Bill Number: Senate Bill 1488 (Calderon) as introduced February 21, 2008.

SUMMARY

SB 1488 permits participants in the Defined Benefit (DB) Program Retirement Incentive (also known as the "Golden Handshake") to return to work for their employer within five years to serve as substitute teachers without losing the incentive benefit. This provision would be retroactively applied to individuals returning to work as substitutes on or after January 1, 2004.

PURPOSE OF THE BILL

According to the author, some school districts have a small pool from which to hire substitute teachers, making it difficult to fill substitute positions. Current law prohibits retirees who receive a Defined Benefit (DB) Program retirement incentive from being re-employed within five years by the district that granted the incentive, further limiting the pool of substitute teachers.

BOARD POSITION

Oppose unless amended to remove the retroactive provision and expand eligibility for this exemption to all retired members. As introduced, SB 1488 creates an occupation-specific exemption and unfairly benefits districts and retirees who did not follow the program's rules, while providing no benefit to those employers and retirees who did comply over the past four years.

LEGISLATIVE HISTORY

<u>SB 879—Calderon (2007)</u> would have exempted members retired for service with a retirement incentive from the five-year prohibition on returning to work for the district providing that incentive if the retired member returned as a substitute teacher. Died in Assembly.

<u>Chapter 935, Statutes of 2004 (AB 1852—Mullin)</u> eliminates the one-year waiting period for members retired with a retirement incentive to return to work for a district other than that which granted the incentive; expands the 5-year restriction on members retired with a retirement exemption returning to work in the district that granted the incentive to include community college districts and county offices of education.

<u>Chapter 313, Statues of 2003 (AB 1207—Corbett)</u> re-authorizes and makes permanent the retirement incentive 'Golden Handshake' program permitting districts to purchase an additional two years of service credit for retiring employees if the district can demonstrate that purchasing the retirement incentive would result in cost savings. Districts may also purchase two years of service credit plus two years of age for retiring members. AB 1207 includes two new restrictions on post-retirement employment for recipients of the retirement incentive: any member retired for service with a retirement incentive who takes any job with any school district in the state less than one year after receiving the credit will forfeit the additional service credit; any member retired for service with a retirement incentive who takes any job with the school district that granted the member the service credit less than five years after receiving the credit shall forfeit the additional service credit.

<u>Chapter 20, Statutes of 1994 (SB 858—Senate Public Employment and Retirement Committee)</u> authorizes CalSTRS employers to purchase two additional years of service credit for members to offer as a retirement incentive under certain conditions; this option expires on January 1, 1999.

PROGRAM BACKGROUND

The DB Program Retirement Incentive is a program that school districts, community college districts, or county offices of education may offer that adds two years of service credit to eligible members' monthly DB Program benefit. To qualify, members must retire for service within an employer-specified time period. The additional service credit given in the incentive program does not count toward eligibility for service retirement or other CalSTRS benefit enhancements such as one-year final compensation, career factor and longevity bonus. CalSTRS cannot grant partial benefits—the participating employer must fund a full two years of service credit. Employers pay CalSTRS the administrative and actuarial cost of the additional benefit, with the option of paying over time, up to eight years.

The Retirement Incentive program includes restrictions intended to ensure that participating members actually cease employment with their employer. To that end, members lose the ongoing benefit increase provided by the incentive if they do any of the following:

- Terminate their retirement benefit and reinstate to active CalSTRS-covered employment,
- Return within five years of retirement to CalSTRS-covered employment with the school district that granted the benefit, or
- File for unemployment within a year of retirement.

Employers are not required to submit documentation for a retirement incentive prior to the member's effective date of retirement, so the member's initial award letter may not reflect the retirement incentive. Once CalSTRS receives the documentation, however, the incentive is processed and is included in the member's retirement benefit retroactive to the member's effective date of retirement.

CalSTRS educates districts and members through several publications regarding the retirement incentive program and restrictions on post-retirement earnings: Employer directives include explicit language addressing retirement incentive program provisions, and employer information circulars specific to this program also outline restrictions on returning to work. Additionally, CalSTRS provides information about this restriction to members through various publications: the annual Member Handbook, the member's award letter once the member's retirement incentive has been processed, the Fall 2003 Member Bulletin (prior to the 1/1/04 program inception), and the Spring 2005 Retired Educator publication (which contained an update for legislation eliminating a previous one-year prohibition on returning to work for any district).

