

AMENDED IN SENATE JANUARY 11, 2012

Senate Constitutional Amendment

No. 13

**Introduced by Senators Cannella, Berryhill, Emmerson, and
Harman**

June 28, 2011

Senate Constitutional Amendment No. 13—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 12 to Article VII thereof, and by amending subdivision (b) of Section 8 of, amending subdivisions (b) and (f) of Section 17 of, and repealing and adding subdivision (e) of Section 17 of, Article XVI thereof, relating to public employees' benefits.

LEGISLATIVE COUNSEL'S DIGEST

SCA 13, as amended, Cannella. Public employees' retirement.

(1) The California Constitution provides that the retirement board of a public pension or retirement system has plenary authority and fiduciary responsibility for investment of moneys and administration of the system. Existing law establishes various public agency retirement systems, including the Public Employees' Retirement System (PERS), the State Teachers' Retirement System (STRS), the Judges' Retirement System II, and various county retirement systems pursuant to the County Employees Retirement Law of 1937, among others, and these systems provide defined pension benefits to public employees based on age, service credit, and final compensation. The California Constitution permits a city or county to adopt a charter for purposes of its governance that supersedes general laws of the state in regard to specified subjects, including compensation of city or county employees. The California Constitution also establishes the University of California as a public

trust with full powers of organization and government, subject only to specified limitations. Charter cities and the University of California may establish pension plans under their respective independent constitutional authority.

This measure would provide that any change to the formula used to calculate the pension benefits of a member of a public retirement system, as defined, that results in an increase in the member's pension benefits shall apply only to service performed on and after the operative date of the change, and would prohibit the retroactive application of that change.

The measure also would require any retirement plan for public employees hired on and after ~~July 1, 2012~~ *January 1, 2013*, to expressly provide that the public employer retains the right to prospectively change retirement benefits, as specified.

The measure would require, with respect to public employees first hired on and after ~~July 1, 2012~~ *January 1, 2013*, the governing body of a public retirement system to annually set an actuarially sound contribution rate for any defined benefit plan based on the recommendations of an independent plan actuary. The measure would permit a public employer to offer those employees a defined benefit plan only as part of a uniform hybrid retirement plan, as specified, and only if the Legislature has established the hybrid retirement plan and the defined pension benefits that may be provided, as specified. The measure would require the employer and employee to share equally the ~~hybrid~~ *defined benefit* plan costs. Any benefits under a defined benefit plan would be based on a member's *highest* annual base pay averaged over ~~the any consecutive 5-year 36-month period immediately preceding his or her retirement or last separation from state service if earlier.~~

The measure would increase, beginning 30 days after its effective date, employee contribution rates for members of defined benefit plans by at least an additional 5% of current salary until the pension fund of the plan is 90% funded, as determined by an independent plan actuary. The bill would require the funded status of a defined benefit plan to be calculated annually, as specified.

(2) Existing state and local public employee retirement systems are funded by investment returns and employer and employee contributions. The California Constitution provides that the retirement board of a public pension or retirement system has the exclusive power to provide for actuarial services in order to assure the competency of the assets of the system. Existing law, with respect to PERS, requires the Governor

to include in the annual Budget Act the contribution rates submitted by the system actuary of the liability on account of employees of the state.

This measure would permit an actuary to authorize a *reduction or suspension* of employer contributions to a defined benefit plan for a fiscal year only if the actuary determines that the plan has a surplus of actuarially determined plan assets sufficient to fund *120% of* the employer's share of estimated plan normal costs for the next 30 years.

The measure would also prohibit an employer from paying the employee contribution to a defined benefit plan for any employee, would require that an employee's rate of contributions represent a reasonable percentage of the normal costs of the plan, and would prohibit that rate from being less than the contribution rate applicable to his or her membership classification on ~~January~~ *July 1, 2012*.

This measure would also require STRS to set an actuarially sound contribution rate to be paid annually to the system, to be used as a basis for increasing the state's contribution to that system.

(3) Existing law permits members of PERS, STRS, and county, city, and district retirement systems that have adopted specified provisions, to purchase up to 5 years of additional retirement service credit by contributing an amount that, at the time of purchase, provides for the resulting increase in employer liability.

