

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 1667 (Cooper)  
Version: May 19, 2022  
Hearing Date: June 28, 2022  
Fiscal: Yes  
Urgency: No  
TSG

**SUBJECT**

State Teachers' Retirement System: administration

**DIGEST**

This bill proposes a series of measures designed, together, to better protect public teachers against the possibility of losing retirement or other benefits due to miscalculation of the amount of benefits to which the teacher is entitled.

**EXECUTIVE SUMMARY**

The California State Teachers' Retirement System, better known as CalSTRS, manages contributions and pays out benefits to nearly a million of our state's public educators. It does so through complex accounting coordinated with each local school district. From time to time, either CalSTRS or one of the school districts miscalculates the benefits that are due to a retiree. If that miscalculation causes an overpayment to the retiree, the result may be a reduction in benefits or even a demand to return some of the overpayment. Such an outcome can be upsetting and problematic for retirees who, understandably, rely on what they understand to be their correctly calculated benefit level. This bill proposes a series of measures intended to prevent scenarios like these from recurring. Key components of the bill include provisions that would ensure retired members are not held liable for prior overpayments, except in cases of fraud or intentional misrepresentation by the member, and establish a penalty, to be paid by the school district or CalSTRS (whichever was at fault for the mistake), that partially replaces the retired member's benefit reduction.

The bill is sponsored by the California County Superintendents Educational Services Association, the California Retired Teachers Association, and the California Teachers Association. Support comes from organized labor and many local school districts. There is no known opposition. The bill passed out of the Senate Labor, Public Employment and Retirement Committee by a vote of 4-0. If the bill passes out of this Committee, it will next be heard in the Senate Appropriations Committee.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the E. Richard Barnes Act that, together with certain other areas within the Education Code administered by CalSTRS, is known as the Teachers' Retirement Law (TRL). (Ed. Code § 22000.)
- 2) Establishes that the purpose of CalSTRS is to provide a financially sound plan for the retirement, with adequate retirement allowances, of teachers in the public schools of this state, teachers in schools supported by this state, and other persons employed in connection with the schools. (Ed. Code § 22001.)
- 3) Establishes, pursuant to the California Constitution, that the retirement board of a public pension or retirement system has plenary authority and fiduciary responsibility for administration of the system, and among other provisions, consistent with the fiduciary responsibilities vested in it, must 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. (Cal. Const., art XVI, § 17.)
- 4) Provides for a three-year limitation of action relating to adjustments of errors and omissions by or against CalSTRS after all obligations to, or on behalf of, the member and others, as specified, have been discharged.
  - a) If CalSTRS makes an error that results in an incorrect payment to such individuals, CalSTRS' right of recovery expires three years from the date the incorrect payment was made.
  - b) If an incorrect payment is made due to the lack of, or inaccurate, information, the period of limitation commences with the discovery of the incorrect payment.
  - c) If an incorrect payment is made on the basis of fraud or intentional misrepresentation by the member (including the member's beneficiary or those related to, or acting on behalf of, the member) the three-year limitation must not be deemed to commence or have commenced until CalSTRS discovers the incorrect payment. (Ed. Code § 22008.)
- 5) Authorizes CalSTRS to reduce the monthly allowance payable under the Defined Benefit (DB) Program, Defined Benefit Supplement (DBS) Program, and Cash Balance (CB) Benefit Programs, as specified, if the overpayment was due to CalSTRS error, the county superintendent of schools, a school or community college district, and if the error was due to inaccurate or nonsubmission of information by the recipient of the benefit allowance. However, this does not apply to fraud or misrepresentation of facts by the recipient of the allowance or benefit. (Ed. Code § 24617.)

