
SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 278 (Leyva) - Public Employees' Retirement System: disallowed compensation: benefit adjustments

Version: March 23, 2021

Policy Vote: L., P.E. & R. 5 - 0, JUD. 10 -
1

Urgency: No

Mandate: No

Hearing Date: April 19, 2021

Consultant: Robert Ingenito

Bill Summary: SB 278 would require that, in the event of a California Public Employees' Retirement System (CalPERS) retiree having a pension reduced due to the inclusion of compensation by the relevant public employer that cannot be counted towards a final pension calculation, the public employer must cover the reduced benefit to the retiree.

Fiscal Impact: CalPERS indicates that this bill would result in implementation costs, likely in the low hundreds of thousands of dollars annually, to review additional MOUs and calculate employer costs in cases when a retirement benefit must be adjusted. Additionally, the bill could result in additional costs to the State to the extent that state agencies or school employers must cover the costs of disallowed overpayments. The magnitude is unknown (and would depend on future actions), but is potentially significant. Contributions based on disallowed compensation would be credited against future contributions, but employers would be required to make immediate payments to make affected retirement members whole.

Background: Current law (Public Employees Retirement Law, or PERL) 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:

- Make findings and declarations regarding the need to protect retired CalPERS members from retroactive clawbacks and permanent reductions in retirement benefits.
- Establish new procedures under PERL for cases in which PERS determines that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with PEPRA and other specified laws and thus impermissible under PERL. The bill would also apply these procedures retroactively to determinations made on or after January 1, 2017, if an appeal has been filed and the employee member, survivor, or beneficiary has not exhausted their administrative or legal remedies. At the threshold, after determining that compensation for an employee member reported by the state, school employer, or a contracting agency is disallowed, the bill would require the applicable employer to discontinue the reporting of the disallowed compensation. The bill would require that contributions made on the disallowed compensation, for active members, be credited against future contributions on behalf of the state, school employer, or contracting agency that reported the disallowed compensation and would require that the state, school employer, or contracting agency return to the member any contributions paid by the member or on the member's behalf.
- With respect to retired members, survivors, or beneficiaries whose benefits are based on disallowed final compensation, the bill would require PERS to adjust the benefit to reflect the exclusion of the disallowed compensation and provide that contributions made on the disallowed compensation be credited against future contributions on behalf of the employer entity that reported the disallowed compensation. Additionally, if specified conditions are met, the bill would require the employing entity to refund overpayment costs to the system and to pay retired members, survivors, and beneficiaries whose benefits have been reduced by an annuity, or a lump sum, as prescribed, that reflects the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance calculated without the disallowed compensation, as provided. The bill would require the system to provide certain notices in this regard. This bill would require the system to provide confidential contact information of retired members, and their survivors and beneficiaries, who are affected by these provisions to the relevant employing entities, the confidentiality of which the entities would be required to maintain.
- The bill would authorize the state, a school employer, as specified, or a contracting agency, as applicable, to submit to the system an additional compensation item proposed to be included or contained in a memorandum of understanding or collective bargaining agreement on and after January 1, 2022, that is intended to form the basis of a pension benefit calculation in order for PERS to review its consistency with PEPRA and other laws, as specified, and would require PERS to provide guidance regarding the review within 90 days, as specified. The bill would require PERS to publish notices regarding proposed compensation language submitted to the system for review and the guidance given by the system that is connected with it. For educational entities that

participate in the system, the final responsibility for funding payments to the system and to retired members, survivors, and beneficiaries would belong to the educational entity that is the actual employer of the employee.

Related Legislation:

- SB 266 (Leyva, 2019) was similar to this bill and would have implemented substantially similar procedures by which the entity that reported disallowed compensation would bear the cost of the over-reporting for a retired member. SB 266 died in the Assembly.
- SB 1124 (Leyva, 2018) was similar to this bill and would have implemented substantially similar procedures by which the entity that reported disallowed compensation would bear the cost of the over-reporting for a retired member, but did not contain this bill's provision allowing an entity to confer with CalPERS about including items as compensation before doing so. The bill was vetoed by the Governor.

Staff Comments: As noted above, this bill would create a new actuarial process when employers who reported disallowed compensation are required to reach a settlement or agreement with the retired member or survivor or beneficiary to pay the actuarial equivalent present value representing the difference between the monthly allowance that included the disallowed compensation and the adjusted monthly allowance that excludes it. CalPERS estimates each present value calculation would cost up to \$1,000, depending on the complexity involved. Based on historical data, CalPERS anticipates an average of up to ten downward adjustments that would require a present value calculation.

Additionally, CalPERS currently encourages employers to submit their MOU's for review to ensure their compensation reporting and MOU/Labor Agreements are compliant with PERL and regulations. Under the bill, more employers would likely request this service to avoid the liability associated with reporting "disallowed compensation". CalPERS notes that the average cost for each MOU review is approximately \$330. Currently, the agency receives an average of 40 review requests monthly.

-- END --