

AMENDED IN SENATE APRIL 19, 2016

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.

Existing federal law prescribes requirements for different types tax-qualified retirement plans that permit employees to contribute portions of their ~~pre-tax~~ *pretax* 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, bill~~ would authorize a state or local public employer participating in an employee supplemental retirement savings plan, defined to include specified deferred compensation 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 *and default investment plan* that meets *a variety of* specified ~~criteria~~

~~and is either a stable value product or a default investment options, as defined: criteria, including providing employees an opportunity to opt out or withdraw.~~ The bill would provide that an employer that provides automatic enrollment or automatic escalation in an employee retirement plan *subject to these provisions* 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: plan.~~ 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 *or other collective bargaining agreement* authorizing those deductions. The bill would also prohibit an employer that makes *employer* contributions to an employee retirement plan ~~on behalf of employees that implements automatic enrollment of escalation~~ 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. *The bill would prohibit vendors for the default investment plan from using that relationship to market other products. The bill would prohibit personnel, including members of governing bodies, acting on behalf of an employer from receiving consideration from a vendor in exchange for the promotion of a vendor product.*

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

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

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

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

(d) *“Default investment plan” means the investment plan that provides the default investment option.*

~~(d)~~

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

~~(e) “Stable value product”~~

(f) *“Capital Preservation Account”* means an investment product or fund designed to preserve principal, ~~provide a rate of return generally consistent with that earned on intermediate investment grade bonds,~~ *principal* and provide liquidity for withdrawals by participants and beneficiaries, including transfers to other investment alternatives, with both of the following characteristics:

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

~~(1) It seeks to maintain, over the term of the investment, the dollar value that is equal to the amount invested.~~

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

1 7523.1. (a) This article shall apply to all state and local public
2 employee supplemental retirement savings plans and to their
3 participating employers.

4 (b) The administration of this article shall comply with
5 applicable provisions of the Internal Revenue Code and the
6 Revenue and Taxation Code.

7 7523.2. (a) ~~Notwithstanding any other law, and subject~~ *Subject*
8 ~~to the conforming limitations of Section 7523.4, this section,~~
9 a state or local public employer participating in an employee
10 supplemental retirement savings plan may make a deduction from
11 the wages or compensation of an employee for contributions
12 attributable to automatic enrollment and automatic escalation in
13 the employee supplemental retirement savings plan, regardless of
14 whether the plan is subject to the federal Employee Retirement
15 Income Security Act of 1974, as amended (29 U.S.C. Sec. 1001
16 ~~et seq.~~ *et seq.*), and under the following conditions:

17 (1) *The deduction from the wages or compensation of an*
18 *employee for contributions attributable to automatic enrollment*
19 *or automatic escalation has been agreed to in a memorandum of*
20 *understanding or other agreement that has been collectively*
21 *bargained in accordance with applicable laws.*

22 (2) *The memorandum of understanding or other collective*
23 *bargaining agreement described in paragraph (1) includes the*
24 *percentage amount of agreed upon employee contributions and,*
25 *if applicable, the amount of automatic escalation and related time*
26 *periods for automatic escalation of employee contributions.*

27 (b) An employer that provides for automatic enrollment in a
28 supplemental employee retirement savings plan shall provide a
29 default investment *plan and default investment* option that shall
30 meet all of the following criteria:

31 (1) The default ~~option~~ *investment plan* has been agreed to with
32 affected employees in a memorandum of understanding *or other*
33 *agreement* that has been collectively bargained in accordance with
34 applicable laws. The agreement may identify a specific default
35 investment option or allow the ~~savings~~ *default investment* plan
36 administrator to select the default investment *option* in compliance
37 with the requirements of this section.

38 (2) The default investment ~~is either~~ *option* is a qualified default
39 investment alternative, as defined in Section 2550.404c-5 of Title

1 29 of the Code of Federal Regulations, effective April 30, 2008,
2 or a stable value product. 2008.

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

6 (4) Conditions for fiduciary relief described in Section
7 2550.404c-5 of Title 29 of the Code of Federal Regulations,
8 effective April 30, 2008, are met.

9 ~~(e) This section does not modify the fiduciary responsibility of~~
10 ~~employers or other plan officials for the selection of investment~~
11 ~~funds, other than the default investment option, for participating~~
12 ~~employees.~~

13 (5) *The default investment plan offers a broad range of*
14 *investment alternatives and provides the participating employee*
15 *at least quarterly opportunities to select investments for the*
16 *employee's contributions among investment alternatives available*
17 *under the plan.*

18 (6) *The participating employee is given notice of the investment*
19 *decisions that will be made in the absence of direction from the*
20 *employee, a description of all the investment alternatives available*
21 *for employee investment direction under the plan, and a brief*
22 *description of procedures available for the employee to change*
23 *investments.*

24 (7) *The employee is given at least annual notice of the actual*
25 *default investments made from contributions attributable to the*
26 *employee.*

27 (8) *The employee is given notice of his or her right to opt out*
28 *from automatic enrollment, to revise investment amounts, and to*
29 *choose an investment other than the default investment during the*
30 *relevant opt-out period, as described in subdivision (a) of Section*
31 *7523.4.*

32 (9) *The employee is given notice of the 90-day elective*
33 *withdrawal period from automatic enrollment, as described in*
34 *subdivision (b) of Section 7523.4.*

35 (c) *If the capital preservation account is selected as the default*
36 *investment option, it shall not remain as the default investment*
37 *option for more than 120 days after the date of the participant's*
38 *first contribution.*

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

7523.3. (a) (1) An employer that provides automatic enrollment or automatic escalation in an employee supplemental retirement savings plan *subject to the requirements in Section 7523.2* is not liable for the investment decisions made that are subject to the provisions of Section 7523.2 on behalf of any participating employee with respect to the default investment of contributions made for that employee to the plan, if all of the following requirements are met: *plan*.

