Date of Hearing: June 23, 2021

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT
Jim Cooper, Chair
SB 411 (Cortese) – As Amended April 13, 2021

SENATE VOTE: 36-0

SUBJECT: Public Employees' Retirement System: employment without reinstatement

SUMMARY: Grants discretionary authority to the California Public Employee's Retirement System (CalPERS) relating to reinstatement of retirees to active membership if they work more than the 960-hour per fiscal year limit under current law in CalPERS-covered positions, and to address violations in a manner that does not impose harsh financial terms on retirees. Specifically, **this bill**:

1) Grants CalPERS discretionary authority whether to require a retired member who works in violation of the post-retirement employment limitations to reinstate as an active member.

2) Requires a Retired Annuitant (RA) who is in violation of the post-retirement employment rules to pay employee contributions plus interest that otherwise would have been due to CalPERS for the employment period or periods, only if the RA is reinstated to active membership, as provided.

3) Requires an employer that violates the post-retirement employment rules to pay employer contributions plus interest that would have been paid for the period or periods of unlawful employment, only if the RA is reinstated to active membership, as provided.

4) Makes technical and conforming changes for these purposes.

EXISTING LAW:

1) Establishes the Public Employees' Retirement Law (PERL) to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated may, without hardship or prejudice, be replaced by more capable employees, and to that end provide a retirement system consistent of retirement compensation and death benefits. The PERL is administered by CalPERS.

2) Permits a retired CalPERS member to return to work for a CalPERS-covered employer, without reinstatement after meeting specified conditions. No additional service credit is gained during the period or periods of employment while working after retirement.[1]

[1] Sections 7522.56 and 21220 of the Government Code.

A retired person who works in violation of existing law must reimburse CalPERS for any retirement allowance received during the period or periods of employment that are in violation of law; pay to CalPERS the employee's share of contributions that would have been paid during the period or periods of unlawful employment (plus interest), and reimburse CalPERS for administrative costs incurred by the system for responding to the situation, as provided.

3) Provides that a public employer who employs a retired member in violation of existing law must:[2]

    a) Pay an amount equal to employer contributions that would have been paid for the period or periods that the member was employed in violation of existing law, to CalPERS.

    b) Reimburse CalPERS for administrative expenses relating to the matter to the extent that the employer is determined to be at fault. If an employer fails to enroll a retired member, or fails to report payrate and number of hours worked by a retired member, generally, the penalty that must be paid to CalPERS is $200 per member per month, for each respective violation, until the reporting requirements are satisfied.

    c) Employers are prohibited from passing on the costs of the employer's contributions and penalties to the employee.

4) Establishes the California Public Employees' Pension Reform Act of 2013 (PEPRA), a comprehensive reform of public pension law designed to stabilize public pension systems while preserving the objective of ensuring that public employees who dedicate a lifetime of service to California receive financial security in retirement.[3]

5) Prohibits a person retired from a public retirement system from working for a public employer in the same public retirement system from which the retiree receives the retirement benefit without reinstatement, as specified.[4]

6) Prohibits a person retired from a public retirement system from serving on a state board or commission, as specified, without reinstatement.[5]

7) Prohibits a person retired under CalPERS from working in any capacity except as specified for the state, university, a school employer, or a contracting agency unless the person first reinstates from retirement.[6]

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[2] Section 21220, *Ibid.*
[3] Section 7522.02 et seq., *Ibid.*
[4] Section 7522.56, *Ibid.*
[5] Section 7522.57, *Ibid.*
[6] Section 21220, *Ibid.*

FISCAL EFFECT: Unknown. This bill bypassed the Senate Appropriations Committee pursuant to Senate Rule 28.8.

COMMENTS: According to the author, "[This bill] will allow CalPERS staff to work with retired members and employers to resolve working after retirement violations in an efficient and agreeable manner.

"Existing law allows a CalPERS retiree to return to work with a CalPERS employer under certain limitations. These retires are also known as a retired annuitant and they are limited to 960 hours of work a year. Some retirees do this to supplement their retirement income, while others fill in essential vacancies during an emergency to ensure adequate staffing or may temporarily staff vacant positions when needed.

"Unfortunately, many of these retirees are having to pay significant costs for unintentionally going over their current limitation of 960 hours. For instance, they weren't aware of this limitation or their employer may have inadvertently misinformed them."

The author further states that, "This bill] would simply grant the CalPERS board the authority to reach a fair resolution with retirees who inadvertently go over the 960-hour limit, based on the circumstances and conditions of that particular violation, without having to force a retiree to reinstate back into the system.

