Date of Hearing: June 29, 2022

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
SB 1343 (Leyva) – As Amended June 15, 2022

[Note: This bill is double referred to the Assembly Public Employment and Retirement Committee and was heard by that Committee as it relates to issues under its jurisdiction.]

SENATE VOTE: 21-10

SUBJECT: Public employees' retirement: charter schools

SUMMARY: Requires a charter school authorized on or after January 1, 2023 to participate in the California State Teacher's Retirement System (CalSTRS) or the California Public Employee's Retirement System (CalPERS), or both. Establishes an automatic payment mechanism from the charter schools to the retirement systems. Specifically, **this bill**:

1) Requires, prior to January 1, 2023, if a charter school chooses to make the CalSTRS available, all employees of the charter school who perform creditable service to be entitled to have that service covered under the CalSTRS's Defined Benefit Program or Cash Balance Benefit Program, and requires all provisions to apply in the same manner as the provisions apply to other public schools in the school district that granted the charter.

2) Requires, if a charter school offers its employees coverage by the CalSTRS or the CalPERS, or both, the charter school to inform all applicants for positions within that charter school of the retirement system options for employees of the charter school.

3) Requires a charter school initially authorized to commence operations on or after January 1, 2023, to participate in the CalSTRS or the CalPERS, or both. Requires that specified requirements apply to charter schools in the same manner as those provisions apply to other public schools.

4) States that these requirements not apply to charter schools seeking a renewal authorization on or after January 1, 2023, if the charter school initially received authorization to commence operations before January 1, 2023, and has continuously operated as a charter school since that initial authorization.

5) Requires, for the purpose of paying contributions due to the CalSTRS on behalf of a charter school, the county superintendent, district superintendent, or other employing agency that reports directly to the system to, upon state apportionment to the charter school, draw requisitions against the funds of the charter school in amounts equal to the contributions required to be paid, as specified.

   a) Requires the requisitions drawn to not exceed an estimated three months of contributions required to be paid on behalf of the charter school to the CalSTRS, as specified. Requires the estimated amount to be determined by the county superintendent, district superintendent, or other employing agency that reports directly to the system.

   b) Requires the requisitions drawn to be paid to the CalSTRS by the county superintendent, district superintendent, or other employing agency that reports directly to the system.

6) Requires, for the purpose of paying penalties and interest due to the CalSTRS on behalf of a charter school, the county superintendent, district superintendent, or other employing agency that reports directly to the CalSTRS to, upon state apportionment to the charter school, draw requisitions against the funds of the charter school in amounts equal to the penalties and interest required to be paid, as specified.

   a) Requires the requisitions drawn to be paid to the CalSTRS by the county superintendent, district superintendent, or other employing agency that reports directly to the system.

7) Requires the county superintendent, district superintendent, or other employing agency that reports directly to the CalSTRS to use any unencumbered funds, otherwise legally available for this purpose, to pay any amounts due to the system that remain unpaid.

8) Requires, for the purpose of paying contributions due to the CalSTRS on behalf of a charter school, the employer to, upon state apportionment to the charter school, draw requisitions against the funds of the charter school in amounts equal to the contributions required to be paid, as specified.

   a) Requires the requisitions drawn to not exceed an estimated three months of contributions required to be paid on behalf of the charter school to the CalSTRS. Requires the estimated amount to be determined by the employer.

   b) Requires the requisitions drawn to be paid to the CalSTRS by the employer.

9) Requires, for the purpose of paying penalties and interest due to the CalSTRS on behalf of a charter school, the employer to, upon state apportionment to the charter school, draw requisitions against the funds of the charter school in amounts equal to the penalties and interest required to be paid.

   a) Requires the requisitions drawn to be paid to the system by the employer.

   b) Requires the employer to use any unencumbered funds, otherwise legally available for this purpose, to pay for any amounts due to the CalSTRS that remain unpaid.

10) Defines “employer” to mean a school district, community college district, or county office of education (COE) that reports directly to the CalSTRS.

11) Requires the chartering authority to provide notice to the CalSTRS or the CalPERS, as applicable, if any of the following events occur:

   a) A charter school petition is approved;

   b) A charter school renewal petition is granted or denied;

   c) A charter school charter is revoked; and

   d) A charter school has ceased operations for any reason.

