Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Simitian, et al.	Analyst:	William Koch	Bill Number:	SB 27
Related Bills:	See Legislative History	Telephone:	845-4372	Introduced Date: Amended Date:	December 6, 2010 March 3, 2011
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: California Public Employees' Retirement System - 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 member of the California Public Employees' Retirement System (CALPERS) that has not reinstated to active service after retirement from performing services for any employer whose employees are covered by CALPERS until 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 for members of CALPERS or the State Teachers' Retirement System.

This is the department's first analysis of this bill and reflects the bill as amended March 3, 2011.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to correct abuses that impose an undue burden on taxpayers and erode public support for reasonable public employee pensions.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2012, and would generally be specifically operative on July 1, 2012, except that the provisions of the bill impacting the department are specifically operative for CALPERS members retiring on or after January 1, 2013.

ANALYSIS

STATE LAW

Current state law allows retired 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 employment.

Board Position:			Executive Officer	Date
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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 including 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.

<u>THIS BILL</u>

This bill would prohibit any retired member of CALPERS 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 CALPERS until separated from service for at least 180 days.

The above provision would apply to CALPERS members retiring on or after January 1, 2013.

Any retired CALPERS member employed in violation of the above provision would be required to do all of the following:

1. Cease performing services in violation of the above provision and allow 180 days following the last date he or she performed services to elapse before resuming the services.

2. Reimburse CALPERS for any retirement allowance received during the period of employment that is in violation of the law.

3. Pay CALPERS an amount equal to the employee contributions that would have otherwise have been paid during the period of unlawful employment, plus interest.

4. Contribute toward reimbursement of CALPERS' administrative expenses incurred in responding to the unlawful employment, to the extent the member is determined to be at fault.

Any public employer that employs a retired CALPERS member in violation of the above provision would be required to do both of the following:

1. Pay CALPERS an amount equal to employer contributions that otherwise would have been paid for the period that the member was unlawfully employed.

2. Contribute toward reimbursement of CALPERS' administrative expenses incurred in responding to the unlawful employment, to the extent the employer is determined to be at fault.

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

AB 1987 (Ma, et al, 2009/10) and SB 1425 (Simitian, 2009/10) contained provisions similar to the provisions discussed in this analysis. Both bills were vetoed by Governor Arnold Schwarzenegger. In his veto message, Governor Schwarzenegger indicated he vetoed SB 1425 because it contained contingent enactment language with AB 1987, which was vetoed because it failed to provide "real pension reform."

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 SB 27 For Retirements Beginning On or After January 1, 2013 Enactment Assumed After June 30, 2011		
2011-12	2012-13	2013-14
-$150,000	-$700,000	-$1,400,000

SUPPORT/OPPOSITION

Support:
State Controller, John Chiang
California Association of Highway Patrolmen
Glendale City Employees Association
Organization of SMUD Employees
Retired Public Employees Association
San Bernardino Public Employees Association
San Luis Obispo County Employees Association
Santa Rosa City Employees Association
Service Employees International Union, Local 1000
California School Boards Association, if amended

Opposition:
Association of California School Administrators
California Police Chiefs Association
California State Sheriffs' Association
Small School Districts' Association
California Association of Joint Powers Authorities, unless amended
California Faculty Association (CFA), unless amended
California State Association of Counties, unless amended
Humboldt County Superintendent of Schools, unless amended

ARGUMENTS

Pro: Proponents could say this bill would eliminate the “revolving door” practices in which some public employees return to the same job immediately after retirement.

Con: Opponents of this bill could say the requirement for 180 days to elapse after an employee retires before employing that person would cause unnecessary delays and potentially jeopardize critical state operations.

LEGISLATIVE STAFF CONTACT

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 27 AS AMENDED
March 3, 2011

AMENDMENT 1

On page 28, line 21, at the end thereof, insert:

The preceding sentence shall not be applied to prevent the Franchise Tax Board from employing a person who has been retired under this system, for service or for disability, at any time after that person's retirement date.

AMENDMENT 2

On page 29, line 12, strikeout "A" and insert:

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

AMENDMENT 3

On page 29, after line 17, insert:

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