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**SB-432 Teachers' retirement.** (2023-2024)

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**Senate Bill No. 432**

**CHAPTER 215**

An act to amend Sections 22325, 22326, 24616.2, and 24617 of the Education Code, relating to teachers' retirement, and making an appropriation therefor.

[ Approved by Governor September 22, 2023. Filed with Secretary of State September 22, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 432, Cortese. Teachers' retirement.

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. Existing law creates the Cash Balance Benefit Program to provide a retirement plan for the benefit of participating employees who perform creditable service for less than 50% of full time.

Existing law commits the administration of STRS and its defined benefit program and the Cash Balance Benefit Program to the Teachers' Retirement Board (board). 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.

Existing law prescribes various duties for STRS, as well as for employers participating in the system and members and their beneficiaries, in connection with law relating to the applicability of creditable compensation and creditable service. Existing law, for purposes of audits or other system actions, requires that employers be responsible for the rules in effect at the time the compensation is reported, except when expressly superseded by state or federal law or an executive order of the Governor. Existing law also requires STRS to annually provide resources that interpret and clarify the applicability of creditable compensation and service pursuant to its laws and regulations.

This bill would require STRS to identify and provide those resources on its website. The bill would require those identified resources to be relied upon and used for purposes of audits and other actions related to compliance by employers, unless the resource is revoked or superseded.

Under existing law, new or different interpretations related to creditable compensation and service do not take effect until after notice is issued to employers and exclusive representatives. Existing law prohibits a new or different interpretation from being 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.

This bill would revise the above provision to specify that it applies to new or different interpretations of law, including those that differ from the resources identified by STRS. The bill, with respect to retroactivity, would instead allow for a retroactive interpretation if it is the result of a state or federal law, executive order of the Governor, or final court order.

Existing law requires that, if compensation is reported in accordance with STRS rules and is later determined by STRS to have been reported in error, the resulting overpayment be deemed to be an error by STRS. Existing law requires that overpayments made due to an error by STRS be recovered pursuant to a specified process, and a portion of this recovery is funded by a continuous appropriation from the General Fund.

This bill would revise those provisions to instead provide that if STRS later determines that compensation reported in accordance with the system's identified resources has been reported in error as a result of an error in those resources, the resulting overpayment to the individual member, former member, or beneficiary shall be deemed an error of STRS and subject to that specified recovery process. The bill would require a determination of an amount that has been overpaid be provided in writing by STRS to the party responsible for the overpayment. The bill would further require STRS to identify the error, document its source, and specify the total amount overpaid due to the error. By broadening the circumstances that may lead to recovery pursuant to the above-described continuous appropriation, this bill would make an appropriation.

Existing law also prohibits those changes in interpretations from applying before the next July 1, unless changes to state or federal law, an executive order of the Governor, an advisory letter, or programs require application or revision of the creditability of compensation on an earlier basis.

This bill would delete the prohibition against changes in interpretations applying before the next July 1.

Existing law authorizes an employer or an exclusive labor representative to submit a request to STRS for an advisory letter, which is a written determination issued by STRS for purposes of providing formal written guidance to that employer or representative relating to the proper reporting of compensation in a publicly available agreement, consistent with laws governing creditable compensation. Existing law provides that an advisory letter may be superseded by a state or federal law, executive order of the Governor, or rule, as prescribed. These provisions require, if compensation that is reported in accordance with the advisory letter is later determined by STRS to have been reported in error, that a resulting overpayment be deemed an error by the system.

This bill would delete the above-described reference to an advisory letter being superseded by rule, and would instead provide that it may be superseded by an identified resource, and also by a final court order. The bill would also revise the related reporting provisions to instead provide that if STRS later determines that specific compensation reported in accordance with its advisory letter has been reported in error by the employer identified in the advisory letter as a result of an error in the advisory letter, the resulting overpayment to the individual member, former member, or beneficiary would be deemed an error by STRS. The bill would make other conforming changes to these provisions, including specifying that the advisory letter relates to specific compensation language and only to the employer identified in the advisory letter.

Existing law requires STRS, to recover an amount overpaid under the Teachers' Retirement Law or the State Teachers' Retirement System Cash Balance Benefit Program, to correct the benefit, annuity, or refund, and the corrected allowance or annuity benefit payable, by no more than 15% if the amount overpaid was due to inaccurate information or nonsubmission thereof by or on behalf of a recipient of the allowance or annuity benefit, not including an error by STRS, a county superintendent of schools, or an employer.

This bill would revise that provision to expressly apply to recovery of an overpayment from a member, participant, former member, former participant, or beneficiary. The bill would instead provide for recovery under these circumstances due to inaccurate information, untimely submission, or nonsubmission of information by or on behalf of a recipient of the allowance or annuity benefit. The bill would also provide that amendments to this provision enacted during the 2nd year of the 2021–22 Regular Session shall apply when the system notifies a member, participant, former member, former participant, or beneficiary of a benefit adjustment on and after January 1, 2023.

The bill would also make clarifying and conforming changes.

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

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

### **SECTION 1.** Section 22325 of the Education Code is amended to read:

**22325.** (a) The system, at least annually, shall identify and provide resources on its website that interpret and clarify the applicability of creditable compensation and creditable service laws in this part and regulations promulgated pursuant to this part. Resources identified by the system shall be relied upon and used for purposes of subdivision (c) until and unless such a resource is revoked or superseded by the system.

(b) New or different interpretations of law, including those that would modify the application of prior interpretations, that differ from the resources identified by the system pursuant to subdivision (a) 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 the result of a state or federal law, an executive order of the Governor, or a final court order.

(c) For purposes of audits or any other actions by the system, employers are responsible for complying with the laws and regulations in effect at the time the compensation is reported, except when such laws or regulations are superseded by state or federal law, an executive order of the Governor, or final court order. If the system later determines that compensation reported in accordance with the system's resources identified pursuant to this section has been reported in error, as a result of an error in those resources, the resulting overpayment to the individual member, former member, or beneficiary shall be deemed an error by the system and shall be recovered pursuant to paragraph (4) of subdivision (a) of Section 24616.2.

**SEC. 2.** Section 22326 of the Education Code is amended 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 specific compensation language 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 specific 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, final court order, or a resource identified pursuant to Section 22325.

(e) If the system later determines that specific compensation reported in accordance with the system's advisory letter provided pursuant to this section has been reported in error by the employer identified in the advisory letter as a result of an error in the advisory letter, the resulting overpayment to the individual member, former member, or beneficiary 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 identified in the advisory letter or a member to whom an advisory letter expressly relates may use and rely upon the advisory letter, or offer the advisory letter as evidence of an error 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 specific compensation were disclosed in the submission and the employer reported that specific compensation in reliance on the advisory letter.

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

**SEC. 3.** Section 24616.2 of the Education Code is amended 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) Determination of an amount that has been overpaid shall be provided in writing by the system to the party responsible for the overpayment pursuant to subdivision (a). The system shall identify the error, document the source of the error, and specify the total amount overpaid due to the error.

(d) 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.

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

**SEC. 4.** Section 24617 of the Education Code is amended to read:

**24617.** (a) To recover from a member, participant, former member, former participant, or beneficiary 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, untimely submission, or nonsubmission of information by, or on behalf of, a recipient of the allowance or annuity benefit.

(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.

(c) The amendments to this section enacted during the second year of the 2021–22 Regular Session shall apply when the system notifies a member, participant, former member, former participant, or beneficiary of a benefit adjustment on and after January 1, 2023.