

Assembly Constitutional Amendment

No. 22

Introduced by Assembly Members Smyth and Conway
(Coauthors: Assembly Members Achadjian, Donnelly, Garrick,
Hagman, Harkey, Jeffries, Jones, Knight, Logue, Mansoor,
Morrell, Nestande, Nielsen, Olsen, Silva, Valadao, and Wagner)

February 22, 2012

Assembly Constitutional Amendment No. 22—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 (f) of Section 17 of Article XVI thereof, relating to public employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

ACA 22, as introduced, Smyth. Public employees' retirement.

(1) 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 amount of 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. These pension systems are funded by employee and employer contributions and investment returns. Existing law provides that public employee pension benefits are a form of deferred compensation, the right to which vests in the employee on contractual principles and is protected from impairment by the California Constitution and the United States Constitution.

This measure would require each public retirement system, as defined in statute, to provide one or more hybrid pension plans meeting the requirements of this measure to each public employer that provides its employees a defined benefit pension plan administered by the public retirement system. The measure would require that a hybrid pension plan consist of a defined benefit component and a defined contribution or alternative plan design component, as specified. The measure would require, among other things, that a hybrid pension plan be designed with a goal of providing annually during retirement, based on a full career in public service, as defined, replacement income of 75% of a public employee's final compensation. The measure would require the Director of Finance, on or before January 1, 2013, to establish initial criteria and requirements for one or more hybrid pension plans, as specified. The measure would require, on and after July 1, 2013, each public retirement system to administer, and make available to each public employer that provides a defined benefit pension plan, one or more hybrid pension plans, except as specified, for public employees hired in each member classification in the public retirement system.

The measure would require, for public employees hired on and after January 1, 2013, that retirement benefits be limited as provided, with regard to a defined benefit that is calculated with reference to final compensation, as specified, that final compensation be calculated using at least a consecutive 36-month period of service.

The measure would establish various other limitations on the retirement benefits offered by public employers to public employees, regardless of the date the employees are hired, to the fullest extent permissible under the United States Constitution. In this regard, the measure would require that any change to a formula or benefit resulting in an increase in a member's pension benefits shall apply only to service performed on and after the operative date of the change and would require that employers and employees make required payments to fund the normal cost of benefits, as specified. The measure would require public employees to contribute at least $\frac{1}{2}$ of the normal costs of any defined benefit plan and would prohibit an employer from paying an

employee's required contributions, except as specified. The measure would also prohibit retirement systems from granting any nonqualified service credit, as specified.

The measure additionally would require that a public employee, who is convicted of any felony arising from his or her official duties, forfeit retirement benefits based on certain statutes. The measure would limit the amount of service that a retired public employee may perform for public employers. The measure would provide that neither its provisions nor any related statutory provisions apply to, or otherwise restrict, death, survivor, and disability benefits, except as specified. The measure would provide that labor contracts that are in effect on November 7, 2012, and that are in conflict with the measure's provisions remain in effect until the expiration of the contract, at which time the requirements of the measure would apply. The measure would specify that terms used in those provisions are to be defined in a specified statute and would permit the Legislature to amend specified statutes referenced in the measure's provisions by a $\frac{2}{3}$ vote of the membership of each house by a statute that is consistent with and furthers its purposes.

The measure would provide that the activities, programs, and levels of service associated with its provisions are not state-mandated local programs requiring a subvention of funds.

(2) The California Constitution prohibits the Legislature from changing the composition of the retirement board of a public pension or retirement system that included elected employee members as of a specified date, including the number, terms, and method of selection and removal of members, unless the change 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 require the composition of the retirement board of a public pension or retirement system to be modified, in the manner provided for in a specified statute, and would exempt that modification from ratification by the electors.

(3) The measure would require the state to defend the constitutionality of its provisions.

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

- 1 *Resolved by the Assembly, the Senate concurring,* That the
- 2 Legislature of the State of California at its 2011–12 Regular
- 3 Session commencing on the sixth day of December 2010,

1 two-thirds of the membership of each house concurring, hereby
2 proposes to the people of the State of California that the
3 Constitution of the State be amended as follows:

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

5 SEC. 12. (a) Each public retirement system shall provide one
6 or more hybrid pension plans that meet the requirements of this
7 section to each public employer that provides its employees a
8 defined benefit pension plan administered by the public retirement
9 system.

