SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2023 - 2024 Regular Session

SB 548 (Niello) - Public employees' retirement: joint county and trial court contracts

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Policy Vote: L., P.E. & R. 5 - 0
Mandate: No
Consultant: Robert Ingenito

Bill Summary: SB 548 would authorize a county and a trial court that have a joint contract with the California Public Employees Retirement System (CalPERS) for the provision of retirement benefits for their employees to voluntarily separate the contract into two individual contracts.

Fiscal Impact: CalPERS indicates that, if all 37 counties and courts opt to separate their joint contracts, it would incur costs of $350,000 to complete the actuarial reports required by the bill. These costs would be partially offset by CalPERS charges for each actuarial report. In addition, CalPERS anticipates administrative costs of $66,000 for its contracts staff to process 37 county-court contact splits (Public Employment Retirement Fund).

Staff notes that, to the extent that fewer than all 37 counties and courts opted to separate in any given year, costs to CalPERS would be reduced commensurately.

Background: In 1997, the State transferred from the counties to the State the responsibility for financing trial court operations. Subsequently, county court staff were neither county employees nor state employees; instead, they became court employees with their trial court becoming their employer of record. Trial courts were initially unprepared to assume many of the administrative responsibilities previously handled by county administrative staff. In addition, separating from a larger, county employee pool potentially increased actuarial costs to a smaller, trial court employee pool. 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 CalPERS 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. Specifically, CalPERS cannot apply the additional pre-payments to reduce the pension obligations of solely 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. This situation goes against the State taking financial responsibility for the trial court from the county; additionally, it 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.

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

- Authorize 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.
- Authorize 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.
- Provide 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.
- Prohibit 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.
- Require, 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.
- Require 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.

Related Legislation:

- SB 431 (Aanestad, 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 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.

Staff Comments: The Senate Labor, Public Employment and Retirement Committee notes that, 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, as noted above, 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.

As noted previously, the bill's costs to CalPERS would be offset by a one-time $300 cost charged to employers for each actuarial report it provides. The number of reports per employer depends on the number of plans the employer has. For example, an employer may have a miscellaneous Classic plan and a miscellaneous PEPRA plan, which would result in two reports.

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