

AMENDED IN ASSEMBLY APRIL 25, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1949

Introduced by Assembly Member Cedillo

February 23, 2012

An act to add Section 770.4 to the Insurance Code, relating to public employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 1949, as amended, Cedillo. Public employees: annuities and mutual fund custodial accounts.

Existing law prohibits state and local agencies from negotiating life and disability insurance or requiring the placing of that insurance through particular agents, brokers, or companies, except to the extent that the state has a direct financial interest in the subject of the insurance, as specified. Existing law excepts from these provisions a tax-sheltered annuity under an annuity plan that meets the requirements of Section 403(b) of the Internal Revenue Code to be placed or purchased for an employee, as specified. Existing law requires an annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code to be offered to all employees of any state agency who are members of the State Teachers' Retirement Plan, any employee of a local public agency or political subdivision of the state that employs persons to perform creditable service subject to coverage by the plan, and eligible state employees of a state employer under the uniform state payroll system, excluding the California State University System. The Teachers' Retirement Law provides a registration process for information relating to tax-deferred retirement investment products.

This bill would authorize a school district, a community college district, a county office of education, or a charter school to select specific 403(b) products offered by 4 or more vendors of tax-deferred retirement investment products described in Section 403(b) of the Internal Revenue Code, including fixed annuities, variable annuities, and mutual fund custodial accounts, through salary reduction agreements and, if elected by the school district, county office of education, or charter school, through additional employer or employee contributions a due diligence and competitive review process, as specified. The bill would make a related statement of legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature to allow, on a
2 permissive basis, a school district, a community college district,
3 a county office of education, or a charter school the ability to
4 competitively bid their 403(b) programs and structure these
5 programs to do the following:

6 (a) Fully comply with 403(b) regulations and other applicable
7 regulatory guidelines.

8 (b) Enhance retirement savings opportunities for plan
9 participants.

10 (c) Include coordinated communication and education programs
11 designed to support education of employees regarding the benefits
12 of participation in 403(b) plans.

13 (d) Emphasize transparency and disclosure of any potential
14 conflicts of interest in 403(b) plan design and operation to
15 participants and plan sponsors.

16 (e) Offer high-quality investment options with the lowest costs
17 to participants, school districts, community college districts, county
18 offices of education, and charter schools.

19 ~~SECTION 1.~~

20 SEC. 2. Section 770.4 is added to the Insurance Code, to read:

21 770.4. (a) For the purposes of this section, "403(b) product or
22 403(b) products" means payroll-deducted, tax-deferred retirement
23 investment products as described in Section 403(b) of the Internal
24 Revenue Code, ~~and complying that comply~~ with applicable

1 California insurance laws, and federal and California securities
2 laws and rules as applied by appropriate regulatory entities.

3 (b) (1) Notwithstanding Section 770.3 and any other law, a
4 school district, *a community college district*, a county office of
5 education, or a charter school may select *specific 403(b) products*
6 *offered by* four or more vendors of 403(b) products through ~~salary~~
7 ~~reduction agreements and, if elected by the school district, county~~
8 ~~office of education, or charter school, through additional employer~~
9 ~~or employee contributions. The selected vendors shall offer access~~
10 ~~to both of the following: (1) the three broad classifications of~~
11 ~~403(b) products, including fixed annuities, variable annuities, and~~
12 ~~mutual fund custodial accounts, and (2) a range of bundled service~~
13 ~~models, including, but not limited to, direct purchase and services~~
14 ~~of local representatives. The school district, county office of~~
15 ~~education, or charter school may designate one of the selected~~
16 ~~vendors or a third party to provide or facilitate plan compliance~~
17 ~~coordination consistent with the requirements of Section 403(b)~~
18 ~~of the Internal Revenue Code. If a vendor is designated to provide~~
19 ~~that service, the vendor shall agree not to use information obtained~~
20 ~~in the course of providing the service for any other purpose, except~~
21 ~~as expressly authorized by the school district, county office of~~
22 ~~education, or charter school and communicated to each of the other~~
23 ~~403(b) product vendors a due diligence and competitive review~~
24 ~~process, either individually or as part of a joint bidding and~~
25 ~~procurement process.~~

