

AMENDED IN SENATE APRIL 24, 2014

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 2, 2014

**SENATE BILL**

**No. 1251**

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**Introduced by Senator Huff**

February 20, 2014

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An act to amend Section 7522.02 of the Government Code, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

SB 1251, as amended, Huff. California Public Employees' Pension Reform Act of 2013: joint power authority: employees.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan for employees first hired on or after January 1, 2013. PEPRA authorizes 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, to 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, as specified.

Existing law, the Joint Exercise of Powers Act, generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common

power, which may include hiring employees and establishing retirement systems.

This bill would ~~authorize~~ *require* a joint powers authority formed by one or more public employers, on or after January 1, 2013, to provide employees meeting specified criteria with the defined benefit plan or formula that was available to employees of the employer on December 31, 2012. This bill would prohibit the formation of a joint powers authority on or after January 1, 2013, in a manner that would exempt a new employee or a new member from the requirements of PEPRA.

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

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

1 SECTION 1. Section 7522.02 of the Government Code is  
2 amended to read:  
3 7522.02. (a) (1) Notwithstanding any other law, except as  
4 provided in this article, on and after January 1, 2013, this article  
5 shall apply to all state and local public retirement systems and to  
6 their participating employers, including the Public Employees’  
7 Retirement System, the State Teachers’ Retirement System, the  
8 Legislators’ Retirement System, the Judges’ Retirement System,  
9 the Judges’ Retirement System II, county and district retirement  
10 systems created pursuant to the County Employees Retirement  
11 Law of 1937, independent public retirement systems, and to  
12 individual retirement plans offered by public employers. However,  
13 this article shall be subject to the Internal Revenue Code and  
14 Section 17 of Article XVI of the California Constitution. The  
15 administration of the requirements of this article shall comply with  
16 applicable provisions of the Internal Revenue Code and the  
17 Revenue and Taxation Code.  
18 (2) Notwithstanding paragraph (1), this article shall not apply  
19 to the entities described in Section 9 of Article IX of, and Sections  
20 4 and 5 of Article XI of, the California Constitution, except to the  
21 extent that these entities continue to be participating employers in  
22 any retirement system governed by state statute. Accordingly, any  
23 retirement plan approved before January 1, 2013, by the voters of  
24 any entity excluded from coverage by this section shall not be  
25 affected by this article.

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

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

14 (4) Notwithstanding paragraph (1), this article shall not apply  
15 to a multiemployer plan authorized by Section 302(c)(5) of the  
16 Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public employer  
17 began participation in that plan prior to January 1, 2013, and the  
18 plan is regulated by the Employee Retirement Income Security  
19 Act of 1974.

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

22 (c) (1) Individuals who were employed by any public employer  
23 before January 1, 2013, and who became employed by a subsequent  
24 public employer for the first time on or after January 1, 2013, shall  
25 be subject to the retirement plan that would have been available  
26 to employees of the subsequent employer who were first employed  
27 by the subsequent employer on or before December 31, 2012, if  
28 the individual was subject to concurrent membership for which  
29 creditable service was performed in the previous six months or  
30 reciprocity established under any of the following provisions:

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

33 (B) Chapter 3 (commencing with Section 31450) of Part 3 of  
34 Division 4 of Title 3.

35 (C) Any agreement between public retirement systems to provide  
36 reciprocity to members of the systems.

37 (D) Section 22115.2 of the Education Code.

38 (2) An individual who was employed before January 1, 2013,  
39 and who, without a separation from employment, changed  
40 employment positions and became subject to a different defined

1 benefit plan in a different public retirement system offered by his  
2 or her employer shall be subject to that defined benefit plan as it  
3 would have been available to employees who were first employed  
4 on or before December 31, 2012.

5 (d) If a public employer, before January 1, 2013, offers a defined  
6 benefit pension plan that provides a defined benefit formula with  
7 a lower benefit factor at normal retirement age and results in a  
8 lower normal cost than the defined benefit formula required by  
9 this article, that employer may continue to offer that defined benefit  
10 formula instead of the defined benefit formula required by this  
11 article, and shall not be subject to the requirements of Section  
12 7522.10 for pensionable compensation subject to that formula.  
13 However, if the employer adopts a new defined benefit formula  
14 on or after January 1, 2013, that formula must conform to the  
15 requirements of this article or must be determined and certified by  
16 the retirement system's chief actuary and the retirement board to  
17 have no greater risk and no greater cost to the employer than the  
18 defined benefit formula required by this article and must be  
19 approved by the Legislature. New members of the defined benefit  
20 plan may only participate in the lower cost defined benefit formula  
21 that was in place before January 1, 2013, or a defined benefit  
22 formula that conforms to the requirements of this article or is  
23 approved by the Legislature as provided in this subdivision.

24 (e) If a public employer, before January 1, 2013, offers a  
25 retirement benefit plan that consists solely of a defined contribution  
26 plan, that employer may continue to offer that plan instead of the  
27 defined benefit pension plan required by this article. However, if  
28 the employer adopts a new defined benefit pension plan or defined  
29 benefit formula on or after January 1, 2013, that plan or formula  
30 must conform to the requirements of this article or must be  
31 determined and certified by the retirement system's chief actuary  
32 and the system's board to have no greater risk and no greater cost  
33 to the employer than the defined benefit formula required by this  
34 article and must be approved by the Legislature. New members of  
35 the employer's plan may only participate in the defined  
36 contribution plan that was in place before January 1, 2013, or a  
37 defined contribution plan or defined benefit formula that conforms  
38 to the requirements of this article. This subdivision shall not be  
39 construed to prohibit an employer from offering a defined  
40 contribution plan on or after January 1, 2013, either with or without

1 a defined benefit plan, whether or not the employer offered a  
2 defined contribution plan prior to that date.

3 (f) (1) If one or more public employers, on or after January 1,  
4 2013, form a joint powers authority pursuant to the provisions of  
5 the Joint Exercise of Powers Act (Article 1 (commencing with  
6 Section 6500) of Chapter 5), that joint powers authority ~~may~~ *shall*  
7 provide the following employees with the defined benefit plan or  
8 formula that would have been available to employees of the  
9 employer on December 31, 2012:

10 (A) An employee of that public employer or employers that was  
11 hired prior to January 1, 2013, and was not subject to the provisions  
12 of this article, and was subsequently employed by the joint powers  
13 authority without a break in service of more than 180 days.

14 (B) An employee of that public employer or employers that was  
15 hired on or after January 1, 2013, but would otherwise be exempt  
16 from this article pursuant to subdivision (c), and was subsequently  
17 employed by the joint powers authority without a break in service  
18 of more than 180 days.

19 (2) If there was more than one retirement plan or formula in  
20 place on December 31, 2012, due to there being more than one  
21 employer, then the joint powers authority shall indicate which  
22 defined benefit plan or formula shall apply to employees of the  
23 authority who are exempt from this article pursuant to this  
24 subdivision.

25 (3) The formation of a joint powers authority on or after January  
26 1, 2013, shall not act in a manner as to exempt a new employee  
27 or a new member, as defined by Section 7522.04, from the  
28 requirements of this article. New members may only participate  
29 in a defined benefit plan or formula that conforms to the  
30 requirements of this article.

31 (g) The Judges' Retirement System and the Judges' Retirement  
32 System II shall not be required to adopt the defined benefit formula  
33 required by Section 7522.20 or 7522.25 or the compensation  
34 limitations defined in Section 7522.10.

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

39 (i) On and after January 1, 2013, each public retirement system  
40 shall modify its plan or plans to comply with the requirements of

1 this article and may adopt regulations or resolutions for this  
2 purpose.

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