SENATE BILL **No. 11**

Introduced by Senator Negrete McLeod

December 1, 2008

An act to add Article 8.10 (commencing with Section 31699.1) to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, relating to county employees retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 11, as introduced, Negrete McLeod. County employees retirement: San Bernardino County health benefits.

The County Employees Retirement Law of 1937 authorizes the board of supervisors of a county to provide for the contributions of funds for, and the retirement system to establish, a Post-Employment Benefits Trust Account as a part of the retirement fund. Existing law vests, except as specified, the management of a county retirement system in a county board of retirement.

This bill would authorize the board of retirement of San Bernardino County to establish by resolution a fund for the collective investment of assets held in trust solely for the exclusive benefit of providing health benefits to employees of any local public agency, as specified. The fund would be a legal entity that is separate from the retirement system, and would be governed by a postemployment health benefits fund board that would be composed of the members of the board of retirement. The bill would direct the postemployment health benefits fund board to establish the terms and conditions for a public agency to participate in the fund. The bill would also authorize the board of retirement to terminate the fund in its discretion at any time, in a specified manner.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Article 8.10 (commencing with Section 31699.1) is added to Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code, to read:

Article 8.10. Post-Employment Health Benefits: San Bernardino County Alternative Fund

31699.1. This article shall apply to a board of retirement established in a county of the seventh class.

31699.2. Unless the context otherwise requires, the definitions contained in this section govern the construction of this article.

(a) "Board members" means the retirement system board and the individual members of that board or the individual members of a postemployment health benefits fund board, as applicable.

(b) "Employee," except as used in subdivision (g), means a former or retired employee of a local public agency and his or her spouse and dependents who are eligible for retiree health benefits provided by that public agency.

(c) "Postemployment health benefits fund" means the fund established by the retirement system board as a legal entity separate from the retirement system that is used for the collective investment of assets held solely for providing health benefits to employees of a local public agency.

(d) "Postemployment health benefits fund board" means the governing board of the postemployment health benefits fund.

(e) "Public agency" means any local public agency, as defined in Section 53630.

(f) "Retirement system board" means the governing board of the retirement system.

(g) "Staff" means the officers and employees of the retirement system or of the postemployment health benefits fund, as applicable.

31699.3. The purpose of this article is to allow the retirement system board to establish a postemployment health benefits fund for public agencies that would enable the agencies to do all of the following:

(a) Combine for investment the assets that the agencies set aside to provide for retiree health benefits.

(b) Take advantage of economies of scale.

(c) Use existing investment expertise to reduce the cost of funding for retiree health benefits and increase the security of public retirees and their dependents in those benefits.

31699.4. (a) (1) The retirement system board may establish, by resolution, a postemployment health benefits fund for the collective investment of assets held in trust solely for the exclusive benefit of providing health benefits to employees of any local public agency.

(2) The postemployment health benefits fund board shall be composed of the same members that compose the retirement system board. The postemployment health benefits fund board shall have the sole and exclusive responsibility and discretion for administration of the postemployment health benefits fund. However, the retirement system board may terminate the fund in its discretion at any time.

(b) The postemployment health benefits fund shall be established and administered to comply with the requirements of Governmental Accounting Standards Board Statements No. 43 and No. 45 (GASB 43 and 45) for assets held by the postemployment health benefits fund to be treated as plan assets, to the extent reasonably practicable.

(c) The assets in the postemployment health benefits fund shall be irrevocably held for the exclusive purposes of providing health benefits to employees of the participating public agencies, and to defray the reasonable expenses of administering the fund. The postemployment health benefits fund board may require that all assets transferred to it on behalf of a participating public agency be transferred from a trust fund that meets the requirements of GASB 43 and 45 for assets to be treated as plan assets, including that the assets of the trust fund be held for the exclusive purpose of providing health benefits to employees of a local public agency.

(d) The retirement system board shall determine, at its sole discretion, the form of the postemployment health benefits fund, which may be one or more trusts that are established under Section 115 of the Internal Revenue Code or any other form or forms chosen. The retirement system board may take any and all actions necessary or appropriate to implement the postemployment health benefits fund, including, but not limited to, establishing one or more joint powers authorities, partnerships, common trust funds, or other mechanisms in order to combine or commingle the assets held by the fund for investment purposes.

(e) A public agency, or the trustees of a trust fund that has transferred assets to the postemployment health benefits fund, may, in accordance with rules established by the postemployment health benefits fund board, direct that all or part of the assets allocated to the account of that agency or trust be transferred to another fund that is maintained by the agency that holds those assets solely for the exclusive purpose of providing health benefits to employees of the agency. Upon termination of the postemployment health benefits fund by the retirement system board, the postemployment health benefits fund board shall retain an amount sufficient to pay reasonable costs and expenses of operating and terminating the postemployment health benefits fund, and thereafter shall transfer any remaining assets allocated to the account of each participating public agency only to another fund maintained by the agency that holds those assets solely for the exclusive purpose of providing health benefits to employees of the agency. If a participating agency does not maintain a fund for that exclusive purpose, the postemployment health benefits fund board shall transfer the assets allocated to the public agency's account to a trust account maintained by a bank for the exclusive purpose of providing health benefits to employees of the agency. The bank shall have net assets of at least five hundred million dollars ($500,000,000). The postemployment health benefits fund board shall be reimbursed from the assets of the postemployment health benefits fund allocated to the public agency for all direct and indirect costs of establishing and transferring fund assets to a bank trust account.