10 (1) To reduce employer risk and cost, a hybrid pension plan
11 shall consist of a defined benefit component, a defined contribution
12 component or alternative plan component, and, if applicable,
13 benefits under the federal Social Security Act (42 U.S.C. Sec. 301
14 et seq.). The hybrid pension plan shall be designed with the goal
15 of providing, annually during retirement, replacement income of
16 75 percent of a public employee's final compensation, based on a
17 full career in public service. The hybrid pension plan shall also be
18 designed to limit the combination of the defined benefit and the
19 defined contribution benefit at the amount of either (A) the
20 contribution and benefit base specified in Section 430(b) of Title
21 42 of the United States Code, or its successor, for those eligible
22 for social security benefits or (B) 120 percent of the contribution
23 and benefit base specified in Section 430(b) of Title 42 of the
24 United States Code, or its successor, for those not eligible for social
25 security benefits. As used in this paragraph, "full career in public
26 service" means 30 years of credited service and a normal retirement
27 age of 57 for public employees in safety member classifications
28 and 35 years of credited service and a normal retirement age of 67
29 for all other public employees.

30 (2) On or before January 1, 2013, the Director of Finance shall
31 establish initial criteria and requirements for one or more hybrid
32 pension plans to be provided by a public retirement system for
33 each of the system's member classifications as specified in this
34 section and Section 7514.70 of the Government Code. Chapter 3.5
35 (commencing with Sec. 11340) of Part 1 of Division 3 of Title 2
36 of the Government Code does not apply to the activities undertaken
37 by the Director of Finance pursuant to this section.

38 (3) On and after July 1, 2013, each public retirement system
39 shall administer, and make available to each public employer that
40 provides a defined benefit pension plan, one or more hybrid

1 pension plans for public employees hired in each member
2 classification in the public retirement system. Each hybrid pension
3 plan shall be consistent with the goals, criteria, and requirements
4 of this section and the criteria and requirements established by the
5 Director of Finance. A public employer shall offer to its public
6 employees first hired on and after July 1, 2013, only a hybrid
7 pension plan made available by the public retirement system
8 pursuant to this section, unless the public employer has an
9 alternative pension plan that is determined and certified by the
10 system's chief actuary and by the system's board to have less risk
11 and lower costs to the employer than any available hybrid plans
12 provided by this section.

13 (4) An action to obtain a judgment or writ restraining and
14 preventing the implementation or continued implementation of
15 the alternative plan pursuant to paragraph (3) may be maintained
16 against the retirement system actuary, the board of the retirement
17 system, the retirement system, and the employer challenging any
18 of the following: (A) the determination that the alternative plan is
19 less risky and less costly to the employer; (B) the authorization to
20 offer the alternative plan; or (C) the actual offer of the alternative
21 plan to employees. An action may be brought by any resident or
22 corporation that is assessed and is liable to pay, or within one year
23 before the commencement of the action, has paid, a tax within the
24 jurisdiction or geographical boundaries of the public employer.
25 The right to maintain an action described in this paragraph is in
26 addition to, and does not limit, any other right of action otherwise
27 provided in law.

28 (5) On and after July 1, 2013, to the extent possible while
29 preserving the beneficial federal tax treatment of contributions,
30 the hybrid pension plan or plans described in paragraph (3) shall
31 be made available to public employees who are members of, or
32 eligible for membership in, the employer's defined benefit pension
33 plan, as applicable to each member classification in the system
34 prior to July 1, 2013.

35 (b) This subdivision applies to all public employees first hired
36 by a public employer on or after January 1, 2013, who are, or are
37 eligible to be, members of a public retirement system.

38 (1) For a defined benefit for retirement that is calculated by
39 multiplying the member's years of service by a percentage of the
40 member's final compensation based on age at retirement, final

1 compensation shall be calculated by using the member's highest
2 average payrate during at least a consecutive 36-month period of
3 service. Final compensation shall not include bonuses, unplanned
4 overtime, or payments for unused sick leave or vacation.

5 (2) To be eligible to apply for service retirement, a member
6 shall first be credited with five years of service and attain either
7 52 years of age for safety member classifications or 57 years of
8 age for all other public employees. If the minimum age
9 requirements are increased under the federal Social Security Act
10 (42 U.S.C. Sec. 301 et seq.), the age requirements of this section
11 shall increase by an equal number of years for any new employee
12 hired after the operative date of the change in federal law.

13 (c) This subdivision applies to all public employers and to all
14 public employees who are members of a public retirement system,
15 regardless of the date the public employee is first hired by a public
16 employer, to the fullest extent permissible under the United States
17 Constitution. This subdivision shall not be construed to enlarge
18 the application of any paragraph of this subdivision, or a statute
19 referenced in a paragraph of this subdivision, that is limited to
20 particular types or classes of employees or members.

