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LEGISLATIVE EDUCATION STUDY COMMITTEE
BILL ANALYSIS
55th Legislature, 2nd Session, 2022

Bill Number SB172 **Sponsor** Munoz

Tracking Number .221462.3 **Committee Referrals** SEC/SFC

Short Title Retirees Returning to Work

Analyst Simon **Original Date** 1/31/2022
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BILL SUMMARY

Synopsis of Bill

Senate Bill 172 (SB172) would create a new return-to-work program for retirees receiving pension benefits from the Educational Retirement Board (ERB). The program would allow a retired educational employee to return to work after a 90-day layout period but would limit that worker to 36 months of additional service.

FISCAL IMPACT

SB172 could lead to an increase in the number of educational retirements by lowering barriers to returning to work. This could lead to some educators retiring earlier than they otherwise would, reducing contributions to the fund, increasing payouts from the fund, and reducing member's pension payments. However, SB172 includes some protections on extended return-to-work periods by establishing a 36-month limit on the return-to-work program. Additionally, ERB anticipates new minimum salaries and proposed raises for educational employees will offset possible negative impact SB172 might have had if the bill led to a significant increase in the number of retirements.

In recent years, the Legislature has increased employer contributions to the educational retirement fund in an effort to increase revenue and pay down the fund's existing liabilities. For FY22, the Legislature appropriated $34 million to cover the costs of a 1 percentage point increase in the employer contribution, and for FY23, the House Appropriations and Finance Committee substitute for House Bills 2 and 3 include a two percentage point increase in employer contributions to the fund.

SUBSTANTIVE ISSUES

SB172 would create a new return-to-work program under the Educational Retirement Act, supplementing several existing programs that allow retired educational employees to return to an educational employer while still receiving retirement benefits. As designed, public pension funds are intended to replace the income an individual loses when leaving the workforce by providing a

steady stream of payments in retirement. As a result, pension plans and regulations from the Internal Revenue Service (IRS) generally prohibit payment from the pension system to an active employee, except under certain circumstances. However, return-to-work programs have been designed to allow retired workers to return to employment to address a shortage of qualified educators.

Theoretically, a return-to-work program would not increase the costs of the retirement system because the worker being employed has qualified for retirement and already decided to retire and begin receiving pension benefits. Under this paradigm, return-to-work merely allows a public employer continued access to the services of experienced educators, who might otherwise go on to work in the private sector or in the public sector for an employer not affiliated with ERB while continuing to receive their pension. However, in practice, the existence of return-to-work programs likely leads some employees to move up their retirement date with a reasonable assurance that they will be able to find continued employment and be able to receive both a paycheck and pension payments, sometimes called "double dipping." Under this paradigm, return-to-work programs increase costs to the retirement system because pension payments must be made for a longer period than if no return-to-work system existed.

In reality, neither paradigm is likely a true representation of a wide variety of actual employment decisions made by educators around the state. Anecdotally, former staff with ERB have stated some educators appear to be planning to return to work even before finalizing their retirement. Similarly, some school district leaders have stated difficulties in teaching and supporting students through the Covid-19 pandemic have led to many early retirements, although some of these employees may be persuaded to return with additional flexibility.

To cut back on possible abuses of return-to-work programs, most public pension funds place limits on how a retired employee can return to work. These restrictions can include limits on the amount of time that can be worked, how much a person can earn, how long a person must wait before returning to work, and the age of an employee allowed to return to work. Some states require formal certification of a "critical shortage" of workers before an employer is allowed to consider hiring return-to-work applicants, and some restrict the overall number of workers who can be hired. As with SB172, some limit the amount of time a worker is allowed to participate in a return-to-work program. A concise review of return-to-work policies is available in a joint publication from the Center for State and Local Government Excellence, a nonprofit that promotes public employment, and the National Association of State Retirement Administrators, which represents pension plans from around the country: *Balancing Objective in Public Employee Post Retirement Employment Policies*.

Notably, SB172 would allow workers who have not yet retired to participate in the program, which could lead to an increase in current educators considering retirement, particularly as the end of the current school year approaches. SB172 would require a 90-day layout period but does not restrict the period to those when schools are in session. Some employees could attempt to use summer vacation period to coincide with most of the layout period. ERB proposes an amendment to limit participants to those retired as of December 31, 2021, to eliminate the incentive for currently employed members to retire sooner than they otherwise would. Amending the bill to apply to only those who have already retired would also ensure employers and soon-to-be-retired employees could not enter into an agreement to rehire that person after the layout period, which would violate IRS regulations requiring a "bona fide" termination of service before a retiree can return to work.

Layout Period. Because the IRS regulations generally prohibit pension plans from making payments to workers who have not retired, many plans require a period on nonservice before a retiree is allowed to return to work. Current return-to-work plans allow a retiree to observe a 90-day layout period before returning to work, but that employee is limited to earning $15 thousand per year. To earn a higher amount, retirees must sit out for a full year.

Although the IRS does not have a set rule for a layout period, a short layout period might draw increased scrutiny. However, many other state currently have layout periods that are less than 90-days. Additionally, the IRS has signaled it is unlikely to target pension plans that allow retired workers to meet critical, unforeseen staffing shortages caused by the Covid-19 pandemic. In October 2021, the IRS issued a statement noting the re-hiring of a retiree due to unforeseen circumstances was not prohibited so long as there was no prearrangement to rehire. In this statement, the IRS used a school district as an example of an employer who may be looking to hire retired workers because of the Covid-19 pandemic.

Possible Issues in FY26. SB172 would limit the return-to-work period to no more than 36 months. If SB172 is effective in attracting educators back to the classroom for a three-year period, the state could face an additional retirement cliff after educators reemployed under the bill have completed their 36 months of service. Educator shortages are a long-term, multifaceted challenge to the state and may not be resolved in that time. As a result, there could be pressure to extend or eliminate the 36-month limit at some point in the future. Additionally, to address the core issues with educator shortages, the state will need to continue investing in building effective educator workforce programs.

RELATED BILLS

SB172 is identical to House Bill 73, as amended by the House Education Committee.

Relates to Senate Bill 36, which would increase employer contributions to ERB in an effort to pay down existing unfunded liabilities.

SOURCES OF INFORMATION

- LESC Files
- Educational Retirement Board

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