Office of Senate Floor Analyses
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THIRD READING

Bill No: SB 548
Author: Niello (R)
Amended: 4/24/23
Vote: 21

SENATE LABOR, PUB. EMP. & RET. COMMITTEE: 5-0, 4/19/23
AYES: Cortese, Wilk, Durazo, Laird, Smallwood-Cuevas

SENATE APPROPRIATIONS COMMITTEE: 7-0, 5/18/23
AYES: Portantino, Jones, Ashby, Bradford, Seyarto, Wahab, Wiener

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

SOURCE: State Association of County Auditors

DIGEST: This bill 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.

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.

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 pro-ratable change in the unitary contribution rate to the corresponding parties.

This 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.

Related/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.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee, 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).

Appropriations Committee 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.

SUPPORT: (Verified 5/18/23)

State Association of County Auditors (source)
California State Association of Counties
County of Monterey
County of Placer
Solano County Board of Supervisors

OPPOSITION: (Verified 5/18/23)

None received

ARGUMENTS IN SUPPORT: According to the sponsor, State Association of County Auditors:

> 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:
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> a) prevents counties (and courts) from prepaying pension liabilities for their respective employees, which would benefit all parties involved;
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> 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.

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