This measure would prohibit a *public employer or public retirement system from ~~allowing the purchase of~~ offering, or entering into, a contract by which a member may make contributions to receive* additional retirement service credit, as described above.

(4) Existing law generally prohibits any person who has retired from being employed in any capacity with the same *public* employer unless he or she is first reinstated from retirement, except as authorized.

This measure would, on or after ~~July 1, 2012~~ *January 1, 2013*, prohibit a person from being employed by, or providing personal services as a contractor for, a public employer while he or she is receiving pension payments from a public retirement system.

(5) Existing law provides that any elected public officer who takes public office, or is reelected to public office, on or after January 1, 2006, who is convicted of any specified felony arising directly out of his or her official duties, forfeits all rights and benefits under, and membership in, any public retirement system in which he or she is a member, effective on the date of final conviction, as specified.

This measure would require that a public employee, as defined, who is convicted of any felony for conduct related to his or her office or

employment on or after the effective date of this measure forfeit *that portion of* the rights and benefits to which he or she is entitled in any public retirement system in which he or she is a member *that accrued on or after the date of commission of the crime, and not accrue further benefits*, as specified.

(6) The Public Employees' Medical and Hospital Care Act, which is administered by the Board of Administration of PERS, establishes various percentages for employer contributions for health care benefits provided under the approved health benefit plan in which the employee or annuitant is enrolled.

This measure would require public employees to pay an increased amount, that is proportional to employee base pay, as specified, for employee health care benefits. The measure would also require a public employee hired on and after ~~July 1, 2012~~ *January 1, 2013*, to contribute to the cost of postretirement health care benefits, in proportion to the employee's base pay and years of service, as specified, if the public employer provides those benefits. The bill would prohibit employees hired on and after ~~July 1, 2012~~ *January 1, 2013*, from being eligible for full postretirement health care benefits until the employee has 25 years of service. The measure would provide that these provisions shall not impair existing collective bargaining agreements, but would apply upon expiration of those agreements.

(7) The measure would declare that the above-described provisions are self-executing and would require any bill, ordinance, resolution, or other measure enacted to implement any of those provisions to be approved by a $\frac{2}{3}$ vote of the membership of each house of the Legislature, the Regents of the University of California, or the governing body of the public employer. The measure would also require any bill enacted to change public employee retirement benefits or health care benefits to be approved by a $\frac{2}{3}$ vote of the membership of each house of the Legislature. The measure would declare that the above-described provisions would not limit any disability, death, or survivor benefits.

(8) The California Constitution requires that the moneys to be applied by the state for the support of school districts and community college districts be not less than the ~~greater~~ *greatest* of 3 amounts computed pursuant to specified tests. The Constitution provides that the first of those tests is the amount which, as a percentage of General Fund revenues which may be appropriated pursuant to Article XIII B, equals the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year

1986–87. The Constitution provides that the 2nd and 3rd tests are the amount required to ensure that the total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes shall not be less than the total amount from these sources in the prior fiscal year, excluding specified revenues, and adjusted for specified factors.

Existing law requires the state to appropriate a sum equal to 8% of creditable compensation, as specified, to be deposited in the Teachers’ Retirement Fund, for the initial purpose of financing the Defined Benefit Program of the State Teacher’s Retirement System. Existing law does not count these appropriations toward meeting the state’s constitutional obligation to annually provide funding for the support of school districts and community college districts, as described above.

This measure would specify, for purposes of the first test, that the “General Fund revenues appropriated for school districts and community college districts, respectively, in ~~fiscal year~~ *the 1986–87 fiscal year*” excludes General Fund revenues appropriated ~~for purposes of the State Teachers’ Retirement System~~ *to the Controller for transfer to the Teachers’ Retirement Fund*. The measure would specify, for the ~~2012–13~~ *2013–14* fiscal year, and for purposes of the 2nd and 3rd tests, that “total allocations from General Fund proceeds of taxes appropriated pursuant to Article XIII B and allocated local proceeds of taxes” for the prior fiscal year excludes General Fund revenues appropriated for purposes of the State Teachers’ Retirement System.

