SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2019 - 2020 Regular Session

SB 266 (Leyva) - Public Employees' Retirement System: disallowed compensation: benefit adjustments

Version: February 12, 2019
Urgency: No
Hearing Date: April 8, 2019

Policy Vote: L., P.E. & R. 4 - 0
Mandate: No
Consultant: Robert Ingenito

Bill Summary: SB 266 would establish new procedures for employees covered by the California Public Employees Retirement System (CalPERS) in cases where their pensionable benefits are erroneously calculated and reported to CalPERS by their employer.

Fiscal Impact: CalPERS indicates that its costs to implement the bill are unknown, but would likely be in the millions of dollars annually (General Fund and special funds); the precise amount will depend on specific factors that are difficult to determine in advance (See Staff Comments).

Background: Current law provides (1) a defined benefit retirement plan for state and public school employees administered through CalPERS, and (2) that local public employers can contract, as specified, with CalPERS to provide retirement benefits for their local public employees. The Public Employees' Pension Reform Act of 2013 (PEPRA) made substantial changes to public retirement benefits provided to new members, including defining the categories of pensionable compensation that can be used to calculate a retirement allowance.

CalPERS requires contracting employers to provide accurate and timely payroll information in order to correctly calculate their employees' service credit and final compensation for retirement. These payroll reports contain information on the employee's earnings and contributions, as well as other information, including pay rate, work schedule, and special compensation. In the event of an erroneous payment to a CalPERS member or beneficiary, CalPERS has three years to collect. The window is ten years in the case of fraud.

Instances have occurred where employers incorrectly reported employees' pensionable compensation to CalPERS. Current law places on the employee all of the penalties for a public employer filing disallowed compensation with CalPERS. This has resulted in the retired member (1) having to pay back to CalPERS the overpayment amount, and (2) sustaining a reduction in their future retirement allowances.

Proposed Law: This bill would, among other things, do the following:

- Require that, if CalPERS determines that the compensation reported for a CalPERS member by a public employer is in conflict with existing law or regulations, it must prohibit the public employer from continuing to report the disallowed compensation. This requirement also applies to determinations made on or after January 1, 2017 if the appeal rights of the CalPERS member have not been exhausted.

- Require that, in the case of an active CalPERS member, all contributions on disallowed compensation must be credited against future contributions to the benefit of the public employer by CalPERS and the public employer must return the member's contributions that were paid on the disallowed compensation.

- Require, in the case of a retired CalPERS member or survivor or beneficiary whose final compensation at the time of retirement was based on disallowed compensation, the contributions made on the disallowed compensation must be credited against future contributions to the benefit of the public employer.

- Require CalPERS to permanently reduce the retired CalPERS member or survivor or beneficiary's benefit to exclude the disallowed compensation.

- Require the public employer to both pay CalPERS the full cost of any overpayment resulting from the disallowed compensation AND pay to the retired CalPERS member, survivor, or beneficiary a lump sum or annuity based on the difference between the permissible retirement benefit and the actuarially equivalent present amount of the disallowed compensation.

- Require CalPERS to provide a notice to the public employer and affected retired CalPERS member or survivor or beneficiary that includes, at a minimum: (1) the amount overpayment resulting from the disallowed compensation made by the public employer, (2) the actuarial equivalent present amount owed to the retired CalPERS member, survivor, or beneficiary, and (3) written disclosures by the public employer's obligations to the retired member under this bill.

- Require that the aforementioned overpayment is only due if the following is applicable: (1) the compensation was reported to CalPERS and the contributions were made on that compensation while the member was actively employed, (2) the compensation was provided for in a memorandum of understanding as compensation for pension purposes, (3) the determination by the system that compensation was disallowed was made after the date of retirement, (4) the member was not aware that the compensation was disallowed at the time it was reported, and (5) for any disallowed compensation subject to a memorandum of understanding entered into on or after January 1, 2020, the public employer failed to secure an affirmative determination of the compensation proposal from CalPERS.

- Require public employers to submit to CalPERS for review any compensation proposal intended to form the basis of a pension benefit calculation in order to determine compliance with California Public Employment Retirement Law (PERL). CalPERS must respond to the compensation proposal within 60 days.

- Require that, if CalPERS determines that the compensation proposal complies with PERL, then CalPERS must fulfill the obligations described above for disallowed compensation, rather than the public employer.

Related Legislation: SB 1124 (Leyva, 2018) was similar to this bill, as it also pertained to disallowed compensation for CalPERS members, retirees, beneficiaries, and survivors. The bill was vetoed by the Governor.

Staff Comments: As noted above, this bill would place with an employer (as opposed to the employee per current law) the consequences of reporting disallowed pensionable compensation to CalPERS. Additionally, the bill would require CalPERS to analyze all compensation proposals and determine if they comply with the law within 60 days. If the compensation agreements comply with the law, then CalPERS assumes the full liability of any future disallowable compensation. CalPERS provides retirement benefits to the State, over 1,500 public agencies and over 1,300 school districts. CalPERS indicates that participating employers include roughly 30,000 MOUs covering various bargaining units. Several of the bill's resulting annual fiscal drivers are unknown, including (1) number of MOUs that would need to be reviewed each fiscal year, (2) the number of "compensation proposals" CalPERS would receive each fiscal year, and (3) complexity of each "compensation proposal" and corresponding length of time that would be required to conduct the review.

When SB 1124 was heard by this Committee last year, CalPERS indicated that it would require eight hours to review a State Bargaining Unit MOU, and 12 hours for an MOU of a contracting agency. The agency estimated a total annual need of 38 positions and $4 million to perform the additional workload. One position (roughly $150,000 annually in salary and operating expenses) would be dedicated to reviewing State Bargaining Unit MOUs; the remaining positions would review contracting agency MOUs.

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