

BILL NUMBER: AB 991 (PER&SS) as amended June 1, 2015

SUMMARY

AB 991 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

AB 991 will help ensure continued effective and efficient plan administration for CalSTRS internal and external customers.

SUMMARY OF AMENDMENTS

The June 1, 2015, amendments:

- Make clarifying and technical changes to one additional provision of law governing membership in the DB Program and eligibility to participate in the CB Benefit Program,
- Clarify the types of compensated leaves of absence for which compensation is creditable,
- Clarify that an election to be a member in the DB Program is irrevocable until the member receives a refund of accumulated retirement contributions,
- Clarify that members may receive up to 12 years of service credit for service as an elected officer of an employee organization while on a compensated leave of absence.
- Clarify that CalSTRS shall grant service credit for unused sick leave reported by employers during the last school year in which the member earns creditable compensation,
- Make various changes to specify and clarify service retirement calculations for members with multiple retirements,
- Clarify the calculation for the annual adjustment to the compensation cap for participants subject to the Public Employees' Pension Reform Act of 2013 (PEPRA), and
- Make minor corrections to drafting errors.

PROGRAM BACKGROUND & ANALYSIS:

Cash Balance Benefit Program Clean-Up

Background

The CB Benefit Program is a hybrid retirement plan that has attributes of both a defined benefit and defined contribution plan, including employee and employer contributions and annuities. It was established to provide an alternative retirement program for employees who do not mandate into the DB Program and is optional for employers to offer. Requirements for mandatory membership into the DB Program depend on the type of employer (preK-12 or community college district) and if that employer offers the CB Benefit Program or if they are a DB-only employer. The CB Benefit Program is for employees of public schools who are hired to perform creditable service by any of the following:

- School district or county office of education:
 - On an hourly or daily basis; or
 - In a contract position for less than 50 percent of a 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.

Proposed

This measure makes several clarifying and technical changes to provisions governing membership in the DB Program and eligibility to participate in the CB Benefit Program. More specifically, this measure:

- Clarifies the CB Benefit Program is for persons employed:
 - By an employer, excluding a community college district, for less than 50 percent of a full-time position.
 - On a temporary basis by a community college district.
 - As a substitute employee.
- Prohibits a participant who receives a retirement benefit in the form of a lump-sum payment from performing creditable service during the first 180 calendar days following his or her retirement effective date in order to conform to requirements set forth in the Internal Revenue Code by:
 - Not distributing the lump-sum payment until 180 calendar days have elapsed following the retirement effective date.
 - Automatically cancelling the retirement application if creditable service is performed, unless the participant has reached the age at which a distribution of benefits is required.

Sections affected: 22001.5, 26000, 26132, 26400, 26401, 26806, 26812

Leave Definition and Clarification

Background

Under existing law, creditable compensation includes remuneration paid for employer-approved leave, although employer-approved leave is not defined. Laws governing

some types of leave, such as industrial injury or service as an elected officer of an employee organization, specifically provide that contributions continue to be remitted to CalSTRS during the leave as if the individual remained employed. Other sections of law are less explicit but would generally be creditable as sick leave or other accrued leave. However, employers may grant leave that is negotiated on an ad-hoc basis, which would generally not be creditable since it does not meet the definition of creditable service and is not specifically protected by law.

Proposed

This measure clarifies the types of compensated leave for which compensation is creditable for CalSTRS by adding a definition of “leave of absence” and adding pay for the use of an employer-approved compensated leave of absence to the definition of “creditable compensation.”

Sections affected: 22119.2, 22119.3, 22144.3

Credited Service

Background

Existing law defines “credited service” as service for which the required contributions have been paid. However, there is a limit established by Section 401(a)(17) of the Internal Revenue Code on compensation that counts toward the pension of a public employee who first becomes a member on or after July 1, 1996, and no contributions are paid to CalSTRS on compensation in excess of the limit. The limit is increased based on cost-of-living increases.

Proposed

This measure defines “credited service” so that service for which compensation is in excess of the 401(a)(17) limit, and no contributions are paid, is deemed to be credited service.