It is a policy of the Board to oppose special interest legislation that benefits only one individual or a small group of individuals within a larger group unless the Board determines an inequity exists which the legislation would correct. As such, the Board has stated its intent to reduce or eliminate position- or curriculum-specific exemptions to programs, including a December 2006 decision to reform the standard post-retirement earnings limit to eliminate all curriculum-and occupation-specific exemptions.

ANALYSIS:

Existing Law:

Existing law provides that any member retired for service with a retirement incentive will lose that incentive if he or she returns to work for the district granting the incentive within five years of receiving the incentive.

This bill:

SB 1488 permits a member retired for service with a retirement incentive to work for the district that granted the incentive within the five-year period provided that the member returns to work as a substitute teacher. Additionally, SB 1488 makes this exemption retroactive to apply to any retired member who returned to work on or after January 1, 2004, as a substitute teacher.

Staff currently conduct a manual review of accounts and follow up on the accuracy and relevancy of the employer reporting. However, employer reports make no distinction between retirees working as substitute teachers and other members working after retirement, such as substitute counselors or members working in administration. While there are few retirees who receive the incentive relative to the total number of all CalSTRS retirees, to implement this bill as written would require CalSTRS staff to determine whether retirees who receive the incentive are returning to work specifically as substitute teachers.

As indicated above, the Board has expressed its intent not to support occupation-specific exemptions to the post-retirement earnings limitation. Therefore, CalSTRS is seeking an amendment to extend eligibility for this exemption to any CalSTRS member, rather than being exclusive to substitute teachers. For ease of administration, CalSTRS proposes providing the exemption to any CalSTRS member returning to work only up to that fiscal year's post-retirement earnings limit, as adopted by the Board.

Additionally, the retroactive provision of this measure is problematic. This bill may be perceived as unfair to retired members who remained in compliance with the program rules and did not return to work, even though they would have preferred to do so had they known the law would be retroactively adjusted. Moreover, the population that would benefit is very small – under one dozen individuals – however it may be administratively difficult to determine how to correct for actions these individuals have made as a result of losing their retirement incentive, such as reinstating to active status to work full-time. Finally, SB 1488 requires CalSTRS to remedy a dispute between employees and employers as to who should bear responsibility for a lost benefit. As indicated above, CalSTRS has made extensive efforts to educate both employers and employees as to the retirement incentive program's restrictions, and CalSTRS should not be required to remedy other entities' inadvertent or purposeful oversights of program rules. Therefore, CalSTRS is seeking an amendment to eliminate the retroactive provision of this measure.

Finally, on a technical level, the exemption language is ambiguous, and it could be interpreted broadly to mean that anyone who takes a job as a substitute teacher on or after January 1, 2004, is exempt from the retirement incentive's post-retirement earnings prohibition, regardless of whether any subsequent work is substitute teaching or another type (full-time, etc.). As a result, CalSTRS is seeking a technical amendment to clarify the exemption's requirements.

CalSTRS proposes the following amendments to subsection (h) of Section 22417 of the Education Code, as amended in SB 1488:

> 22714 (h) ~~(1) Except as described in paragraph (2), a~~ *A* member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who takes any job with the school district, community college district, or county office of education that granted the member the service credit less than five years after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional service credit granted under this section~~.~~ *if the member, in any single fiscal year within the first five years after receiving the credit, earns more than the limit described in subsection (f) of Section 24214 performing service for that district or office. No exemptions to this limit, including but not limited to those described in subsection (d) of Section 24214, in Section 24216, in Section 24216.5, and in Section 24216.6, shall apply*.
>
> ~~(2) This subdivision shall not apply to a member described in paragraph (1) who, on or after January 1, 2004, takes a job with the school district as a substitute teacher.~~

FISCAL IMPACT

Benefit Program Cost – Minor increase in payments for benefits that would otherwise be forfeited.

Administrative Costs/Savings – Approximately $50,000 annually to manually process the new exemption.

SUPPORT

Unknown.

OPPOSITION

CalSTRS.

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