Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT
Tina S. McKinnor, Chair
SB 548 (Niello) – As Amended April 24, 2023

**SENATE VOTE**: 40-0

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

**SUMMARY:** Authorizes a county and trial court that have a joint contract with the California Public Employees' Retirement System (CalPERS) for the administration and provision of retirement for their employees to voluntarily separate the contract into separate and individual contracts, among other provisions. Specifically, **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) Amends the Public Employee Pension Reform Act (PEPRA) of 2013, by authorizing on or after January 1, 2024, a county and trial court that separate their joint contract into individual contracts to provide employees the defined benefit plan or formula that those employees received from their respective employers prior to exercising the option to separate; however, this is subject to the employee not being a "new employee" as defined and prescribed pursuant to the PEPRA.

3) Requires a county and a trial court that voluntarily elect to separate the joint contract into individual contracts to do so by ordinance or resolution adopted by both the affirmative majority vote of the governing body of a county and the presiding officer of the trial court. However, to be effective, the resolution of the trial court presiding officer and resolution or ordinance of the county governing body must be adopted within 30 days of each other.

4) Provides that following the separation of the joint contract, any plan under separate contract that has less than 100 members, or otherwise meets applicable CalPERS criteria, must participate in a risk pool, as specified.

5) Establishes that the separation must not be a cause for the modification of retirement benefits, and that retirement benefit levels provided to employees under the joint contract must not be modified until after an existing memorandum of understanding (MOU) has expired 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.

6) Requires CalPERS, within its existing resources, to perform a one-time separate computation of the assets and liabilities, as determined by the actuary, for a county and trial court that

voluntarily elect to separate their joint contract into individual contracts. Moreover, the assets and liabilities of each entity must be moved to their respective individual contract, and subsequent to the movement of assets and liabilities of the respective individual contracts, the joint contract must terminate.

a) Relating to the computation of assets and liabilities, both of the following must apply:

i) A person must be deemed a trial court employee for service that satisfies either: (A) the person was employed on or after January 1, 2001, all continuous service for the county immediately preceding January 1, 2001, regardless of whether that services was as a county employee or a county employee assigned to the trial court; that person must be employed by the trial court, or (B) any service on or after January 1, 2001, that the person is employed by the trial court; and,

ii) A person must be deemed a county employee for service that satisfied either: (A) any period of service prior to January 1, that is not described in "a)" above, or (B) any service on or after January 1, 2001, that the person is employed by the county.

7) Requires each respective trial court and county that separate the joint contract, as provided, to identify and send all of the following information to CalPERS within 90 days of the election to separate the joint contract:

a) Those active, inactive, and retired members that are considered county employees, as well as those that are considered trial court employees.

b) Any lump-sum payments previously made by either the county or trial court to CalPERS that covers the period from January 1, 2001, to the date of the separation, inclusive.

8) Requires within 180 days of the election to separate the joint pension contract, CalPERS to forward the computation of assets and liabilities, as prescribed, to the respective county and trial court, and in which the computation and separate must be based on the most recent actuarial valuation at the time the prescribed data is received by the system. Thereafter, the county must have 30 days to review the computation and provide any additional information required for clarification or correction, and subsequent to that deadline, CalPERS must have 60 days to amend the computation and separate the joint contract into individual contracts for the county and trial court.

9) Makes other nonsubstantive and technical changes for these purposes.

**EXISTING LAW:**

1) Requires all counties that contract with CalPERS for the provision of retirement benefits for eligible trial court employees covered by the Trial Court Employment Protection and Governance Act, a trial court and a county in which the trial court is located to jointly participate in CalPERS by joint contract for retirement benefits, and authorizes all other counties and trial courts to elect such joint participation.[1]

2) Provides that a county must not be responsible for the required employer or employee contributions due on behalf of trial court employees, nor a trial court to be responsible for the required employer or employee contributions due on behalf of county employees.[2]

3) Establishes the PEPRA – a comprehensive reform of public employee retirement that, among other things, increased contributions towards retirement, decreased benefit formulas, and increased the age of retirement that apply to new members of the system first hired on or after January 1, 2013, and made changes that apply to all members towards resolving unfunded liabilities, manipulation of compensation for purposes of calculating a retirement allowance (i.e., pensions spiking), double-dipping, and other prescribed best practice measures.[3]

4) Allows a "classic" member (i.e., a pre-PEPRA) 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 the PEPRA.[4]

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.[5]

**FISCAL EFFECT:** 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)." Further, "… 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."

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[1] Section 20460.1 of the Government (Gov.) Code.
[2] *Id.*
[3] Sections 7522 *et seq*. of the Gov. Code.
[4] Section GC 7522.02, *ibid.*
[5] Section 7522.05, *ibid.*

**COMMENTS:** Information provided by the author states that, "[i]n 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 (20+ years later) 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 the unfunded pension liability, especially when compensation and benefits are being negotiated, new laws are enacted and when new accounting standards are implemented; and c) hinders the counties ability to issue pension obligation bonds."

For these purposes, the author states that, "[this bill] would simply provide a permissive 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. In our discussions with CalPERS, they confirmed that legislation is necessary to direct how the separation will work and the separation is not possible without new Code."

1) <u>Background</u>

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 be 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 a pension obligation and pre-payment strategy since the county has no authority to indebt county residents for non-county expenditures. To address this problem, some counties have established a memorandum of understanding with their corresponding trial court; whereby, the county and court calculate their respective pension obligations based upon an agreed formula and the trial court accordingly reimburses the county. 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. Moreover, 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.

2) This Bill

As stated by the author, this bill essentially finalizes trial court transition that started over 30 years ago and helps make accurate pension obligation reporting more efficient for counties and courts.

To the extent that this bill 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, it would not modify or enhance the retirement of an affected employee provided that the employee subsequently does not otherwise meet the definition of a “new employee” under PEPRA.

3) Committee Proposed Amendments

To ensure the effective administration of this proposed statute by CalPERS, the committee recommends the following amendments to this bill discussed in summary form:

a) Clarify the process that a county and trial must follow when separating their joint contract, and establish that the election to separate the joint contract is irrevocable; (ii) clarify provisions relating to CalPERS performing actuarial valuations; and, (iii) clarify provisions relating to requiring the county and trial court to provide specific information to CalPERS.

b) Make other technical, clarifying, and conforming changes for these purposes.

4) Equity Solutions and Maximizing Benefits for Underserved and Marginalized Communities

Pursuant to House Resolution (HR) 39 (Gipson, 2021), to continue the Assembly’s commitment to investing in equity solutions and maximizing benefits for underserved and marginalized communities, legislative analyses of the Assembly must discuss the equity impact that a bill will, or may, have on such communities, if any.

This bill does not present a particular focus towards addressing equity in relation to maximizing benefits for underserved or marginalized communities as articulated in HR 39.

5) Comments by Supporters

The California State Association of County Auditors, sponsors of this proposed statute, offer statements similar to those of the author.

6) Comments by Opponents

None on file.

7) <u>Prior or Related Legislation</u>

Chapter 256, Statutes of 2007 (Senate Bill 431, Aanestad and Wiggins) 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.

Chapter 1010, Statutes of 2000 (Senate Bill 2140, Burton) designated courts as independent employers and made trial court staff employees of the courts, and 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. Prior to this statutory change, trial court staff were employees of the county.

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.

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

**REGISTERED SUPPORT / OPPOSITION**:

**Support**

State Association of County Auditors *(Sponsor*)
County of Monterey
Solano County Board of Supervisors

**Opposition**

None on file.

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