
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: SB 885 **Hearing Date:** April 25, 2023
Author: Committee on Labor, Public Employment and Retirement
Version: March 14, 2023
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Public employees' retirement*

HISTORY

Source: Committee on Labor, Public Employment and Retirement

Prior Legislation: None

Support: California Public Employees' Retirement System (CALPERS); California State Teachers' Retirement System (CALSTRS); State Association of County Retirement Systems

Opposition: None known

PURPOSE

The purpose of this bill is to make technical, conforming, clarifying, and noncontroversial changes to various sections of the Education and Government Codes administered by the California State Teachers' Retirement System (CalSTRS), the California Public Employees' Retirement System (CalPERS), and the 20 independent County Employee Retirement Law of 1937 Act ("CERL" or "'37 Act') systems¹, respectively, for the purposes of continued appropriate and effective administration of these laws.

Existing law:

CalSTRS

- 1) Provides a list of specified conduct that constitutes cause for discipline of a state employee, or of a person whose name appears on any state employment list and includes conviction of a felony or conviction of a misdemeanor involving moral turpitude. (Government Code (GC) § 19572)
- 2) Requires the California Department of Justice (DOJ) to maintain state summary criminal history information (Penal Code (PC) § 11105 (a));

¹ The State Association of County Retirement Systems (SACRS) represents the 20 county retirement systems established under the 37 Act/ CERL.

- 3) Requires the California Attorney General to furnish state summary criminal history information to state officials if needed in the course of their duties, provided that specified employee protection provisions, including Labor Code § 432.7, apply when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any other entity, in fulfilling employment, certification, or licensing duties. (PC § 11105 (b))
- 4) Authorizes, under federal law, the FBI to exchange criminal history record information (CHRI) with officials of state and local governmental agencies for licensing and employment purposes pursuant to state statute which approved by the U.S. Attorney General. (Pub. L. 92-544, 28 CFR § 20.33)
- 5) Prohibits an employer from seeking from any source whatsoever, or utilizing, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or post trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law. (LC § 432.7)
- 6) However, does not prohibit an employer from seeking criminal background information regarding, a particular conviction if, pursuant to federal or state law the employer is required by law to obtain the information, as specified (LC § 432.7 (m));
- 7) Also, does not prohibit an employer required by law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history from complying with those requirements, or to prohibit the employer from seeking or receiving an applicant's criminal history report that has been obtained pursuant to procedures otherwise provided for under federal, state, or local law (LC § 43.7 (n)).

CalPERS / Judges Retirement System II (JRS II)

- 8) Authorizes CalPERS to charge interest on the amount of any payment due and unpaid by a contracting agency until the system receives payment at the greater of the annual return on the system's investments for the year prior to the year in which the agency did not make timely payments or a simple annual rate of 10 percent. (GC § 20537)
- 9) Establishes the California Employers' Pension Prefunding Trust Fund (CEPPT) as a special trust fund in the State Treasury to allow state and local public agency employers that provide a defined benefit pension plan to their employees to prefund their required pension contributions. (GC § 21711)
- 10) Creates the Public Employees' Retirement Fund (PERF) as a trust fund, administered in accordance with the Public Employees' Retirement Law, solely for the benefit of CalPERS members, retired members, and their survivors and beneficiaries. (GC § 20170)
- 11) Provides that moneys in the PERF are continuously appropriated, without regard to fiscal years, for payments which shall be made upon warrants drawn by the Controller upon demands made by CalPERS. Upon CalPERS' demand, the Controller shall draw warrants to make payments by electronic fund transfers. (GC § 20172)

- 12) Requires the Controller to direct and superintend the collection of all money due the State, as specified. (GC § 12418)
- 13) Requires the Controller to draw warrants on the Treasurer for the payment of money directed by law to be paid out of the State Treasury; but provides that a warrant shall not be drawn unless authorized by law, as specified. (GC § 12440)
- 14) Authorizes specified, actuarial adjusted, optional settlements that a JRS II member may elect to provide for the judge's surviving spouse or estate upon the judge's death and provides, under optional settlement one, that a judge's balance of accumulated contributions go to the judge's spouse or estate. (GC § 75570 et seq.)

