

BILL NUMBER: AB 2101 (PE&R) as amended August 7, 2020

SUMMARY

AB 2101 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. The bill also makes various technical and conforming changes in the Public Employees' Retirement Law and the County Employees Retirement Law.

BOARD POSITION

Support. 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 2101 will help ensure continued effective and efficient plan administration for CalSTRS internal and external customers.

PROGRAM BACKGROUND & ANALYSIS:

Basic and Excess Sick Leave Days

Background

Education Code section 22170.5 defines a "basic sick leave day" as the equivalent of one day's paid leave of absence per pay period due to illness or injury. This generally means up to 12 days per school year of basic sick leave can be offered by an employer. Any days offered in excess of that amount are "excess sick leave days."

When members reach retirement, CalSTRS allows a member's final employer (or employers, if retiring from multiple employers) to report any accumulated unused sick leave balances to CalSTRS. The sick leave is converted to service credit and used to calculate the member's retirement benefit. The cost of converting unused basic sick leave is covered, in part, by a 0.25% contribution by all employers. The cost for the conversion of unused excess sick leave is based on the present value of the excess sick leave days and is funded at the time of retirement by the member's final employer(s).

Language in current statute has caused confusion about how many days of basic sick leave a member can earn in a school year.

Proposed

This measure avoids confusion by clearly differentiating between basic and excess sick leave days granted by an employer in a school year. Basic sick leave days consist of 12 or fewer days, and excess sick leave days are any days in excess of 12 days in a school year. Additionally, subdivision (e) is added to Education Code section 22717 to stipulate that members may not receive service credit for accumulated unused sick leave at CalSTRS if they are already receiving service credit in another public retirement system for the same days. Finally, this measure reorganizes sections of statute to clarify the definitions of other terms related to sick leave.

Sections affected: 22106.2, 22156.1, 22170.5, 22717, 22718

Creditable Service for Audiometrists

Background

The work of audiometrists has historically been creditable to CalSTRS since they were required to be licensed by the Education Code, and employees performing those activities were CalSTRS members. In 2015, the definition of “creditable service” was changed to require that prekindergarten through grade 12 employees must be employed in a position requiring certification by the Commission on Teacher Credentialing in order to perform creditable service. Since the commission does not certify audiometrists, their work was inadvertently omitted from the revised definition.

Proposed

This measure ensures audiometrist service is correctly reported to CalSTRS by clarifying that creditable service includes their work if they hold a certificate of registration issued by the State Department of Health Care Services. Additionally, this proposal reflects the CTC’s practice of authorizing employers to determine certification qualifications for certain positions.

Sections affected: 22119.5, 26113

DB Coverage for State Employees

Background

Current law includes the state as an employer within the DB Program definition of “creditable service.” While the state may employ CalSTRS members, those employees retain membership only because of a permissive election, pursuant to Education Code section 22508, not as a result of performing creditable service. Accordingly, the state is not included as an employer in statutes related to mandatory DB membership for educators employed to perform creditable service on a part-time basis or as a substitute. Those provisions specifically require the service to be performed for a school district, community college district or county office of education. Conversely, the section requiring mandatory membership for full-time employees fails to make the same distinction. Additionally, the CB Benefit Program excludes the state as an employer, yet the CB definition of “creditable service” erroneously includes the state. This inconsistent language across statutes creates confusion.

Proposed

This measure improves consistency within the statute by removing the state as an employer within the definition of “creditable service” for both the DB and CB Benefit programs. It also mitigates potential confusion by clarifying that full-time employment in a state agency does not mandate coverage under the DB Program by specifying that mandatory full-time membership only applies to creditable service performed at a school district or county office of education.

Sections affected: 22119.5, 22501, 26113

Leave of Absence

Background

Creditable compensation includes remuneration that is paid for the use of sick leave, vacation leave or an employer-approved compensated leave of absence. The definition of “leave of absence” that was added to the Teachers’ Retirement Law in 2016 inadvertently excluded certain employer-approved compensated leaves that have historically been considered creditable compensation.

Proposed

This measure confirms that employer-approved compensated leaves are considered creditable compensation by clarifying the definition of “leave of absence.”

Section affected: 22144.3

Obsolete Definition of “Overtime”*Background*

Current law defines “overtime;” however, the term is not referenced by any other part of the Teachers’ Retirement Law.

Proposed

This measure removes the obsolete definition of “overtime” from the Teachers’ Retirement Law.

Section affected: 22151

Copies of Retirement System Election Forms*Background*

DB Program members can permissively elect continued DB coverage when taking a position that would otherwise be covered by another public retirement system. A member making this election submits the *Retirement System Election* form (ES 372) to their employer. The employer then transmits a copy to the elected retirement system and to the unchosen system as well. Employers are not required to retain a copy of the form.

Proposed

This measure removes the requirement for employers to transmit a copy of the election form to the unchosen retirement system and requires employers to retain a copy of the form. This change alleviates an existing administrative burden for the unchosen system to track and store non-member data and helps maintain information at the employer level.

