AMENDED IN ASSEMBLY MARCH 24, 2009

california legislature—2009–10 regular session

ASSEMBLY BILL No. 654

Introduced by Assembly Member Mendoza

February 25, 2009

An act to amend Sections 22714, 22715, 23003, 23006, 23008, 26301, and 26303 of, to amend, repeal, and add Section 22162 of, and to add Section 23006.5 to, the Education Code, relating to state teachers' retirement.

legislative counsel's digest

AB 654, as amended, Mendoza. State teachers' retirement.

(1) Under existing law, the State Teachers' Retirement Law, retirement benefits under the Defined Benefit Program of the State Teachers' Retirement Plan are based on the member's final compensation and years of credited service. Generally, final compensation is the highest average annual compensation earnable by the member during a 3-year period. However, for a member with 25 or more years of credited service, final compensation is the highest average annual compensation earnable by the member during a one-year period. That law authorizes the Governor, a school district, community college district, or county office of education to grant members of the Defined Benefit Program of the State Teachers' Retirement Plan 2 additional years of service credit, if the member retires for service within a designated period and certain conditions are satisfied, including the transfer of a specified amount to the Teachers' Retirement Fund.

This bill would require regular interest to be charged on the unpaid balance if the transfer to the retirement fund is made in installments.

The bill would modify the definition of “regular interest” for purposes of the State Teachers’ Retirement Law.

(2) The law specifies the date by which member and employer contributions are due in the office of the State Teachers’ Retirement System, and provides that payments thereafter shall be delinquent and subject to interest, as specified. If a county superintendent of schools, employing agency, school district, or community college district that reports directly to the system fails to pay the contributions, the Teachers’ Retirement Board may assess penalties and charge regular interest on the delinquent contributions.

This bill, instead, would require the board, *in accordance with regulations*, to assess ~~interest at the~~ *penalties and charge* regular interest ~~rate~~ for any delinquent contributions, as specified.

(3) The law requires the county superintendent of schools or employing agency, and authorizes a school district or community college district, with approval of the Teachers’ Retirement Board, to submit a report monthly to the State Teachers’ Retirement System containing information as the board may require in the administration of the State Teachers’ Retirement Plan. If those monthly reports are submitted late or in an unacceptable form, or include late or improper adjustments, the board is authorized to assess penalties pursuant to a specified formula, or a fee of $500, whichever is greater.

This bill, instead, would require the board, *in accordance with regulations*, to assess those penalties, pursuant to a specified formula, or a fee of $500, whichever is greater. The bill would additionally require the board to assess penalties, pursuant to a specified formula, if a county superintendent of schools, or an employing agency, school district, or community college district that reports directly to the system, includes in those monthly reports creditable compensation earned during prior fiscal years.

(4) The law permits an employer to offer benefits under the Cash Balance Benefit Program to certain employees who are employed less than 50% of full time, and requires employers to transmit and report contributions paid on behalf of each participant in each pay period, along with all other information required by the system by specified due dates. The board is authorized to collect interest for delinquent contributions and to assess a penalty for a report submitted late or in an unacceptable form pursuant to a specified formula, or a fee of $500, whichever is greater.

This bill, instead, would require the board to collect interest on delinquent contributions, as specified, and to assess penalties, *in accordance with regulations,* against the employer for a report submitted late or in an unacceptable form pursuant to a specified formula, or a fee of $500, whichever is greater.

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 22162 of the Education Code is amended to read:

22162. "Regular interest" means interest that is compounded annually based on the annual equivalent of the prior year's average yield to maturity on the investment-grade fixed income securities attributable to the Defined Benefit Program, but not on assets attributable to the Defined Benefit Supplement Program. The regular interest rate shall be adopted annually by the board as a plan amendment with respect to the Defined Benefit Program.

This section shall become inoperative on June 30, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 22162 is added to the Education Code, to read:

22162. "Regular interest" means interest that is equal to the actuarially assumed rate of return on investments on assets of the Defined Benefit Program. The regular interest rate shall be adopted annually by the board as a plan amendment with respect to the Defined Benefit Program.

This section shall become operative on July 1, 2010.

SEC. 3. Section 22714 of the Education Code is amended to read:

22714. (a) Whenever the governing board of a school district or a community college district or a county office of education, by formal action, determines pursuant to Section 44929 or 87488 that, because of impending curtailment of, or changes in, the manner of performing services, the best interests of the district or county office of education would be served by encouraging certificated employees or academic employees to retire for service and that the retirement will result in a net savings to the district or county office of education, an additional two years of service credit shall be granted under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service credit and retires for service under Chapter 27 (commencing with Section 24201) during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer that shall specify the period.