26 (2) *The competitive review process shall include the following*
27 *requirements:*

28 (A) *That prospective vendors not communicate with any member*
29 *of the governing body of the school district, community college*
30 *district, county office of education, or charter school, or the*
31 *committee specified in paragraph (1) of subdivision (c) except in*
32 *an official meeting of the governing body or the committee with*
33 *respect to the competitive review process being undertaken*
34 *pursuant to this section. A violation of this subparagraph shall*
35 *result in disqualification of the prospective vendor from selection.*

36 (B) *That prospective vendors not provide any financial payment*
37 *to any member of the governing body of the school district,*
38 *community college district, county office of education, or charter*
39 *school, or the committee specified in paragraph (1) of subdivision*
40 *(c) for the period of time beginning with the start of the competitive*

1 review process and ending when the contract expires. A violation
 2 of this subparagraph shall result in disqualification of the
 3 prospective vendor from selection.

4 (C) That vendors adhere to any policy adopted by the school
 5 district, community college district, county office of education, or
 6 charter school or the committee specified in paragraph (1) of
 7 subdivision (c) regarding communications and marketing of
 8 financial products to employees of the school district, community
 9 college district, county office of education, or charter school. A
 10 violation of this subparagraph by a vendor shall result in
 11 termination of the contract with the school district, community
 12 college district, county office of education, or charter school.

13 (3) Notwithstanding paragraph (1), an employer of a school
 14 district, a community college district, a county office of education,
 15 or a charter school may continue to make contributions to a 403(b)
 16 product not selected pursuant to paragraph (1) if the employee
 17 purchased or entered into the product before the effective date of
 18 the first contract entered into by his or her employer pursuant to
 19 paragraph (1) and the employee has been continuously employed
 20 by that same employer since the employee purchased or entered
 21 into that product.

22 (c) (1) A school district, a community college district, a county
 23 office of education, or a charter school that has represented
 24 employees shall appoint a committee to make a recommendation
 25 to the governing body regarding the vendors and the products to
 26 be selected pursuant to this section. At least 50 percent of the
 27 committee shall consist of represented employees, as designated
 28 by the exclusive representatives of the employees.

29 (2) A school district, a community college district, a county
 30 office of education, or a charter school with 2,500 or fewer prior
 31 year average daily attendance may adopt the vendor selections of
 32 another school district, community college district, county office
 33 of education, or charter school if that selection was made pursuant
 34 to the requirements of this section.

35 ~~(e) (1) A school district, a county office of education, or a~~
 36 ~~charter school electing to limit the number of 403(b) product~~
 37 ~~vendors available to its employees pursuant to subdivision (b) may~~
 38 ~~do so by either of the following processes:~~

39 ~~(A) Utilizing an objective and competitive bidding and~~
 40 ~~procurement process for the school district, county office of~~

1 ~~education, or charter school, or as part of a joint bidding and~~
2 ~~procurement process, consistent with the public procurement~~
3 ~~guidelines applicable to each school district, county office of~~
4 ~~education, or charter school participating in the process.~~

5 ~~(B) Adopting the vendor selection of another school district,~~
6 ~~county office of education, or charter school, if that selection was~~
7 ~~subject to, or otherwise met, the requirements of subparagraph (A)~~
8 ~~and occurred within the current or preceding three calendar years.~~

9 ~~(2)~~

10 ~~(3) The school district, *community college district*, county office~~
11 ~~of education, or charter school may equitably apportion the costs~~
12 ~~associated with the ~~procurement~~ *due diligence and competitive*~~
13 ~~*review* process to each vendor selected pursuant to the requirements~~
14 ~~of this section.~~

15 ~~(3) A school district, a county office of education, or a charter~~
16 ~~school that includes represented employees shall include those~~
17 ~~employees in the vendor selection process.~~