12) Requires the notice to be transmitted within 30 calendar days of the occurrence of the event, on a form prescribed by the CalSTRS or the CalPERS, as applicable.

13) Prohibits these requirements from applying to the extent it would cause the CalSTRS or CalPERS or their members to incur adverse tax consequences under the federal Internal Revenue Code of 1986 (Title 26 of the United States Code).

14) Prohibits the State Board of Education (SBE) from waiving these provisions.

15) Requires, if a charter school participates in the CalPERS, all employees of the charter school who qualify for membership in the CalPERS to be covered under the system and requires all applicable provisions to apply to the charter school in the same manner as those provisions apply to other public schools.

16) Prohibits, notwithstanding any other law, a charter school from participating in the CalPERS if the CalPERS Board of Administration (board), in its sole discretion, determines that participation would jeopardize the CalPERS's tax-qualified or governmental plan status under federal law. Authorizes the board to impose any additional requirements that the board considers necessary to comply with applicable federal law.

17) Requires, for the purpose of paying necessary contributions to the contract retirement fund on behalf of a charter school, the county superintendent, district superintendent, or other employing agency that reports directly to the CalPERS to, upon state apportionment to the charter school, draw requisitions against the funds of the charter schools in amounts equal to the estimated total contributions required to be paid by the charter school to the contract retirement fund.

   a) Requires the requisitions drawn to not exceed an estimated three months of employer contributions required to be paid by the charter school to the contract retirement fund. Requires the estimated amount to be determined by the county superintendent of schools.

   b) Requires the requisitions drawn to be paid by the county superintendent, district superintendent, or other employing agency to the CalPERS.

EXISTING LAW:

1) Establishes the CalSTRS to provide a financially sound plan for the retirement of public school educators and mandates that any person employed to perform creditable service on a full-time basis shall become a member of the CalSTRS' Defined Benefit Plan, as specified. (Education Code (EC) 22001 et seq.; EC 22501)

2) Establishes the CalPERS to provide a defined benefit retirement plan to eligible state, public agency, and school employees, as specified. (Government Code (GC) 20000 et seq.)

3) Provides opportunities for teachers, parents, pupils, and community members to establish and maintain charter schools that operate independently from the existing school district structure, as a method to accomplish specified objectives. (EC 47600 et seq.)

4) Allows charter schools to choose to participate in the CalSTRS and the CalPERS, and provides that if they do, they must comply with laws related to those systems, as specified. (EC 47611 et seq.)

5) Requires each CalSTRS employer to deduct from its employees' creditable compensation CalSTRS' required member contributions. (EC 23000)

6) Requires CalSTRS employers to draw requisitions for contributions to the Defined Benefit Plan that is required to constitute a warrant against the employer's county treasurer and which the employers are required to forward to the CalSTRS, who are required to immediately deposit the warrants in the State Treasury to the Teachers' Retirement Fund, as specified. (EC 23001)

7) Establishes the CalSTRS Cash Benefit Program as part of the CalSTRS as an optional program designed specifically for part-time educators and adjunct faculty, as specified. (EC 26000 et seq.)

8) Requires each employer to deduct from the salary of Cash Benefit Program participants the required participant contributions plus corresponding employer contributions and remit them to the CalSTRS, as specified. (EC 26301.5)

9) Provides that if a charter school chooses to make the CalSTRS Retirement Plan available, all employees of the charter school who perform creditable service are to be entitled to have that service covered under the plan's Defined Benefit Program or Cash Balance Benefit Program, as specified. (EC 47611 (a))

10) Requires a charter school to inform employee applicants whether the school offers CalSTRS or CalPERS retirement benefits, or both, and that employment with the school may result in the applicant's exclusion from further coverage in the applicant's current retirement system, depending on the retirement options offered by the charter school. (EC 47611 (b))

11) Requires a county school superintendent to enter into contracts with the CalPERS for coverage of all the county school employees and school district employees in its jurisdiction, as specified. (GC 20610)

12) Requires the county superintendent and school employers to collect and deposit funds to provide for the employer and employee contributions for their employees and transfer those funds to the CalPERS, as specified. (GC 20617)

FISCAL EFFECT:

According to the Senate Appropriations Committee:

- The CalSTRS indicates that it would incur annual ongoing costs of $328,000 to implement its provisions of the bill (Teachers Retirement Fund).

