
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Jerry Hill, Chair

2019 - 2020 Regular

Bill No: AB 2967 **Hearing Date:** August 11, 2020
Author: O'Donnell
Version: July 28, 2020
Urgency: No **Fiscal:** Yes
Consultant: Glenn Miles

SUBJECT: Public Employees' Retirement System: contracting agencies: exclusion from membership

KEY ISSUE

Should the Legislature prohibit public agencies from amending their contract for retirement benefits with the California Public Employees' Retirement System (CalPERS) to exclude groups of employees?

ANALYSIS

Existing law:

1. Allows a public agency to participate in the California Public Employees' Retirement System (CalPERS) by contract (Government Code Section 20460).
2. Permits CalPERS to refuse to contract with, or to agree to an amendment proposed by, any public agency for any benefit provisions not specifically authorized by statute and that the board determines would adversely affect the administration of the system (Government Code Section 20461).
3. Requires CalPERS to exclude any group of employees who vote, as specified, not to approve of a public agency's proposed plan to participate in CalPERS (Government Code Section 20470).
4. Provides for opportunities to amend the contract to make the public agency subject to optional CalPERS provisions (Government Code Section 20500).
5. Requires the public agency to cover all its employees under the contract except that the public agency may exclude, in addition to employees excluded from the system by state law, groups of employees as agreed to with CalPERS. If excluding employees from coverage, the public agency must exclude all, not just a portion, of the same kind of employees (e.g., all firefighters, or all police) and the exclusion must be based on a group (e.g., department, duties, etc.) not on an individual employee (Government Code Section 20502).

This bill:

1. Prohibits a contracting public agency from amending its contract with CalPERS to exclude groups of its employees. Thus, any groups of employees that were included in the initial contract will receive coverage unless the agency completely terminates its contract for all covered employees.

2. Declares that this bill does not prohibit an amendment to a contract that enumerates or clarifies provisions related to groups of employees in a manner that does not expand those already subject to exclusion.
3. Applies the prohibition against CalPERS contract amendments to any contract entered into, amended, or extended on and after January 1, 2021.

COMMENTS

1. Need for this bill?

According to the author,

In 2019, the city of Placentia voted to end their contract with the Orange County Fire Authority and establish the Placentia Fire and Life Safety Department. In the Final Draft City Proposal brought before the Placentia City Council on June 4th, 2019, the City proposed to establish “a new City department with almost fifty (50) full and part-time employees” in order to reduce costs associated with fire and emergency medical services.

In September of 2019, the City petitioned CalPERS to amend its contract to exclude from CalPERS membership any firefighters hired to work for the new department. Ordinance O-2019-10, discussed at the September 10, 2019 Placentia City Council meeting, included the proposed CalPERS Amendment to the CalPERS Contract, specifying that among the “classes of employees [who] shall not become members of said Retirement System” are “firefighters employed on or after the effective date of this amendment to contract.”

Under the model proposed by this contract amendment, firefighters will be the only full-time public employees in the city of Placentia to be denied a secure pension through CalPERS. The city administrator, the police chief, and every cop and clerk employed by Placentia will get their secure retirement, but not their firefighters.

2. Committee Comments

This bill seeks to prevent contracting agencies from using the contract amendment process to repeal defined benefit pension benefits for certain public employees through a kind of entity formation arbitrage. In Placentia’s case, after over two decades of participation, the city withdrew from the Orange County Fire Authority (OCFA), a Joint Powers Authority that provides fire services to several Orange County communities. Essentially, the city moved from receiving fire protection services from firefighters with a defined benefit plan to excluding those benefits for firefighters who will provide those services going forward. Ordinarily, a public agency would have to terminate its contract with CalPERS to eliminate its defined benefit plan and the termination would affect all of its employees. The termination process is long and arduous.

Placentia accomplished this objective by re-establishing its city fire department. However, prior to hiring any city firefighters, the city applied for a contract amendment with CalPERS to exclude firefighters from membership. Thus, the city’s miscellaneous and police

employees continue to receive CalPERS retirement coverage but the city's new firefighters will receive a 401A defined contribution plan. In the meantime, the move potentially undermines support for the OCFA, as other cities observe Placentia's success or failure.

CalPERS membership generally provides retirement benefits for all of a public agency's employees unless statute or the public agency specifically excludes a group upon contract formation. The amendment process was not intended to provide an avenue to shift some employees away from a defined benefit plan while maintaining it for others. This bill would prohibit further use of the amendment process to take away retirement benefits from a class of employees and prevent using it to implement "phased" contract terminations.

3. Proponent Arguments

According to the California Professional Firefighters,

This measure ensures that no class of workers can be excluded and deprived of retirement security when other classes of workers in that local agency enjoy the security of a defined benefit retirement plan. AB 2967 provides clarity in the law with respect to how employer contracts with CalPERS for the provision of retirement benefits are formed or amended to ensure that all employees have access to the benefits provided by that contract. AB 2967 simply makes clear that agencies electing to participate in the CalPERS system may not in the future amend the contract in a way that excludes a class or classes of workers from CalPERS coverage that were otherwise previously included.

4. Opponent Arguments:

According to a coalition consisting of the League of California Cities (League), the California Special Districts Association (CSDA), and the California State Association of Counties (CSAC),

At a time when governments at all levels of society are struggling with the dual challenges of lowered revenues and consistent or higher demands of services now is not the time to reduce one of the "tools in the toolbox" for local governments to manage their operations. This bill would prohibit cities, special districts, and counties contracted with CalPERS from exploring novel and innovative operational structures in the future.

5. Prior Legislation:

None found.

SUPPORT

California Professional Firefighters (Sponsor)
California Labor Federation, AFL-CIO
California Nurses Association
California Public Employees' Retirement System (CALPERS)
California State Firefighters Association
Orange County Professional Firefighters Association, Local 3631

OPPOSITION

California Special Districts Association
California State Association of Counties
City of Cypress
League of California Cities

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