21 (1) Any change to a formula or benefit that results in an increase
22 in a member's pension benefits shall apply only to service
23 performed on and after the operative date of the change, and shall
24 not be applied to any service performed prior to the operative date
25 of the change, except as otherwise provided in Section 7503.71 of
26 the Government Code.

27 (2) Each public employer and each public employee who is a
28 member of a public retirement system shall make required
29 payments to fund the normal cost of the employee's defined benefit
30 plan or component, if any, of the employee's pension plan.

31 (3) Public employees shall contribute at least one-half of the
32 annual actuarially determined normal costs of any defined benefit
33 plan or component. The public employer shall not pay on behalf
34 of a member of a public retirement system any of the member's
35 required employee contributions.

36 (4) A public retirement system shall not grant to a member
37 nonqualified service credit, regardless of the manner in which that
38 service credit may be denominated, except as provided in Section
39 22826 of the Education Code and Sections 7503.74, 20899.5,
40 20909, 31486.35, and 31658 of the Government Code.

1 (5) If a public employee is convicted of any felony under state
2 or federal law for conduct arising out of, or in the performance of,
3 his or her official duties, his or her pursuit of an office or
4 employment, or in connection with obtaining salary, disability
5 retirement, retirement, or other benefits, he or she shall forfeit
6 retirement benefits in accordance with Section 1243, 1244, or 1245
7 of the Government Code, as may be applicable.

8 (6) Any service performed by a public employee who has retired
9 from a public retirement system may be performed only to the
10 extent authorized in Section 7503.76 of the Government Code.
11 Service that is authorized shall not exceed a total of 960 hours or
12 120 full-time days in a consecutive 12-month period for all public
13 employers in that public retirement system. A retired employee
14 who serves on a public board or commission shall not earn any
15 retirement benefits for that service unless he or she reinstates from
16 retirement.

17 (d) The definition of terms contained in Section 7514.60 of the
18 Government Code govern the construction of those terms used in
19 this section.

20 (e) Except as expressly provided in this section or any of the
21 statutory provisions referenced in this section, neither this section
22 nor any of those statutory provisions apply to, or otherwise restrict,
23 any disability, death, or survivor benefits provided by a public
24 employer.

25 (f) If the terms of a contract, including a memorandum of
26 understanding, between a public employer and its public
27 employees, that is in effect on November 7, 2012, would be
28 impaired by any provision of this section or by any statutory
29 provision referenced in this section, that provision shall not apply
30 to the public employer and public employees subject to that
31 contract until the expiration of that contract. A renewal,
32 amendment, or any other extension of that contract shall be subject
33 to the requirements of this section and the statutory provisions
34 referenced in this section.

35 (g) (1) The Legislature may amend a code section referenced
36 in this section, by statute passed by a two-thirds vote of the
37 membership of each house of the Legislature, only if the statute
38 is consistent with, and furthers the purpose of, this section.

1 (2) Any reference in this section to any code section refers to
2 that code section as it read on January 1, 2013, or as amended
3 pursuant to paragraph (1).

4 (h) Notwithstanding any other provision of this Constitution,
5 neither the activities, programs, or levels of service required by
6 the criteria or requirements established by the Director of Finance
7 pursuant to subdivision (a), nor the goals, criteria, requirements,
8 or definitions provided in the statutes referenced in this section or
9 statutes enacted pursuant to subdivision (g), shall constitute a
10 mandate requiring the State to provide a subvention of funds.

11 Second—That subdivision (f) of Section 17 of Article XVI
12 thereof is amended to read:

13 (f) ~~With~~ (1) *Except as provided in paragraph (2), with regard*
14 *to the retirement board of a public pension or retirement system*
15 *which includes in its composition elected employee members, the*
16 *number, terms, and method of selection or removal of members*
17 *of the retirement board which were required by law or otherwise*
18 *in effect on July 1, 1991, shall not be changed, amended, or*
19 *modified by the Legislature unless the change, amendment, or*
20 *modification enacted by the Legislature is ratified by a majority*
21 *vote of the electors of the jurisdiction in which the participants of*
22 *the system are or were, prior to retirement, employed.*

23 (2) *The composition of the retirement board of a public pension*
24 *or retirement system shall be modified in the manner provided for*
25 *in Section 20090 of the Government Code, as that section read on*
26 *January 1, 2013, and that modification is not subject to ratification*
27 *by the electors as described in paragraph (1).*

28 Third—That, notwithstanding any other provision of law,
29 including this Constitution, the state shall defend the
30 constitutionality of this act.