Section affected: 22121

Improvement Factor

Background

Existing law provides an increase of 2 percent to the minimum guaranteed allowance payable to retired members, their option beneficiaries and surviving spouses. Chapter 1027, Statutes of 2000 (AB 429–Correa), added section 24410.7 to the Education Code and amended section 22141 to include section 24410.7 in the 2 percent increase. However, the reference to section 24410.7 within section 22141 is inadvertently written as section 24110.7. In addition, the term “improvement factor” is not used consistently throughout section 22141.

Proposed

This measure corrects the typographical error to read “24410.7,” rather than “24110.7,” and adds the term “improvement” before one occurrence of the term “factor” so that the term “improvement factor” is used consistently throughout section 22141.

Section affected: 22141

Threshold for Payments or Collections

Background

The Teachers' Retirement Board is allowed to establish a threshold of up to \$10 for the processing of a payment or the collection of an overpayment resulting from an adjustment to a benefit or other amount paid to a member, participant or beneficiary. If the amount of the payment or collection is below the threshold, then CalSTRS is not required to issue the payment or collect the overpayment until the amount equals or exceeds the threshold. This allows CalSTRS to avoid the expense of issuing a payment or collecting an overpayment when the amount is relatively small. However, there are payments or collections that are not subject to the threshold, requiring CalSTRS to process a payment or collection for small amounts.

Proposed

This measure reduces the number of payments or collections for relatively small amounts by broadening the types of payments and overpayments eligible for dispensation when the amounts are below the threshold.

Section affected: 22404

Notice of Right to Election of Membership

Background

A CalPERS member may elect to retain coverage in CalPERS if the member performs service subject to coverage by the DB Program. However, this option is available only if the service he or she performs requires membership in CalSTRS. Subdivision (c) of Education Code section 22508 describes the circumstances under which an eligible CalPERS member can elect to retain CalPERS coverage. Section 22509 requires elections to be filed with the appropriate retirement system and contains an incorrect reference to subdivision (b) of section 22508.

Proposed

This measure corrects the incorrect reference to correctly refer to subdivision (c) of section 22508.

Section affected: 22509

Permissive Election Clarification

Background

Existing law allows substitute teachers and part-time employees otherwise excluded from mandatory membership to elect membership in the DB Program at any time while employed to perform creditable service. As currently worded, the law specifies that the election is irrevocable and is to remain in effect until the member terminates employment. This has led some employers and members to incorrectly interpret the law to mean that an individual may make a new election if he or she terminates employment with one employer and begins employment with another.

Proposed

This measure clarifies that a person's election of membership into the DB Program is irrevocable until the member receives a refund of accumulated retirement contributions, in addition to terminating employment.

Section affected: 22515

Service Credit for Elected Officers of Employee Organizations*Background*

Existing law allows a member to be granted service credit for time during which he or she serves as an elected officer of an employee organization while on an approved compensated leave of absence. The member would have had to have been employed and performed creditable service in the month before the beginning of the leave of absence, and the member has to make contributions to the Teachers' Retirement Fund that would have been made if he or she had performed creditable service. The employer must make contributions to the Teachers' Retirement Fund at a rate adopted by the board on the creditable compensation that would have been paid to the member had he or she performed creditable service. A member may receive up to 12 calendar years of service credit for service as an elected officer.

The wording in existing law could cause confusion regarding the limit on service credit that may be granted for time during which a member serves as an elected officer of an employee organization while on an approved compensated leave of absence. A member might take a leave of absence to serve as an elected officer for a fraction of a year. However, because the law uses the term "calendar year," there is potential to misinterpret whether that fraction of a year would count as a full "calendar year" for purposes of limiting the service credit that a member may receive for serving as an elected officer.

Proposed

This measure clarifies that members may receive up to 12 years of service credit for service as an elected officer of an employee organization while on a compensated leave of absence.

Section affected: 22711, 44987, 87768.5

Retirement Incentive Program Restrictions and Reporting*Background*

There is no specific time during which an employer is required to submit documentation to participate in the Retirement Incentive Program. Without a specific deadline, there is an impact on CalSTRS' ability to correctly calculate member benefits in a timely manner. A delay in receiving the documentation also delays CalSTRS' ability to notify members of the postretirement employment restrictions associated with the incentive in a timely manner.

