

AMENDED IN SENATE AUGUST 17, 2015

AMENDED IN SENATE JULY 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1052

Introduced by Assembly Member Cooley

February 26, 2015

An act to amend Sections 22203 and 22257 of the Education Code, and to amend ~~Sections 20172 and 20190~~ *Section 20172* of, and to add Section 20211 to, the Government Code, relating to retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 1052, as amended, Cooley. Retirement board authority: investments.

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. The California Constitution also requires the retirement board of a public pension or retirement system, consistent with the exclusive fiduciary responsibilities vested in it, to 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.

The Teachers' Retirement Law creates the State Teachers' Retirement System for the provision of service, disability, and other benefits to members. The law requires the assets of the plan, including, but not limited to, employee contributions, employer contributions, and investment income, to be deposited into the Teachers' Retirement Fund, and continuously appropriates the fund for, among other things, the

payment of member benefits. The Teachers' Retirement Law authorizes the board to appoint investment managers to manage the assets of the fund.

This bill would specify that, without regard to state contracting laws, the board is authorized to contract for services for the investment of the fund or appoint investment managers to manage the assets of the fund under the terms and conditions and utilizing the processes the board deems necessary and consistent with its fiduciary duties, as specified. The bill would require the board's processes to be competitive, except as elected by the board, as specified.

The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS) and the Public Employees' Retirement Plan for the provision of pension benefits to members. PERL requires the assets of the system, including, but not limited to, employee contributions, employer contributions, and investment income, to be deposited into the Public Employees' Retirement Fund, a continuously appropriated fund. PERL grants the Board of Administration of PERS exclusive control of and fiduciary responsibility for the investment of the fund and authorizes the board to retain a bank or trust company to serve as a custodian for services in connection with the investment of the fund.

This bill would specify that, without regard to state contracting laws, the board of administration is authorized to contract for services with a bank or trust company for those custodial services and to invest the assets of the fund under the terms, conditions, and processes the board deems necessary and consistent with its fiduciary duties and is not required to comply with any law or rule pertaining to state contracting to do so. The bill would require the board's processes to be competitive, except as ~~elected by the board~~, as specified. The bill would specify that the board is authorized to contract with individuals or outside firms with demonstrated expertise in trade order management services in connection with investment of the retirement fund without regard to state contracting laws. The bill would require the board's processes in this regard to be competitive, except as ~~elected by the board~~, as specified.

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

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

SECTION 1. Section 22203 of the Education Code is amended to read:

22203. (a) The board has exclusive control of the investment of the Teachers' Retirement Fund. Except as otherwise restricted by the California Constitution and by law, the board may in its discretion invest the assets of the fund through the purchase, holding, or sale thereof of any investment, financial instrument, or financial transaction when the investment, financial instrument, or financial transaction is prudent in the informed opinion of the board.

(b) Notwithstanding any other law pertaining to state contracting, the board, in exercising its discretion pursuant to this section, may contract for services under the terms and conditions and utilizing the processes the board deems necessary and consistent with its fiduciary duties.

(c) The processes utilized by the board pursuant to subdivision (b) shall be competitive except as elected by the board as follows:

(1) Competitive bids or proposals are not required under subdivision (b) of Section 10340 of the Public Contract Code.

(2) At the time of the contract, an executed contract with an investment manager qualifies that person as an emerging investment manager, as defined by the board. The board shall monitor and assess investment managers selected pursuant to this paragraph in accordance with all other provisions under this part and consistent with its fiduciary duties.

SEC. 2. Section 22257 of the Education Code is amended to read:

22257. (a) Notwithstanding any other law pertaining to state contracting, the board may contract with or appoint one or more investment managers to manage the assets of the retirement fund under the terms and conditions and utilizing the processes the board deems necessary and consistent with its fiduciary duties. In selecting investment managers, the processes utilized by the board shall be competitive, pursuant to subdivision (c) of Section 22203. If the board has acted with care, skill, prudence, and diligence in meeting the requirements of Sections 22252 and 22253 in selecting and monitoring the investment managers, then, notwithstanding Sections 22250, 22252, 22253, 22254, and 22256, no board

1 member shall be liable for the acts or omissions of the investment
2 managers or be under any obligation to invest or otherwise manage
3 any assets of the retirement fund that are subject to the management
4 of the investment managers.

