



|      |                  |                |              |                 |                  |              |
|------|------------------|----------------|--------------|-----------------|------------------|--------------|
| Home | Bill Information | California Law | Publications | Other Resources | My Subscriptions | My Favorites |
|------|------------------|----------------|--------------|-----------------|------------------|--------------|

**AB-1667 State Teachers' Retirement System: administration.** (2021-2022)

SHARE THIS:  

Date Published: 10/03/2022 02:00 PM

**Assembly Bill No. 1667**

**CHAPTER 754**

An act to amend Sections 24616 and 24617 of, to add Sections 22132.5, 22206.1, 22206.2, 22206.3, 22206.4, 22206.5, 22325, 22326, 23012, and 24616.2 to, and to repeal Section 24616.5 of, the Education Code, and making an appropriation therefor, relating to teachers' retirement.

[ Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1667, Cooper. State Teachers' Retirement System: administration.

The California Constitution grants the retirement board of a public pension or retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the system, as specified. Existing law, the Teachers' Retirement Law, establishes the State Teachers' Retirement System (STRS) and creates the Defined Benefit Program of the State Teachers' Retirement Plan, which provides a defined benefit to members of the program, based on final compensation, credited service, and age at retirement, subject to certain variations. STRS is administrated by the Teachers' Retirement Board (board). Existing law also creates the Cash Balance Benefit Program, which is administered by the board, to provide a retirement plan for the benefit of participating employees who provide creditable service for less than 50% of full time. Existing law authorizes the board to audit, or cause to be audited, the records of any public agency as often as it deems necessary.

This bill would prescribe various requirements and duties in connection with audits of public agencies by the board. The bill would require the board to provide written notice of an intended audit to the affected public agency and to the exclusive representative of the members affected by the audit. The bill would require this notice to apprise the public agency and the exclusive representative of the purpose and scope of the intended audit. The bill would define "exclusive representative" for purposes of STRS. The bill would require the public agency to provide information requested by the board in a timely manner and, at that time, to also provide the information to the exclusive representative of the members affected by the audit. The bill would authorize an audited public agency and the exclusive representative of affected members to provide the board information relevant to the audit, and would require the board to consider this information in preparing its audit findings. The bill would require the board to provide to the audited public agency and the exclusive representative of the affected members the preliminary audit findings, the statutes being addressed by the audit, and a list of every member known to be affected. The bill would authorize recipients to provide the board written responses to the preliminary audit findings and would require the board to consider the responses in preparing its final audit report. The bill would require the public agency to provide, as specified, the board and the exclusive representative a list of the names of any member affected by the audit not included in the board's list.

This bill would require the board to provide the final audit report to an audited public agency, to the exclusive representative or representatives of members affected by the audit, and to the affected members, with an explanation of their appeal rights. The bill would authorize the public agency and the affected members to request administrative hearings if they disagree with the final

audit and would prescribe a process for this purpose. The bill would require STRS to make all final employer audit reports available on its internet website, as specified.

Existing law prescribes various rights and duties of the board to administer STRS. Existing law generally prohibits adjustments in new rates of contribution adopted by the board on the basis of an investigation, valuation, and determination or because of an amendment to the Teachers' Retirement Law with respect to the Defined Benefit Program, for time prior to the effective date of the adoption or amendment. Existing law prohibits an action of the board, other than for correction of errors in calculating the allowance or annuity at the time of retirement, disability, or death of a member, from changing the allowance or annuity payable to a retired member or beneficiary prior to the date the action is taken.

This bill would require STRS to provide resources, at least annually, that interpret and clarify the applicability of creditable compensation and creditable service laws. The bill would prohibit new interpretations, including those that would modify prior interpretations, from taking effect until after notice is issued to employers and exclusive bargaining representatives and would prohibit retroactive application to compensation reported prior to that notice, unless that is expressly required by state or federal law, or an executive order of the Governor, and would generally require application on July 1, following the notice. The bill would state that for audits and other actions, including actions and penalties relating to disallowed compensation reporting, employers are responsible for the rules in effect at time the compensation is reported, except when specified. If compensation reported in accordance with these provisions is later determined by the system to have been reported in error, the bill would require the resulting overpayment to be recovered, as specified.