(9) The California Constitution provides that the retirement board of a public pension or retirement system has the exclusive power to provide for actuarial services in order to assure the competency of the assets of the system.

This measure would delete those provisions and would instead require that the retirement board of a public pension or retirement system select an independent plan actuary, to serve for a term of not less than 12 years, from a specified list to be established by the California Actuarial Advisory Panel. The measure would permit, following the initial term of service, the independent actuary to be appointed by the retirement board to subsequent terms. The measure would prohibit the reduction of the independent plan actuary’s salary and benefits during his or her term of office, and would require his or her salary agreement to provide for annual increases in pay, except as specified. The measure would

limit the circumstances under which the independent plan actuary may be removed from office.

The measure would grant an independent plan actuary exclusive authority to provide actuarial services and would require a retirement board to adopt the actuary's recommendations without amendment. The measure would require the actuary to be guided by prevailing actuarial standards, any applicable governmental accounting standards that are consistent with prevailing actuarial standards, and any contracts related to the required funding of the system, and to seek to maximize retirement security and minimize the employer's long-term cost. The measure would provide for the removal of plan actuaries who were not chosen pursuant to its requirements, and would require the retirement board of a public pension or retirement system to ensure that the independent plan actuary has sufficient staff and budgetary resources to perform all of his or her required duties.

(10) The California Constitution prohibits the number, terms, and method of selection or removal of members of the retirement board of a public pension or retirement system, which includes in its composition elected employee members, from being changed, amended, or modified by the Legislature from those that were required by law or otherwise in effect on July 1, 1991, unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

This measure would additionally require $\frac{2}{3}$ of the *elected or appointed* members of the retirement board of a public pension or retirement system to have demonstrated expertise in the financial, legal, accounting, or health care fields and would prohibit them from being members of that system or from having immediate family members who are members of that system. The measure would authorize the Legislature to prescribe the criteria and process for selecting those *elected or appointed* members by a statute enacted by a $\frac{2}{3}$ vote of the membership of each house.

(11) The measure would provide that if the Attorney General fails to defend the constitutionality of its provisions, following its approval by the voters, a taxpayer may intervene and participate for that purpose in any court action challenging its constitutionality, and the fees and costs of defending the action would be a charge on funds appropriated to the Attorney General.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

1 WHEREAS, The bipartisan Milton Marks “Little Hoover”
2 Commission on California State Government reports that the 10
3 largest public pension systems in California have a combined
4 unfunded accrued actuarial liability of two hundred forty billion
5 dollars (\$240,000,000,000); and

6 WHEREAS, The Little Hoover Commission has determined
7 that public pensions in California are unsustainably expensive;
8 and

9 WHEREAS, Projections show that the combined costs to the
10 state’s General Fund of the Public Employees’ Retirement System,
11 the State Teachers’ Retirement System, and retiree health care will
12 grow from 5 percent of the state’s annual budget to 10 percent
13 over the next 30 years; and the Little Hoover Commission reports
14 that the situation with many local governments is even worse; and

15 WHEREAS, As dire as these figures are, they are based on the
16 optimistic assumptions of most public pension governing boards
17 regarding the rates of return that they expect to earn on their
18 investments and, therefore, may actually understate the magnitude
19 of the problem severalfold; and

20 WHEREAS, The rising cost of public employee retirement
21 benefits threatens the ability of government agencies to deliver
22 the vital services upon which the public depends and, therefore,
23 the Legislature intends to exercise the police powers of the state
24 to make reasonable modifications to public pension systems while
25 protecting employees’ earned, vested rights; now, therefore, be it

26 *Resolved by the Senate, the Assembly concurring,* That the
27 Legislature of the State of California at its 2011–12 Regular
28 Session commencing on the sixth day of December 2010,
29 two-thirds of the membership of each house concurring, hereby
30 proposes to the people of the State of California that the
31 Constitution of the State be amended as follows:

32 First—That Section 12 is added to Article VII thereof, to read:

33 SEC. 12. (a) As used in this section, the following definitions
34 shall apply:

35 (1) “Employee contribution” means the contributions to a public
36 retirement system required to be paid by a member of the system
37 as fixed by law, contract, or contract amendment.

