

11-12-2013

Public Employees. Pension and Retiree Healthcare Benefits. Initiative Constitutional Amendment.

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November 8, 2013

RECEIVED

NOV 12 2013

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Ms. Ashley Johansson
Initiative Coordinator
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Re: Request for Title and Summary for Re-submitted Proposed Initiative

Dear Ms. Johansson:

Pursuant to Article II, Section 10(d) of the California Constitution, this letter respectfully requests that the Attorney General prepare a circulating title and summary of the enclosed proposed statewide initiative: "The Pension Reform Act of 2014." The proposed initiative is substantially the same as the identically-titled initiative which we submitted to your office on October 15, 2013, though the proposed initiative includes several substantive amendments. For your convenience, we have included a clean version of the proposed initiative, as well as a version identifying the changes that we have made to the prior version of the initiative. Also enclosed are the required signed statements pursuant to California Elections Code sections 9001 and 9608, and a check in the amount of \$200.

Please direct all queries and correspondence regarding this proposed initiative to:

James R. Sutton, Esq.
Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108
415/732-7700
jsutton@campaignlawyers.com

Thank you for your time and attention to this matter.

Sincerely,



Proponent - Chuck Reed

11/7/13
Date

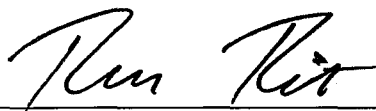
cc: James R. Sutton, Esq.
Enclosures

Ms. Ashley Johansson
Request for Title and Summary for Re-submitted Proposed Initiative
The Pension Reform Act of 2014
November 8, 2013

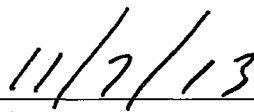
William R Kampe
Proponent – William R. Kampe

Nov 7, 2013
Date

Ms. Ashley Johansson
Request for Title and Summary for Re-submitted Proposed Initiative
The Pension Reform Act of 2014
November 8, 2013



Proponent – Tom Tait



Date

Ms. Ashley Johansson
Request for Title and Summary for Re-submitted Proposed Initiative
The Pension Reform Act of 2014
November 8, 2013


Proponent – Patrick J. Morris

11/8/13
Date

Ms. Ashley Johansson
Request for Title and Summary for Re-submitted Proposed Initiative
The Pension Reform Act of 2014
November 8, 2013



Proponent – Stephanie Gomes

11/8/13

Date

THE PENSION REFORM ACT OF 2014

SECTION 1. TITLE.

This measure shall be known and may be cited as "The Pension Reform Act of 2014."

SECTION 2. FINDINGS.

(a) Government has a responsibility to provide essential services that protect the safety, health, welfare, and quality of life enjoyed by all Californians. Government also has an obligation to be fair to its employees and ensure that its retirement benefit plans are sustainable, fiscally sound, and able to meet the commitments made to its employees and retirees.

(b) The cost of California's current government employee retirement benefits is threatening the government's ability to achieve these goals. California's government reform agency, the Little Hoover Commission, issued a report in February 2011 entitled "Public Pensions for Retirement Security." The report stated, "*California's pension plans are dangerously underfunded, the result of overly generous benefit promises, wishful thinking and an unwillingness to plan prudently.*" The Commission concluded that pension costs are impairing the government's ability to provide essential services, and without aggressive reforms, cities and counties will be forced to slash services, reduce other forms of compensation, and lay off more government employees. In fact, government employee retirement benefits have been a primary factor behind the recent bankruptcies of the cities of Vallejo, Stockton, and San Bernardino, and threaten dozens of other jurisdictions with service-level insolvency. And if these problems continue to grow and become more widespread, government employees will be in peril of not receiving the retirement benefits they have earned.

(c) The current situation was not foreseen when the State Legislature passed Senate Bill 400, which granted retroactive pension increases to state employees in 1999. Back then, the California Public Employees Retirement System ("CalPERS"), the state's largest pension plan, estimated that state pension costs would not increase for a decade. Instead, according to CalPERS, the cumulative increase in state pension costs topped \$16 billion during that decade. In addition, the Stanford Institute for Economic Policy Research has estimated that unfunded state and local pension liabilities now exceed \$500 billion. These dramatic cost increases and unfunded liabilities are not simply due to the recession or drops in the housing and stock market several years ago, but are also attributable to inherent and systemic flaws in the government employee retirement benefits system. In a report issued in April 2013, CalPERS projected that retirement

contributions will rise by up to an additional 50 percent during the next seven years, creating a burden that will prove unbearable for many cities, counties, and other local government agencies. The situation at the California State Teachers' Retirement System ("CalSTRS") is much worse. In September 2013, CalSTRS reported that, under currently accepted Governmental Accounting Standards Board standards, its pension plan was only 44.7 percent funded.

