

Legislative Report
September 2018

Bills on which there has been activity are highlighted in bold text. For those bills that have died, if you are interested in what they might have done, please refer to the last report.

The Legislature has now recessed for the year. Aug. 31 was the last day for each house to pass bills. As you'll note from the below commentary, when it chooses to do so, the Legislature can accomplish a lot in a short period of time. Sept 30 is the last day for Governor to sign or veto bills. Accordingly, the last report for this year will be submitted after the Governor's deadline.

AB 1912 (Rodriguez). This bill would eliminate many provisions within the Joint Exercise of Powers Act (Act) regarding the debts, liabilities, and obligations of the joint powers agency (JPA). As amended on May 9, the bill would additionally specify that for a JPA that participates in a public retirement system, all parties to the joint powers agreement (agreement) would be required to mutually agree as to the apportionment of the JPA's retirement obligations among themselves, provided that the agreement equals the total retirement liability of the JPA. The bill would require the board of the retirement system (board), in cases in which the member agencies are unable to mutually agree to apportionment, to apportion the retirement liability of the JPA to each member agency. The board's decision may be challenged through arbitration, and the arbitrator's decision shall be final. The bill would also provide that if a judgment is rendered against an agency or a party to the agreement for a breach of its obligations to the retirement system, the time within which a claim for injury may be presented or an action commenced against the other party that is subject to the liability determined by the judgment begins to run when the judgment is rendered. The bill would specify that those provisions apply retroactively to all parties, both current and former, to the agreement. This bill would apply to all JPAs in existence prior to January 1, 2019, and to all new JPAs that contract with a public retirement system thereafter, but not to a JPA that dissolved prior to the bill's effective date.

The bill would also revise the provisions of PERL regarding termination of an agreement with CalPERS and an agency formed under the Act. This bill would extend that liability and lien to all of the parties of a terminating agency that was formed under the Act. **The bill passed out of the Senate Appr Committee on August 16 (5-2), after being amended. It was also amended on the Senate floor on August 24. Both amendments can be characterized as important clarifications. The bill passed out of the Senate on August 30 (27-10), the Assembly concurred in the Senate's amendments on August 31 (59-13), and the bill was sent to the Governor.**

AB 2196 (Cooper). This bill would, after January 1, 2020, permit the member, survivor, or beneficiary, where prior service credits are being purchased under an installment plan, to elect to discontinue the payments and receive a retirement allowance that is reduced by the actuarial equivalent of any balance remaining unpaid by the member. It was last amended in the Senate on June 13. **The Assembly concurred in the Senate amendments on August 6, and the Governor signed it on August 20 (Chapter 168, Stats. of 2018).**

AB 2310 (Aguiar-Curry). This bill provides that collective bargaining agreements, as an alternative to specifying the exact percentage of member compensation to be paid toward the current service cost of the benefit by members, to specify the methodology for calculating that cost-sharing rate. It would specify that once a contracting agency elects to be subject to the cost-sharing provision, contract amendments are not required to effectuate cost sharing in subsequent collective bargaining agreements or memoranda of understanding ratified by the employee bargaining unit and the governing body of the agency. The bill would, however, require the contracting agency, if a collective bargaining agreement or memorandum of understanding sets

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forth a methodology for calculating the cost-sharing rate instead of an exact percentage, to provide the retirement system with a signed side letter ratified by the employee bargaining unit and the agency indicating the exact percentage at least 90 days prior to the effective date of the cost-sharing rate set forth in the signed side letter. **The bill passed out of the Senate on August 6 (37-0), and the Governor signed it on August 27 (Chap. 213, Stats. of 2018)**

AB 2415 (Calderon). This bill would add a chief operating officer and a chief health director to the list of positions for which PERS is authorized to appoint and fix the compensation. **The bill was amended and passed out of the Senate APPR Committee on August 16 (6-1). The amendment limited increases in compensation for the new positions. The bill passed out of the Senate on August 27 (31-7), the Assembly concurred in the Senate amendments on August 29 (79-1), and the bill was sent to the Governor.**

SB 656 (Moorlach & Lara). Existing law authorizes a judge who is a member of the Judges' Retirement System II system and who retires upon attaining both 65 years of age and 20 or more years of service, or upon attaining 70 years of age with a minimum of 5 years of service, to receive specified retirement benefits, including a monthly pension. Existing law requires a judge who leaves judicial office after accruing 5 or more years of service, but who has not reached the applicable age of retirement, to be paid a lump sum equal to monetary credits that accrued while he or she was in office. Existing law also authorizes a judge who separates from office after accruing 5 or more years of service but has not reached 65 years of age to continue health care benefits if he or she assumes certain payments.

This bill would authorize a judge who has attained 60 years of age with a minimum of 5 years of service, or who has accrued 20 or more years of service, to retire and to elect to receive a monthly pension that would be deferred until the judge reaches retirement age, but to continue health care benefits upon separation from office if he or she assumes specified payments.