38 (2) “Independent plan actuary” or “actuary of a public retirement
39 system” or any other similar term in this Constitution, or in state

1 or local law, means the independent plan actuary appointed
2 pursuant to Section 17 of Article XVI.

3 (3) “Member” means a public employee who is a member of a
4 public retirement system.

5 (4) “Public employee” means an officer or employee of a public
6 employer.

7 (5) “Public employer” means the following:

8 (A) The State, including the Legislature, the courts, and the
9 University of California.

10 (B) Any political subdivision of the State, including a charter
11 city, charter county, charter city and county, school district, any
12 special district, any public board or commission, *any public agency*,
13 and the California State University.

14 (6) “Public retirement system” means all state and local public
15 pension or retirement systems, including, but not limited to, the
16 Public Employees’ Retirement System, the State Teachers’
17 Retirement System, the Judges’ Retirement System II, the
18 Legislators’ Retirement System, the University of California
19 Retirement System, county and district retirement systems created
20 pursuant to the County Employees Retirement Law of 1937, and
21 any other entity that provides retirement benefits to public
22 employees on behalf of a public employer.

23 (7) “Retirement benefits” includes pension benefits and defined
24 contribution plan benefits.

25 (b) The following shall apply to all public employees, regardless
26 of the date first hired, who are members of a public retirement
27 system:

28 (1) Any change, adopted on or after the effective date of this
29 section, to the formula used to calculate the pension benefits of a
30 member that results in an increase in the member’s pension benefits
31 shall apply only to service performed on and after the operative
32 date of the change, and shall not be applied to any service
33 performed prior to the operative date of the change.

34 (2) On and after the effective date of this section, a ~~member~~
35 ~~shall not public employer or public retirement system shall not~~
36 ~~offer, or enter into, a contract by which a member may make~~
37 contributions to receive additional retirement service credit for
38 any time that does not qualify as public service or military service
39 by the pension or retirement system.

1 (3) Notwithstanding Section 17 of Article XVI or any other
2 provision of law, if the independent plan actuary of a public
3 retirement system determines, in any fiscal year, that a defined
4 benefit plan has a surplus of actuarially determined plan assets
5 sufficient to fund *120 percent of* the employer's share of the
6 estimated plan normal costs for the next 30 years, ~~then~~ the actuary
7 may authorize a *reduction or* suspension of employer contributions
8 to the plan for that fiscal year. Under no other circumstances shall
9 a suspension *or reduction* of employer contributions to a defined
10 benefit plan be authorized.

11 (4) The public employer shall be prohibited from paying on
12 behalf of a member any of the member's required employee
13 contributions to a defined benefit plan, *except that a public*
14 *employer may pay employee contributions by reducing employee*
15 *salaries as permitted by Section 414(h) of Title 26 of the United*
16 *States Code, as amended.* The rate of required employee
17 contributions shall represent a reasonable percentage of the
18 *estimated plan* normal costs ~~of the plan~~ and shall not be less than
19 the employee contribution rate applicable to his or her membership
20 classification on ~~January~~ *July 1, 2012.*

21 (5) (A) Beginning 30 days after the effective date of this section,
22 and notwithstanding paragraph (4) or any other provision of this
23 Constitution, including Section 9 of Article I, contribution rates
24 for public employees who are members of a defined benefit plan
25 shall be increased by at least an additional 5 percent of current
26 salary and shall remain at that level until the ~~pension fund of the~~
27 defined benefit plan is 90 percent funded, as determined pursuant
28 to subparagraph (B) by an independent plan actuary.

29 (B) The funded status of a defined benefit plan shall be
30 calculated annually, as the ratio of the market value of assets of
31 the plan to the actuarial liabilities, including any outstanding
32 balance of any pension obligation bonds after January 1, ~~2011~~
33 *2012*, using the ~~actuarial standards methods~~ *actuarial standards methods* and assumptions
34 established under federal law by the federal Employee Retirement
35 Income Security Act of 1974 (ERISA), or any successor to that
36 act, for private sector pension funds.

