

## Assembly Bill No. 1222

### CHAPTER 527

An act to amend Section 7522.02 of the Government Code, relating to public employees' retirement, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 4, 2013. Filed with  
Secretary of State October 4, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1222, Bloom. Public employees' retirement: collective bargaining: transit workers: transportation.

The California Public Employees' Pension Reform Act of 2013 (PEPRA), among other things, establishes new retirement formulas for employees first employed on or after January 1, 2013, which a public employer offering a defined benefit pension plan is prohibited from exceeding, requires those employees to contribute a specified percentage of the normal cost of the defined benefit plan, and prohibits public employers from paying an employee's share of retirement contributions. PEPRA excepts certain retirement systems from its provisions.

This bill would except from PEPRA public employees whose collective bargaining rights are subject to specified provisions of federal law until a specified federal district court decision on a certification by the United States Secretary of Labor, or his or her designee, or until January 1, 2015, whichever is sooner. The bill would also provide that if a federal district court upholds the determination of the United States Secretary of Labor, or his or her designee, that application of PEPRA to those public employees precludes certification, those employees are excepted from PEPRA. The bill would authorize the Director of Finance to authorize a loan of up to \$26,000,000 from the Public Transportation Account in the State Transportation Fund to be made to local mass transit providers in amounts equal to federal transportation grants not received due to noncertification from the federal Department of Labor, as specified. By providing for loans in the manner specified, this bill would make an appropriation. The bill would prescribe requirements regarding the disbursement of these funds. The bill would require a local transit provider to repay the loan based on the occurrence of certain contingencies or by January 1, 2019.

This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

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

SECTION 1. Section 7522.02 of the Government Code is amended to read:

7522.02. (a) (1) Notwithstanding any other law, except as provided in this article, on and after January 1, 2013, this article shall apply to all state and local public retirement systems and to their participating employers, including the Public Employees' Retirement System, the State Teachers' Retirement System, the Legislators' Retirement System, the Judges' Retirement System, the Judges' Retirement System II, county and district retirement systems created pursuant to the County Employees Retirement Law of 1937, independent public retirement systems, and to individual retirement plans offered by public employers. However, this article shall be subject to the Internal Revenue Code and Section 17 of Article XVI of the California Constitution. The administration of the requirements of this article shall comply with applicable provisions of the Internal Revenue Code and the Revenue and Taxation Code.

(2) Notwithstanding paragraph (1), this article shall not apply to the entities described in Section 9 of Article IX of, and Sections 4 and 5 of Article XI of, the California Constitution, except to the extent that these entities continue to be participating employers in any retirement system governed by state statute. Accordingly, any retirement plan approved before January 1, 2013, by the voters of any entity excluded from coverage by this section shall not be affected by this article.

(3) (A) Notwithstanding paragraph (1), this article shall not apply to a public employee whose interests are protected under subsection (b) of Section 5333 of Title 49 of the United States Code until a federal district court rules that the United States Secretary of Labor, or his or her designee, erred in determining that the application of this article precludes certification under that section, or until January 1, 2015, whichever is sooner.

(B) If a federal district court upholds the determination of the United States Secretary of Labor, or his or her designee, that application of this article precludes him or her from providing a certification under subsection (b) of Section 5333 of Title 49 of the United States Code, this article shall not apply to a public employee specified in subparagraph (A).

(b) The benefit plan required by this article shall apply to public employees who are new members as defined in Section 7522.04.

(c) Individuals who were employed by any public employer before January 1, 2013, and who became employed by a subsequent public employer for the first time on or after January 1, 2013, shall be subject to the retirement plan that would have been available to employees of the subsequent employer who were first employed by the subsequent employer on or before December 31, 2012, if the individual was subject to reciprocity established under any of the following provisions:

(1) Article 5 (commencing with Section 20350) of Chapter 3 of Part 3 of Division 5 of Title 2.

(2) Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3.

(3) Any agreement between public retirement systems to provide reciprocity to members of the systems.