The bill, beginning July 1, 2023, would authorize an employer or an exclusive representative to submit to STRS a request for an advisory letter, which would be defined as a written determination relating to compensation that is included or proposed for inclusion in a publicly available written contractual agreement for review by the system in order to provide formal written guidance for the proper reporting of such compensation, as specified. The bill would prescribe a process in this regard, which would include requiring the system to provide an advisory letter within 30 days of the receipt of all information requested by the system, except as specified. The bill would specify that an advisory letter may be superseded by state or federal law, an executive order of the Governor, or a system rule. If compensation reported in accordance with a system advisory letter given pursuant to these provisions is later determined by the system to have been reported in error, as specified, the bill would require any resulting overpayment or penalty to be deemed an error by the system and would require that it be recovered, pursuant to a specified process. The bill would limit the use, as specified, of an advisory letter to the employer or the member to whom an advisory letter expressly relates.

Existing law requires an employer to deduct from the creditable compensation of members who are employed by the employer the member contributions required by the Teachers' Retirement Law and to remit them to the system plus required employer contributions. Existing law requires a county superintendent of schools, among others, that reports directly to the system to draw requisitions for required contributions, as specified, in favor of STRS, and the requisitions, when allowed and signed by the county auditor, are a warrant against the county treasury. Existing law requires the board to assess penalties if required contributions are not paid or if specified monthly reports are not made or are made in an improper form. Existing law creates the county school service fund and prescribes the expenses to which it may be applied. Existing law generally prohibits expending moneys in the fund for any purpose in excess of the latest proposed expenditures for a purpose as approved by the Superintendent of Public Instruction, as specified. Existing law generally requires a county auditor to approve warrants drawn on the service fund for expenses approved in the county school service fund budget.

This bill would authorize the county superintendent of schools to draw requisitions against the county school service fund and the funds of the respective employing agencies for the purpose of making certain payments to STRS, as specified, in amounts equal to employing agency payments or for the purpose of recovering specified amounts paid that are the responsibility of employers.

Existing law generally authorizes the board, in its discretion and upon any terms it deems just, to correct the errors or omissions of a member or beneficiary of the Defined Benefit Program, and of any participant or beneficiary of the Cash Balance Benefit Program, if specified facts exist. Under existing law, the failure by a member, participant or beneficiary to make an inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an error or omission. Existing law requires that any overpayment made to, or on behalf of, any member, former member, or beneficiary be deducted from any subsequent benefit that may be payable, except as specified.

This bill would revise the requirement to deduct, as described above, to except from its application amounts overpaid in a variety of situations and instead require that overpaid amounts be recovered from the member, participant, former member, former participant, or beneficiary, subject to specified exceptions. The bill would prescribe requirements for the recovery of these amounts. Commencing July 1, 2024, the bill would require that amounts overpaid due to an error by the system be recovered pursuant to a continuous appropriation from the General Fund and from employers reporting to the system, as specified. In this regard, the bill would require that 85% of the amounts resulting from benefit adjustments that take place in the fiscal year ending in the immediately preceding calendar year, the specific amount of which would be determined by the board, be made as a

continuous appropriation from the General Fund for transfer to the Teachers' Retirement Fund. The bill would require that the remaining 15% of these amounts be collected from all employers that report directly to the system in amounts proportionate to their share of contributions, as specified, including the contributions of those employers for whom a county superintendent of schools reports. The bill would authorize a county superintendent of schools to recover certain funds from employers, as specified. The bill would require the amounts recovered to include regular interest, which is defined for purposes of the Teachers' Retirement Law. The bill would require the Controller, in certain circumstances, upon the order of the board, to reduce payments from the State School Fund to a county for deposit in the county school service fund or, upon the request of a county superintendent of schools to the county auditor. The bill would require the Controller to reduce payments to a school district for deposit in the district general fund by the amount owed. The bill would require the Controller to then pay specified amounts owed for deposit in the Teachers' Retirement Fund. The bill would except certain recoveries and benefit adjustments from these requirements.

Existing law requires STRS, if an employer reports erroneous information, to calculate the actuarial present value of the expected payments from the member, the former member, or beneficiary, as specified, and requires the employer to pay the difference between the total amount of the overpayment and the calculation of the actuarial present value of expected payments.

This bill would delete that provision.

Existing law limits the amounts by which STRS may reduce retirement allowances and benefit payments to recover an amount overpaid under the Defined Benefit Program, the Defined Benefit Supplement Program, or the Cash Balance Benefit Program to no more than 5% if the overpayment was due to an error by the system. In this context, existing law limits reductions to 15% for errors due to inaccurate information or nonsubmission of information by the recipient of the allowance or benefit.