Proposed

This measure specifies that Retirement Incentive Program documentation is required to be submitted by the employer within 30 calendar days after the last day of the window period for retirement established by the employer for incentive eligibility.

Section affected: 22714

Unused Sick Leave*Background*

Under existing law, CalSTRS grants service credit for unused sick leave reported by all employers during the last school year in which the member performed creditable service. However, CalSTRS is not able to determine when creditable service is actually *performed* because employers report creditable compensation *earned*. CalSTRS cannot distinguish between when a member performs creditable service and when he or she is on paid leave for which the member also earns service credit. If a member stops performing creditable service at the end of a school year, is on paid leave with one employer into the following school year and then retires, existing law requires CalSTRS to accept any unused sick leave reported by employers during the last year the member performed creditable service even if the member earns creditable compensation in the following school year. This creates a disparity between a member who is on a paid leave in the following school year and a member who performs creditable service in the following school year.

Proposed

This measure allows CalSTRS to grant service credit for unused sick leave reported by employers during the last school year in which the member earns creditable compensation.

Section affected: 22717

Contributions*Background*

Chapter 47, Statutes of 2014 (AB 1469–Bonta), made several changes to the sections of the Education Code concerning member, employer and state contributions to the Teachers' Retirement Fund to enact the CalSTRS full-funding plan. Several code references were inadvertently left out of the legislation.

Proposed

This measure adds references to relevant code sections where they are necessary.

Sections affected: 22900, 22903, 22950, 23001

Postretirement Earnings Limits*Background*

When compensation is earned for the performance of retired member or participant activities as an employee, independent contractor or an employee of a third party, the

amount of the annuity or retirement benefit is reduced dollar for dollar by the amount earned in excess of the earnings limit, including amounts for contributions to tax-sheltered annuities and other tax-favored products. Under the separation-from-service requirement, annuitants of the CB Benefit Program and retired members of the DB Program are subject to the zero-dollar earnings limit during the first 180 calendar days following the most recent effective date of their retirement benefit. Retired members of the DB Program are also subject to a postretirement earnings limit in which the retired member's benefit amount is reduced by the amount earned in excess of the limit. Member's receiving a disability retirement benefit may be employed or self-employed in any capacity but are subject to a limit on earnings from any such employment.

Proposed

This measure clarifies that, for retired members, annuitants and members receiving a disability retirement benefit, the amount of the reduction due to compensation earned in excess of the earnings limit in any individual month shall equal the amount of compensation earned in excess of the limit but shall not exceed the monthly allowance payable in that month. For retired members and annuitants, the total amount of the reduction shall equal the total amount of compensation earned in excess of the limit but shall not exceed either the amount of the allowance payable during the first 180 calendar days from the effective date of the benefit or the annual allowance payable for the fiscal year in which the compensation was earned following any reduction made under the zero-dollar earnings limit, whichever is applicable. For members receiving a disability retirement benefit, the total amount of the reduction shall equal the total amount of compensation earned in excess of the limit but shall not exceed the annual allowance payable for the calendar year in which the compensation was earned.

Sections affected: 24114, 24214, 24214.5, 26812

Multiple Retirement Clean-Up

Background

Existing law provides a breakdown of the benefit calculation for a member who retires for service after reinstating and performing two or more years, or fewer than two years, of creditable service after his or her most recent reinstatement, if the member had:

- A previous service retirement,
- A previous disability retirement,
- A previous disability allowance to service retirement with service performed after the disability allowance termination date, or
- A previous disability allowance to service retirement with no service performed after the disability allowance termination date.

