

CONCURRENCE IN SENATE AMENDMENTS

AB 2967 (O'Donnell)

As Amended July 28, 2020

Majority vote

SUMMARY:

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

The Senate Amendments:

Removed all contents of the prior version of this bill, as previously passed by the Assembly, and:

- 1) Remove a provision in existing law that permits exclusions of groups based on contract amendment with respect to future entrants into the group, and CalPERS' permissive authority to exclude the group if, in the opinion of CalPERS, the exclusion would adversely affect CalPERS' interest.
- 2) Add an explicit prohibition on the exclusion of groups made by amendment to contracts.
- 3) Establish that an amendment to a contract to enumerate or clarify provisions related to groups of employees in a manner that does not expand those already subject to exclusion must not be considered an exclusion.
- 4) Expressly establish that membership in CalPERS is compulsory for all employees included under a contract, and add a clarifying provision relating to the effect of the provisions of this bill on existing law applicable to members of other retirement systems and part-time employees.
- 5) Establish that changes made by this bill must apply to a contract entered into, amended, or extended on and after January 1, 2021.

COMMENTS:

1) Existing Law

Existing law allows a public agency to participate in CalPERS by contract. In addition, CalPERS is authorized 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 CalPERS determines would adversely affect the administration of the system.

CalPERS is required to exclude any group of employees who vote, as specified, not to approve of a public agency's proposed plan to participate in CalPERS, and there are opportunities to amend the contract to make the public agency subject to optional CalPERS provisions.

A public agency is required to cover all its employees under the contract except that the public agency may exclude, in addition to employees excluded from CalPERS by law, groups of employees as agreed to with CalPERS. However, if a public agency excludes 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.

2) General History Regarding the Matter and Context of this Bill

Within the past year, the City of Placentia withdrew from the Orange County Fire Authority (OCFA), a Joint Powers Authority that provides fire services to several Orange County communities. Similar to other Orange County communities that rely on the OCFA to provide services, the city was required to pay the OCFA for those services, including its share of pension costs for OCFA employees. Citing a need to reduce costs, among other reasons, the city proposed to re-establish its own fire department and hire firefighters to provide services to the city.

Towards achieving its objective and prior to hiring city firefighters, the city applied for a contract amendment with CalPERS to exclude firefighters from CalPERS membership; thus, the city's miscellaneous and police employees will continue to receive CalPERS retirement coverage but the city's new firefighters will receive a defined contribution plan – not a defined benefit plan. In re-establishing its fire department, firefighters who have a defined benefit plan, would be excluded from those benefits.

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 formation of its contract with CalPERS. A public agency is required to terminate its contract with CalPERS to eliminate its defined benefit plan and the termination would affect all of its employees. As such, the contract amendment process is not intended to provide a means to circumvent the contract termination process, nor exclude some employees from a defined benefit plan while maintaining it for others.

To address this matter, this bill would prohibit contracting agencies from using the contract amendment process to segregate defined benefits among the same class of employees, and prevent the use of that process to circumvent the process of terminating a contract with CalPERS.

According to the Author:

"The bill clarifies that a public agency may not amend its contract with CalPERS to exclude groups of employees that were previously included under that contract. Selectively limiting access to CalPERS robs entire classes of employees, including critical public safety workers like firefighters, of the pension benefits and financial security they deserve. If a significant number of agencies adopt this model, the loss of contributions to CalPERS could destabilize the fund and endanger retirement benefits for all remaining members. Assembly Bill 2967 is a narrowly tailored bill to ensure public agencies use the CalPERS amendment process as intended, not to cut out select groups of employees from a secure retirement."

Arguments in Support:

According to the California Professional Firefighters, "[t]his 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. Assembly Bill 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. [This bill] 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."

Arguments in Opposition:

A coalition consisting of the League of California Cities, the California Special Districts Association, and the California State Association of Counties state that, "[a]t 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."

FISCAL COMMENTS:

This bill was passed by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

VOTES:**ASM PUBLIC EMPLOYMENT AND RETIREMENT: 7-0-0**

YES: Rodriguez, Voepel, Cooley, Cooper, Fong, O'Donnell, Reyes

ASM APPROPRIATIONS: 18-0-0

YES: Gonzalez, Bigelow, Bauer-Kahan, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Gabriel, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

ASSEMBLY FLOOR: 76-0-3

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Nazarian, O'Donnell, Obernolte, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon
ABS, ABST OR NV: Low, Muratsuchi, Quirk

SENATE FLOOR: 30-6-4

YES: Allen, Archuleta, Atkins, Beall, Bradford, Caballero, Chang, Dodd, Durazo, Galgiani, Lena Gonzalez, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Mitchell, Monning, Pan, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk
NO: Borgeas, Glazer, Grove, Moorlach, Morrell, Nielsen
ABS, ABST OR NV: Bates, Dahle, Jones, Melendez

ASM PUBLIC EMPLOYMENT AND RETIREMENT: 5-1-1

YES: Rodriguez, Cervantes, Cooley, Cooper, O'Donnell
NO: Fong
ABS, ABST OR NV: Voepel

UPDATED:

VERSION: July 28, 2020

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FN: 0003646