

determine eligibility for, and the correctness of, retirement benefits, reportable compensation, enrollment in, and reinstatement to this system. (Government Code § 20222.5 (a))

- 5) Requires CalPERS, before initiating an audit, to notify the subject of the audit of the estimated time required to complete the audit. (Government Code § 20222.5 (b))
- 6) Requires that CalPERS base the time estimate upon various factors, including, but not limited to, the number of employees; employment classifications; benefits; contract provisions; geographical location; time required for audits of comparable entities; and additional time factors raised by the subject of the audit. (Government Code § 20222.5 (b))
- 7) Authorizes CalPERS to assess a reasonable charge upon the employer, if an audit requires an excess of the time estimated, to recover additional costs incurred for the excess time to complete the audit. However, CalPERS may not assess a contracting agency for delays during the course of an audit that are reasonably outside of the agency's control. (Government Code § 20222.5 (c))
- 8) Requires that information obtained from an employer remain confidential, as specified. (Government Code § 20222.5 (d))
- 9) Requires the California State Teachers' Retirement System (CalSTRS) to provide written notice of an intended audit, including its purpose and scope, to the affected public agency and affected members' union. (Education Code § 22206.1)

This bill:

- 1) Requires CalPERS, before initiating an audit, to provide written notice to the subject of the audit that includes the audit's purpose and scope, as well as the estimated time required to complete the audit (already required under existing law).
- 2) Requires CalPERS, after providing the required notice, to list on its website the state employer, school employer, including each school district represented by a school employer, or contracting agency subject to the audit and the purpose and scope of the intended audit.
- 3) Requires the audited employer, as soon as practicable but no later than 10 working days after receiving notice from CalPERS, to forward the audit notice to its employees' union, if any, of members that may be affected by the audit.
- 4) Requires the audited employer to communicate to CalPERS that the employer has provided the audit notice to its employees' union.
- 5) Requires the audited employer, within 60 days of receiving CalPERS' final audit report, to provide its employees' union and CalPERS with a list of the names of any members affected by the final audit report.
- 6) Requires CalPERS to provide the audited employer with a copy of the final audit report upon issuance of CalPERS' final audit report.

- 7) Requires the audited employer, as soon as practicable but no later than 10 working days after receiving CalPERS' final audit report, to forward the report to its employees' union, if any, of the affected members that may be affected by the audit.
- 8) Requires the audited employer to communicate to CalPERS that the employer has provided the final audit report to its employees' union.
- 9) Declares that this bill's provisions do not confer any additional rights upon the union, including, but not limited to, due process rights.

COMMENTS

1. Need for this bill?

According to the author:

“This audit notification provides employees' exclusive representatives with advance warning of an audit so they can properly inform and advocate for their members or proactively seek additional information regarding the audit and its effects. Public employees and their unions are important stakeholders in the audit process, and a quick resolution benefits everyone—especially in cases where an ongoing payroll reporting error compounds over many months or years.

2. Proponent Arguments

According to the California School Employees Association:

“CalPERS regularly audits employers to ensure that employee compensation is correctly reported. Accurate reporting of employee compensation is essential in calculating public employees' monthly pension benefits. The CalPERS Office of Audit Services typically conducts 100 employer audits each year to check for compliance on issues ranging from pay schedules and payrates to part-time employee membership in PERS and employment after retirement.”

“The outcomes of these employer compliance audits can have important consequences for current public employees and retirees. For example, if an audit reveals that an employer inadvertently made an error in pay rate reporting, an employee or retiree may be required to reimburse CalPERS for the resulting overpayment and suffer a reduction in their monthly pension benefit. These mandatory repayments can amount to thousands of dollars depending on the length of time that the reporting error occurred...”

“When school employees receive notice of pension benefit reductions and required lump-sum repayments, they turn to their union for assistance and answers. It is critical that public employee unions be made aware of audits that could adversely impact the promised pension benefits of active members and retirees at the start of the audit process. Timely audit notification allows public employee unions to properly advocate for our members and to proactively seek additional information regarding an audit and its effects. Public employees and their unions are important stakeholders in the audit process, and quick resolution benefits

everyone — especially in cases where an ongoing payroll reporting error compounds over many months or years.”

According to the Service Employees International Union, California:

“Existing law already requires that unions representing certificated teachers participating in the California State Teachers’ Retirement System (CalSTRS) receive timely notice of employer audits by CalSTRS. SB 1038 would bring parity to public employees participating in CalPERS by ensuring their union representatives also receive proactive audit notification.”

3. Opponent Arguments:

None received.

4. Prior Legislation:

AB 1667 (Cooper, Chapter 754, Statutes of 2022), among many other provisions, required CalSTRS to provide written notice, including the purpose and scope, of an intended audit to the affected public agency and its employees’ union, as specified.

SUPPORT

California School Employees Association (Sponsor)
American Federation of State, County and Municipal Employees
California Federation of Labor Unions
Service Employees International Union, California

OPPOSITION

None received.

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