

AMENDED IN ASSEMBLY AUGUST 22, 2014

AMENDED IN ASSEMBLY JUNE 18, 2014

AMENDED IN SENATE APRIL 24, 2014

AMENDED IN SENATE APRIL 21, 2014

AMENDED IN SENATE APRIL 2, 2014

SENATE BILL

No. 1251

Introduced by Senator Huff

February 20, 2014

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 powers 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 ~~require~~ *authorize* a joint powers authority formed by ~~one or more public employers, the cities of Brea and Fullerton~~ on or after January 1, 2013, to provide employees who are not new members under PEPRA with the defined benefit plan or formula that was ~~available to~~ *received by those employees of the employer from their respective employers* on December 31, 2012, if they are employed by the *joint powers* authority without a break in service of more than 180 days. *The bill would authorize up to 3 cities in Orange County, as specified, to join the authority.* 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.

This bill would incorporate additional changes to Section 7522.02 of the Government Code proposed by AB 1783, to be operative only if AB 1783 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

The bill would make a statement of findings with regard to the need for a special law.

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 (Chapter 3 (commencing with Section 31450) of Part
12 3 of Division 4 of Title 3), independent public retirement systems,
13 and to individual retirement plans offered by public employers.

1 However, this article shall be subject to the Internal Revenue Code
2 and Section 17 of Article XVI of the California Constitution. The
3 administration of the requirements of this article shall comply with
4 applicable provisions of the Internal Revenue Code and the
5 Revenue and Taxation Code.

6 (2) Notwithstanding paragraph (1), this article shall not apply
7 to the entities described in Section 9 of Article IX of, and Sections
8 4 and 5 of Article XI of, the California Constitution, except to the
9 extent that these entities continue to be participating employers in
10 any retirement system governed by state statute. Accordingly, any
11 retirement plan approved before January 1, 2013, by the voters of
12 any entity excluded from coverage by this section shall not be
13 affected by this article.

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

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

27 (4) Notwithstanding paragraph (1), this article shall not apply
28 to a multiemployer plan authorized by Section 302(c)(5) of the
29 federal Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public
30 employer began participation in that plan prior to January 1, 2013,
31 and the plan is regulated by the federal Employee Retirement
32 Income Security Act of 1974 (~~Public Law 93-406~~) (29 U.S.C. Sec.
33 *1001 et seq.*).

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

36 (c) (1) Individuals who were employed by any public employer
37 before January 1, 2013, and who became employed by a subsequent
38 public employer for the first time on or after January 1, 2013, shall
39 be subject to the retirement plan that would have been available
40 to employees of the subsequent employer who were first employed

1 by the subsequent employer on or before December 31, 2012, if
2 the individual was subject to concurrent membership for which
3 creditable service was performed in the previous six months or
4 reciprocity established under any of the following provisions:

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

7 (B) Chapter 3 (commencing with Section 31450) of Part 3 of
8 Division 4 of Title 3.

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

11 (D) Section 22115.2 of the Education Code.

12 (2) An individual who was employed before January 1, 2013,
13 and who, without a separation from employment, changed
14 employment positions and became subject to a different defined
15 benefit plan in a different public retirement system offered by his
16 or her employer shall be subject to that defined benefit plan as it
17 would have been available to employees who were first employed
18 on or before December 31, 2012.

19 (d) If a public employer, before January 1, 2013, offers a defined
20 benefit pension plan that provides a defined benefit formula with
21 a lower benefit factor at normal retirement age and results in a
22 lower normal cost than the defined benefit formula required by
23 this article, that employer may continue to offer that defined benefit
24 formula instead of the defined benefit formula required by this
25 article, and shall not be subject to the requirements of Section
26 7522.10 for pensionable compensation subject to that formula.
27 However, if the employer adopts a new defined benefit formula
28 on or after January 1, 2013, that formula must conform to the
29 requirements of this article or must be determined and certified by
30 the retirement system's chief actuary and the retirement board to
31 have no greater risk and no greater cost to the employer than the
32 defined benefit formula required by this article and must be
33 approved by the Legislature. New members of the defined benefit
34 plan may only participate in the lower cost defined benefit formula
35 that was in place before January 1, 2013, or a defined benefit
36 formula that conforms to the requirements of this article or is
37 approved by the Legislature as provided in this subdivision.