- 6) Provides for violations and penalties with respect to actions that attempt to defraud, or defraud, CalSTRS with respect to any benefit administered by the system. A violation may be punished by one-year imprisonment in a county jail, or a fine up to \$5,000, or both, including restitution to CalSTRS, unless the court finds that restitution is not in the interests of justice. (Ed. Code § 22010.)
- 7) Establishes that any overpayment made to, or on behalf of, any member, former member or beneficiary (including, but not limited to contributions, interest, benefits of any kind, federal or state tax, or insurance premiums), must be deducted from any subsequent benefit that may be payable under either the DB, DBS, or CB Benefit programs, except as otherwise provided. In addition, such deductions must be permitted concurrently with any legal claim for restitution, and recovery of overpayment by adjustment must be reduced by the amount of the recovery the extent of liability for restitution. (Ed. Code § 24616.)
- 8) Provides that if an employer reports erroneous information to CalSTRS, the system must calculate the actuarial present value (APV) of the expected payments from the member, the former member, or beneficiary pursuant to existing law, and requires the employer to pay the difference between the total amount of the overpayment and the calculation of the APV of the expected payments. (Ed. Code § 24617.)
- 9) Relating to the collection of overpayments, CalSTRS may reduce the monthly allowance of a CalSTRS retiree under the DB, DBS, or CB programs an amount no greater than five percent if the overpayment was due to error by the system, the county superintendent of schools, a school district, or a community college district, and by no more than 15 percent if the error was due to inaccurate information or nonsubmission of information by the recipient of the allowance or benefit. However, these provisions do not apply to the collection of overpayments due to fraud or intentional misrepresentation of facts by the recipient of the allowance or benefit. (Ed. Code § 24617.)
- 10) Establishes procedures concerning payment, and more specifically, compliance with federal law in making distributions. Here, distributions payable under certain programs must be in accordance with Section 401(a)(9) of the Internal Revenue Code and related regulations.
- 11) Generally, defines “creditable compensation” to mean compensation reportable to CalSTRS for an employee’s performance of “creditable service.” Sick leave, vacation, or an employer-approved leave are included in the statutory definition of this term. “Creditable service” generally means the work activities that count toward years of service for purposes of CalSTRS retirement. (Ed. Code §§ 22119.5, 22119.6, and 26113.)

- 12) Requires CalSTRS staff to annually report to the CalSTRS board the amount of underpayment made to recipients under the DB, DBS, and CB programs; the amount to be recovered because of overpayments and the number of overpayments under these programs. (Ed. Code § 24619.)
- 13) Provides, pursuant to the state Constitution that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1)
- 14) Provides that, mindful of the right of individuals to privacy, the Legislature finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Code § 6250.)

This bill:

- 1) Requires CalSTRS to provide certain written notices, information, and other prescribed documents to the affected public agency as well as to the exclusive representative or representatives of the members that may be affected by an audit; an audited public agency to cooperate in good faith with CalSTRS and timely provide all information requested by the system; and, information provided by the public agency to also be provided to the exclusive representative or representatives, if any, as provided.
- 2) Establishes, subject to a timeframe, certain due process procedures for a public agency audited that, or member affected by the audit who, disagrees with the final audit, and requires CalSTRS to make all final employer audit reports available on its internet website with personal information excluded to the extent necessary to protect privacy.
- 3) Requires CalSTRS to, at least annually, publish rules that interpret and clarify the applicability of creditable compensation and creditable service laws; promulgated regulations; conditions new or different interpretations, including those that modify a prior interpretation in a publication, regulation, employer information circular, or similar means, from taking effect until after notice is issued to employers and exclusive representatives; and, expressly prohibits them from being retroactively applied to compensation reported prior to that notice, unless the retroactive interpretation is required by state or federal law, or an executive order by the Governor.
- 4) Provides that changes to interpretations must not be applicable before the next July 1, unless changes to state or federal law, an executive order by the Governor, or programs, require application of revision of the creditability of compensation on an earlier basis.