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

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

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

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

(b) Nothing in this ~~section~~ *article* modifies any ~~existing~~ responsibility of employers or other plan officials for the selection of investment ~~funds~~ *funds, other than the default option*, for participating employees.

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

7523.4. (a) ~~An~~ *The employee shall have the opportunity to opt out of the default investment plan prior to enrollment, as may be applicable, and for a period of no less than 30 days following*

1 *enrollment in the plan. Contributions shall not be made to the plan*
 2 *on behalf of the employee pursuant to automatic enrollment during*
 3 *the opt-out period. During the opt-out period, the employee may*
 4 *choose to opt-out of automatic enrollment, choose an investment*
 5 *amount other than the default investment amount, or choose an*
 6 *investment other than the default investment option.*

7 *(b) An employee shall have a 90-day elective withdrawal period*
 8 *that shall begin on the date of the employee's first contribution to*
 9 *the default investment option during which the employee may elect*
 10 *to withdraw from automatic enrollment. During this period, the*
 11 *employee may also elect to withdraw funds from the default*
 12 *investment option or to transfer funds from the default investment*
 13 *option to another investment in the default plan or to another*
 14 *investment of the employee's outside of the default investment plan.*
 15 *During this period, the employee shall not be subject to any*
 16 *restrictions, fees, or expenses, including surrender charges,*
 17 *liquidation or exchange fees, redemption fees, or similar expenses*
 18 *charged in connection with the liquidation of, or transfer from,*
 19 *the investment.*

20 *(c) An employee subject to automatic enrollment or automatic*
 21 *escalation of contributions shall have the opportunity to choose*
 22 *a different investment amount than the amount determined for*
 23 *automatic enrollment and escalation.*

24 *(d) An employer shall not make deductions from the*
 25 *compensation of represented employees, as described in Section*
 26 *7523.2, in the absence of a memorandum of understanding or other*
 27 *collective bargaining agreement authorizing those deductions that*
 28 *has been collectively bargained in accordance with applicable*
 29 *laws. An employer shall not impose provisions upon represented*
 30 *employees following an impasse in collective bargaining.*

31 *(e) An employer that implements an automatic enrollment or*
 32 *escalation pursuant to this article may also include related*
 33 *non-represented employees.*

34 ~~(b)~~
 35 *(f) An employer that makes employer contributions to an*
 36 *employee supplemental retirement savings plan ~~on behalf of~~*
 37 *~~employees~~ that implements automatic enrollment or escalation*
 38 *shall not contribute at a greater rate to the plan for nonrepresented,*
 39 *managerial, or supervisory employees than the employer*

1 contributes for represented employees who are in related retirement
2 membership classifications except if either of the following apply:

3 (1) The related represented employees have agreed *not* to receive
4 *an employer contribution or have agreed to a lower rate of*
5 *employer contribution in a memorandum of understanding or other*
6 *agreement* that has been collectively bargained in accordance with
7 applicable laws.

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

13 (g) *The vendor selected for the default investment plan shall*
14 *not use its relationship with participants of the plan to market*
15 *other products provided by the vendor that are not included in the*
16 *default investment plan.*

17 (h) *Personnel, including members of a governing body, acting*
18 *on behalf of an employer shall not receive consideration from a*
19 *vendor in exchange for the promotion of a particular vendor or*
20 *vendor's products. If it is determined that a person acting on behalf*
21 *of an employer received this type of consideration, the applicable*
22 *memorandum of understanding or other collective bargaining*
23 *agreement shall be reopened and its provisions relative to*
24 *automatic enrollment or escalation may, at that time, be*
25 *renegotiated.*

26 (i) *A memorandum of understanding or other collective*
27 *bargaining agreement made to implement this article that affects*
28 *school employees shall be affirmatively negotiated by the local*
29 *bargaining unit representing employees affected by the agreement.*

30 7523.5. (a) *Implementation of a collectively bargained default*
31 *investment plan and automatic enrollment is not intended to limit*
32 *the choice of investments that employees have. This article shall*
33 *not serve to limit the choice of investment options or plans*
34 *available to an employee from other investment vendors or*
35 *providers. Investment plans that were available to the employee*
36 *prior to the implementation of automatic enrollment into a default*
37 *investment plan shall not be reduced or eliminated as a direct*
38 *result of implementing automatic enrollment into a default*
39 *investment plan.*

1 ***(b) An employee who contributes to a supplemental retirement***
2 ***savings plan other than the default plan shall not have his or her***
3 ***contribution to the other plan modified as a direct result of***
4 ***implementing automatic enrollment in a default investment option.***

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