

**Introduced by Senator Burton**

March 6, 2000

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Senate Constitutional Amendment No. 16—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 17 of Article XVI thereof, relating to public pension or retirement funds.

LEGISLATIVE COUNSEL'S DIGEST

SCA 16, as introduced, Burton. Public retirement systems.

The California Constitution provides that a retirement board of a public pension or retirement system shall have sole and exclusive responsibility to administer the system, as specified, and to provide for actuarial services, as specified.

This measure would provide that expenditures for administration and personnel of any retirement system that receives regularly scheduled contributions from the state shall be subject to appropriation therefor in the annual Budget Act, and would authorize the Governor or the Rules Committees of both houses of the Legislature, once every 5 years beginning in January 2005, to cause an independent actuarial review to be conducted of such a public pension or retirement system, as specified.

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

1 *Resolved by the Senate, the Assembly concurring, That*  
2 *the Legislature of the State of California at its 1999–2000*  
3 *Regular Session commencing on the seventh day of*

1 December 1998, two-thirds of the membership of each  
2 house concurring, hereby proposes to the people of the  
3 State of California that the Constitution of the State be  
4 amended by amending Section 17 of Article XVI thereof,  
5 to read:

6 SEC. 17. The State shall not in any manner loan its  
7 credit, nor shall it subscribe to, or be interested in the  
8 stock of any company, association, or corporation, except  
9 that the State and each political subdivision, district,  
10 municipality, and public agency thereof is hereby  
11 authorized to acquire and hold shares of the capital stock  
12 of any mutual water company or corporation when the  
13 stock is so acquired or held for the purpose of furnishing  
14 a supply of water for public, municipal or governmental  
15 purposes; and the holding of the stock shall entitle the  
16 holder thereof to all of the rights, powers and privileges,  
17 and shall subject the holder to the obligations and  
18 liabilities conferred or imposed by law upon other holders  
19 of stock in the mutual water company or corporation in  
20 which the stock is so held.

21 Notwithstanding any other provisions of law or this  
22 Constitution to the contrary, the retirement board of a  
23 public pension or retirement system shall have plenary  
24 authority and fiduciary responsibility for investment of  
25 moneys and administration of the system, subject to all of  
26 the following:

27 (a) The retirement board of a public pension or  
28 retirement system shall have the sole and exclusive  
29 fiduciary responsibility over the assets of the public  
30 pension or retirement system. The retirement board shall  
31 also have sole and exclusive responsibility to administer  
32 the system in a manner that will assure prompt delivery  
33 of benefits and related services to the participants and  
34 their beneficiaries. *Notwithstanding the foregoing, the*  
35 *proposed budget for personnel and administration for*  
36 *each fiscal year of any public pension or retirement*  
37 *system that receives regularly scheduled contributions*  
38 *from the state shall be submitted to and reviewed by the*  
39 *Legislature pursuant to Section 12 of Article IV. No*  
40 *expenditure by the system for administration or*



1 *personnel shall be made unless an appropriation has been*  
2 *made for those purposes, for that fiscal year, in the annual*  
3 *Budget Act.* The assets of a public pension or retirement  
4 system are trust funds and shall be held for the exclusive  
5 purposes of providing benefits to participants in the  
6 pension or retirement system and their beneficiaries and  
7 defraying reasonable expenses of administering the  
8 system.

9 (b) The members of the retirement board of a public  
10 pension or retirement system shall discharge their duties  
11 with respect to the system solely in the interest of, and for  
12 the exclusive purposes of providing benefits to,  
13 participants and their beneficiaries, minimizing  
14 employer contributions thereto, and defraying  
15 reasonable expenses of administering the system. A  
16 retirement board's duty to its participants and their  
17 beneficiaries shall take precedence over any other duty.

18 (c) The members of the retirement board of a public  
19 pension or retirement system shall discharge their duties  
20 with respect to the system with the care, skill, prudence,  
21 and diligence under the circumstances then prevailing  
22 that a prudent person acting in a like capacity and  
23 familiar with these matters would use in the conduct of  
24 an enterprise of a like character and with like aims.

25 (d) The members of the retirement board of a public  
26 pension or retirement system shall diversify the  
27 investments of the system so as to minimize the risk of loss  
28 and to maximize the rate of return, unless under the  
29 circumstances it is clearly not prudent to do so.

30 (e) The retirement board of a public pension or  
31 retirement system, consistent with the exclusive  
32 fiduciary responsibilities vested in it, shall have the sole  
33 and exclusive power to provide for actuarial services in  
34 order to assure the competency of the assets of the public  
35 pension or retirement system. *Once every five years,*  
36 *commencing in January, 2005, the Governor or the Rules*  
37 *Committees of both houses of the Legislature may choose*  
38 *an independent actuary to review the financial data and*  
39 *actuarial determinations of any public pension or*  
40 *retirement system that receives regularly scheduled*



1 *contributions from the state. The retirement board of the*  
2 *public pension or retirement system shall fully cooperate*  
3 *with the review process and shall provide a written*  
4 *explanation of any discrepancies noted by the reviewing*  
5 *actuary.*

6 (f) With regard to the retirement board of a public  
7 pension or retirement system which includes in its  
8 composition elected employee members, the number,  
9 terms, and method of selection or removal of members of  
10 the retirement board which were required by law or  
11 otherwise in effect on July 1, 1991, shall not be changed,  
12 amended, or modified by the Legislature unless the  
13 change, amendment, or modification enacted by the  
14 Legislature is ratified by a majority vote of the electors of  
15 the jurisdiction in which the participants of the system are  
16 or were, prior to retirement, employed.

17 (g) The Legislature may by statute continue to  
18 prohibit certain investments by a retirement board  
19 where it is in the public interest to do so, and provided  
20 that the prohibition satisfies the standards of fiduciary  
21 care and loyalty required of a retirement board pursuant  
22 to this section.

23 (h) As used in this section, the term “retirement  
24 board” shall mean the board of administration, board of  
25 trustees, board of directors, or other governing body or  
26 board of a public employees’ pension or retirement  
27 system; provided, however, that the term “retirement  
28 board” shall not be interpreted to mean or include a  
29 governing body or board created after July 1, 1991 which  
30 does not administer pension or retirement benefits, or the  
31 elected legislative body of a jurisdiction which employs  
32 participants in a public employees’ pension or retirement  
33 system.