(2) (A) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of service credit pursuant to this section and the amount the member would have received without the service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Section 24415. The transfer to the retirement fund shall be made in a manner and a time period, not to exceed eight years, that is acceptable to the Teachers' Retirement Board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(B) Regular interest shall be charged on the unpaid balance if the employer makes the transfer to the retirement fund in installments.

(3) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(4) The employer has considered the availability of teachers or academic employees to fill the positions that would be vacated pursuant to this section.

(b) (1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in a net savings to the district.

(2) The county superintendent shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be

demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 14502.1.

(3) The school district shall reimburse the county superintendent for all costs to the county superintendent that result from the certification.

(c) (1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in a net savings to the county office of education.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 14502.1.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d) (1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in a net savings to the district.

(2) The chancellor shall certify to the Teachers' Retirement Board that the result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5.

(3) The chancellor may request reimbursement from the community college district for all administrative costs that result from the certification.

(e) The opportunity to be granted service credit pursuant to this section shall be available to all members employed by the school district, community college district, or county office of education who meet the conditions set forth in this section.

(f) The amount of service credit shall be two years.

(g) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates shall forfeit the service credit granted under this section.

(h) Any member of the Defined Benefit Program who retires under this part for service under Chapter 27 (commencing with Section 24201) with service credit granted under this section and who takes any job with the school district, community college district, or county office of education that granted the member the service credit less than five years after receiving the credit shall forfeit the ongoing benefit he or she receives from the additional service credit granted under this section.

(i) This section does not apply to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part within one year following the effective date of the formal action under subdivision (a), or if the member is not otherwise eligible to retire for service.

SEC. 4. Section 22715 of the Education Code is amended to read:

22715. (a) Notwithstanding any other provisions of this part, whenever the Governor, by executive order, determines that because of an impending curtailment of, or change in the manner of performing service, the best interest of the state would be served by encouraging the retirement of state employees, and that sufficient economies could be realized to offset any cost to state agencies resulting from this section, an additional two years of service shall be credited under this part to members of the Defined Benefit Program, who are state employees, if the following conditions exist:

(1) The member is credited with five or more years of service and retires during a period not to exceed 120 days or less than 60 days commencing no sooner than the date of issuance of the Governor's executive order specifying that period.

(2) (A) The appointing power, as defined in Section 18524 of the Government Code, transfers to the retirement fund an amount determined by the board to equal the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount the member would have received without the service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the employer and the board.

(B) Regular interest shall be charged on the unpaid balance if the employer makes the transfer to the retirement fund in installments.

(3) The appointing power determines that it is electing to exercise the provisions of this section, pursuant to the Governor's

order, and certifies to the Department of Finance and to the Legislative Analyst, as to the specific economies that would be realized if the additional service credit toward retirement were granted.

(b) As used in this section, "member" means a state employee who is employed in a job classification, department, or other organizational unit designated by the appointing power, as defined in Section 18524 of the Government Code.

(c) The amount of service credit shall be two years regardless of credited service, but shall not exceed the number of years intervening between the date of the member's retirement under this part and the date the member would be required to be retired because of age. The appointing power shall make the payment with respect to all eligible employees who retire pursuant to this section.

(d) Any member who qualifies under this section, upon subsequent reinstatement under this part, shall forfeit the service credit granted under this section.

(e) This section shall not be applicable to any member otherwise eligible if that member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the date of issuance of the executive order or if the member is not eligible to retire without the additional credit available under this section.

(f) The benefit provided by this section shall not be applicable to the employees of any appointing power until the Director of Finance approves the transmittal of funds by that appointing power or the Board of Regents or the Board of Trustees to the retirement fund pursuant to paragraph (2) of subdivision (a).

(g) The Director of Finance shall approve the transmittal of funds by the appointing power not sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house that considers appropriations and the chairperson of the Joint Legislative Budget Committee, or not sooner than any lesser time that the chairperson of the committee, or his or her designee, may in each instance determine. If there is any written communication between the Director of Finance and the Legislative Analyst, a copy of the communication shall be transmitted to the chairperson of each appropriate policy committee.