31699.5. The investment of the assets in the postemployment health benefits fund shall be subject to the fiduciary standards governing investments under Section 17 of Article XVI of the California Constitution, as those standards apply to the management of investments of the retirement system governed by the board, notwithstanding that assets in the postemployment health benefits fund will be used to provide retiree health benefits and not retirement allowances. Each public agency and trust fund, and each governing body and member thereof, that participates in the postemployment health benefits fund shall be conclusively determined to have accepted and approved the applicability of the investment standards set forth in this article.

31699.6. (a) The postemployment health benefits fund board shall determine the investments of the postemployment health benefits fund and may delegate this function to the extent consistent with its fiduciary responsibilities, including delegating this function to the retirement system board.

(b) The postemployment health benefits fund board may offer different investment pools to be chosen by the public agencies and their trust funds that participate in the postemployment health benefits fund.

(c) To the extent allowed by California law and federal law, including, but not limited to, federal tax and securities law, the postemployment health benefits fund board may invest the assets that it holds, and the retirement system board may invest the assets that it holds, in investment pools established under this article, and each of those boards may combine or commingle, for investment purposes only, the assets that it holds with the assets held by the other board. The postemployment health benefits fund board and the retirement system board may take any and all actions necessary or appropriate to implement that combination or commingling, including, but not limited to, unitizing the investments held for retirement purposes.

(d) The retirement system board may invest the assets that it holds for retirement purposes, and the postemployment health benefits fund board may invest the assets held in the postemployment health benefits fund in the same or similar investments by parallel investing rather than commingling the assets for investment.

31699.7. (a) The postemployment health benefits fund board shall establish the terms and conditions for a public agency and its trust fund to participate in the postemployment health benefits fund, including, but not limited to, eligibility to participate, amount of assets transferred to the fund, investments, withdrawal, transfer of assets to or from the fund, termination of participation, and reporting to the public agency.

(b) The postemployment health benefits fund board shall account separately for each public agency and its trust fund with respect to contributions, withdrawals, earnings, losses, fees paid to third-party vendors, expenses, and all other relevant items. Any expenses charged to the postemployment health benefits fund by the retirement system shall be reported at least monthly by the postemployment health benefits board in its public records and shall be reported at least annually to each agency or trust that participates in the postemployment health benefits fund. The portion of the postemployment health benefits fund that is attributable to each public agency and its trust fund after the accounting, including each agency's and trust fund's allocated share of expenses as provided in this section, shall be used only for the exclusive benefit of the employees of that agency.

(c) The postemployment health benefits fund board shall, by resolution, establish all rules, regulations, or bylaws for the administration of the postemployment health benefits fund, including any revision that it deems appropriate, and shall have sole discretion to interpret those rules, regulations, or bylaws.

31699.8. (a) The sole function of the postemployment health benefits fund shall be to invest assets of participating public agencies and their trust funds that are held for the exclusive benefit of agency employees. The postemployment health benefits fund shall not have any liability for benefits that are provided by any agency or trust that transfers assets to the postemployment health benefits fund for investment. Additionally, the retirement system shall not have any liability for those benefits.

(b) The transfer of assets to or from the postemployment health benefits fund, and the investment of assets by that fund, shall not change the obligation of any agency for retiree health benefits, shall not create any obligations on the part of the retirement systems for retiree health benefits, and shall not create any obligation on the part of a postemployment health benefits fund for any pension or annuity benefits.

(c) The retirement system and the postemployment health benefits fund are separate legal entities, and they and their boards, board members, and staffs, are liable only for their own actions or failures to act. Any liability shall be determined in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title 1. Any of those claims or causes of action shall accrue in accordance with Division 3.6 (commencing with Section 810) of Title 1.

31699.9. (a) Expenses of administration of this article shall be allocated by the retirement system board, in its discretion and on a reasonable basis, among the postemployment health benefits fund, the retirement system, and the accounts of the public agencies and trust funds that participate in the postemployment health benefits fund.

(b) The establishment of the postemployment health benefits fund will enable the sharing of expenses of administration and investment, bringing economies of scale and better use of investment expertise to the retirement system. Consequently, the retirement system board may pay the startup and initial administrative expenses for the fund if the retirement system board determines that this expenditure is in the long-term best interests of the members and beneficiaries of the retirement system, and the employers that participate in that system. The board may also assess participating agencies and trusts for all or a portion of those expenses.

31699.10. The postemployment health benefits fund board shall act as a separate governing board of the postemployment health benefits fund, with separate rules, regulations, and bylaws, and shall meet separately from the meetings of the retirement system. The postemployment health benefits fund board shall have all of the power, authority, and ability to act on behalf of the postemployment health benefits fund that the retirement system board has with respect to the retirement system, including, but not limited to, the power to obtain fiduciary insurance.

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