37 (c) For public employees first hired on and after ~~July 1, 2012~~
38 *January 1, 2013*, a public employer shall comply with all of the
39 following:

1 (1) A public employer shall not offer any new or existing
2 retirement plan that fails to conform with this subdivision.

3 (2) Any retirement plan offered by a public employer shall
4 expressly provide that the public employer retains the right to
5 prospectively change any retirement benefits that accrue with
6 respect to service performed on and after the operative date of the
7 change for any member prior to retirement, subject to this section.

8 (3) (A) A public employer may offer, and a public retirement
9 system may provide, a defined benefit plan only as part of a
10 uniform hybrid retirement plan that includes a defined contribution
11 plan and only if a statute, enacted by a two-thirds vote of the
12 membership of each house of the Legislature, has established the
13 uniform hybrid retirement plan and the pension benefits that may
14 be provided by the defined benefit plan in accordance with this
15 ~~section~~ *section*.

16 (B) The hybrid retirement plan shall be designed to provide,
17 upon retirement for a full career in public service, replacement
18 income as prescribed in this subparagraph:

19 (i) The service retirement formula applicable for the calculation
20 of a defined pension benefit of any safety member classification
21 shall provide a benefit upon retirement for a full career in public
22 service at 57 years of age that, when combined with anticipated
23 defined contribution plan benefits and any benefit payments under
24 the federal Social Security Act, shall not exceed 75 percent of the
25 member's final compensation. For purposes of this clause, a "full
26 career in public service" means 30 years of public service.

27 (ii) The service retirement formula applicable for the calculation
28 of a defined pension benefit for any member in a nonsafety
29 classification shall provide a benefit upon retirement for a full
30 career in public service at 65 years of age that, when combined
31 with anticipated defined contribution plan benefits and any benefit
32 payments under the federal Social Security Act, shall not exceed
33 75 percent of the member's final compensation. For purposes of
34 this clause, a "full career in public service" means 35 years of
35 public service.

36 (C) (i) A public employer and a public employee shall share
37 equally the ~~hybrid retirement~~ *defined benefit* plan costs, including
38 payments for any unfunded liabilities. *The public employer may*
39 *provide a matching contribution for the defined contribution plan*
40 *up to 5 percent of the public employee's salary.*

1 (ii) The governing body of a public retirement system shall
2 annually set an actuarially sound contribution rate for the defined
3 benefit plan, which rate shall be based on the recommendations
4 of an independent plan actuary.

5 (iii) The pension benefits provided under any defined benefit
6 plan shall be based on a member's final compensation. "Final
7 compensation" shall mean the *highest* average annual compensation
8 earned by the member during the consecutive ~~5-year~~ *36-month*
9 period immediately preceding his or her retirement or last
10 separation from public service, if earlier, *or during any other period*
11 *of 36 consecutive months during his or her public retirement system*
12 *membership that the member designates on the application for*
13 *retirement*. For the purposes of this subparagraph, "final
14 compensation" shall not include any compensation for accrued
15 leave of any form or compensation for overtime work or special
16 compensation and shall only include the member's rate of base
17 pay.

18 (D) The pension benefits provided under any defined benefit
19 plan shall not exceed the contribution and benefit base, as
20 calculated for purposes of determining federal Old-Age, Survivors,
21 and Disability Insurance benefits, pursuant to Section 430(b) of
22 ~~Article Title~~ 42 of the United States Code, or its successor. If the
23 formula contained in Section 430(b) of ~~Article Title~~ 42 of the
24 United States Code, or its successor, is altered, then the maximum
25 permissible amount of the pension benefit described in this
26 subparagraph shall be determined by using the contribution and
27 benefit base in the year prior to the alteration, as adjusted annually
28 by the consumer price index.

29 (d) On and after ~~July 1, 2012~~ *January 1, 2013*, a person shall
30 not be employed by, or provide personal services as a contractor
31 for, a public employer while he or she is receiving pension
32 payments from a public retirement system.

