SENATE THIRD READING
SB 548 (Niello)
As Amended September 6, 2023
Majority vote

SUMMARY

Authorize 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.

Major Provisions

1) 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.

2) Amend 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) Require 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) Provide 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.

5) Establish 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) Require CalPERS within existing resources, and upon request not to exceed once every five years, to perform a separate computation of the assets and liabilities of the most recent actuarial valuation date, as provided, 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.

7) Require each respective trial court and county that separate the joint contract to identify and send certain information within 90 days of the election to separate the joint contract.

8) Require 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) Make other nonsubstantive and conforming changes for these purposes.

COMMENTS

1) Background

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

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) *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.

4) *Please see the policy committee analysis for a full discussion of this bill.*

According to the Author
"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 1990s. It is voluntary, permissive, and would only be triggered when there are willing participants at the local level."

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

Arguments in Opposition
None.

FISCAL COMMENTS

The Assembly Appropriations Committee notes that this bill would result in the following:

1) One-time special fund (i.e., Public Employee Retirement Fund) costs as high as $350,000 to CalPERS for staff to complete the actuarial reports required by this bill. Actual costs would depend on the number of counties and county trial courts opting to separate their joint contracts. These costs would be partially offset by the $300 fee charged to an employer for each actuarial report, (CalPERS estimates an offset of between $22,200 and $44,400). The state has 37 counties and county trial courts to which this bill would apply.

2) One-time General Fund (GF) costs as high as $66,000 to CalPERS for staff to process as many as 37 county and county trial court contract splits.

3) Potential, unknown state GF costs to fund CalPERS contributions for county trial court employees who might otherwise have had their pension obligations reduced by county pension contributions absent this bill.

VOTES

SENATE FLOOR: 40-0-0
YES: Allen, Alvarado-Gil, Archuleta, Ashby, Atkins, Becker, Blakespear, Bradford, Caballero, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hurtado, Jones, Laird, Limón, McGuire, Menjivar, Min, Newman, Nguyen, Niello, Ochoa Bogh, Padilla, Portantino, Roth, Rubio, Seyarto, Skinner, Smallwood-Cuevas, Stern, Umberg, Wahab, Wiener, Wilk

ASM PUBLIC EMPLOYMENT AND RETIREMENT: 7-0-0
YES: McKinnor, Lackey, Addis, Vince Fong, Haney, Stephanie Nguyen, Schiavo

ASM APPROPRIATIONS: 16-0-0
YES: Holden, Megan Dahle, Bryan, Calderon, Wendy Carrillo, Dixon, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Sanchez, Soria, Weber, Wilson

UPDATED

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