"This would put an end to what, in some cases, can amount to an egregious encumbrance on retirees and, instead, allow for more swift and effective resolutions to these unintentional violations. Our retirees deserve respect, peace of mind, and a sense of security for their future as they continue to contribute to our state schools and public agencies, especially during a time of such socioeconomic turmoil."

1) <u>Public Employees Working After Retirement, Generally</u>

As stated by the author above, generally, existing law permits a retired CalPERS member to return to work for a CalPERS-covered employer after waiting 180 days after retirement; however, after returning to work, the retiree is limited to working a maximum of 960 hours per fiscal year without being required to reinstate to active CalPERS membership, among other requirements. Such individuals are commonly referred to as "retired annuitants (RAs)." No additional service credit is earned by the RA during the period of employment.

Under existing law, public employers who employ CalPERS members must submit payroll data to CalPERS for purposes of reporting and tracking these hours, and accountability. Retired employees who exceed the 960-hour work limit per fiscal year must reinstate to active CalPERS service and reimburse CalPERS for all retirement allowances received during the period or periods of the violation, pay the employee's share of contributions to the system, including penalties, interest, and the system's administrative costs. In contrast, reporting violations by employers result in a penalty assessed to them by CalPERS in the statutory amount of $200 per member per month, until the reporting requirements are satisfied.

2) <u>CalPERS Audit Regarding Retired Annuitants</u>

In 2019, CalPERS' Office of Audit Service and Public Agency Review performed a random and sample audit of 61 contracting agencies comprised of 38 public agencies and 23 schools and found that among these 61 employers, 44 were not in compliance with the statutory reporting requirements relating to the appointments of RAs. These violations ranged from untimely submittal of payroll data, inaccurate information submitted, or a complete lack of reporting, to CalPERS.

Notwithstanding that the PEPRA became effective in 2013 immediately followed by clean-up legislation that same year;[7] coupled with information provided to employers by CalPERS that provides detailed guidance on reporting on the use of RAs, there remains numerous CalPERS-contracting public agency employers and schools that fail to adhere to the reporting requirements.

3) <u>Consequences of Public Employer Nonadherence to Statutory Reporting Requirements Regarding Retired Annuitants: Significant Financial Risk to Retirees Working After Retirement Who Shoulder The Highest Cost Due To Employer Error</u>

The RA is not statutorily responsible for the processing and submittal of payroll information to CalPERS for purposes of their employment, nor submitting the required documents relating to their employment to CalPERS. However, the employer is the responsible party for such requirements.

There have been instances in which RAs have been required to reimburse CalPERS for overpayments in amounts ranging from thousands to tens of thousands of dollars because the RA's CalPERS-covered employer either failed to properly or accurately, timely, or not report such payroll data as required under existing law. In addition, there may be instances in which an employer asks an RA to continue working beyond the 960-hour work limitation without regard to the RA and the employer violating existing law.

The ultimate end result of the continued lack of adherence to existing law results in a financial detriment, and in some instances, substantial financial detriment to the RA, but an unequal and substantially less than de minimus financial impact to the employer.

This bill proposes to resolve this ongoing matter of concern.

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[7] Chapter 528, Statutes of 2013 (Senate Bill 13, Beall).

4) Prior or Related Legislation

Senate Bill 634 (Senate Committee on Labor, Public Employment and Retirement, 2021) would make technical, conforming, and noncontroversial changes to public employee retirement laws administered by the California State Teachers' Retirement System (CalSTRS), CalPERS, and 1937 Act County Retirement Systems. Among other provisions, this bill addresses overpayments issued to a deceased CalPERS member or beneficiary of the member, and deductions from subsequent payments or benefits paid by CalPERS as a result of the death. This bill is currently pending in the Assembly Committee on Public Employment and Retirement.

Senate Bill 278 (Leyva, 2021) would establish requirements relating to the reporting of disallowed compensation by state, school or contracting agency employers to, and retirement benefits paid by, CalPERS, to its retirees and their survivors or beneficiaries, among other provisions. This bill is currently pending in the Assembly Committee on Public Employment and Retirement.

Assembly Bill 2365 (Rodriguez, 2020) was substantially similar to the current bill. This bill was passed by the Assembly, but held in the Senate Committee on Labor, Public Employment and Retirement at the request of the author following disruption to the legislative calendar as a result of the COVID-19 pandemic.

REGISTERED SUPPORT / OPPOSITION:

Support

California School Employees Association, AFL-CIO *(Sponsor)*
California Public Employees' Retirement System
California Teachers Association
Peace Officers Research Association of California
Retired Public Employees Association

Opposition

None on file.

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