- 5) Provides, for purposes of audits or any other actions by CalSTRS, including actions or penalties relating to disallowed compensation reporting, that employers are responsible for the rules in effect at the time the compensation is reported, except when expressly superseded by state or federal law or an executive order by the Governor, and if compensation reported in accordance with CalSTRS' rules or guidance is later determined by the system to result in disallowed compensation, including the collection of overpayments, any disallowed compensation reported in accordance with CalSTRS' written guidance must be deemed an error by CalSTRS, thereby, rendering CalSTRS financially responsible for any assessments or payments owed, as provided.
- 6) Authorizes an employer or exclusive representative to submit in writing (along with any supporting documents deemed necessary by CalSTRS), a request for an advisory letter concerning any compensation item that is proposed to be included, or is contained, in publicly available written contractual agreement so that CalSTRS can provide guidance for the proper reporting of the compensation consistent with the laws governing creditable compensation and its own administrative regulations, and CalSTRS must provide an advisory letter regarding the submission within 30 days of receipt of all information required to conduct the review.
- 7) Establishes that if compensation is reported in accordance with CalSTRS' written guidance is later determined by the system to have been reported in error, any resulting overpayment or penalty must be deemed an error by the system, thereby, rendering CalSTRS financially responsible for any assessments or payment owed to the retired member.
- 8) Establishes, in relation to County Offices of Education, that for purposes of remitting contributions, assessments, or any other payment required by CalSTRS, the county superintendent of schools is authorized, on an annual basis or as otherwise directed by CalSTRS, to draw requisitions against the county school service fund and the funds of respective employing agencies in amounts equal to the total required to be paid by the employment agency.
- 9) Defines "disallowed compensation" to mean compensation reported to an employer that CalSTRS subsequently determines is not properly creditable as reported by the employer pursuant to existing law, or CalSTRS administrative regulations
- 10) Establishes that if CalSTRS determines that the compensation reported for a member by an employer is disallowed, the system must require the employer to discontinue reporting it as creditable to the member's account.
- 11) Establishes that, subject to certain conditions being met, for active members, retired members, their survivors and beneficiaries, all employer and member contributions

on the disallowed compensation to be credited or returned, as applicable and provided; requires the employer or county superintendent of schools to pay a penalty to CalSTRS and to make restitution to the affected retired member, survivor, or beneficiary; and, CalSTRS to provide certain notices to the employer and affected retired member, survivor, or beneficiary regarding a permanent adjustment to the monthly benefit that reflects the exclusion of the disallowed compensation.

- 12) Establishes that if compensation is determined to be disallowed due to an act by a county superintendent of schools that reports directly to CalSTRS on behalf of an employer, including an act to modify or correct an employer's payroll report, the county superintendent must be financially responsible for payments or penalties owed by the employer resulting from the disallowance, unless the county superintendent provides notice to, and received consent from, the employer relating to that act. In addition, CalSTRS, upon request, must provide the employer with contact information data in its possession regarding the relevant retired member, survivor, or beneficiary so that the employer can fulfill its obligations.
- 13) Requires CalSTRS to recover an overpayment from a member or former member, participant or former participant, beneficiary, an employer, or county superintendent of schools, as applicable and provided, except an overpayment due to an error by CalSTRS.
- 14) Prescribes the timeframe in which an employer is required to remit an overpayment to CalSTRS and certain actions by the State Controller to reduce subsequent payments from the State School Fund or to the county for deposit in the county school service fund, or to a school district for deposit in the district general fund, by the same amount owed to the system, if the employer fails to remit payment within that timeframe, as provided.

### COMMENTS

#### 1. Background on CalSTRS

The California State Teachers' Retirement System, better known by its acronym, CalSTRS, is the largest teachers' retirement system and second largest public pension fund in the nation. In essence, CalSTRS' function is to receive regular contributions from California's public teachers, pool these funds, invest them, and pay out benefits back to those teachers when they become eligible. CalSTRS states that it provides retirement, disability, and survivor benefits to more than 949,000 public school educators and their families.

