical changes to the provisions of the Teachers' Retirement Law. Implemented the California Domestic Partner Rights and Responsibilities Act of 2003 (AB 205) and clarified that a DB member's registered domestic partners must sign preretirement option election forms before submission to CalSTRS.

AB 821 (PER&SS, Chapter 1028, Statutes of 2000) Based final compensation on the highest average annual compensation earnable by a member during a consecutive 12-month period of employment, rather than highest three consecutive years, for members with at least 25 years of credited service.

AB 2700 (Lempert, Chapter 1021, Statutes of 2000) Made all compensation for creditable service creditable to CalSTRS and credited member and employer contributions for service in excess of one year in a school year to the DBS Program.

FISCAL IMPACT

Program Cost – None.

Administrative Costs/Savings – Costs for one-time changes to the CalSTRS member database system are estimated to range from \$55,000 to \$63,000, which include costs for the following components of this measure:

“Break in Service”-- \$15,000.

“Cash Balance Termination Requirements”-- \$5,000 to \$8,000.

“Option Change Window Period for Same-Sex Spouse”-- \$35,000 to \$40,000.

SUPPORT

CalSTRS (Sponsor)

OPPOSITION

None known.

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