Section affected: 22509

Elected Officer Clarification*Background*

Current law grants members service credit for time during which they are on a compensated leave of absence to serve as an elected officer of an employee organization if they meet certain requirements and remit contributions to CalSTRS. Their employer must also remit contributions during the leave. The employer contribution rate for elected officers is the higher of the standard employer contribution rate or the amount necessary to cover the normal cost of the service credit.

The statute is broadly worded to require higher contributions on the creditable compensation that would have been paid for service performed on a full-time basis and does not cover situations in which elected officer duties are performed during a partial leave of absence. In addition, while CalSTRS’ practice has been to provide full retirement benefits for the elected officer service, the statute only specifies that elected officers receive service credit for the time they are on leave.

Proposed

This measure clarifies that employers must only remit the higher contribution rate for the percentage of time the member is on a leave of absence to serve as an elected officer. It also acknowledges that members may be on a partial leave of absence and makes clear that members are entitled to all benefits they otherwise would have been due had they not been on leave.

Section affected: 22711

CalSTRS Retirement Incentive Program and Postretirement Employment

Background

Employers participating in the CalSTRS Retirement Incentive Program may provide eligible DB Program members with two years of additional service credit if the member elects to retire during a specific window period. Employers must pay the cost of the benefit and associated administrative fees and demonstrate that the incentive would result in a net savings to the district.

If the member reinstates to active status, receives unemployment during the year after receiving the incentive or takes any job within the district that granted the incentive within five years of retirement, the member will lose the ongoing increase in the benefit. The statute does not address situations in which a member takes a job as an independent contractor or an employee of a third party within the district that granted the incentive, which could also reduce the demonstrated net savings of the district.

Proposed

This measure includes taking any job as an independent contractor or as an employee of a third party working within the district that granted the incentive as situations in which a member will lose the ongoing increase in the benefit, mitigating potential circumstances in which the demonstrated net savings of the district could be affected.

Section affected: 22714

Crediting Overpayments of Contributions, Penalties and Interest

Background

CalSTRS collects contributions and assesses penalties and interest on late reporting and late contributions associated with member and participant service. All money received is due for purposes of funding the plan. Instead of refunding, CalSTRS has moved to crediting employers' accounts with any amounts overpaid. Employers are allowed to apply the credits to any outstanding contribution or penalties and interest balance they choose for up to 90 days. After 90 days, CalSTRS applies the credit to any outstanding balance remaining.

Proposed

This measure clarifies that penalties and interest due to the system are additional required contributions and, when received, are treated in the same manner as other contributions, including being applied to any outstanding receivables for either contributions or penalties and interest.

Sections affected: 23011, 26303.7

Benefit Effective Dates

Background

For the DB Program, the benefit effective date for retirement is "no earlier than the date upon which the member completes payment of a service credit purchase." This language is confusing and could be interpreted to allow a member to retire on the same day a service credit purchase is completed. However, a benefit cannot commence until the day after service credit is purchased.

For the CB Benefit Program, all creditable service subject to coverage under the program must be terminated prior to the participant's retirement date. The law does not specify whether a CB participant may backdate the benefit effective date for retirement. However, CalSTRS' disallows

backdating as CB benefits are understood to be prospective, and age and service are not factors in the benefit amount.

Proposed

This measure clarifies that DB members must choose a benefit effective date at least one day after a completed service credit purchase. It also clarifies that the CB benefit effective date for retirement cannot be earlier than the first day of the month in which an application is received by the system. These changes eliminate potential confusion regarding appropriate benefit effective dates.

Sections affected: 24204, 26801

Lump-Sum Benefit Changes

Background

When applying to receive a benefit, DB members and CB participants may elect to receive a DBS distribution or CB termination benefit as a lump sum, partial lump sum or annuity. Under current law, DB members can make changes to their retirement application, including their distribution preferences, within 30 days of receiving their first benefit payment. However, current law is silent regarding the timeframe in which members or participants must return their lump-sum distribution to the system prior to CalSTRS paying out the newly chosen distribution type. This creates an administrative burden, as CalSTRS can neither reject nor process requests until the lump-sum distribution has been returned to the system in full.

Proposed

This measure clarifies that DBS and CB lump-sum distributions must be returned within 45 calendar days from the date a request to change distribution type is received by CalSTRS when the request is to change from a lump sum to an annuity. This measure also states that if funds are not received within this period, the request will be cancelled.

Sections affected: 24204, 26804

Break in Service for Termination Benefits

Background

Members and participants may receive a DBS or CB termination benefit, which is equal to the sum of the balance of a member's or participant's contributions, the employers' contributions plus any compounded interest and additional earnings credits as of the date the benefit is paid. To ensure a break in service has occurred, these termination benefits are not payable until six months have elapsed since the last day of service was performed. In other benefit payment situations requiring a break in service, the separation period is 180 calendar days.

Proposed

This measure improves consistency within the statute by conforming the DBS and CB break-in-service requirements for termination benefits to other break-in-service statutes by requiring a 180-calendar day separation period, instead of six months, which aids in implementing the new CalSTRS pension administration system.

