Pension & Health Benefits Committee

California Public Employees' Retirement System

Agenda Item 5a

April 16, 2013

ITEM NAME: Assembly Bill 410 (Jones-Sawyer) – Retention of Health Benefits After Reinstatement from Retirement

As Introduced February 15, 2013

Sponsor: California Professional Firefighters

PROGRAM: Legislation

ITEM TYPE: Action

RECOMMENDATION

Adopt a **Support** position with clarifying technical amendments on Assembly Bill (AB) 410 because it provides greater flexibility for public employers to recruit experienced, retired individuals as new employees. It would allow an annuitant the option to retain his or her vested retiree health benefits with another employer after reinstatement to active employment and subsequent retirement.

EXECUTIVE SUMMARY

AB 410 would allow an annuitant who reinstates to active employment with a different employer, then subsequently retires from that second employer, to still enroll as an annuitant of the first employer from which he or she first retired. To be eligible, the annuitant must have at least five years of service with the first employer from which he or she originally retired. In addition, the second retirement must occur within 120 days after separation from employment from the second employer.

STRATEGIC PLAN

This item is not a specific product of the Annual or Strategic Plans, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

BACKGROUND

1. <u>Vesting for Retiree Health Care</u>
   Generally, the Public Employees' Medical and Hospital Care Act (PEMHCA) specifies that the last employer of record before a member's retirement is the employer responsible for paying the employer contribution for annuitant's health coverage, based on the length of the member's service or vested status. Generally, PEMHCA requires members to perform a minimum number of years of service, typically five, prior to obtaining eligibility for annuitant health coverage or any employer contribution toward that coverage. It also ordinarily requires that an individual retire within 120 days of separation from employment and receive a retirement allowance to qualify as an annuitant for retiree health benefit purposes.

The amount of the employer contribution for annuitants varies widely among employers. The State and some contracting agency employers use PEMHCA vesting schedules to determine eligibility for retiree health coverage and the employer contribution toward participant premiums.

2. Reinstatement from Retirement

Current law allows retired annuitants to work for a California Public Employees' Retirement System (CalPERS) employer for no more than 960 hours per year, unless the member qualifies for an exemption. Violating this limit triggers an automatic reinstatement to active service, and suspension of the annuitant's retirement allowance and retiree health coverage. For these individuals, as well as retired annuitants whose financial circumstances or desire to serve leads to a return to full-time active status, and go to work for a CalPERS employer other than the employer from which they first retired, reinstatement may cause a reduction in, or outright loss of, the employer contribution toward annuitant health coverage.

For example, if an annuitant who had worked for the State earns the full employer contribution for health coverage under the 100/90 formula after 20 years of service, later reinstates to active service with a PEMHCA contracting agency, when the employee subsequently retires from that contracting agency, he or she would only be eligible to receive the employer contribution from the second contracting agency. However, if the person had returned to active CalPERS-covered service with the State, he or she would experience no reduction in retiree health benefits. This discrepancy could result in a substantial increase in the annuitant's out-of-pocket costs for health care in retirement and may deter a retiree from returning to public service after retirement due to the substantial impact that such a loss in benefits might cause.

ANALYSIS

1. Proposed Changes

Specifically, this bill would:

- Allow an annuitant who reinstates to active employment and subsequently retires, to enroll as an annuitant of the first employer from which he or she first retired, unless the annuitant is entitled to a higher contribution from the employer from which he or she subsequently retires.
- Require that, to be eligible, the annuitant must have at least five years of service with the employer from which he or she first retired.
- Require the second retirement occur within 120 days after separation from employment from the most recent employer.
- Specify that any creditable service earned by a member after reinstatement may not be used for purposes of calculating his or her employer post-retirement health benefit contribution, unless the individual reinstates from retirement with the same employer from which he or she first retired.

- Apply to an annuitant who, after reinstatement, subsequently retires on or after January 1, 2014.

2. <u>Eliminates Disincentives for Retirees to Return to Work</u>
   In most circumstances, when an annuitant reinstates from retirement to become an active employee for a CalPERS-covered employer, the new employer becomes the last employer of record for purposes of determining health coverage eligibility when that individual subsequently retires. This may unintentionally discourage an annuitant from returning to active service when the second employer does not provide the same level of retiree health benefits, if any, as the member's first employer, or the member does not remain with the subsequent employer long enough to equal their former employer's contribution.