37 Act County Retirement Systems / CERL / State Association of County Retirement Systems (SACRS)

- 1) Defines "Pensionable compensation" (terminology that applies to members subject to the California Public Employees' Pension Reform Act of 2013 (PEPRA)) to mean the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules, subject to specified limitations. (GC § 7522.34)
- 2) Defines "Compensation earnable" (terminology that applies to Legacy or Classic, i.e., non-PEPRA, members) to mean the average compensation as determined by the retirement board, for the period under consideration upon the basis of the average number of days ordinarily worked by persons in the same grade or class of positions during the period, and at the same rate of pay. (GC § 31461)
- 3) Defines "Final compensation" under PEPRA to mean the highest average annual pensionable compensation earned by the member during a period of at least 36 consecutive months, or at least three consecutive school years if applicable, immediately preceding his or her retirement or last separation from service if earlier, or during any other period of at least 36 consecutive months, or at least three consecutive school years if applicable, during the member's applicable service that the member designates on the application for retirement. (GC § 7522.32)
- 4) Requires the retirement system to determine the final compensation of a PEPRA or Legacy member who has less than three years of service by dividing the member's total compensation by the number of months of credited service and multiplying by 12. (GC § 31462 and § 31462.05)
- 5) Provides for members whose service is temporary, seasonal, intermittent, or part-time, that "final compensation" only means one-third of the total compensation earned, as specified. (GC § 31462.2)
- 6) Requires the retirement system to notify specified members who have attained age 70 that they will receive their deferred retirement allowance or a lump sum distribution, as applicable, at age 72 pursuant to federal IRS Required Minimum Distribution (RMD) provisions. (GC § 31706)

This bill:*CalSTRS (Education Code §22338)*

- 1) Adds a specific Education Code statute to facilitate CalSTRS' request to the DOJ for FBI background requests by conforming with recent changes to FBI guidelines requiring that requests for national criminal background information cite specific state authorization for department requests.
- 2) Limits an authorized criminal history check to employees and applicants whose duties include or would include:
 - a. Access to confidential or sensitive information and data maintained by CalSTRS or submitted to CalSTRS by its members or others;
 - b. Performing duties delegated to CalSTRS' chief executive officer;
 - c. Legal services and operations;
 - d. Actuarial , investment, audit, accounting, and financial services;
 - e. A position that requires driving as an essential function.
- 3) Requires CalSTRS to submit fingerprint images and related information as required for affected employees to DOJ and for DOJ to provide a state or federal response to CalSTRS pursuant to specified provisions of the Penal Code.
- 4) Requires CalSTRS to use the records and information received from DOJ exclusively for the authorized purposes of employment related to causes for discipline and to screen applicants for employment while a tentative offer is still pending with CalSTRS, as specified.

CalPERS / JRS II (Government Code §§ 20537, 21714.5, 75571, and 75571.5)

- 5) Caps the interest which CalPERS can charge local agencies on unpaid due payments at a simple annual rate of 10 percent.
- 6) Authorizes a state or local public agency employer to request a disbursement of funds from its CEPPT account and transfer those funds directly to the PERF. Requires CalPERS to certify to the Controller the total amount to transfer and requires the Controller to transfer the amount from the CEPPT to the PERF.
- 7) Authorizes a JRS II member in cases where there is not a surviving spouse to designate a beneficiary under optional settlement one for the return of remaining contributions and revises gendered pronouns.

37 ACT County Retirement Systems / CERL / SACRS (Government Code §§ 31462, 31462.05, 31462.2, 31593, 31706, 31725.7, 31726, and 31776.3)

- 8) Makes non-substantive, technical changes to provisions calculating final compensation for members with less than three years of service credit or whose service is temporary, seasonal, intermittent, or part-time to conform to post-PEPRA terminology regarding *compensation earnable* (applicable to Legacy members) and *pensionable compensation* (applicable to PEPRA members).

- 9) Conforms provisions relating to Required Minimum Distributions to federal law under the SECURE ACT 2.0 by referencing the federal law instead of referencing a specific age, which federal law changes periodically.
- 10) Makes minor typographical corrections.

COMMENTS

1. Need for This Bill

According to the Author:

This is the annual retirement systems omnibus housekeeping bill which alternates each year between the Senate LPER committee and the Assembly PERS committee to make the technical, conforming, administrative, or non-controversial changes to retirement system-related statutes administered respectively by CalSTRS, CalPERS, and the 37 Act County retirement systems.

2. Background checks

Existing law allows background check for specified employees including those working for the State Teachers' Retirement System (STRS). According to the Department of Justice, cleanup is needed to a number of sections regarding background checks for state employees in order for California to be in compliance with Federal background check requirements. This bill makes those necessary changes to the provisions allowing background checks for specified STRS employees.

3. Other provisions

This bill makes a number of other technical or necessary changes to various retirement sections that are under the jurisdiction of the Committee on Labor, Public Employment and Retirement.

-- END --