Sections affected: 25025, 27204

Employment Certification for CB Retirements

Background

When CB participants apply for retirement within one year of the last day they performed service, their employers must certify employment termination on a form. CalSTRS is implementing a new pension administration system that will allow employers to provide this information electronically.

Proposed

This measure clarifies employers can certify employment termination in a “format” prescribed by the system, which includes electronic formats planned for the new CalSTRS pension administration system.

Section affected: 26803

CB Retirement Application Change Requests

Background

While Education Code section 24204 details the process for making changes to DB retirement applications, current law is silent on permissible changes to CB retirement applications. In practice, changes to CB retirement applications are only accepted if a participant’s application has not yet been processed.

Proposed

Consistent with the DB Program, this measure specifies that participants may change or cancel a CB retirement application provided the request is received at the system’s headquarters no later than 30 days from, and repayment of any benefits paid occurs within 45 days of the issue date of, the participant’s initial benefit payment. This change reduces system vulnerability as existing practice potentially yields inconsistent treatment of participants’ change requests.

Section affected: 26804

CB Annuity Termination

Background

Current law allows CB annuity recipients to self-terminate their annuity, reinstate as a participant and resume contributing to the CB Benefit Program. Unlike DB members, CB participants are not able to choose a specific annuity termination date. Currently, the termination date is the first day of the month designated by the participant.

Proposed

This measure affords greater flexibility to CB participants by aligning the CB annuity termination process with the DB process and allowing participants to terminate their annuity on any date they designate, provided the termination date is no earlier than the first day of the month in which CalSTRS receives the request. This measure also provides a process by which participants can cancel or change a CB reinstatement request after submitting the request. Finally, this measure removes a redundant reference to the calculation of CB annuities in situations when a member previously cancelled an annuity and subsequently re-retires. The calculation is already described in Education Code section 26808.

Sections affected: 26808, 26810

LEGISLATIVE HISTORY

SB 647 (Harmer, Chapter 89, Statutes of 1974) established procedures for members to convert unused sick leave into additional service credit at the time of retirement.

AB 1298 (Ducheny, Chapter 592, Statutes of 1995) authorized CalSTRS to establish a voluntary cash balance retirement plan to serve part-time public school employees.

AB 3221 (Gallegos, Chapter 383, Statutes of 1996) amended the process and time limit for electing CalSTRS membership and provided that, upon changing employment, retirement coverage defaults to the retirement system the new employment would normally be under.

AB 2765 (PER&SS Committee, Chapter 965 Statutes of 1998) deleted the provision providing for mandatory membership unless otherwise excluded and, instead, required that any person employed to perform creditable service on a full-time basis who is not already a member of the DB Program becomes a member as of the first day of employment.

SB 1074 (PE&R Committee, Chapter 939, Statutes of 1999) codified regulations pertaining to sick leave following merger of the DB Program and the CB Benefit Program.

AB 1207 (Corbett, Chapter 313, Statutes of 2004) required members to forfeit the benefit they received under the CalSTRS Retirement Incentive Program if they took any job with the school district that granted the incentive within five years of retirement.

AB 3076 (Mullin, Chapter 474, Statutes of 2004) clarified that mandatory membership for part-time members hired at 50% or more of the full-time basis shall apply to persons employed by a school district or county office of education.

AB 654 (Mendoza, Chapter 249, Statutes of 2009) established a consistent basis for assessment of penalties and interest for late payment of contributions and late submissions of reports.

AB 963 (Bonilla, Chapter 782, Statutes of 2015) clarified the types of service that may be reported to CalSTRS and remedied membership issues for individuals in classified positions who were erroneously reported to CalSTRS.

AB 991 (PER&SS, Chapter 123, Statutes of 2015) added the definition of “leave of absence.”

FISCAL IMPACT

Program Cost – While reporting remuneration for employer-approved compensated leaves to CalSTRS also requires the remittance of the associated contributions, CalSTRS never intended to exclude certain employer-approved compensated leaves. Therefore, it is likely that employers have continued to report such leaves and remit the related contributions, keeping any associated costs minimal. Any increased liabilities for this additional creditable service associated with past settlement agreements would be covered by the contributions collected from members and employers. Since base contributions more than cover the amount necessary to fully fund the normal cost of the benefit, the contributions above the normal cost would help pay down the unfunded actuarial obligation.

Administrative Costs/Savings – Minor and absorbable.

SUPPORT

CalSTRS

Association of California Community College Administrators
Association of California School Administrators
California County Superintendents Educational Services Association
California Federation of Teachers
California Labor Federation
California Public Employees' Retirement System
California Retired Teachers Association
California School Boards Association
California Teachers Association
Delta Kappa Gamma California
Faculty Association of California Community Colleges
Los Angeles Unified School District
Office of the Riverside County Superintendent of Schools
School Employers Association of California
Small School Districts' Association
State Association of County Retirement Systems

OPPOSITION

None known.

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