This bill would delete the above-described limitation on reductions for overpayments due to errors by the system. The bill would also make various changes in these provisions to conform with other revisions the bill would make, as described above.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: 2/3 Appropriation: yes Fiscal Committee: yes Local Program: no

---

## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 22132.5 is added to the Education Code, to read:

**22132.5.** "Exclusive representative" means an exclusive representative as defined in subdivision (e) of Section 3540.1 of the Government Code.

**SEC. 2.** Section 22206.1 is added to the Education Code, to read:

**22206.1.** (a) Before auditing, or causing to be audited, the records of a public agency pursuant to Section 22206, the board shall provide written notice of the intended audit to the affected public agency as well as to the exclusive representative or representatives, if any, of members that may be affected by the audit, and this notice shall apprise the public agency and the exclusive representative or representatives, if any, of the purpose and scope of the intended audit. For purposes of carrying out the provisions of this section and Section 22206.2, the public agency shall be responsible for providing the board with the name and contact information for all applicable exclusive representatives.

(b) An audited public agency shall cooperate in good faith with the board and provide all information requested by the board in a timely manner. The public agency, at the time it provides information to the board, shall also provide all the information to the exclusive representative or representatives, if any, of the members affected by the audit.

(c) An audited public agency and the exclusive representative or representatives, if any, of the members affected by the audit may provide the board with additional information relevant to the audit, and the board shall consider this information in preparing its audit findings.

(d) Prior to issuing its final audit report, the board shall provide to the audited public agency and to the exclusive representative or representatives, if any, of the members affected by the audit, the preliminary audit findings, the statutes being addressed by the audit, and a list of every member then known by the board to be affected by the audit. Within a period to be specified by the board, which shall not be less than 60 days, the recipients may provide the board their written responses to the preliminary audit findings and the board shall consider their responses in preparing its final audit report.

(e) Within a period specified by the board of not less than 60 days, the public agency shall provide the board and the exclusive representative a list of the names of any members affected by the audit not included in the list provided by the board pursuant to subdivision (d).

(f) Except as provided in this section, this section does not confer additional rights upon the exclusive representative, including, but not limited to, due process rights.

**SEC. 3.** Section 22206.2 is added to the Education Code, to read:

**22206.2.** (a) The board shall provide the final audit report to the public agency audited pursuant to Section 22206 and to the exclusive representative or representatives, if any, of the members affected by the audit, and shall provide the audited public agency with an explanation of its appeal rights pursuant to Section 22206.3.

(b) Following the notification by the public agency of the members affected by the audit pursuant to subdivisions (d) and (e) of Section 22206.1, the board shall provide the final audit report, with an explanation of appeal rights pursuant to Section 22206.4, to each member affected by the audit.

(c) If a member is later known to have been affected by an audit, the board shall provide a copy of the final audit report and an explanation of appeal rights pursuant to Section 22206.4 to that member or former member, or their beneficiaries if the member or former member is deceased.

(d) Except as provided in this section, this section does not confer additional rights upon the exclusive representative, including, but not limited to, due process rights.

**SEC. 4.** Section 22206.3 is added to the Education Code, to read:

**22206.3.** (a) If the public agency audited pursuant to Section 22206 disagrees with the final audit report, it may request an administrative hearing pursuant to Section 22219. The request shall be made in writing and be mailed or emailed to the address identified in the final audit report within 90 days of the board's transmission of the final audit report to the public agency as provided in Section 22206.2.

(b) If the audited public agency fails to request an administrative hearing within the time provided in subdivision (a), the right to an administrative hearing shall be deemed waived, and the findings of the final audit report shall be deemed the board's final determination as to that public agency.

**SEC. 5.** Section 22206.4 is added to the Education Code, to read:

**22206.4.** (a) If a member affected by an audit disagrees with the final audit report, the member may request an administrative hearing pursuant to Section 22219. The request shall be made in writing and be mailed or emailed to the designated address identified in the final audit report within 90 days of the board's transmission of the final audit report to the member, as provided in Section 22206.2.

(b) If a member affected by the audit fails to request an administrative hearing within the time provided in subdivision (a), the member's right to an administrative hearing shall be deemed waived, and the findings of the final audit report shall be deemed the board's final determination as to that member.

**SEC. 6.** Section 22206.5 is added to the Education Code, to read:

**22206.5.** The system shall make all final employer audit reports available on its internet website. Personal information regarding members shall be excluded to the extent necessary to protect their privacy.