SEC. 5. Section 23003 of the Education Code is amended to read:

23003. ~~If~~ *(a) If* a county superintendent of schools or employing agency or school district or community college district that reports directly to the system fails to make payment of contributions as provided in Section 23002, the board shall ~~assess interest at the regular interest rate for any delinquent contributions under this part that exceed the amount specified in Section 13943.2 of the Government Code. Interest shall accrue when contributions become delinquent until payment for the contributions and interest is received in full by the system.~~*, in accordance with regulations, assess penalties.*

(b) The board shall, in accordance with regulations, charge regular interest on any delinquent contributions under this part.

SEC. 6. Section 23006 of the Education Code is amended to read:

23006. (a) If a county superintendent of schools or employing agency or school district or community college district that reports directly to the system, submits monthly reports, as specified by Section 23004, late, as defined in Section 23005, or in unacceptable form, the board shall*, in accordance with regulations,* assess penalties.

~~(b) The penalties shall be equal to the product of the sum of the employer and employee contributions submitted late or in an unacceptable form, and the regular interest rate for the period from the time the reporting was due, as specified in Section 23005, to the time acceptable reporting is received by the system, or a fee of five hundred dollars ($500), whichever is greater.~~

(b) The board shall, in accordance with regulations, assess penalties, based on the sum of the employer and employee contributions required under this part by the report, for late or unacceptable submission of reports, at a rate of interest equal to the regular interest rate or a fee of five hundred dollars ($500), whichever is greater.

SEC. 7. Section 23006.5 is added to the Education Code, to read:

23006.5. If a county superintendent of schools, or an employing agency, school district, or community college district that reports directly to the system, includes creditable compensation earned during prior fiscal years in the monthly reports specified in Section

23004, the board shall, *in accordance with regulations,* assess penalties. The penalties shall be equal to the product of the creditable compensation earned during prior fiscal years and the contribution rate specified in Sections 22954 and 22955, plus the product of the creditable compensation earned during prior fiscal years and the regular interest rate for the period from July 1 of the fiscal year following the year in which the creditable compensation is earned and the time the penalty is received in full by the system.

SEC. 8. Section 23008 of the Education Code is amended to read:

23008. (a) If more or less than the required contributions specified in this part and Section 44987 are paid to the system based on any payment of creditable compensation to a member, proper adjustments shall be made on a monthly report, by the county superintendent, district superintendent, chancellor of a community college district, or other employing agency who submitted the report, within 60 days after discovery or notification by the system and any refunds shall be made to the member within the same time period by the employing agency.

(b) The board shall, *in accordance with regulations*, assess penalties for late or improper adjustments, as specified in Sections 23006 and 23006.5.

(c) If a required report contains erroneous information and the system, acting in good faith, disburses funds from the Teacher's Retirement Fund based on that information, the county superintendent, district superintendent, chancellor of a community college district, or other employing agency who submitted the report shall reimburse the retirement fund in full for the amount of the erroneous disbursement. Reimbursement shall be made immediately upon notification by the system.

SEC. 9. Section 26301 of the Education Code is amended to read:

26301. (a) Employers shall report contributions paid on behalf of each participant in each pay period, along with all other information required by the system no later than 10 working days following the last day of the pay period in which the salary was earned, and the report shall be delinquent immediately thereafter. That report shall be submitted electronically in an encrypted format provided by the system that ensures the security of the transmitted participant data.

(b) The board shall, *in accordance with regulations,* assess penalties against the employer for a report submitted late or in an unacceptable form. The penalties shall be ~~equal to~~ *based upon* the sum of the employee and employer contributions required to be reported under this part ~~and the regular interest rate for the period from~~ *at a rate of interest equal to the regular interest rate, accruing on the balance for the period between* the time the report was due and the time an acceptable report is *actually* received by the system, or a fee of five hundred dollars ($500), whichever is greater.

SEC. 10. Section 26303 of the Education Code is amended to read:

26303. (a) Employers shall transmit to the plan the employee contributions and employer contributions with respect to the Cash Balance Benefit Program for salary paid to each participant during the pay period no later than 10 working days following the last day of the pay period in which the salary was earned.

(b) Payments shall be delinquent on the 11th working day thereafter, and interest shall begin to accrue ~~on delinquent contributions that exceed the amount specified in Section 13943.2 of the Government Code~~ at the regular interest rate from that day until payment for the contributions and interest is received in full by the system. The board shall collect interest for late payment from the employer under this subdivision.

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