(d) If a public employer, before January 1, 2013, offers a defined benefit pension plan that provides a defined benefit formula with a lower benefit factor at normal retirement age and results in a lower normal cost than the defined benefit formula required by this article, that employer may continue to offer that defined benefit formula instead of the defined benefit formula required by this article, and shall not be subject to the requirements of Section 7522.10 for pensionable compensation subject to that formula. However, if the employer adopts a new defined benefit formula on or after January 1, 2013, that formula must conform to the requirements of this article or must be determined and certified by the retirement system's chief actuary and the retirement board to have no greater risk and no greater cost to the employer than the defined benefit formula required by this article and must be approved by the Legislature. New members of the defined benefit plan may only participate in the lower cost defined benefit formula that was in place before January 1, 2013, or a defined benefit formula that conforms to the requirements of this article or is approved by the Legislature as provided in this subdivision.

(e) If a public employer, before January 1, 2013, offers a retirement benefit plan that consists solely of a defined contribution plan, that employer may continue to offer that plan instead of the defined benefit pension plan required by this article. However, if the employer adopts a new defined benefit pension plan or defined benefit formula on or after January 1, 2013, that plan or formula must conform to the requirements of this article or must be determined and certified by the retirement system's chief actuary and the system's board to have no greater risk and no greater cost to the employer than the defined benefit formula required by this article and must be approved by the Legislature. New members of the employer's plan may only participate in the defined contribution plan that was in place before January 1, 2013, or a defined contribution plan or defined benefit formula that conforms to the requirements of this article.

(f) The Judges' Retirement System and the Judges' Retirement System II shall not be required to adopt the defined benefit formula required by Section 7522.25 or 7522.30 or the compensation limitations defined in Section 7522.10.

(g) This article shall not be construed to provide membership in any public retirement system for an individual who would not otherwise be eligible for membership under that system's applicable rules or laws.

SEC. 2. (a) Notwithstanding any other law, the Director of Finance may authorize a cashflow loan of up to twenty-six million dollars (\$26,000,000) from moneys in the Public Transportation Account in the State Transportation Fund to local mass transit providers upon their request to the Director of Finance. The cashflow loans shall be provided as follows:

(1) The loan to a local mass transit provider shall be in an amount equal to the federal transportation grant not received by the provider due to the noncertification by the United States Secretary of Labor, or his or her designee, under subsection (b) of Section 5333 of Title 49 of the United States Code for the funds scheduled to lapse on September 30, 2013, as determined by the Director of Finance.

(2) The Director of Finance shall provide a schedule to the State Controller for the disbursement of the loan amount for each local mass transit provider that receives a loan under paragraph (1).

(3) The Controller shall draw warrants against the Public Transportation Account in the State Transportation Fund per the schedule provided by the Director of Finance in paragraph (2) within 14 days of receipt of the schedule.

(b) (1) On or before 60 days after a federal district court rules that the United States Secretary of Labor, or his or her designee, erred in determining that application of the California Public Employees' Pension Reform Act of 2013 precludes certification under subsection (b) of Section 5333 of Title 49 of the United States Code, or longer if so authorized by the Director of Finance, a local mass transit provider shall repay the amount loaned pursuant to subdivision (a) to the Public Transportation Account in the State Transportation Fund with the interest calculated at the rate earned by the Pooled Money Investment Account at that time of loan, unless interest charges are waived by the Director of Finance.

(2) On or before 60 days after a certification by the United States Secretary of Labor, or his or her designee, that results in the receipt of funds described in paragraph (1) of subdivision (a), a local mass transit provider shall repay the amount loaned pursuant to subdivision (a) to the Public Transportation Account in the State Transportation Fund with the interest calculated at the rate earned by the Pooled Money Investment Account at that time of loan, unless interest charges are waived by the Director of Finance.

(3) No later than January 1, 2019, if neither of the contingencies described in paragraph (1) or (2) have occurred, a local mass transit provider shall repay the amount loaned pursuant to subdivision (a) to the Public Transportation Account in the State Transportation Fund with the interest calculated at the rate earned by the Pooled Money Investment Account at that time of loan, unless interest charges are waived by the Director of Finance.

(c) A cashflow loan from the Public Transportation Account in the State Transportation Fund authorized by this section does not constitute budgetary expenditures. A cashflow loan, and the repayment of a cashflow loan, made under this section shall not affect the budgetary reserve.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to preserve the funding for essential transportation infrastructure projects while balancing the public's need to control the costs of public employee pension benefits, it is necessary that this measure take effect immediately.

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