**SEC. 7.** Section 22325 is added to the Education Code, to read:

**22325.** (a) The system, at least annually, shall provide resources that interpret and clarify the applicability of creditable compensation and creditable service laws in this part and regulations promulgated pursuant to this part.

(b) (1) New or different interpretations, including those that would modify the application of prior interpretations, whether in the resources described in subdivision (a) or regulations or an employer information circular or similar means, shall not take effect until after notice is issued to employers and exclusive representatives and shall not be applied retroactively to compensation reported prior to that notice, unless a retroactive interpretation is expressly required by state or federal law or an executive order of the Governor.

(2) The changes described in paragraph (1) shall not be applicable before the next July 1, unless changes to state or federal law, an executive order of the Governor, an advisory letter provided pursuant to Section 22326, or programs require application of revision of the creditability of compensation on an earlier basis.

(c) For purposes of audits or any other actions by the system, 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 of the Governor. If compensation reported in accordance with the system's rules pursuant to this section is later determined by the system to have been reported in error, the resulting overpayment shall be deemed an error by the system and shall be recovered pursuant to paragraph (4) of subdivision (a) of Section 24616.2.

**SEC. 8.** Section 22326 is added to the Education Code, to read:

**22326.** (a) For the purposes of this section:

(1) "Advisory letter" means a written determination issued to an employer or an exclusive representative in response to the employer's or exclusive representative's submission relating to compensation that is included, or is proposed to be included, in a publicly available written contractual agreement in order for the system to provide formal written guidance for the proper reporting of such compensation consistent with the laws governing creditable compensation and the administrative regulations of the system.

(2) "Material facts" means facts that would have changed the determination made in an advisory letter.

(b) An employer or an exclusive representative may submit to the system a request for an advisory letter.

(c) (1) A submission to the system under subdivision (b) shall be in writing on a form provided by the system and shall include the compensation language, a description of the facts related to the compensation language and the basis of the requesting party's inquiry, including, but not limited to, specific questions about the reporting of the compensation, and any other supporting documents or requirements the system deems necessary to complete its review.

(2) A submission to the system may be denied if it involves an issue that is in litigation with the system and the employer or a member to whom the advisory letter would expressly relate.

(3) A submission to the system may be withdrawn by the employer or exclusive representative at any time before an advisory letter is provided.

(d) (1) The system shall provide an advisory letter regarding the submission to the employer or exclusive representative within 30 days of the receipt of all information requested by the system, unless an extended period of time is necessary for good cause.

(2) An advisory letter may be superseded by state or federal law, an executive order of the Governor, or a rule pursuant to Section 22325.

(e) If compensation reported in accordance with the system's advisory letter provided pursuant to this section is later determined by the system to have been reported in error by the employer or on behalf of a member to whom the advisory letter expressly relates, the resulting overpayment shall be deemed an error by the system and shall be recovered pursuant to paragraph (4) of subdivision (a) of Section 24616.2.

(f) Only the employer or a member to whom an advisory letter expressly relates may use and rely upon, or offer as evidence of an error by the system, the advisory letter in an action brought by the system. The use and reliance upon, or the offering in evidence of, an advisory letter shall be contingent on a system determination that all material facts related to the compensation were disclosed in the submission and the employer reported compensation in reliance on the advisory letter.

(g) This section shall become operative on July 1, 2023.

**SEC. 9.** Section 23012 is added to the Education Code, to read:

**23012.** (a) For the purpose of remitting contributions, assessments, or any other payment required by the system, the county superintendent of schools that reports directly to the system may, on an annual basis or as otherwise directed by the system, draw requisitions against the county school service fund and the funds of the county's respective employing agencies in amounts equal to the total required to be paid by the employing agency.

(b) Additionally, the county superintendent of schools may draw requisitions against the county school service fund and the funds of the county's respective employing agencies, as applicable, in amounts necessary for recovering payments made pursuant to Section 24616.2.

**SEC. 10.** Section 24616 of the Education Code is amended to read:

**24616.** 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, shall be deducted from any subsequent benefit that may be payable under either the Defined Benefit Program, the Defined Benefit Supplement Program, or the Cash Balance Benefit Program, except as provided in Section 24616.2. These deductions shall be permitted concurrently with any suit for restitution, and recovery of overpayment by adjustment shall reduce by the amount of the recovery the extent of liability for restitution.

