

AMENDED IN SENATE APRIL 5, 2016

SENATE BILL

No. 1297

Introduced by Senator Pan

February 19, 2016

An act to add Article 5 (commencing with Section 7523) to Chapter 21 of Division 7 of Title 1 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 1297, as amended, Pan. Public employee retirement plans: automatic enrollment and escalation.

~~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.~~

~~Under existing law, public employees may participate in prescribed supplemental defined benefit plans and deferred compensation plans established or maintained by employers.~~

Existing federal law prescribes requirements for different types tax-qualified retirement plans that permit employees to contribute portions of their pre-tax wages to individual retirement accounts or that provide for deferred compensation. Existing law authorizes the Department of Human Resources to establish and administer tax-deferred saving plans in accordance with specified provisions of federal law.

This bill, notwithstanding any other law, would authorize a state or local public employer participating in an employee *supplemental retirement savings* plan, defined to include ~~certain defined benefit plans, specified deferred compensation plans, or plans and payroll deduction~~

individual retirement account plans, to make a deduction from the wages or compensation of an employee for contributions attributable to automatic enrollment and automatic escalation in the employee retirement plan. *The bill would require an employer that provides for automatic enrollment in a supplemental retirement savings to provide a default investment option that meets specified criteria and is either a stable value product or a default investment options, as defined.* The bill would provide that an employer that provides automatic enrollment or automatic escalation in an employee retirement plan is not liable for the investment decisions made by the employer on behalf of any participating employee with respect to the default investment of contributions made for that employee to the plan, if specified requirements are met. *The bill would prohibit an employer from making deductions from the compensation of represented employees in the absence of a collectively bargained memorandum of understanding authorizing those deductions. The bill would also prohibit an employer that makes contributions to an employee retirement plan on behalf of employees from contributing at a greater rate for nonrepresented, managerial, or supervisory employees than that contributed for represented employees who are in related retirement membership classifications, except in specified instances.*

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

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

1 SECTION 1. Article 5 (commencing with Section 7523) is
 2 added to Chapter 21 of Division 7 of Title 1 of the Government
 3 Code, to read:

4
 5 Article 5. Public Employee Retirement Plans: Automatic
 6 Enrollment and Escalation

7
 8 7523. As used in this article:

9 (a) “Automatic enrollment” means an employee *supplemental*
 10 retirement *savings* plan provision under which an employee will
 11 have a specified contribution made to the plan, equal to a
 12 compensation reduction, that will be made for the employee unless
 13 the employee affirmatively elects not to have any compensation
 14 reduction contributions or elects a compensation reduction

1 contribution in an alternative amount, in accordance with the
2 federal Pension Protection Act of 2006 (Public Law 109-280). An
3 employee *supplemental retirement savings* plan may provide for
4 automatic enrollment whether or not the employee *supplemental*
5 *retirement savings* plan elects to provide for automatic escalation.

6 (b) “Automatic escalation” means an employee *supplemental*
7 *retirement savings* plan provision under which an employee’s
8 salary reduction contribution to the plan is increased by a specified
9 amount annually up to the limits imposed by the Internal Revenue
10 Code of 1986, as amended, unless the employee affirmatively
11 elects not to have the automatic escalation amount deducted from
12 compensation or elects an alternative contribution reduction
13 amount.

14 (c) “*Default investment option*” means the investment option
15 in which funds would be invested unless the employee selected an
16 alternative investment option.

17 (e)

18 (d) “Employee *supplemental retirement savings* plan” means a
19 plan described in Sections 401(k) or 403(b), or a governmental
20 deferred compensation plan described in Section 457, or a payroll
21 deduction individual retirement account plan described in Sections
22 408 or 408A, of the Internal Revenue Code of 1986, as amended.

23 (e) “*Stable value product*” means an investment product or
24 fund designed to preserve principal, provide a rate of return
25 generally consistent with that earned on intermediate investment
26 grade bonds, and provide liquidity for withdrawals by participants
27 and beneficiaries, including transfers to other investment
28 alternatives, with both of the following characteristics:

29 (1) It imposes no fees or surrender charges in connection with
30 withdrawals initiated by a participant or beneficiary.

31 (2) It invests primarily in investment products that are backed
32 by state or federally regulated financial institutions.

33 7523.1. (a) This article shall apply to all state and local public
34 employee *supplemental retirement savings* plans and to their
35 participating employers.

36 (b) The administration of this article shall comply with
37 applicable provisions of the Internal Revenue Code and the
38 Revenue and Taxation Code.

