SENATE COMMITTEE ON EDUCATION
Senator Connie Leyva, Chair
2019 - 2020 Regular

Bill No:	SB 715	**Hearing Date:**	April 24, 2019
Author:	Galgiani		
Version:	March 28, 2019		
Urgency:	No	**Fiscal:**	No
Consultant:	Lynn Lorber		

Subject: University of California retirement plans: asset managers: contracts.

SUMMARY

This bill prohibits the University of California (UC) from entering into a contract for services with an asset manager for a defined contribution plan if that plan is a stand-alone optional plan.

BACKGROUND

Existing law:

1) Establishes the UC as a public trust, administered by the Regents with full powers of organization and government, subject only to such legislative control as may be necessary to insure the security of its funds and compliance with the terms of the endowments of the university and such competitive bidding procedures as may be made applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services. (Constitution of California, Article IX, Section 9)

2) Requires the retirement board of a public pension or retirement system to have plenary authority and fiduciary responsibility for investment of moneys and administration of the system, subject to specified conditions which include:

   a) The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. The assets of a public pension or retirement system are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries and defraying reasonable expenses of administering the system.

   b) The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system.

A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty.

c) The retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, shall have the sole and exclusive power to provide for actuarial services in order to assure the competency of the assets of the public pension or retirement system.

d) The Legislature may by statute continue to prohibit certain investments by a retirement board where it is in the public interest to do so, and provided that the prohibition satisfies the standards of fiduciary care and loyalty required of a retirement board pursuant to this section. (Constitution of California, Article XVI, Section 17)

3) Prohibits the University of California (UC) from contracting for services performed by workers outside of the United States that would displace a UC employee. (Public Contract Code § 12147)

4) Requires a state agency to comply with specified procedures in awarding agency contracts. (PCC § 10180 et seq.)

5) Provides that present, future, and former Regents of the UC, jointly and individually, officers and employees of the UC, and investment managers under contract with the UC, are to be indemnified from the General Fund by the State of California from all claims, demands, suits, actions, damages, judgments, costs, charges, and expenses, as specified. (Government Code § 16649.93)

ANALYSIS

This bill:

1) Prohibits the UC from entering into a contract for services with an asset manager for a defined contribution plan if that plan is a stand-alone optional plan that is not a complement to a defined benefit pension plan.

2) Specifies that this prohibition does not apply to a defined contribution plan that is offered as a complement to a defined benefit pension plan.

3) Applies the provisions of this bill to a contract entered into on or after January 1, 2015.

STAFF COMMENTS

1) ***Need for the bill.*** According to the author, "In 2015, Governor Jerry Brown and UC President Janet Napolitano convened the 'committee on two' to resolve a dispute between them regarding the amount of state funding the UC would receive. The result was that Governor Brown promised to increase State funding for the UC in exchange for UC accepting the terms and conditions of the Public Employee Pension Reform Act (PEPRA). President Napolitano agreed to impose PEPRA on UC employees, which was met with resistance from

employees and their unions. One of the most controversial elements of the Public Employee Pension Reform Act (PEPRA) terms was the cap on pensionable compensation. In the year 2015, the PEPRA cap was $118,000 (it is indexed, and the cap is approximately $121,000 today). The University of California (UC) placated its higher income earners by creating a Defined Contribution Plan for compensation over the cap. In 2016, the UC decided to extend the Defined Contribution Plan that had been created only to make up for the lost pensionable benefits above the PEPRA cap. They extended the Defined Contribution Plan as an option to all new employees for their total compensation. If the employee opted for the '401k opt-out' they would not be able to opt back in to the pension if they later decided it was detrimental to their retirement security. Unions fought the imposition and state that the '401k opt-out' had to be bargained. The UC agreed that it would bargain with employee groups in the case of those who had a collective bargaining agent, but would unilaterally impose the option for those with no union. Of the 190,000 employees that UC has, the majority are not in a collective bargaining unit."