**SEC. 11.** Section 24616.2 is added to the Education Code, to read:

**24616.2.** (a) Except as limited pursuant to Section 22008:

(1) All amounts that have been overpaid due to inaccurate information, untimely submission, nonsubmission of information, or on the basis of fraud or intentional misrepresentation by, or on behalf of, a recipient of a benefit, annuity, or refund shall be recovered, as applicable, from the member, participant, former member, former participant, or beneficiary. This paragraph excludes amounts overpaid pursuant to paragraph (2), (3), or (4).

(2) All amounts that have been overpaid due to inaccurate information, untimely submission, or nonsubmission of information by an employer that reports directly to the system shall be recovered, as applicable, from that employer.

(3) All amounts that have been overpaid due to inaccurate information, untimely submission, or nonsubmission of information by a county superintendent of schools that reports directly to the system on behalf of an employer shall be recovered, as applicable, from that county superintendent of schools. If the overpayment resulted from an error of an employer, the county superintendent of schools may recover the amounts required from that employer pursuant to Section 23012.

(A) If the county superintendent of schools provided notice to, and received consent from, an employer to submit that employer's monthly report, inclusive of any modifications by the county superintendent of schools on behalf of the employer, an overpayment due to inaccurate information shall be considered an error of that employer.

(B) If the untimely submission or nonsubmission of information was the result of the employer's untimely submission or nonsubmission of information, the overpayment shall be considered an error of the employer.

(4) (A) All amounts that have been overpaid due to an error by the system shall be recovered, with interest as specified in subparagraph (B), as follows:

(i) Commencing July 1, 2024, 85 percent of this amount resulting from benefit adjustments that take place within the fiscal year ending in the immediately preceding calendar year, the specific amount of which shall be determined by the board, shall be made as a continuous appropriation from the General Fund to the Controller each July 1 for transfer to the Teachers' Retirement Fund.

(ii) Commencing July 1, 2024, 15 percent of this amount resulting from benefit adjustments that take place within the fiscal year ending in the immediately preceding calendar year, the specific amount of which shall be determined by the board, shall be recovered from all employers that report directly to the system in amounts proportionate to their share of contributions for that fiscal year, including the contributions of those employers for whom a county superintendent of schools reports. A county superintendent of schools that reports directly to the system on behalf of employers may recover amounts proportionate to each employer's share of contributions for that fiscal year from those employers pursuant to Section 23012.

(B) The amount to be recovered in accordance with subparagraph (A) shall be calculated to include regular interest from the date of the overpayment to the date of recovery.

(b) (1) An employer shall remit any amount required to be paid to the system pursuant to this section within 30 days of the date of the invoice. If the system does not receive payment within 30 days, the amount owed to the system shall be recalculated to include regular interest from the initial due date.

(2) If a payment pursuant to paragraph (1) is not received within 30 days of the date of invoice, the Controller shall, upon the order of the board, reduce subsequent payments from the State School Fund to the county for deposit in the county school service fund by the amount owed or, upon the request of a county superintendent of schools to the county auditor, the Controller shall reduce payments to a school district for deposit in the district general fund by the amount owed. The Controller shall then pay to the system the amount owed for deposit in the Teachers' Retirement Fund.

(c) This section shall not apply to a recovery made under Section 24015, 24016, or 24017 or to a benefit or allowance reduction required pursuant to Section 24010, 24109, 24114, 24201.5, 24214, or 24214.5.

(d) Except as explicitly provided by its provisions, this section shall not be interpreted to limit the system's authority to correct benefits.

**SEC. 12.** Section 24616.5 of the Education Code is repealed.

**SEC. 13.** Section 24617 of the Education Code is amended to read:

**24617.** (a) To recover an amount overpaid under this part or Part 14 (commencing with Section 26000), as determined pursuant to Section 24616.2, the system shall correct the benefit, annuity, or refund, and the corrected monthly allowance payable under the Defined Benefit Program or the corrected annuity benefit payable under the Defined Benefit Supplement Program or the Cash Balance Benefit Program may be reduced by no more than 15 percent if the amount overpaid was due to inaccurate information or nonsubmission of information by, or on behalf of, a recipient of the allowance or annuity benefit, not including an error by the system, a county superintendent of schools, or an employer.

(b) This section does not apply to the collection of overpayments due to fraud or intentional misrepresentation of facts by the recipient of the allowance or benefit.

**SEC. 14.** The Legislature finds and declares that Section 6 of this act, which adds Section 22206.5 to the Education Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

This act strikes a balance between providing transparency concerning compensation reporting rules and the privacy of individuals.