38 (e) If a public employer, before January 1, 2013, offers a
39 retirement benefit plan that consists solely of a defined contribution
40 plan, that employer may continue to offer that plan instead of the

1 defined benefit pension plan required by this article. However, if
2 the employer adopts a new defined benefit pension plan or defined
3 benefit formula on or after January 1, 2013, that plan or formula
4 must conform to the requirements of this article or must be
5 determined and certified by the retirement system's chief actuary
6 and the system's board to have no greater risk and no greater cost
7 to the employer than the defined benefit formula required by this
8 article and must be approved by the Legislature. New members of
9 the employer's plan may only participate in the defined
10 contribution plan that was in place before January 1, 2013, or a
11 defined contribution plan or defined benefit formula that conforms
12 to the requirements of this article. This subdivision shall not be
13 construed to prohibit an employer from offering a defined
14 contribution plan on or after January 1, 2013, either with or without
15 a defined benefit plan, whether or not the employer offered a
16 defined contribution plan prior to that date.

17 (f) (1) ~~If one or more public employers,~~ *If*, on or after January
18 1, 2013, ~~the Cities of Brea and Fullerton~~ form a joint powers
19 authority pursuant to the provisions of the Joint Exercise of Powers
20 Act (Article 1 (commencing with Section 6500) of Chapter 5), that
21 joint powers authority ~~shall~~ *may* provide ~~employees~~ the defined
22 benefit plan or formula that ~~would have been available to~~
23 ~~employees of the employer~~ *those employees received from their*
24 *respective employers* on December 31, 2012, to any employee of
25 ~~that public employer~~ *the City of Brea, the City of Fullerton, or a*
26 *city described in paragraph (2)* who is not a new member and
27 subsequently is employed by the joint powers authority without a
28 break in service of more than 180 days.

29 (2) ~~If there was more than one retirement plan or formula in~~
30 ~~place on December 31, 2012, due to there being more than one~~
31 ~~employer, then the joint powers authority shall indicate which~~
32 ~~defined benefit plan or formula shall apply to employees of the~~
33 ~~authority who meet the conditions of paragraph (1).~~

34 (3)

35 (2) *On or before January 1, 2017, a city in Orange County that*
36 *is contiguous to the City of Brea or the City of Fullerton may join*
37 *the joint powers authority described in paragraph (1) but not more*
38 *than three cities shall be permitted to join.* ~~The~~

39 (3) *The* formation of a joint powers authority on or after January
40 1, 2013, shall not act in a manner as to exempt a new employee

1 or a new member, as defined by Section 7522.04, from the
2 requirements of this article. New members may only participate
3 in a defined benefit plan or formula that conforms to the
4 requirements of this article.

5 (g) The Judges' Retirement System and the Judges' Retirement
6 System II shall not be required to adopt the defined benefit formula
7 required by Section 7522.20 or 7522.25 or the compensation
8 limitations defined in Section 7522.10.

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

13 (i) On and after January 1, 2013, each public retirement system
14 shall modify its plan or plans to comply with the requirements of
15 this article and may adopt regulations or resolutions for this
16 purpose.

17 *SEC. 2. Section 7522.02 of the Government Code is amended*
18 *to read:*

19 7522.02. (a) (1) Notwithstanding any other law, except as
20 provided in this article, on and after January 1, 2013, this article
21 shall apply to all state and local public retirement systems and to
22 their participating employers, including the Public Employees'
23 Retirement System, the State Teachers' Retirement System, the
24 Legislators' Retirement System, the Judges' Retirement System,
25 the Judges' Retirement System II, county and district retirement
26 systems created pursuant to the County Employees Retirement
27 Law of ~~1937~~, 1937 (*Chapter 3 (commencing with Section 31450)*
28 *of Part 3 of Division 4 of Title 3*), independent public retirement
29 systems, and to individual retirement plans offered by public
30 employers. However, this article shall be subject to the Internal
31 Revenue Code and Section 17 of Article XVI of the California
32 Constitution. The administration of the requirements of this article
33 shall comply with applicable provisions of the Internal Revenue
34 Code and the Revenue and Taxation Code.

35 (2) Notwithstanding paragraph (1), this article shall not apply
36 to the entities described in Section 9 of Article IX of, and Sections
37 4 and 5 of Article XI of, the California Constitution, except to the
38 extent that these entities continue to be participating employers in
39 any retirement system governed by state statute. Accordingly, any
40 retirement plan approved before January 1, 2013, by the voters of

1 any entity excluded from coverage by this section shall not be
2 affected by this article.