2) ***Defined benefit vs. Defined contribution.*** A defined benefit plan provides a lifetime allowance commonly known as a pension to an employee upon retirement through a formula based on years of employment, age at retirement, and final compensation. The employer and employee typically make contributions that the plan administrator invests over the course of the employee's career in order to prefund the lifetime allowance. The risk to assets of investment market declines falls on the employer not the employee. The employer has a continuing responsibility to provide the lifetime allowance regardless of the plan assets available at the employee's retirement.

A defined contribution plan is an individual retirement account to which an employer and employee make contributions. Upon retirement, the employee receives the accumulated contributions in the account plus investment returns. The employer has no further liability. The risk to assets of investment market declines falls on the employee not the employer.

3) ***UC's Defined Benefits Plan and Defined Contribution Plan.*** The UC offers employees enrollment in the UC Retirement Plan, which consists of a defined benefit plan and includes a supplemental 401(k)-style component. Since 2016, the UC offers new employees (those hired July 1, 2016 and after) a choice to enroll in the UC's defined benefit plan ("pension choice") *or* in UC's defined contribution plan ("savings choice"). According to the UC, new employees have a specific amount of time to select either plan, and if no selection is made in that timeframe, the employee is enrolled in the defined benefit plan.

According to the author, permitting a stand-alone 401(k) plan may enable employers to incentivize employees to choose a 401(k) plan over a defined benefit plan, and would likely result in less retirement security for employees in the long term and lower associated costs to the UC as it reduces its long-term liability and shifts market risk to employees.

According to the University of California (UC), the amount that the UC contributes to each plan is the same; the UC does not contribute a greater share to defined benefit plans than it does to defined contribution plans. Further, the University of California (UC) notes that employees who are enrolled in the defined contribution plan are vested after one year, while employees who are enrolled in the defined benefit plan are vested after five years.

This bill does not prohibit the UC from offering a defined contribution plan that is separate from its defined benefit plan, but does prohibit the UC from contracting with an asset manager for a stand-alone defined contribution plan. This bill does not affect the UC's ability to offer a defined contribution plan that is complementary to its defined benefit plan. If this bill were to become law, the result could be that the UC would decline to offer a stand-alone defined contribution program (whereby all employees would be enrolled in a defined benefit plan), or the UC could manage the defined contribution plan itself.

Are defined benefit plans more beneficial for employees than defined contribution plans?

Does the UC incentivize employees to choose a 401(k) plan over a defined benefit plan?

Should the UC be required to offer all employees enrollment in a defined benefit plan?

Should the State legislate UC retirement issues?

4) ***Subject of collective bargaining.*** According to information provided by the author's office, of the UC unions, Teamsters Local 2010 and UC-AFT chose to allow the "401k opt-out" for new employees in exchange for other desirable terms and conditions in their contracts. Also according to the author's office, both AFSCME Local 2010 and UPTE-CWA Local 9119 are still in bargaining over the issue. According to the UC, the unions have asked for the defined contribution plan to be taken off the bargaining table.

   Should the legislature act on a measure that would affect the outcome of ongoing, as well as past, collective bargaining?

5) ***Retroactive.*** This bill applies to a contract entered into on or after January 1, 2015. It is unclear what would happen to defined contribution plan accounts that were active subsequent to January 1, 2015. Staff notes that the author intends to amend this bill in the future to instead apply the provisions of this bill after January 1, 2020.

6) ***Related legislation.*** ACA 14 (Gonzalez) authorizes the Regents of the UC, or any campus or other entity of the UC, to contract for contract labor to perform support services only if authorized to do so by statute, and only to the extent necessary to address specified needs. ACA 14 is pending in the Assembly.

   SB 698 (Leyva) requires the UC to follow the same labor rules as private employers, and encourages UC administrators to prioritize the accurate, timely and fair payment of their employees. SB 698 is scheduled to be heard in the Senate Labor, Public Employment and Retirement Committee on April 24.

SUPPORT

California Federation of Teachers (co-sponsor)
University Council-American Federation of Teachers (co-sponsor)
University Professional and Technical Employees – Communication Workers of America Local 9119 (co-sponsor)
California Teamsters Public Affairs Council
Council of UC Faculty Associations

OPPOSITION

None received

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