(d) This voter-sponsored measure is necessary because attempts to reform the system through legislation and other initiatives have been inadequate. Even though the Little Hoover Commission has confirmed that California cannot solve its pension problems without making prospective changes going forward for current employees, the pension reforms passed by the Legislature in 2012 did not include such necessary changes. In addition, more substantial pension reforms adopted by local governments are at-risk of being overturned by the courts due to a lack of clarity in the law. While private sector pension plans are governed by federal laws that allow the plan sponsors to prospectively change employee benefits and provide for specific remedies when the plans become financially distressed, some argue that the language in some California judicial decisions hold that the same standard does not apply to public pensions. Finally, the citizens of California strongly support pension reform and believe the 2012 state legislation did not fix the problem.

(e) This measure is fair and reasonable, serves an important public purpose, restores the integrity and stability of government pension systems, and is necessary to preserve and protect the safety, health, and welfare of the people of California, for the following reasons:

(1) This measure allows government employers and voters to modify pension and retiree healthcare benefits and to increase employee contributions in future collective bargaining agreements for future years of service, while protecting benefits previously earned.

(2) Under federal law for private sector pension funds, pension plans are allowed to modify benefits for future years of service and are required to develop a plan for corrective action when they are underfunded. This measure would apply similar standards to government employee pension and retiree healthcare plans, allowing financially distressed government employers to make necessary modifications and requiring agencies administering the plans to implement such modifications.

(3) This measure provides long-term stability to retirement benefit programs by providing comprehensive standards that permit government employers to make and implement necessary modifications to pension and retiree

healthcare plans that will provide fiscal sustainability for the government employer, require implementation of such modifications by agencies administering such plans, and give the courts clear direction on how to adjudicate such important public policy goals.

(f) Therefore, to enable the people of California to meet the goals outlined above, to prevent them from being encumbered with additional unsustainable burdens, and to protect government employees and retirees, this measure amends the Constitution of the State of California.

SECTION 3. PURPOSE AND INTENT.

The People hereby enact this measure:

(a) To amend the Constitution of the State of California to enable the people of California to take those actions necessary to attain fiscal sustainability and provide fiscally responsible and adequately funded pension and retiree healthcare benefits for all government employees and retirees.

(b) To create an explicit constitutional amendment to Article 1, Section 9 of the California Constitution.

(c) To prevail and control over any conflicting provisions in the California Constitution, California Government Code or other provision of California law.

(d) To supersede the portions of the California Supreme Court decisions in *Kern v. City of Long Beach* (1947) 29 Cal.2d 848, *Miller v. California* (1977) 18 Cal.3d 808, and their progeny which have been construed as limiting the ability to prospectively modify pension and retiree healthcare benefits for work not yet performed by government employees.

(e) To authorize state and local governments to exercise their authority, including the exercise of their inherent police powers, to provide and protect essential government services, consistent with the United States Constitution.

(f) To provide clear and reasonable guidelines to all California courts, government employers, and retirement plan administrators to address these serious pension and retiree healthcare benefit cost and underfunding problems in a manner consistent with the United States Constitution's contract, takings, equal protection, and due process provisions.

(g) To protect pension and retiree healthcare benefits based on work already performed, while allowing reasonable modifications to such benefits for future services.

SECTION 4. AMENDMENTS TO CALIFORNIA CONSTITUTION

Section 9 of Article I of the California Constitution is amended to read:

A bill of attainder, ex post facto law, or law impairing the obligation of contracts may not be passed. *Section 12 of Article VII of the Constitution is deemed not to impair the obligation of contracts.*

Section 12 is added to Article VII of the California Constitution, to read:

Public Employee Retirement Benefits and Obligations

SEC. 12(a)(1) From the effective date of this Section, to the extent any government employer confers its current employees with vested contractual rights to pension or retiree healthcare benefits of any kind, such rights shall be earned and vested incrementally, only as the recipient employee actually performs work, and only in proportion to the work performed, subject to the vesting periods established by the applicable plan.

(2) Nothing in this subsection shall affect pension or retiree healthcare benefits earned and accrued for work already performed by employees or retirees.

(b) For any government employee hired after the effective date of this Section, to the extent any government employer confers these employees with vested contractual rights to pension or retiree healthcare benefits of any kind, such rights shall be earned and vested incrementally, only as the employee actually performs work, and only in proportion to the work performed, subject to the vesting periods established by the applicable plan.

(c) Any action by a government employer, labor agreement or voter initiative prior to the effective date of this Section shall not be found to have created a vested contractual right to future pension or retiree healthcare benefits before such work is performed by employees, unless the specific language of the underlying action, agreement or initiative expressly states that such benefits are vested or are otherwise irrevocable.

