Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Ma, et al	Analyst:	William Koch	Bill Number:	AB 1987
Related Bills:	See Legislative History	Telephone:	845-4372	Amended Date:	June 1, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: State Employees - Retirees Who Have Not Reinstated May Not Perform Services For State Until Separated From Service For At Least 180 Days

SUMMARY

This bill would, among other things, prohibit any retired state employee that has not reinstated to active service after retirement from performing services for any employer whose employees are covered by the state retirement system from which the employee retired, until that retired state employee has been separated from service for at least 180 days.

This analysis does not address the other provisions of the bill relating to the calculation of final compensation for purposes of determining retirement benefits or the provisions of the bill relating to the County Employee Retirement Law of 1937.

This is the department's first analysis of this bill and reflects the bill as amended June 1, 2010.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to attack abusive retirement compensation practices, to prevent a few individuals from putting retirement at risk for the vast majority of honest, hard-working public servants, and to give retirement systems the tools to keep their assets safe and secure.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2011, and would generally be specifically operative on July 1, 2011, except that the provisions of the bill impacting the department are specifically operative for employees retiring on or after January 1, 2011. This bill would become operative only if SB 1425 (Simitian, et al, 2009/10) is also enacted and takes effect on or before January 1, 2011.

POSITION

Pending.

Summary of Suggested Amendments

The attached amendments are provided to resolve the implementation concern identified.

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
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_______ N	_______ OUA	___X___ PENDING		

ANALYSIS

STATE LAW

Current state law allows retired California Public Employee Retirement System (CALPERS) members, without reinstatement to active service, to work as a retired annuitant for any employer whose employees are covered by CALPERS. Positions in which a retired annuitant may be utilized must be of limited duration and require specialized skills. Retired annuitants may not work more than 960 hours per fiscal year and do not accrue service credit or otherwise acquire any additional retirement benefits from the retiree's employment.

Current state law does not specify a number of days that must elapse from separation before a retired member can work as a retired annuitant.

BACKGROUND

The Franchise Tax Board (FTB) currently employs approximately 50 retired annuitants and all perform short term services in critical need areas where no other viable option exists to immediately fill the position. Because the department utilizes retired annuitants in critical need areas, most retired annuitants employed by the FTB return to work for the department immediately after retirement. Current duties of retired annuitants working for the FTB include the following:

1. Finishing large, complex audits of multistate corporations and banks. In instances where an employee retires before completion of an audit that is extremely complicated, it would cause an unreasonable delay and possibly jeopardize the outcome of the audit to reassign the audit to another employee that is unfamiliar with the particular details of the examination.

2. Performing highly technical information technology duties on projects and FTB legacy systems that, if delayed, could imperil the FTB’s ability to timely assess and collect the proper amount of tax revenue. Many of the department’s legacy technology systems are built on dated technology platforms no longer readily supported by outside industry, which further reduces the FTB’s options for critical information technology support.

3. Training successor staff members on technical matters pertaining to some of the most complex tax laws. Recently the department has been experiencing an increase in sudden retirements of key staff due to compensation issues involving furloughs, proposed pay cuts, and uncertainties pertaining to proposed retirement benefit modifications. Employment of retired annuitants provides a mechanism to transfer key institutional knowledge to successor staff, which absent the sudden retirement, would have otherwise occurred prior to the annuitant’s retirement.

THIS BILL

This bill would prohibit any retired state employee that has not reinstated to active service after retirement from performing services, whether as an employee, through a third party, or as an independent contractor, for any employer whose employees are covered by the state retirement system from which the employee retired, until that retired state employee has been separated from service for at least 180 days.

The above provision would apply to state employees retiring on or after January 1, 2011.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern.

If the FTB is required to wait 180 days from the date an employee retires before employing that individual as a retired annuitant, revenue producing activities, technology projects, and maintenance of legacy systems would be adversely impacted. As noted in the “Background” section of this analysis, the FTB only employs retired annuitants in positions that require short term services in critical need areas where no other viable option exists to fill the position immediately. Few, if any, options exist for the FTB to mitigate the adverse impacts of this provision of the bill.

The author may wish to amend the bill to exempt FTB from the above provision. For convenience, the department is including amendment language to provide such exemption.

LEGISLATIVE HISTORY

SB 1425 (Simitian, et al, 2009/10) would make changes to the calculation of final compensation for purposes of determining retirement benefits for members of CALPERS and the State Teachers Retirement System. This bill would also prohibit a retiree from returning to work as a retired annuitant or as a contract employee for a period of 180 days after retirement.
SB 1425 would only become operative if this bill [AB 1987 (Ma, et al, 2009/10)] is enacted and takes effect on or before January 1, 2011. SB 1425 is currently waiting to be heard in the Assembly Appropriations Committee.

FISCAL IMPACT

This bill would result in minor salary savings to the extent the department delays employing retired annuitants for 180 days as required.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1987 As Amended June 1, 2010 Enactment Assumed September 30, 2010 ($ in Millions)				
Fiscal Year	2009-10	2010-11	2011-12	2012-13
Revenue Loss	-$0.6	-$1.5	-$2.3	-$1.9

LEGISLATIVE STAFF CONTACT

Legislative Analyst
William Koch
(916) 845-4372
william.koch@ftb.ca.gov

Revenue Manager
Monica Trefz
(916) 845-4002
monica.trefz@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov

Analyst	William Koch
Telephone #	(916) 845-4372
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1987 AS AMENDED
June 1, 2010

AMENDMENT 1

On page 5, line 1, strikeout "A" and insert:

(1) Except as provided in paragraph (2), a

AMENDMENT 2

On page 5, between lines 7 and 8, insert:

(2) This subdivision shall not apply to a retired person performing service for the Franchise Tax Board.