33 (e) (1) If a public employee is convicted of any felony for
34 conduct related to his or her office or employment on or after the
35 effective date of this section, he or she shall forfeit ~~all that portion~~
36 *of the* rights and benefits to which he or she is entitled in any public
37 retirement system in which he or she is a member *that accrued on*
38 *or after the date of commission of the crime, and shall not accrue*
39 *further benefits*.

1 (2) Any contributions to the public retirement system made by
2 the public employee described in paragraph (1) shall be returned,
3 without interest, to the public employee.

4 (f) This section shall not limit any disability, death, or survivor
5 benefits that may be provided by a public employer.

6 (g) Beginning within 30 days after the effective date of this
7 section, the actuary for the State Teachers' Retirement System, or
8 its successor, shall set an actuarially sound contribution rate to be
9 paid annually to the State Teachers' Retirement System, or its
10 successor, which rate shall be used as a basis for increasing the
11 State's contribution to the system and shall not be used as a basis
12 for increasing employer or employee contributions.

13 (h) (1) On or before ~~July 1, 2012~~ *July 1, 2013*, the Legislature,
14 by statute, the Regents of the University of California, and the
15 governing body of each local public employer that provides
16 employee health care benefits shall increase the amount that public
17 employees contribute to the cost of their employee health care
18 benefits and shall provide for a contribution amount that is
19 proportional to the base pay of the employee but does not exceed
20 the cost of the health care benefits provided to the employee.

21 (2) (A) A public employer that provides postretirement health
22 care benefits shall require employees who are first hired on or after
23 ~~July 1, 2012~~ *January 1, 2013*, and who are members of a public
24 retirement system, to make contributions to fund their
25 postretirement health care benefits, which contributions shall be
26 in an amount that is proportional to the base pay of the employee
27 and his or her years of creditable service but does not exceed the
28 actuarial cost of the postretirement health care benefits to be
29 provided to the employee. An employee shall not be eligible for
30 full postretirement health care benefits until the employee has
31 attained 25 years of creditable service. Those public employers
32 shall also require that those employees continue to pay a
33 contribution for health care benefits after retirement.

34 (B) The public employer shall not pay on behalf of a member
35 any of the member's share of the cost of postretirement health care
36 benefits.

37 (C) The public employer shall retain the right to prospectively
38 modify postretirement health care benefits for any member prior
39 to retirement.

1 (3) This subdivision shall not impair any collective bargaining
2 agreement or memorandum of understanding that is in effect on
3 the effective date of this section, but shall apply upon the expiration
4 of any such agreement or memorandum of understanding.

5 (i) (1) This section shall be self-executing.

6 (2) Any bill, ordinance, resolution, or other measure enacted to
7 implement any provision of this section shall require for passage
8 a two-thirds vote of the membership of each house of the
9 Legislature, the Regents of the University of California, or the
10 governing body of a local public employer. Any bill enacted to
11 change public employee retirement benefits or health care benefits
12 shall require for passage a two-thirds vote of the membership of
13 each house of the Legislature.

14 Second—That subdivision (b) of Section 8 of Article XVI
15 thereof, is amended to read:

16 (b) Commencing with the 1990–91 fiscal year, the moneys to
17 be applied by the State for the support of school districts and
18 community college districts shall be not less than the ~~greater~~
19 *greatest* of the following amounts

20 (1) The amount which, as a percentage of General Fund revenues
21 which may be appropriated pursuant to Article XIII B, equals the
22 percentage of General Fund revenues appropriated for school
23 districts and community college districts, respectively, in ~~fiscal~~
24 ~~year~~ *the 1986–87 fiscal year*. For the purposes of this paragraph,
25 “General Fund revenues appropriated for school districts and
26 community college districts, respectively, in fiscal year *the*
27 *1986–87 fiscal year*” excludes General Fund revenues appropriated
28 to the Controller for transfer to the Teachers’ Retirement Fund.