2. The problem the bill is intended to address

CalSTRS' system for properly calculating the contributions given and benefits owed to each California teacher is complex. Furthermore, as the employers of the teachers the local education districts act as intermediaries. The districts deduct CalSTRS contributions from teachers' pay and provide CalSTRS with information about each teachers' service. (See Sen. Com. on Labor, Public Employment and Retirement Analysis of AB 1667 (2021-2022 Reg. Sess.) as amended on May 19, 2022, at p. 6-8 for details of how this system works.)

Naturally, mistakes get made in this process. Sometimes these are simple accounting errors; other times the calculations are correctly made, but later turn out to be based on interpretations of law or policy that change or later turn out to be flawed. When such mistakes are made, they may need to be rectified.

The upshot of all of this is that from time to time former teachers who have been contentedly living out their retirement on the understanding that they will receive regular payments from CalSTRS of a certain amount are informed that they have been overpaid, that their future benefits may be reduced and/or that they may owe a lump sum payment. Of course, the retiree may well have organized their plans and finances relying on the higher payment amount. Understandably, many retirees facing this situation are deeply upset.

3. Components of the proposed solution

To address this problem, this bill proposes a seven part solution. As summarized by the author, those seven components would: (1) ensure retired members are not held liable for prior overpayments, except in cases of fraud or intentional misrepresentation by the member; (2) establish a penalty to be paid by the former employer or CalSTRS (whichever party the mistake is attributable to) that partially replaces the retired member's benefit reduction; (3) hold CalSTRS accountable for reporting guidance to an employer and bargaining unit, which CalSTRS later determines to be erroneous; (4) require that CalSTRS regularly update an official guidance document governing employer reporting; (5) clarify that any changes to CalSTRS' interpretation of creditable compensation laws must be preceded by prior notice; (6) require that CalSTRS publish all audit reports on their website; and (7) ensure that CalSTRS' appeal process allows all individuals impacted by an audit the right to appeal.

4. Appropriate protections for privacy

The principal policy matter drawing this bill into the purview of the Judiciary Committee is the inclusion of a provision that restricts public access to information in Section 6 of the bill.

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 6250.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide gen. elec.),<sup>1</sup> which amended the California Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the conduct of the people's business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) Additionally, it required a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).) A public record is defined as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 6252(e).)

This bill mandates CalSTRS to post the final report on its website upon concluding the audit of an employer. This is intended to increase public transparency regarding how compensation reporting rules are being followed and to shed light on the administration of CalSTRS more generally. The trouble is that these audits may often contain personal information about individual teachers: their names, service credits, and compensation levels, at a minimum, but perhaps other personal information as well, depending on the substance of the audit. With this in mind the bill admonishes CalSTRS to exclude "personal information regarding members... to the extent necessary to protect their privacy." Although this places a limitation on public access to information, in light of the important privacy issues implicated by the information in the audit report, this limitation seems warranted.

##### 5. Arguments in support of the bill

According to the author:

Existing law requires school and community college employers to correctly report pension eligible compensation to CalSTRS. Unfortunately, clear and accurate guidance on what is, and what is not, creditable has not always been provided. This has sometimes led to retirees benefits being modified after retirement, sometimes years later. In some cases the retiree has had to pay back the overpaid amount and suffer a permanent reduction in future retirement payments. AB 1667 seeks to remedy this issue by ensuring retired members are not held liable for overpayments except in cases of "member error" and requiring CalSTRS to regularly update guidance documents to the employer.

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<sup>1</sup> Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004).



As sponsors of the bill, the California County Superintendents Educational Services Association, the California Retired Teachers Association, and the California Teachers Association jointly write:

[AB 1667] will protect a teachers' retirement security by ensuring that any California State Teachers' Retirement System (CalSTRS) retiree will be justly compensated for benefit reductions that stem from employer and CalSTRS reporting errors. This important measure will additionally create a more transparent and accountable system to ensure school and community college districts receive timely and accurate information from CalSTRS, reducing the likelihood of reporting mistakes in the future. Employer reporting errors or changes to CalSTRS interpretations can have significant consequences on retirees by throwing their entire living situation into disarray; it throws a retirees' life into turmoil as their entire retirement plans are eliminated by an unexpected pension cut.