   According to the author, the primary purpose of AB 410 is to allow retired firefighters to reinstate to active employment without permanently losing retiree health care benefits. As such, this bill allows all CalPERS annuitants who reinstate the ability to retain their former employer's contributions toward retiree health benefits. The sponsor of this bill, the California Professional Firefighters, believes that it is important to address this disincentive given the expected demographic shift in the workforce.

   The Board has supported previous attempts to enact similar legislation, including: AB 2132 (Levine) in 2006 and AB 1611 (Levine) in 2003.

3. <u>Recognize and Incorporate Exceptions to Common PEMHCA Standards</u>
   AB 410 allows a retiree to retain the higher of the two employer contributions: either the one provided by the employer from which he or she first retired, or the one provided by a subsequent employer after reinstatement. It also allows a retiree to retain annuitant health care from an employer other than the one from which he or she first retired, if the individual had vested for that benefit through a contracting agency that had included a specified portability provision in its contract with CalPERS. Currently, there are only a handful of provisions in the PEMHCA that allow State or public agency participants to receive annuitant health coverage from an employer that was not their employer immediately prior to retirement. For example, members who work for the State of California for at least 30 years can be employed by a CalPERS contracting agency without loss of their State-provided retiree health benefits.

   In addition, a provision of the recently enacted Public Employees' Pension Reform Act of 2013 (AB 340, Chapter 296, Statutes of 2012) allows an individual who returns to serve on a State board or commission after retirement to reinstate any suspended benefits, including employer provided retiree health benefits, that he or she was entitled to at the time of being appointed to the board or commission. AB 410 would provide the same benefit to individuals returning to work after retirement at other CalPERS employers so long as applicable statutory requirements have been met.

Therefore, staff recommends that the bill be amended to clarify that an annuitant who reinstates to active service and subsequently retires may elect to enroll in a health benefit plan as an annuitant of the employer that provided the employer contribution for health benefits during his or her first period of retirement.

Staff also recommends amendments to specify that an annuitant retiring a second time would be enrolled in annuitant health coverage with their last employer, unless the annuitant requests to be covered under a prior employer, and other technical amendments to match the author's intent.

4. Costs

The effects of this bill on health and pension benefits are unclear. If a greater number of annuitants reinstate who would not have otherwise, it is likely the bill would generate savings to employers from which annuitants first retire while the annuitant is reinstated or when the annuitant elects post-retirement benefits from the second employer. However, if annuitants would have reinstated without the enactment of this bill, then it is likely to result in a cost to employers from which annuitants first retire.

Benefit Program Costs

AB 410 will not impact the cost of health benefits, but it does impact employer contributions for retiree health coverage and pension liabilities. While staff does not have enough information to determine the actual cost, following is an explanation of how AB 410 is likely to impact employer contributions:

- *Savings:* Because this bill eliminates one of a retiree's major disincentives to returning to work, more State retirees may return to active employment. During the period when a former State annuitant is working in active member status for another public employer that participates in PEMHCA, the State will save the annuitant premium contribution amount that otherwise would be paid.
- *Costs:* The State currently saves money when annuitants lose their eligibility for the State's annuitant contribution after they reinstate with a contracting agency. Thus, this bill will increase costs with respect to those individuals because AB 410 makes them eligible to resume the State's annuitant contribution after the subsequent retirement.

The cost impact for contracting agencies would be similar to that of the State. This may cause PEMHCA contracting agencies that offer the most generous health contributions to reduce their annuitant health contributions or to alter their vesting schedules.

Administrative Costs
Minor and absorbable. CalPERS would provide appropriate guidance and update member publications and employer training materials to include information regarding an annuitant's health coverage options upon subsequent retirement. Employers would be responsible for disclosing the information to annuitants prior to reinstatement.

BENEFITS/RISKS

1. Benefits of Bill Becoming Law
    - Prevents a retiree from receiving a reduction in health benefits due to reinstatement to active employment.
    - Provides greater flexibility for all PEMHCA employers in recruiting experienced, retired individuals as new employees.

2. Risks of Bill Becoming Law
    - May result in a greater number of annuitants reinstating from retirement, but the impact on CalPERS operations and customer service is unclear. It is assumed staff can absorb the potential increased workload, unless there is a large increase in retirees requesting to reinstate from retirement.

ATTACHMENTS
Attachment 1 – Legislative History

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