29 (2) The amount required to ensure that the total allocations to
30 school districts and community college districts from General Fund
31 proceeds of taxes appropriated pursuant to Article XIII B and
32 allocated local proceeds of taxes shall not be less than the total
33 amount from these sources in the prior fiscal year, excluding any
34 revenues allocated pursuant to subdivision (a) of Section 8.5,
35 adjusted for changes in enrollment and adjusted for the change in
36 the cost of living pursuant to paragraph (1) of subdivision (e) of
37 Section 8 of Article XIII B. This paragraph shall be operative only
38 in a fiscal year in which the percentage growth in California per
39 capita personal income is less than or equal to the percentage

1 growth in per capita General Fund revenues plus one-half of 1
2 percent.

3 (3) (A) The amount required to ensure that the total allocations
4 to school districts and community college districts from General
5 Fund proceeds of taxes appropriated pursuant to Article XIII B
6 and allocated local proceeds of taxes shall equal the total amount
7 from these sources in the prior fiscal year, excluding any revenues
8 allocated pursuant to subdivision (a) of Section 8.5, adjusted for
9 changes in enrollment and adjusted for the change in per capita
10 General Fund revenues.

11 (B) In addition, an amount equal to one-half of 1 percent times
12 the prior year total allocations to school districts and community
13 colleges from General Fund proceeds of taxes appropriated
14 pursuant to Article XIII B and allocated local proceeds of taxes,
15 excluding any revenues allocated pursuant to subdivision (a) of
16 Section 8.5, adjusted for changes in enrollment.

17 (C) This paragraph (3) shall be operative only in a fiscal year
18 in which the percentage growth in California per capita personal
19 income in a fiscal year is greater than the percentage growth in
20 per capita General Fund revenues plus one-half of 1 percent.

21 (4) For the ~~2012–13~~ 2013–14 fiscal year, for the purposes of
22 paragraphs (2) and (3), “total allocations from General Fund
23 proceeds of taxes appropriated pursuant to Article XIII B and
24 allocated local proceeds of taxes” for the prior fiscal year shall
25 exclude General Fund revenues appropriated for purposes of the
26 State Teachers’ Retirement System.

27 Third—That subdivision (b) of Section 17 of Article XVI
28 thereof, is amended to read:

29 (b) The members of the retirement board of a public pension
30 or retirement system shall discharge their duties with respect to
31 the system solely in the interest of, and for the exclusive purposes
32 of providing benefits to, participants and their beneficiaries,
33 minimizing employer contributions thereto, to the extent allowed
34 by prevailing actuarial and, if applicable, governmental accounting
35 standards and contractual provisions, and defraying reasonable
36 expenses of administering the system. A retirement board’s duty
37 ~~to ensure prompt delivery of required benefits to the system’s~~
38 ~~its~~ participants and their beneficiaries shall take precedence over
39 any other duty.

1 Fourth—That subdivision (e) of Section 17 of Article XVI
2 thereof is repealed.

3 Fifth—That subdivision (e) is added to Section 17 of Article
4 XVI thereof, to read:

5 (e) (1) Consistent with its duties described in subdivision (b),
6 the retirement board of a public pension or retirement system shall
7 select an independent plan actuary who shall serve for a term of
8 not less than 12 years. An independent plan actuary shall be
9 selected from a list of three to five qualified actuaries who are
10 willing to serve in the position, and that list shall be developed by
11 the California Actuarial Advisory Panel or a successor entity
12 described in a statute approved by a vote of two-thirds of the
13 membership of each house of the Legislature. If practicable, at
14 least two of the actuaries on that list shall be residents of the county
15 in which a single-county retirement system is located and at least
16 one of the actuaries on that list shall be a current resident of another
17 state. Following his or her initial term of service, an independent
18 actuary may be appointed by the retirement board to one or more
19 subsequent terms of service. The independent plan actuary's salary
20 and benefits shall not be reduced during the actuary's term of office
21 except with his or her consent, and his or her salary agreement
22 shall provide for annual increases in pay equal to, or greater than,
23 increases in an applicable consumer price index, except in fiscal
24 years in which the Governor issues a proclamation declaring a
25 fiscal emergency pursuant to subdivision (f) of Section 10 of
26 Article IV.