This bill passed out of the Assembly APPR Committee on August 16 (17-0), was amended on the Assembly floor for clarification on August 24, and passed out of the Assembly on August 30 (78-0). The Senate concurred in the Assembly amendment on August 31 (39-0), and the bill was sent to the Governor.

SB 964 (Allen). This bill and would, until January 1, 2035, require climate-related financial risk to be analyzed to the extent the boards of CalPERS and CalSTRS identify the risk as a material risk to their funds. The bill, by January 1, 2020, and every 3 years thereafter, would require each board to publicly report on the climate-related financial risk of its public market portfolio, including alignment of their funds with the COP 21 climate agreement and California climate policy goals and the exposure of the fund to long-term risks. The bill would provide that it does not require either board to take action unless the board determines in good faith that the action is consistent with its fiduciary responsibilities. **The bill passed out of the Assembly APPR Committee on August 16 (12-5), out of the Assembly on August 30 (53-25), and was sent to the Governor.**

SB 1022 (Pan). PERL provides that data filed by a member or beneficiary with PERS is confidential, subject to certain exceptions, and is to be used only for carrying out PERL. This bill would specify that those confidentiality provisions also apply to the Public Employees Medical and Hospital Care Act, which PERS also administers.

PERL prescribes a process by which an agency contracting of PERS may terminate its contract, including requiring the adoption by the relevant governing body of a resolution giving notice of intention to terminate and adopting an ordinance or resolution terminating the contract not less than one year after giving notice.

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This bill would require terminating agencies to notify past and present employees who are members, former members, or retired members of the PERS, within 7 days of the adoption of the resolution giving notice of intention to terminate and, for contracts that were approved by the electorate, to make notification of a pending vote to terminate at least 90 days before the date of vote. The bill would require that the ordinance or resolution terminating the contract be adopted not less than 90 days and not more than one year after the PERS's receipt of the resolution giving notice of intention to terminate. The bill would prohibit the termination effective date from being earlier than the date of adoption of the ordinance or resolution terminating the contract.

The notice provisions in this bill are intended to shield PERS from the ire of employees and retirees of terminating agencies, and shift it to the terminating agency.

The bill passed out of the Assembly APPR Committee on August 8 (17-0), out of the Assembly on August 16 (76-0), and was sent to the Governor.

SB 1124 (Leyva). This bill would establish new procedures under PERL for cases in which a member's benefits are erroneously calculated by the state or a contracting agency. The bill, with respect to a memorandum of understanding (MOU) entered into before January 1, 2019, would require the system, upon determining that compensation for an employee member covered by that MOU reported by the state or a contracting agency conflicts with specified law, to discontinue the reporting of the disallowed compensation and not to pay benefits based on the disallowed compensation. The bill would require the contributions made on the disallowed compensation, for active members, to be credited against future contributions on behalf of the member. The bill would require PERS, with respect to retired members or beneficiaries whose final compensation at retirement was predicated upon disallowed compensation, to permanently adjust the benefit to reflect the inclusion of the disallowed compensation. The bill would also require the retired member or beneficiary to be permitted to retain the benefit level and not be required to repay that benefit, if, among other things, the member was unaware the compensation was disallowed when reported. **The bill was amended in committee at the author's request on August 7, passed out of the Assembly APPR Committee on August 16 (17-0), and out of the Assembly on August 27 (80-0). The Senate concurred in the Assembly amendment on August 28 (39-0), and sent the bill to the Governor.**

SB 1166 (Pan). This bill would require a contracting agency that fails to make its required employer contributions on time to notify members and retired members of the delinquency by mail within 30 days of the payment having become delinquent. **The bill passed out of the Assembly APPR Committee on August 16 (12-5) but was ordered to the inactive file on August 16 at the request of Assembly Member Calderon, so the bill is dead.**

SB 1413 (Nielson). This bill would enact the California Employers' Pension Prefunding Trust Program and establish the California Employers' Pension Prefunding Trust Fund to allow state and local public agency employers that provide a defined benefit pension plan to their employees to prefund their required pension contributions. The bill would authorize an employer, upon terms and conditions set by the CalPERS board (board), to elect to participate in the prefunding plan, and would require the governing body of that employer to enter into a contract with the board relative to the prefunding plan. Each participating employer would be required to pay an amount, determined by the board, for administrative and asset management costs of the prefunding plan to the fund and would grant the board the sole and exclusive control of the administration and investment of the fund. The bill would also set the terms under which a prefunding plan contract could be terminated or transferred. **The bill passed out of the Assembly APPR Committee on August 16 (17-0), and out of the Assembly on August 31 (80-0). The Senate concurred in Assembly amendments on the same date (39-0), and sent the bill to the Governor.**