SENATE COMMITTEE ON LABOR, PUBLIC EMPLOYMENT AND RETIREMENT
Senator Dave Cortese, Chair
2023 - 2024 Regular

Bill No:	SB 548	**Hearing Date:**	April 26, 2023
Author:	Niello		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	Glenn Miles		

SUBJECT: Public employees' retirement: joint county and trial court contracts

KEY ISSUE

Should the state authorize a county and a trial court that have a joint contract with CalPERS for the provision of retirement benefits for their employees to voluntarily separate the contract into two individual contracts?

ANALYSIS

Existing law:

1. Requires a trial court and a county in which the trial court is located to jointly participate in CalPERS by joint contract for all counties that contract with CalPERS for retirement benefits and authorizes all other counties and trial courts to elect such joint participation. (Government Code (GC) § 20460.1)

2. Provides that a county shall not be responsible for the required employer or employee contributions due on behalf of trial court employees, nor shall a trial court be responsible for the required employer or employee contributions due on behalf of county employees. (GC § 20460.1)

3. Establishes under the California Public Employees' Pension Reform Act of 2013 (PEPRA) a statewide retirement plan formula and requires public employers to offer the PEPRA formula to new employees first hired into public service after January 1, 2013, as defined. (GC § 7522 et seq.).

4. Allows a classic member (i.e., a public employee who first became a member of a public retirement system prior to 2013) to move between public employers or retirement systems, as specified, and be "grandfathered" under the plans that existed on December 31, 2012, prior to implementation of PEPRA. (GC 7522.02).

5. Allows a new public employer, established through a joint powers agreement by existing public agencies who offered the classic pension formula, to offer the classic pension formula to classic members as specified. (GC § 7522.05)

This bill:

1) Authorizes a county and the trial court located within the county to jointly elect to separate their joint CalPERS contract into individual contracts if the county and the trial court both make that election voluntarily, as specified.

2) Authorizes a county and a trial court that separate their joint CalPERS contract into individual contracts to provide their employees the defined benefit plan or formula that those employees received from their respective employers prior to the exercise of the option to separate, provided that the employee subsequently does not otherwise meet the definition of a new employee under PEPRA.

3) Provides that a county and a trial court that elect to separate the joint contract into individual contracts shall do so by ordinances or resolutions adopted by both the affirmative vote of a majority of the members of the governing body of a county and the presiding officer of the trial court. They must do so within 30 days of each other to be effective.

4) Prohibits the separation from being a cause for the modification of employment retirement benefits and prohibits retirement benefit levels under the joint contract from modification until their respective MOU with their employees expires or a period of 24 months, whichever is longer. However, the county and its recognized employee organizations or the trial court and its recognized employee organizations may mutually agree to a modification before then.

5) Requires, after the joint contract separation, that any plan under separate contract that has under 100 members, or otherwise meets applicable board criteria, to participate in a CalPERS risk pool, as specified.

6) Requires CalPERS: to perform a one-time separate computation of the assets and liabilities, as specified, for a county and a trial court that elect to separate their joint contract into individual contracts; to move the assets and liabilities of each entity to their respective individual contract; and subsequently to terminate the joint contract.

COMMENTS

1. Background

In 1997, the state began to significantly restructure its trial court system to transfer the responsibility for financing court operations from the counties to the state. Subsequently, as part of that process, county court staff were neither county employees nor state employees but rather became court employees with their trial court becoming their employer of record. However, trial courts were at first unprepared to take on many of the administrative responsibilities previously handled by county administrative staff. Also, separating from a larger, county employee pool presented potential increased costs to a smaller, trial court employee pool with respect to actuarial risk pools. In counties with CalPERS, the law required the county and the trial court to have a joint contract with CalPERS to provide retirement benefits. The joint contract combines county and trial court assets and liabilities for the purposes of setting a single employer contribution rate.

The joint contract requirement creates certain problems for counties who wish to issue pension obligation bonds or otherwise pre-fund their CalPERS pension obligations to reduce their pension contribution rates. CalPERS cannot apply the additional pre-payments to reduce the pension obligations of just the county employees. Effectively, the county would end up subsidizing the trial court which would enjoy the benefit of a reduced pension contribution rate without paying the additional pre-payments or assuming any obligation to repay the pension obligation bond. Not only is this condition counter to the policy of the state taking financial responsibility for the trial court from the county, it also impedes the county from implementing the pension obligation and pre-payment scheme since the county has no authority to indebt county residents for non-county expenditures. To circumvent this problem, some counties have established MOUs with their corresponding trial court whereby the county and court calculate their respective pension obligations based upon an agreed formula and the court reimburses the county accordingly. The process is resource intensive and inefficient for all parties.