(d) Nothing in this Section shall be construed as conferring or vesting any rights or benefits on government employees not expressly granted by the government employer.

(e) The terms of a pension or retiree healthcare benefit plan for work not yet performed may be amended through a labor agreement, an action by a legislative body, or an initiative, referendum or other ballot measure initiated by the voters or by a legislative body. Any such amendments to pension or retiree healthcare benefits made by a legislative body, whether by legislation or by placing a measure on the ballot, shall comply with applicable collective bargaining laws.

(f) Courts shall have exclusive jurisdiction to consider and adjudicate all disputes regarding laws relating to pension or retiree healthcare benefits enacted or proposed through an initiative, referendum or other ballot measure.

(g)(1) Nothing in this Section shall alter any provisions of a labor agreement in effect as of the effective date of this Act, but this Section shall apply to any successor labor agreement, renewal or extension entered into after the effective date of this Act.

(2) Any provision of a labor agreement executed within 12 months before the effective date of this Act which is inconsistent with any provision of this Act shall be invalid if a court determines by a preponderance of evidence that such provision of the labor agreement was entered into for the purpose of avoiding this Act.

(3) For the purposes of this subsection, there shall be a rebuttable presumption that any labor agreement renewed or extended more than 6 months before its expiration date during the 12-month period before the effective date of this Act was entered into for the purpose of avoiding this Act.

(h) The amount employees are required to pay for pension or retiree healthcare benefits is a component of an employee's compensation package, and may be amended through a labor agreement, an action by a legislative body, or an initiative, referendum or other ballot measure initiated by the voters or by a legislative body.

(i)(1) If a government employer finds its pension or retiree healthcare plan is substantially underfunded and is at risk of not having sufficient funds to pay benefits to retirees or future retirees, or declares a fiscal emergency because the financial condition of the government employer impairs its ability to provide essential government services or to protect the vital interests of the community, the government employer, in addition to its current powers and the powers set out in this Section, shall have the authority to implement one or more of the following actions for all employees, within the limits of the United States Constitution:

(i) Reduce the rate of accrual for pension or retiree healthcare benefits to be earned in the future.

(ii) Reduce the rate of cost of living adjustments for pension or retiree healthcare benefits to be made in the future.

(iii) Increase the retirement age for payment of pension or retiree healthcare benefits to be earned in the future.

(iv) Require employees to pay a larger share of the cost of pension or retiree healthcare benefits.

(v) Other reductions or modifications of pension or retiree healthcare benefits agreed upon during collective bargaining.

(2) The government employer shall make factual findings establishing that such actions are reasonable and necessary to serve an important public purpose and are consistent with the United States Constitution and the California Constitution, as modified by this Act.

(3) If a government employer takes any of the actions described in this subsection, such actions shall apply only to work performed by employees after the date on which the government employer takes such actions.

(4) If such actions are within the mandatory scope of collective bargaining, they shall be submitted to collective bargaining.

(5) Any such actions may be subsequently amended to take into account changes in circumstances, subject to the process established in this Section.

(j)(1) For any pension or retiree healthcare plan with assets equaling less than 80 percent of the plan's liabilities, as calculated by the plan's actuary using generally accepted accounting principles, the government employer shall prepare a stabilization report.

(2) The stabilization report shall specify actions designed to achieve 100 percent funding of the plan within 15 years while preserving basic government services. The stabilization report shall identify (i) the benefits to be modified, if any, (ii) the additional costs to be incurred by employees, if any, (iii) the additional costs to be incurred by the government employer, if any, (iv) the specific funding sources to be used to pay for such additional costs, (v) the investment return rates needed to be achieved to obtain such funding level, as well as information regarding the historical rates of return earned by the applicable plan, and (vi) the impact of any

existing pension obligation bonds issued by the government employer, and any additional actions that may be needed to pay off such bonds.

(3) The stabilization report shall be published for public review within 180 days of receiving an actuarial valuation from the retirement plan administrator on the funding status of the pension or retiree healthcare plan.

(4) The government employer shall hold a public hearing to receive public input and formally accept the stabilization report within 270 days of receiving an actuarial valuation from the retirement plan administrator on the funding status of the plan. Nothing in this subsection shall require the government employer to adopt or implement any actions specified in the stabilization report.

(5) Each year thereafter the government employer shall follow the process established in this Section until the pension or retiree healthcare plan's actuary reports that the pension or retiree healthcare plan is at least 100 percent funded.