- Administrative costs to the CalPERS would be minor and absorbable.

COMMENTS:

Key provisions of the bill. Current law requires school districts and COEs to participate in the CalSTRS and CalPERS. Charter schools are authorized to participate in the state retirement systems, but are not required to do so. This bill would require charter schools authorized after January 1, 2023 to participate in the CalSTRS or the CalPERS, or both.

Need for the bill. According to the author, "Defined benefit retirement plans are the gold-standard for a worker's retirement security. These plans are carefully crafted to ensure stable returns on investments so that the worker may enjoy a defined amount of income in retirement and may plan their retirement accordingly. These plans are made over the course of decades, so that no matter the current economic circumstances, an individual is able to retire with dignity.

Alternatives such as defined contribution plans, like those of 401k or 403b plans are much more volatile and subject to the whim of the stock market when an individual attempts to retire. If the market takes a dive when a worker attempts to retire, their security in retirement will be significantly diminished and their buying power severely limited.

Educators in California have public pension systems that secure their retirement. However, many charter schools have decided to opt-out of participation in these systems in efforts to cut costs. Those costs are actually carried by our teachers and classified employees who have their retirements at risk, by those who work in participating education agencies but must see lower wages in their paychecks in order to cover the cost of non-participating charter schools.

This bill brings every school into our public pension systems for the benefit of the pension's own buying power and thus opportunity for higher returns, as well as the individual employees who can rest assured that their retirement will be well-planned for. The bill also does this by securing automatic pension payments, so that in the event of an unforeseen charter school closure, then pension obligations will still be met."

Background on charter schools. According to the California Department of Education (CDE), in the 2019-20 academic year there were 1,303 charter schools in California, with an enrollment of over 690,000 students. Some charter schools are new, while others are conversions from existing public schools. Charter schools are part of the state's public education system and are funded by public dollars. A charter school is usually created or organized by a group of teachers, parents, community leaders, a community-based organization, or an education management organization. Charter schools are authorized by school district boards, county boards of education or the SBE. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law. Specific goals and operating procedures for the charter school are detailed in an agreement (or "charter") between the sponsoring board and charter organizers.

CalSTRS. The California State Teachers' Retirement System was established by law in 1913 to provide retirement benefits to California's public school educators from prekindergarten through community college.

The CalSTRS provides retirement, disability and survivor benefits through a hybrid retirement system consisting of its Defined Benefit, Defined Benefit Supplement and Cash Balance Benefit programs, and a voluntary defined contribution plan called CalSTRS Pension2.

- Defined Benefit Program: A traditional defined benefit plan that provides retirement, survivor and disability benefits. The Defined Benefit retirement benefit is based on a formula set by law using the employee's age, service credit and final compensation.

- Defined Benefit Supplement: A hybrid cash balance plan for Defined Benefit members that provides additional savings for retirement.

- Cash Balance Benefit Program: An Internal Revenue Code 401(a) defined benefit plan, is an optional program designed specifically for part-time educators and adjunct faculty.

- CalSTRS Pension2: A voluntary defined contribution plan. Pension2 offers the opportunity to invest through tax-advantaged payroll deductions in low cost, flexible 403(b), Roth 403(b) and 457(b) plans for additional retirement savings.

According to the CalSTRS, it has historically been typical to have close to 90% of new charter schools opting to participate in CalSTRS. Since about 2014, between 20% and 40% of new charter schools have been selecting an alternate retirement option and have not elected to join CalSTRS. Additionally, the COVID-19 pandemic has seemed to slow the growth in the number of charter schools in California. In 2020-21, only 23 new charter schools were created as compared to two years prior, when 113 new charter schools were created. Of those 23 new charter schools in 2020-21, 16 chose to join CalSTRS. Since 2011-12, 200, or 25%, of the total approved charter schools have closed, with 139 of those participating in CalSTRS. Of those charter schools participating in CalSTRS that closed, 86% closed within the first five years of operation. Currently, CalSTRS has little oversight as to when a charter school opens or closes. Despite the recent trend, most charter schools still provide a CalSTRS benefit to their teachers. In 2020-21, about 88% of the 1,296 charter schools provided a CalSTRS benefit.