Since the state is responsible for paying the court's share of pension contributions past versions of this bill raised concerns that establishing separate contracts with CalPERS would raise state costs since small trial courts would be subject to greater actuarial risk for being in a smaller risk pool. Some state finance officials may have even hoped that the state would face reduced costs associated with trial court pension contributions if counties prefunded their pension obligations and trial court pension contributions shared in the resulting reduced unitary contribution rate.

This bill addresses the first issue by requiring, following the separation of the joint contract, any plan under separate contract that has under 100 members, or otherwise meets applicable board criteria, to participate in a specified CalPERS risk pool. As for the second issue, state and federal audit standards require that county and state financial reports accurately reflect each party's actual pension obligation thereby requiring the parties to allocate any pror5atable change in the unitary contribution rate to the corresponding parties.

The bill also ensures that employee benefits remain protected by requiring the retirement benefit levels provided to employees under the joint contract not be modified until after expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the county and its recognized employee organizations or the trial court and its recognized employee organizations mutually agree to a modification.

In sum, this bill puts the final piece in place to the court transition program that started over 30 years ago and helps make accurate pension obligation reporting more efficient for counties and courts.

2. Proponent Arguments

According to the sponsor:

"In 1997, the State took action to move all facets of the "courts" from the purview of the counties and separate them operationally, financially, and organizationally. The very last piece that has yet to be separated from the county is the court employees' presence in the county's CalPERS retirement plans which includes the related pension liability. This entanglement in the same retirement plan:

a) prevents counties (and courts) from prepaying pension liabilities for their respective employees, which would benefit all parties involved;
b) requires CalPERS counties to enter into MOUs with the courts to ensure the courts are paying their fair share of unfunded pension liability, especially when compensation and benefits are being negotiated, new laws are enacted and when new accounting standards are implemented;
c) hinders the counties ability to issue pension obligation bonds.

SB 548 would simply provide a mechanism for those counties/courts, who are interested, to move forward with completing the work that began in the late 1990's. It is voluntary and permissive; and would only be triggered when there are willing participants at the local level. SB 548 is necessary to direct how the separation will work and the separation is not possible without new Code."

3. Opponent Arguments:

None received

4. Committee Amendments:

The committee recommends the following minor amendments to clarify that the election to separate the CalPERS contract is voluntary:

SEC. 3.
Section 20471.2 is added to the Government Code, to read:

20471.2.
(a) A county and a trial court ~~***shall***~~ ***that*** *elect to separate the joint contract into individual contracts* ***shall do so*** *by ordinances or resolutions adopted by both the affirmative vote of a majority of the members of the governing body of a county and the presiding officer of the trial court. In order to be effective, the resolution of the presiding officer of the trial court and the resolution or ordinance of the governing body of the county shall be adopted within 30 days of each other.*
(b) The separation shall not be a cause for the modification of employment retirement benefits. The retirement benefit levels provided to employees under the joint contract shall not be modified until after expiration of an existing memorandum of understanding or agreement or a period of 24 months, whichever is longer, unless the county and its recognized employee organizations or the trial court and its recognized employee organizations mutually agree to a modification.
(c) Following the separation of the joint contract, any plan under separate contract that has under 100 members, or otherwise meets applicable board criteria, shall participate in a risk pool pursuant to Section 20840.

5. Prior Legislation:

SB 431 (Aanestad and Wiggins), Chapter 256, Statutes of 2007, required CalPERS to prepare a one-time separate pension fund computation for trial court and all other members in Butte and Solano Counties.

SB 733 (Aanestad, 2005) would have allowed Butte and Solano counties to separate the assets and liabilities of the county from those of the trial courts within those counties to establish separate employer contribution rates under CalPERS. The Assembly Appropriations Committee held the bill on suspense.

SB 2140 (Burton), Chapter 1010, Statutes of 2000, designated courts as independent employers and made trial court staff employees of the courts. Prior to SB 2140, trial court staff were county employees. The bill also required trial courts to participate in CalPERS for retirement benefits through joint contracts with their county in those counties that were already contracting with CalPERS for retirement benefits.

Proposition 220 (Adopted in November 1998) authorized the voluntary unification of each county's superior and municipal courts into a one-tier trial court system.

AB 233 (Escutia), Chapter 850, Statutes of 1997, shifted the primary responsibility of financing trial courts from the counties to the state.

SUPPORT

State Association of County Auditors (Sponsor)
Placer County Board of Supervisors
Solano County Board of Supervisors

OPPOSITION

None received

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