3 (3) (A) Notwithstanding paragraph (1), this article shall not
4 apply to a public employee whose interests are protected under
5 Section 5333(b) of Title 49 of the United States Code until a federal
6 district court rules that the United States Secretary of Labor, or
7 his or her designee, erred in determining that the application of
8 this article precludes certification under that section, or until
9 January 1, ~~2015~~, 2016, whichever is sooner.

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

16 (4) Notwithstanding paragraph (1), this article shall not apply
17 to a multiemployer plan authorized by Section 302(c)(5) of the
18 *federal* Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public
19 employer began participation in that plan prior to January 1, 2013,
20 and the plan is regulated by the *federal* Employee Retirement
21 Income Security Act of 1974 (29 U.S.C. Sec. 1001 *et seq.*).

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

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

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

35 (B) Chapter 3 (commencing with Section 31450) of Part 3 of
36 Division 4 of Title 3.

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

39 (D) Section 22115.2 of the Education Code.

1 (2) An individual who was employed before January 1, 2013,
2 and who, without a separation from employment, changed
3 employment positions and became subject to a different defined
4 benefit plan in a different public retirement system offered by his
5 or her employer shall be subject to that defined benefit plan as it
6 would have been available to employees who were first employed
7 on or before December 31, 2012.

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

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

1 to the requirements of this article. This subdivision shall not be
2 construed to prohibit an employer from offering a defined
3 contribution plan on or after January 1, 2013, either with or without
4 a defined benefit plan, whether or not the employer offered a
5 defined contribution plan prior to that date.

6 *(f) (1) If, on or after January 1, 2013, the Cities of Brea and*
7 *Fullerton form a joint powers authority pursuant to the provisions*
8 *of the Joint Exercise of Powers Act (Article 1 (commencing with*
9 *Section 6500) of Chapter 5), that joint powers authority may*
10 *provide employees the defined benefit plan or formula that those*
11 *employees received from their respective employers on December*
12 *31, 2012, to any employee of the City of Brea, the City of Fullerton,*
13 *or a city described in paragraph (2) who is not a new member and*
14 *subsequently is employed by the joint powers authority without a*
15 *break in service of more than 180 days.*

16 *(2) On or before January 1, 2017, a city in Orange County that*
17 *is contiguous to the City of Brea or the City of Fullerton may join*
18 *the joint powers authority described in paragraph (1) but not more*
19 *than three cities shall be permitted to join.*

20 *(3) The formation of a joint powers authority on or after January*
21 *1, 2013, shall not act in a manner as to exempt a new employee*
22 *or a new member, as defined by Section 7522.04, from the*
23 *requirements of this article. New members may only participate*
24 *in a defined benefit plan or formula that conforms to the*
25 *requirements of this article.*

26 ~~(f)~~

27 *(g) The Judges' Retirement System and the Judges' Retirement*
28 *System II shall not be required to adopt the defined benefit formula*
29 *required by Section 7522.20 or 7522.25 or the compensation*
30 *limitations defined in Section 7522.10.*

31 ~~(g)~~

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

36 ~~(h)~~

37 *(i) On and after January 1, 2013, each public retirement system*
38 *shall modify its plan or plans to comply with the requirements of*
39 *this article and may adopt regulations or resolutions for this*
40 *purpose.*

1 *SEC. 3. The Legislature finds and declares that a special law*
2 *is necessary and that a general law cannot be made applicable*
3 *within the meaning of Section 16 of Article IV of the California*
4 *Constitution because of the need to clarify the benefit eligibility*
5 *rules under the California Public Employees' Pension Reform Act*
6 *of 2013 and maintain the integrity of that act and further its*
7 *purpose.*

8 *SEC. 4. Section 2 of this bill incorporates amendments to*
9 *Section 7522.02 of the Government Code proposed by this bill and*
10 *AB 1783. It shall only become operative if (1) both bills are enacted*
11 *and become effective on or before January 1, 2015, (2) each bill*
12 *amends Section 7522.02 of the Government Code, and (3) this bill*
13 *is enacted after AB 1783, in which case Section 7522.02 of the*
14 *Government Code, as amended by AB 1783, shall remain operative*
15 *only until the operative date of this bill, at which time Section 2*
16 *of this bill shall become operative, and Section 1 of this bill shall*
17 *not become operative.*