CalPERS. The California Public Employees Retirement System is the nation's largest public pension fund, and serves more than 2 million members in the retirement system and more than 1.5 million members and their families in their health program. According to information provided by the CalPERS, as of April 14, 2022, the CalPERS has 305 charter schools with 8,684 active participants.

Social Security. According to the CalSTRS, if a charter school is not participating in the CalSTRS and the charter school provides a different retirement plan option (for example, a 401(k) or Public Agency Retirement System (PARS)), then the charter school may not necessarily participate in Social Security. Conversely, some charter schools may only provide Social Security without another option. Data regarding the statewide participation of charter schools in Social Security is not collected by a single entity, so it is unclear how many charter schools and employees participate in Social Security.

Arguments in support. The California Teachers Association writes, "Unlike a traditional public school, a charter school can select whether to allow its employees to join the state's public pension system or offer an alternative retirement benefit, such as Social Security or a 401(k). Since the enactment of the 2014 CalSTRS Funding Plan, an increasing number of charter schools are choosing alternative retirement benefit options because of the increased costs associated with the state's public retirement system.

Before the 2014 CalSTRS Funding Plan was adopted, only about 10% of newly created charter schools each year chose not to participate in CalSTRS. Since the Funding Plan's enactment, however, nearly 33% of newly created charter schools each year choose not to allow their employees to participate in CalSTRS.

The employer contribution rate for all government entities increases over time as more and more charter schools refuse to allow their employees to participate. In some instances, charter school employees are not made aware of their limited retirement options until after they have provided decades of service. Moreover, teachers who must switch between public schools with and without CalSTRS may not realize the detriment to their retirement security until very late in their careers.

A well-managed pension certainly provides the greatest retirement security for public employees. Charter schools funded with public dollars should ensure that their employees are afforded the same retirement opportunities as all other public employees."

Arguments in opposition. The California Charter Schools Association writes, "CCSA must oppose SB 1343, as it would impose new mandated costs and cash flow hardships on new charter public schools, dramatically complicate compensation requirements for expanding networks of charter public schools and provide the CalSTRS and CalPERS boards with overly broad authority to regulate charter public schools or remove them from participation in the systems.

Charter participation in CalSTRS is already very high. We estimate that nearly 90% of all charter public schools participate in CalSTRS. Therefore, it is unlikely that a new mandate for schools to participate in CalSTRS will have significant impact on the security of the system because there are relatively few charter teachers not already participating. CalSTRS is generally viewed as a necessary and equitable benefit to attract highly qualified teachers.

Charters participating in PERS is lower than CalSTRS, but for good reason. For some time, CalPERS refused to accept charter applications, forcing charters to establish their own retirement options for classified employees. The unreliability of CalPERS as a stable option remains a deterrent to charter participation. In fact, specific provisions in SB 1343 that would allow both CalSTRS and CalPERS overly broad unilateral authority to deny or remove charter public schools from the systems perpetuates this unreliability. Further, excessive authority of the CalSTRS and CalPERS boards to establish criteria for mandated participation could far exceed IRS requirements and undermine charter autonomy overall.

Schools report a number of reasons for not choosing CalPERS, including a relatively low number of classified staff, a desire by employees to have more control over their retirement plan, and a plan that is more flexible and aligned to the nature of classified and administrative staff benefits in private and nonprofit sector employment."

Related legislation. AB 1819 (Ammiano) of the 2011-12 Session would have mandated public charter schools to cover their employees under CalSTRS or CalPERS, as applicable. The bill was held in the Senate Appropriations Committee.

AB 816 (Assembly Committee on Public Employees, Retirement and Social Security), Chapter 1025, Statutes of 2000, requires charter schools to inform prospective employees about the retirement system options they offer and that employment in a charter school could exclude the applicant from further coverage in CalPERS or CalSTRS, depending on the retirement options authorized by their charter. The bill also provides that a charter school employee who is a member of CalPERS or CalSTRS prior to becoming employed at a charter school may continue in membership if the charter school offers CalPERS or CalSTRS.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers
California Labor Federation
California School Employees Association
California State Teachers' Retirement System
California Teachers Association

Opposition

California Charter Schools Association
Charter Schools Development Center
Govern for California

Analysis Prepared by: Marguerite Ries / ED. / (916) 319-2087, Chelsea Kelley / ED. / (916) 319-2087