Proposed

This measure makes various changes to specify and clarify service retirement calculations for members with multiple retirements, including:

- Replacing the phrase "credited service performed" and "service credited" with "credited service accrued" or "credited service accrued or granted,"
- Replacing "service credit" with "credited service,"

- Clarifying the calculation for a service retirement after a previous disability allowance and reinstatement with service performed after the disability allowance termination date by:
 - Specifically excluding service credit from unused sick leave and service credit purchases from credited service accrued prior to the effective date of the disability,
 - Specifying that a member who retires after returning to employment after a disability allowance will have an adjusted age factor,
 - Specifying the amount based on credited service accrued subsequent to the most recent reinstatement includes unused sick leave, service credit purchases and retirement incentives, and
 - Specifying the amount based on credited service prior to the member's most recent reinstatement includes unused sick leave and service credit purchases and excludes retirement incentives.
- Clarifying the calculation for a service retirement after termination of a disability allowance for a member who does not return to work, retires for service, and then reinstates and performs creditable service by specifying that credited service accrued subsequent to the most recent reinstatement includes unused sick leave, service credit purchases and retirement incentives.
- Specifying that calculations of a service retirement allowance will use the member's age on the last day of the month in which the allowance begins to accrue

Sections affected: 24209, 24209.3, 24210, 24211, 24212, 24213

Postretirement Earnings Limits and Insurance Programs

Background

Existing law limits the compensation a retired member or participant may earn for performing retired member or participant activities. A retired member or participant may receive employer-assisted healthcare as a continuation of the employer-provided health benefit coverage he or she received for the performance of creditable service as an employee during active membership. As currently written, existing law could be inadvertently interpreted to mean that employer-provided benefit coverage is compensation that is subject to the earnings limit. However, the intent of existing law is to capture only compensation earned for the performance of retired member or participant activities and not employer-provided healthcare benefits by virtue of the person's retirement.

Proposed

This measure clarifies that only the compensation earned for the performance of retired member or participant activities is subject to the applicable postretirement earnings limits.

Sections affected: 24214, 24214.5, 26812

Registered Domestic Partners

Background

Existing law permits establishing a registered domestic partnership by filing a Declaration of Domestic Partnership with the Secretary of State. Existing law also confers on registered domestic partners rights and responsibilities that are the same as those conferred on married couples, including the filing of joint state income tax returns. However, there are specific exceptions for provisions of state law that are inconsistent with provisions of federal law with respect to domestic partnerships, and there is an incorrect reference in Education Code section 26002.5 concerning those exceptions.

Proposed

This measure corrects that incorrect reference.

Section affected: 26002.5

PEPRA Clean-Up

Background

Existing law defines “salary” for CB Benefit Program participants who are subject to PEPRA. The law includes a cap on salary that is based on 120 percent of the 2013 Social Security wage base, adjusted annually for the changes in the Consumer Price Index for all Urban Consumers: U.S. City Average.

The law could be misinterpreted to tie the salary cap to 120 percent of the 2013 Social Security wage base each fiscal year, instead of using the dollar amount of the cap from the prior fiscal year as the baseline amount to be adjusted.

Proposed

This measure clarifies that the calculation for the annual adjustment to the compensation cap does not require using the initial compensation cap set by PEPRA in 2013 for years after 2014. Chapter 755, Statutes of 2014 (SB 1220—PE&R), made a similar amendment for members of the DB Program who are subject to PEPRA.

Section affected: 26139.5

System’s Headquarters Office

Background

CalSTRS was granted, by Education Code section 22375, the authority to select, purchase or acquire an office building in the greater metropolitan Sacramento area 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. Chapter 558, Statutes of 2013 (AB 1379—PER&SS), defined “system’s headquarters office” in Part 13 of the Teachers’ Retirement Law and removed references to section 22375 in multiple sections of law. However, the removal of the reference was not provided for in Part 14 of the Teachers’ Retirement Law.

Proposed

This measure defines “system’s headquarters office” and removes unnecessary references to Education Code section 22375 in Part 14.

Sections affected: 26142.5, 26400, 26401, 26807.6, 26906.6, 27100

Cash Balance Rollover Credits*Background*

Existing law provides CB Benefit Program participants with the ability to roll over qualified funds into the program. CalSTRS is required to account for the resulting credits separately from the credits that are held in the employee and employer accounts. However, the rollover credits are otherwise treated the same as other credits to the participant’s employee account.

Proposed

This measure clarifies that CalSTRS will treat credits held in rollover accounts as if they are credits to the participant’s employee account for all other purposes for the CB Benefit Program, which would include crediting of interest and earnings credits and the calculation of benefits.

