
SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT

Senator Dave Cortese, Chair

2021 - 2022 Regular

Bill No: AB 890 **Hearing Date:** July 5, 2021
Author: Cervantes
Version: May 24, 2021
Urgency: No **Fiscal:** Yes
Consultant: Glenn Miles

SUBJECT: Public employee retirement systems: investment management: reports

KEY ISSUE

Should the Legislature require the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) to each produce and submit an annual report on the participation of emerging managers or diverse managers?

ANALYSIS

Existing law:

- 1) Establishes the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS). (Government Code § 20170 et seq. and Education Code § 22001 et seq.)
- 2) Vests the Boards of Administration for CalPERS and CalSTRS with management and executive control of the administration and investment of the respective retirement funds. (GC § 20171 and ED § 25931)
- 3) Provides that California's public retirement systems shall have "plenary authority and fiduciary responsibility for investment of monies and administration of the system." In addition, "[t]he members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system." (C.A. CONST., art XVI, § 17)
- 4) Prohibits the State from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. (C.A. CONST., art. I, § 31)

This bill:

1. Requires, beginning March 1, 2023, and annually thereafter, CalPERS and CalSTRS each to submit a report to the Legislature on the status of achieving appropriate objectives and initiatives regarding participation of emerging managers responsible for asset management within their respective portfolios of investments. The systems must base the report on contracts that CalPERS and CalSTRS, respectively, enter into on and after January 1, 2022.

2. Requires that the report must identify and include the following:
 - a) The name of each emerging manager or diverse manager providing investment portfolio or asset management services at the end of the prior fiscal year, including, but not limited to, fund of fund contracts, for all asset classes, as applicable.
 - b) The amount managed by each emerging or diverse manager by asset class at the end of the prior fiscal year, as well as the total amount allocated by the systems, respectively, in the applicable asset class during the year and the total amount of the asset class in each system's investment portfolio. The bill also requires CalSTRS and CalPERS, respectively, to define the terms "emerging manager" and "diverse manager" for these purposes.
3. Provides that CalPERS and CalSTRS are not required to take action unless their respective boards determine in good faith that the action is consistent with their fiduciary duties as described in the California Constitution.
4. Provides that CalPERS and CalSTRS are not required to disclose information that is excepted from disclosure under the California Public Records Act.
5. Repeals these provisions on January 1, 2028, unless a later enacted statute deletes or extends that date.

COMMENTS

1. Need for this bill?

According to the author:

CalPERS and CalSTRS have combined assets of over \$700 billion but a relatively low rate of participation of emerging and diverse managers when compared to other state pension systems. It is clear that systemic inequities exist in how these systems select managers to invest the capital that they oversee. Due to a lack of transparency, the firms that are often excluded from participation are women and minority firms. This cycle perpetuates the historic neglect and lack of resources for historically disenfranchised communities in California.

2. Proponent Arguments

According to the New America Alliance,

Unfortunately, unequal opportunity creates an unequal society. As noted in a study by Stanford researchers entitled "Race Influences Professional Investors' Financial Judgements," investments begin with asset allocators like CalPERS and CalSTRS and flow through the professional money managers they hire before taking root in companies and projects across society. Disparities in who manages assets is therefore reflected and reinforced throughout the economy as these managers decide how capital is distributed and where and in what it will be invested. By extension, the biases of the fund managers that are selected, along with the systemic underutilization of women and diverse

managers, plays a significant role in the inequitable distribution of capital that has relegated entire communities to despair and poverty, while others flourish through wealth creation and opportunities for upward mobility.

3. Committee Concerns:

This bill purports to rectify a lack of transparency among CalPERS and CalSTRS with respect to funds under management by emerging or diverse external money management firms. However, both funds provide significant information regarding their holdings and their management contracts through their comprehensive annual reports, public agenda items, public hearings, and respective programs to assist, inform, and recruit emerging and diverse money managers regarding opportunities to partner with the systems. Moreover, both funds have been very accommodating in providing the Legislature with updates of their activities when requested to do so.

To the extent that the report in this bill offers any additional information necessary for the systems to carry out their fiduciary responsibilities, those systems have sufficient independent authority without this bill to conduct the desired reports. If on the other hand, the bill seeks to utilize the Legislature to impermissibly pressure the retirement systems to allocate trust fund capital, the committee must remind the bill's supporters that such activity is in conflict with the state's constitutional provisions that vest investment and administrative decisions with the pension boards subject to their fiduciary duty to their respective funds' beneficiaries.

Additionally, to the extent that the bill's required reports are intended to actually promote direct allocations of pension trust fund capital based on an external manager's race, sex, color, ethnicity, or national origin, as has been advocated in other states, those actions would be in contravention of this state's constitutional provisions prohibiting such conduct. The committee is concerned that such activities may draw the systems into expensive legal battles regarding the boundaries of our current constitutional prohibitions on the state from granting preferential treatment based on those categories.

4. Opponent Arguments:

None on file.

5. Prior Legislation:

AB 462 (Rodriguez, 2019) was similar to the current bill. The bill was held by the Senate Rules Committee pursuant to a policy not to move report bills that provide no other material change to the law.

AB 81 (Rodriguez, 2019) was similar to the current bill. This bill was subsequently amended to address different subject matter.

Chapter 701, Statutes of 2011 (SB 294, Price), required CalPERS and CalSTRS to provide a five-year strategic plan for emerging manager participation across all asset classes, and to submit an annual report to the Legislature regarding the progress of the strategic plan. This law expired on January 1, 2018, in conformance with its sunset clause.

SUPPORT

New America Alliance (Sponsor)
Association of Asian American Investment Managers
California Public Employees' Retirement System (CalPERS)
The Greenlining Institute
The National Association of Investment Companies

OPPOSITION

None on file.

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