27 (2) The office of the independent plan actuary shall become
28 vacant only upon the expiration of the actuary's term of service;
29 his or her death, imprisonment following a felony conviction, or
30 voluntary resignation; or upon his or her removal for cause as
31 permitted by this paragraph. The independent plan actuary may
32 be removed from office for cause only upon both of the following:

33 (A) A resolution to remove the actuary passed by four-fifths of
34 the membership of the retirement board.

35 (B) In the case of a local retirement or pension system, a
36 resolution to remove the actuary passed by all members present
37 and voting of the county board of supervisors or the governing
38 board of the public employer or, in the case of a state retirement
39 or pension system, including the State Teachers' Retirement
40 System, but excluding the University of California Retirement

1 System, a resolution to remove the actuary passed by four-fifths
2 of the membership of each house of the Legislature.

3 (3) The independent plan actuary shall have the exclusive power
4 to provide for actuarial services in order to ensure the competency
5 of the assets of a public pension or retirement system. A retirement
6 board shall adopt the independent plan actuary's recommendations
7 without amendment. The independent plan actuary, in making
8 actuarial determinations, setting required contribution rates, and
9 developing actuarial assumptions, shall be guided by prevailing
10 actuarial standards, any applicable governmental accounting
11 standards, provided that the governmental accounting standards
12 are consistent with prevailing actuarial standards, and any contracts
13 permitted by this Constitution related to the required funding of
14 the system by members, the State, or public employers. In making
15 those recommendations, the independent actuary shall also seek
16 to maximize the beneficiaries' retirement security and minimize
17 the employer's long-term cost.

18 (4) Within six months after the effective date of the measure
19 that adds this subdivision, plan actuaries of public pension or
20 retirement systems who were not selected pursuant to the
21 requirements of this subdivision shall be replaced by independent
22 plan actuaries selected pursuant to this subdivision. The
23 independent plan actuaries shall perform all duties previously
24 specified in law or contract for the replaced plan actuaries
25 consistent with this subdivision.

26 (5) The retirement board of a public pension or retirement
27 system shall ensure that the independent plan actuary has sufficient
28 staff and budgetary resources to perform all of his or her required
29 duties.

30 Sixth—That subdivision (f) of Section 17 of Article XVI thereof
31 is amended to read:

32 (f) (1) With regard to the retirement board of a public pension
33 or retirement system which includes in its composition elected
34 employee members, the number, terms, and method of selection
35 or removal of members of the retirement board which were required
36 by law or otherwise in effect on July 1, 1991, shall not be changed,
37 amended, or modified by the Legislature unless the change,
38 amendment, or modification enacted by the Legislature is ratified
39 by a majority vote of the electors of the jurisdiction in which the

1 participants of the system are or were, prior to retirement,
2 employed.

3 (2) At least two-thirds of the *elected or appointed* members of
4 the retirement board of a public pension or retirement system, who
5 are elected or appointed on or after the effective date of the measure
6 adding this paragraph, shall have demonstrated expertise in the
7 financial, legal, accounting, or health care fields, shall not be
8 members of that system, and shall not have any immediate family
9 members who are members of that system. The criteria and process
10 for selecting those *elected or appointed* members may be
11 prescribed by a statute enacted by a two-thirds vote of the
12 membership of each house of the Legislature. *This paragraph shall*
13 *not apply to any individual who holds an office whose incumbent*
14 *is designated as a member of that board.*

15 Seventh—That, notwithstanding any other provision of law,
16 including the Constitution, if the Attorney General fails to defend
17 the constitutionality of this act, following its approval by the voters,
18 a taxpayer of this State shall have the authority to intervene and
19 participate for that purpose in any court action challenging the
20 constitutionality of this act and the fees and costs of defending the
21 action shall be a charge on funds appropriated to the Attorney
22 General, which shall be satisfied promptly.

23 Eighth—That the provisions of this measure are severable. If
24 any provision of this measure or its application is held invalid, that
25 finding shall not affect other provisions or applications that can
26 be given effect without the invalid provision or application.