Section affected: 26506

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 PEPR, as enacted in AB 340 (Furutani).

AB 340 (Furutani, Chapter 296, Statutes of 2012) made various changes to the CalSTRS benefit structure that affect those who are first hired on or after January 1, 2013 (CalSTRS 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 salary rate 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 (CalSTRS 2% at 60 and CalSTRS 2% at 62 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 178 (Gorell, Chapter 135, Statutes of 2012) changed the postretirement earnings limit to one-half of the median final compensation of all recently retired members; excluded specified employees of a third party from the postretirement employment

limitations; extended a very narrowly applied exemption for limited-term appointments for one year, and added another very narrow exemption related to failing community college districts, with additional requirements for substantiating eligibility; and allowed service retired members to re-retire within a year of reinstating and required those members to keep the same option and beneficiary or beneficiaries that were in effect before reinstatement, or to retain their unmodified benefit, for one year after reinstatement.

AB 506 (Furutani, Chapter 306, Statutes of 2009) conformed to federal law, which prohibits pension plans from distributing benefits before either the normal retirement age or a separation from service. Required retired members who are under the normal retirement age of 60 to have their retirement benefit reduced by the amount earned in CalSTRS-covered employment for the first six calendar months following their retirement effective date or until their 60th birthday, whichever is sooner. Required this deduction to begin July 1, 2010, regardless of retirement effective date. Extended the sunset dates for the postretirement earnings limit exemptions to June 30, 2012, and expanded eligibility, where applicable, to members who retired on or before January 1, 2009. Stated that the vacant administrative position emergency exemption shall not apply to a retiree whose termination is the basis for the vacant administrator position.

SB 1465 (Soto, Chapter 654, Statutes of 2006) established a threshold for the payment and collection of benefit adjustments; provided a monthly benefit to dependent children under the Coverage B Survivor Benefits Program when there is no surviving spouse or partner at the time of the active member's death; changed service credit purchase and benefit calculation provisions; allowed members to purchase up to two years of permissive service for time spent teaching in the Peace Corps; and eliminated two redundant reports to the Legislature.

SB 2085 (Burton, Chapter 1048, Statutes of 1998) merged the CalSTRS Cash Balance and Defined Benefit plans and renamed both plans the "State Teachers' Retirement Plan." Deleted the Cash Balance Fund and required contributions, earnings, and any other amounts provided under the Cash Balance Plan to be deposited in the Teachers' Retirement Fund. Deleted the Cash Balance Plan Expense Account and authorized all administrative costs of the CB Benefit Program from the Teachers' Retirement Fund. Pursuant to the merger, discharged the \$1 million loan from the Defined Benefit Plan for the initial phase of the Cash Balance Plan.

AB 2673 (Ducheny, Chapter 608, Statutes of 1996) amended the CB Benefit Program statutes as necessary to facilitate employers' "option" to offer the program. Made other technical and conforming amendments as appropriate.

AB 1298 (Ducheny, Chapter 592, Statutes of 1995) authorized CalSTRS to establish a Cash Balance retirement program administered by CalSTRS for part-time public school employees, which employers may elect to provide for persons employed less than half time at a contribution rate that is lower than Social Security tax. Note: The Internal Revenue Service has expressly ruled that the CalSTRS CB Benefit Program qualifies as an alternative retirement plan to Social Security.

AB 2647 (Aguiar, Chapter 507, Statutes of 1994) allowed part-time and substitute instructors in adult education who were excluded from membership in CalSTRS to elect membership in the DB Program; and required the employer to return overpaid contributions to the member within 60 days of discovery or notification of the overpayment.

FISCAL IMPACT

Program Cost – None.

Administrative Costs/Savings – Costs for one-time changes to the CalSTRS member database system are estimated to range from \$90,000 to \$100,000 to broaden the types of payments and collection of overpayments eligible for dispensation. However, there would be ongoing savings related to eliminating payments or collection efforts for amounts subject to dispensation.

SUPPORT

CalSTRS (Sponsor)

OPPOSITION

None known.

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