39 7523.2. (a) Notwithstanding any other law, and subject to the
40 conforming limitations of Section 7523.4, a state or local public

1 employer participating in an employee *supplemental* retirement
 2 *savings* plan may make a deduction from the wages or
 3 compensation of an employee for contributions attributable to
 4 automatic enrollment and automatic escalation in the employee
 5 *supplemental* retirement *savings* plan, regardless of whether the
 6 plan is subject to the federal Employee Retirement Income Security
 7 Act of 1974, as amended (29 U.S.C. Sec. 1001 et seq.).

8 (b) *An employer that provides for automatic enrollment in a*
 9 *supplemental employee retirement savings plan shall provide a*
 10 *default investment option that shall meet all of the following*
 11 *criteria:*

12 (1) *The default option has been agreed to with affected*
 13 *employees in a memorandum of understanding that has been*
 14 *collectively bargained in accordance with applicable laws. The*
 15 *agreement may identify a specific default investment option or*
 16 *allow the savings plan administrator to select the default*
 17 *investment in compliance with the requirements of this section.*

18 (2) *The default investment is either a qualified default investment*
 19 *alternative, as defined in Section 2550.404c-5 of Title 29 of the*
 20 *Code of Federal Regulations, effective April 30, 2008, or a stable*
 21 *value product.*

22 (3) *The investment option does not impose fees or surrender*
 23 *charges in connection with withdrawals initiated by the plan*
 24 *participant or beneficiary.*

25 (4) *Conditions for fiduciary relief described in Section*
 26 *2550.404c-5 of Title 29 of the Code of Federal Regulations,*
 27 *effective April 30, 2008, are met.*

28 (c) *This section does not modify the fiduciary responsibility of*
 29 *employers or other plan officials for the selection of investment*
 30 *funds, other than the default investment option, for participating*
 31 *employees.*

32 (d) *The default investment option for state employees who*
 33 *participate in the Savings Plus Program shall be the default*
 34 *investment determined by the Savings Plus Program.*

35 ~~(b)~~

36 7523.3. (a) (1) An employer that provides automatic
 37 enrollment or automatic escalation in an employee *supplemental*
 38 retirement *savings* plan is not liable for the investment decisions
 39 made by the employer that are subject to the provisions of Section
 40 7523.2 on behalf of any participating employee with respect to the

1 default investment of contributions made for that employee to the
2 plan, if all of the following requirements are met:

3 (A) The plan provides the participating employee at least
4 quarterly opportunities to select investments for the employee's
5 contributions among investment alternatives available under the
6 plan.

7 (B) The participating employee is given notice of the investment
8 decisions that will be made in the absence of direction from the
9 employee, a description of all the investment alternatives available
10 for employee investment direction under the plan, and a brief
11 description of procedures available for the employee to change
12 investments.

13 (C) The employee is given at least annual notice of the actual
14 default investments made of contributions attributable to the
15 employee.

16 (2) The relief from liability of the employer under this section
17 extends to any employee *supplemental retirement savings* plan
18 official who makes the actual default investment decisions on
19 behalf of participating employees.

20 (e)

21 (b) Nothing in this section modifies any existing responsibility
22 of employers or other plan officials for the selection of investment
23 funds for participating employees.

24 (d)

25 (c) Nothing in this section or any other law shall be construed
26 as authorizing an employer to withhold or divert any portion of an
27 employee's wages to pay any tax, fee, or charge prohibited by
28 Section 50026, whether or not the employee authorizes that
29 withholding or diversion.

30 7523.4. (a) *An employer shall not make deductions from the*
31 *compensation of represented employees, as described in Section*
32 *7523.2, in the absence of a memorandum of understanding*
33 *authorizing those deductions that has been collectively bargained*
34 *in accordance with applicable laws.*

35 (b) *An employer that makes contributions to an employee*
36 *supplemental retirement savings plan on behalf of employees shall*
37 *not contribute at a greater rate to the plan for nonrepresented,*
38 *managerial, or supervisory employees than the employer*
39 *contributes for represented employees who are in related*

1 *retirement membership classifications except if either of the*
2 *following apply:*

3 *(1) The related represented employees have agreed to receive*
4 *a lower rate of contribution in a memorandum of understanding*
5 *that has been collectively bargained in accordance with applicable*
6 *laws.*

7 *(2) The related represented employees have agreed to not*
8 *participate in the employee supplemental retirement savings plan*
9 *in a memorandum of understanding that has been collectively*
10 *bargained in accordance with applicable laws.*