(k) When a government employer modifies, freezes or terminates a pension or retiree healthcare plan, the government employer's obligation to ensure payment for all employee benefits accrued prior to the date of such action shall continue. For such modified, frozen or terminated plans, the retirement plan administrator shall use the same discount rate applied to the plan administrator's unmodified plans when establishing contribution rates and shall not impose a penalty or premium on such plans. The government employer and employees shall maintain responsibility for all unfunded liabilities in such plans in accordance with the terms of the labor agreement between the government employer and employees, and shall make amortization payments using the same methodologies that govern the retirement plan administrator's other plans. This provision shall not apply to the obligations of government employers which are dissolving.

(l) The power to amend the terms of a pension or retiree healthcare benefit plan as allowed under this Section may not be prohibited or limited by labor agreement, statute, resolution, ordinance, or any other act by an executive, legislative body, pension board, or any other governmental entity.

(m) Every government employer and pension board shall promptly implement and enforce all provisions of this Act unless ordered otherwise by a court.

(n) Should it be determined that any provision of this Act is in conflict with any other provision of the California Constitution, the California Government Code or any other provision of California law, the provisions of this Act shall prevail and control.

(o) As used in this Section, the following definitions shall apply:

(1) "Act" shall mean the Pension Reform Act of 2014.

(2) "Government employee" and "employee" shall mean an employee, officer or elected official of a government employer who is entitled to receive pension or retiree healthcare benefits.

(3) "Government employer" and "employer" shall mean the state or a political subdivision of the state, including but not limited to counties, cities, charter counties, charter cities, charter city and counties, school districts, special districts, boards, commissions, the Regents of the University of California, California State University, and agencies thereof. For the purposes of this section, the Legislature shall serve as the government employer with respect to the pension benefits of the members of the California State Teachers Retirement System, but not with respect to their retiree healthcare benefits.

(4) "Labor agreement" shall mean a memorandum of understanding, collective bargaining agreement, contract or similar agreement entered into between a government employer and a recognized employee organization representing government employees.

(5) "Pension" or "pension benefits" shall mean a plan or trust providing a defined benefit determined by a formula based on factors such as age, years of service and compensation, or a defined contribution plan. It shall not include disability benefits for government employees or death benefits for families of government employees, even if those benefits are provided as part of a pension or deferred compensation plan.

(6) "Pension board" shall mean a retirement board as defined in section 17(h) of Article XVI.

(7) "Plan" and "retirement plan" shall mean any pension or retirement plan offered by a government employer for the purpose of providing retirement benefits to government employees.

(8) "Retiree healthcare" or "retiree healthcare benefits" shall mean a plan or trust providing healthcare benefits to retired government employees, such as healthcare services (including acute and chronic care), payment of capitation fees (including those for the United States Medicare Program), other medical services, and dental and vision services. It shall not include disability benefits for government employees or death benefits for families of government employees even if those benefits are provided as part of a healthcare plan.

SECTION 5. Effective Date.

Except as otherwise provided herein, this Act shall become effective the day after its approval by the voters, pursuant to section 10(a) of Article II of the California Constitution.

SECTION 6. Conflicting Measures.

This Act is intended to be comprehensive. It is the intent of the People that in the event this Act and one or more measures relating to the same subject shall appear on the same statewide election ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this Act. In the event that this Act receives a greater number of affirmative votes, the provisions of this Act shall prevail in their entirety, and all provisions of the other measure or measures shall be null and void.

SECTION 7. Liberal Construction.

This Act is an exercise of the public power of the people of the State of California for the protection of the health, safety, and welfare of the people of the State of California, and shall be liberally construed to effectuate its purposes.

SECTION 8. Severability.

If any provision of this Act, or part thereof, or the applicability of any provision or part to any person or circumstances, is for any reason held to be invalid or unconstitutional, the remaining provisions and parts shall not be affected, but shall remain in full force and effect, and to this end the provisions and parts of this Act are severable. The voters hereby declare that this Act, and each portion and part, would have been adopted irrespective of whether any one or more provisions or parts are found to be invalid or unconstitutional.

SECTION 9. Defending the Pension Reform Act of 2014.

(a) The people of the State of California declare that the proponents of this Act have a direct and personal stake in defending this Act and grant formal authority to the proponents to defend this Act in any legal proceeding, either by intervening in such legal proceeding, or by defending the Act on behalf of the people and the State in the event that the State declines to defend the Act or declines to appeal an adverse judgment against the Act.

(b) In the event that the proponents are defending this Act in a legal proceeding because the State has declined to defend it or to appeal an adverse judgment against it, the proponents shall:

(1) act as agents of the people and the State;

(2) be subject to all ethical, legal, and fiduciary duties applicable to such parties in such legal proceeding; and

(3) take and be subject to the Oath of Office prescribed by Article XX, section 3 of the California Constitution for the limited purpose of acting on behalf of the people and the State in such legal proceeding.