5 (b) Incorporation of the fiduciary duty set forth in Section 22250
6 into the terms of a contract between the system and an investment
7 manager shall be admissible as evidence that the board has acted
8 with care, skill, prudence, and diligence in the selection of the
9 investment manager.

10 SEC. 3. Section 20172 of the Government Code is amended
11 to read:

12 20172. Notwithstanding any other law, the board may retain
13 a bank or trust company to serve as custodian for safekeeping,
14 delivery, securities valuation, investment performance reporting,
15 and other services in connection with investment of the retirement
16 fund. The board, without compliance with any law, rule, provision,
17 or procedure pertaining to state contracting, may enter into
18 agreements, contracts, or other arrangements with a bank or trust
19 company for custodian and custodian-related services under the
20 terms and conditions the board deems necessary and consistent
21 with its fiduciary duties. In selecting a custodian, the processes
22 utilized by the board shall be competitive, ~~pursuant to subdivision~~
23 ~~(e) of Section 20190: except where a competitive bid or proposal~~
24 ~~is not required under subdivision (b) of Section 10340 of the Public~~
25 ~~Contract Code.~~ Notwithstanding Section 13340, all moneys in the
26 fund are continuously appropriated, without regard to fiscal years,
27 for payments which shall be made upon warrants drawn by the
28 Controller upon demands made by the board. Upon demand of the
29 board, warrants shall be drawn for the purpose of making payments
30 by electronic fund transfers.

31 ~~SEC. 4. Section 20190 of the Government Code is amended~~
32 ~~to read:~~

33 ~~20190. (a) The board has exclusive control of the investment~~
34 ~~of the retirement fund. Except as otherwise restricted by the~~
35 ~~California Constitution and by law, the board may, in its discretion,~~
36 ~~invest the assets of the fund through the purchase, holding, or sale~~
37 ~~thereof of any investment, financial instrument, or financial~~
38 ~~transaction when the investment, financial instrument, or financial~~
39 ~~transaction is prudent in the informed opinion of the board.~~

1 ~~(b) In exercising its discretion pursuant to this section, the~~
2 ~~board, without compliance with any law, rule, provision, or~~
3 ~~procedure pertaining to state contracting, may enter into~~
4 ~~agreements, contracts, or other arrangements for the purposes of~~
5 ~~investing or managing the assets of the fund under the terms and~~
6 ~~conditions and processes the board deems necessary and consistent~~
7 ~~with its fiduciary duties.~~

8 ~~(c) The processes utilized by the board pursuant to subdivision~~
9 ~~(b) shall be competitive except as elected by the board as follows:~~

10 ~~(1) Competitive bids or proposals are not required under~~
11 ~~subdivision (b) of Section 10340 of the Public Contract Code.~~

12 ~~(2) At the time of the contract, an executed contract with an~~
13 ~~investment manager qualifies that person as an emerging~~
14 ~~investment manager, as defined by the board. The board shall~~
15 ~~monitor and assess investment managers selected pursuant to this~~
16 ~~paragraph in accordance with all other provisions under this part~~
17 ~~and consistent with its fiduciary duties.~~

18 ~~SEC. 5.~~

19 *SEC. 4.* Section 20211 is added to the Government Code, to
20 read:

21 20211. The board may contract with individuals or outside
22 firms with demonstrated expertise to perform trade order
23 management services in connection with investment of the
24 retirement fund. The board, without compliance with any law,
25 rule, provision, or procedure pertaining to state contracting, may
26 enter into agreements, contracts, or other arrangements for the
27 providing of trade order management services under the terms and
28 conditions the board deems necessary and consistent with its
29 fiduciary duties. In selecting an individual or outside firm for trade
30 order management services, the processes utilized by the board
31 shall be competitive, ~~pursuant to subdivision (c) of Section 20190.~~
32 *except where a competitive bid or proposal is not required under*
33 *subdivision (b) of Section 10340 of the Public Contract Code.*