#### SUPPORT

California County Superintendents Educational Services Association (sponsor)

California Retired Teachers Association (sponsor)

California Teachers Association (sponsor)

Alameda County Office of Education

Amador County Unified School District

Association of California School Administrators

Association of California Community College Administrators

Association of California School Administrators

Calaveras County Office of Education

California Alliance for Retired Americans

California Association of School Business Officials

California Association of School Business Officials (CASBO)

California Association of Suburban School Districts

California Federation of Teachers, AFL-CIO

California Labor Federation, AFL-CIO

California School Employees Association

Colusa County Office of Education

Contra Costa County Office of Education

Delta Kappa Gamma California

El Dorado County Office of Education

Faculty Association of California Community Colleges

Fresno County Office of Education

Fresno County Superintendent of Schools

Humboldt County Office of Education

Imperial County Office of Education  
Kern County Office of Education  
Kern County Superintendent of Schools  
Lake County Office of Education  
Lassen County Office of Education  
Los Angeles County Office of Education  
Madera County Office of Education  
Marin County Office of Education  
Mariposa County Unified School District  
Mendocino County Office of Education  
Merced County Office of Education  
Mono County Office of Education  
Monterey County Office of Education  
Napa County Office of Education  
Nevada County Superintendent of Schools  
Orange County Department of Education  
Placer County Office of Education  
Plumas County Office of Education/Unified School District  
Riverside County Superintendent of Schools  
Sacramento County Office of Education  
San Benito County Office of Education  
San Bernardino County Superintendent of Schools  
San Diego County Office of Education  
San Joaquin County Office of Education  
San Mateo County Office of Education  
Santa Barbara County Education Office  
Santa Clara County Office of Education  
School Employers Association of California  
Small School District's Association  
Solano County Office of Education  
Tehama County Office of Education  
Trinity County Office of Education  
Tuolumne County Superintendent of Schools  
Ventura County Office of Education  
Yolo County Office of Education  
Yuba County Office of Education

#### **OPPOSITION**

None known

#### **RELATED LEGISLATION**

Pending Legislation: AB 2493 (Cooper) limits the amount that law enforcement and firefighters can be charge for overpayments resulting from errors for which the

employee was not at fault. AB 2493 is currently pending consideration before this Committee.

Prior Legislation:

SB 278 (Leyva, Ch. 331, Stats. 2021) provided that, when a retiree's CalPERS pension is reduced post-retirement, due to the inclusion of compensation agreed to under a collective bargaining agreement that is later determined to be nonpensionable, the public employer must cover the difference between the pension as originally calculated and as reduced by CalPERS.

SB 2682 (Green, Ch. 739, Stats. 1988) set a three-year limitation of actions by or against CalSTRS for adjustments of errors or omissions for purposes of payments into or out of the retirement fund and provided for the application of that period to erroneous payments.

AB 3191 (Bannai, Ch. 314, Stats. 1978) authorized the board to assess penalties and interest for late or improper adjustments and required employers to reimburse the system for any disbursements that were made as a result of erroneous employer information.

AB 169 (Barnes, Ch. 1004, Stats. 1971) changed the period of limitation for actions based on erroneous payments by retirees and beneficiaries to commence from the date of payment.

**PRIOR VOTES:**

Senate Labor, Public Employment and Retirement Committee (Ayes 4, Noes 0)

Assembly Floor (Ayes 75, Noes 0)

Assembly Appropriations Committee (Ayes 12, Noes 0)

Assembly Public Employment and Retirement Committee (Ayes 6, Noes 0)

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