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November 5, 2009

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

VIA MESSENGER

Initiative Coordinator
Office of the Attorney General
1300 "I" Street
Sacramento, California 95814

Re: Request for Title and Summary for Proposed Initiative

I request that the Attorney General prepare a title for and summary of the attached proposed statewide ballot measure pursuant to Elections Code section 9002. The text of the measure, "New Public Employees Benefits Reform Act," a check for $200 payable to the State of California, the address at which I am registered to vote, and the signed statement required by Elections Code section 9608 are enclosed.

Very truly yours,

Marcia Fritz

Address for correspondence:

Marcia Fritz, President
California Foundation for Fiscal Responsibility
5530 Birdcage Street, STE 105
Citrus Heights, CA 95610
916-966-9366

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NEW PUBLIC EMPLOYEES BENEFITS REFORM ACT

SECTION 1. Title

This measure shall be known and may be cited as the New Public Employee Benefits Reform Act.

SECTION 2. Findings and Declaration of Purpose

The People of the State of California find and declare that:

(a) Government has an obligation to provide adequate and secure retirement benefits to its employees;

(b) Our police, firefighters and other public safety employees, who risk their lives protecting us, deserve special consideration;

(c) At the same time, government has a responsibility to its employees and to taxpayers to ensure that such benefits are reasonable and adequately funded;

(d) Existing public employees have a right to receive the retirement and other similar benefits that were promised them upon employment. Thus, this Act does not eliminate, limit or affect existing defined benefit pension plans, defined contribution plans, vested retiree health care plans, disability benefits, or death benefits for current public employees or retirees and their families;

(e) However, the current system of retirement benefits is too costly, overly generous, and cannot be sustained for new public employees;

(f) Government finance experts have determined that retirement benefits provided public employees are significantly more generous than in other states and private industry. Under the current system, some public employees can actually receive more income in retirement than they earned while working. The current system could result in billions of dollars in new taxes to meet the retirement obligations for public employees. Many local governments may be threatened with bankruptcy if no change is made.

(g) It is responsible and prudent for the people to impose limitations on retirement benefits offered to new public employees hired after the effective date of this Act and make public pensions more affordable for taxpayers.

(h) Therefore, the people of the State of California hereby enact the New Public Employee Benefits Reform Act to provide for fiscally responsible retirement benefits for new public employees hired on or after the effective date of this Act.

SECTION 3. New Public Employee Benefits Reform Act

Section 12 of Article VII of the California Constitution is added to read:

Sec. 12(a) The state and any other public agency providing retirement and other benefits for its new employees shall be limited as provided in this Section and such limitations are a matter of statewide concern.

(b)(1) A public agency providing retirement pension benefits to new employees under a defined benefit plan shall be limited as follows:

(A) The plan shall provide for full retirement ages of new employees as follows:
(i) for a new employee retiring as a peace officer or firefighter, no less than 58 years of age;
(ii) for a new employee retiring as public safety employee, no less than 60 years of age; and
(iii) for any other new employee retiring from a public agency, no less than the full retirement age, as defined in the United States Social Security Old-Age and Survivors Insurance Program.
(iv) Notwithstanding the minimum retirement ages provided for in this subdivision, a public agency may offer early retirement pension benefits to one or more of its new employees if the fiscal effect would be to reduce the normal cost to the public agency compared to the normal cost of providing the benefits only upon reaching the full retirement ages provided in this subdivision. Such an actuarially reduced benefit may only be provided to public employees beginning five or fewer years prior to the retirement ages specified above.

(B) The plan may not provide retirement pension benefits to any new public employee unless the new public employee has been a full time employee of one or more public agencies for at least five consecutive years. This subsection does not limit defined contribution plans or disability benefits for new public employees or death benefits for families of new public employees.

(C) To enhance the ability of public agencies to fund and pay retirement pension benefits for new public employees as and when due, from and after the effective date of this Act, no public agency may provide retroactive increases in retirement pension benefits for any current employee or new employee under any existing or new defined benefit plan.

(D) The plan may not provide retirement pension benefits to any new public employee that, for any year of the new public employee's retirement, exceeds the following percentage of the employee's annual average base wage:
(i) for a new employee retiring as peace officer or firefighter, no more than

2.3 percent multiplied by the number of years of employment;
(ii) for a new employee retiring as a public safety employee, no more than 1.8 percent multiplied by the number of years of employment;
(iii) for any other new employee retiring from a public agency that does not require Social Security contributions from new employees, no more than 1.65 percent multiplied by the number of years of employment, but no less than the Social Security benefits to which such employee would have been entitled if the employee had earned Social Security benefits during such employee's years of employment by that public agency;
(iv) for any other new employee retiring from a public agency that requires Social Security contributions from new employees, no more than 1.25 percent multiplied by the number of years of employment; and
(v) in no case shall annual retirement pension benefits paid to any new employee exceed 75 percent of the employee's annual average base wage.

(E) For purposes of subdivision (D), a new employee's annual average base wage shall be based on no greater than the highest annual average base wage of the employee over a period of three consecutive years of employment by a public agency. Any additional payment, including but not limited to, overtime pay, shift differential pay, bonus pay, severance pay, holiday pay, uniform allowance, certificate pay, advanced officer pay, specialty pay, longevity pay, employer-paid member contribution, payments for accrued but unused vacation, sick days, and similar payments shall be excluded from calculating the annual average base wage.

(F) To enhance the ability of public agencies to fund and pay retirement pension benefits for new public employees as and when due, during the first fiscal year of each public agency beginning after June 30, 2011, and during each fiscal year of the public agency thereafter, the public agency shall make payments to each defined benefit plan for current and new employees of that public agency in amounts that each plan's actuary determines will equal or exceed the normal cost for that fiscal year of the defined benefits under that plan for all current and new employees of that public agency. This subdivision does not require payments with respect to any unfunded liability for fiscal years ending on or before June 30, 2011. In all cases, new employees shall be required to contribute a minimum of 4 percent of base salary (2 percent of base salary if the new employee is employed by a public agency that also requires Social Security contributions from new employees) as an employee contribution to their defined benefit plans.

(G) Notwithstanding subdivision (D), a public agency may choose to increase the amount of defined benefit retirement payments made to new public employees who retire as follows. To offset the effects of inflation, if after five years of retirement, a plan's actuary determines in a written report, made public promptly after it is received by the plan, that there has been an increase in the California Consumer Price Index from the preceding year, the public agency may increase the annual defined benefit pension benefit to such retiree in an amount equal to the increase, but not exceeding 3%.

(2) A public agency providing retiree health care benefits to new employees shall be limited as follows:

(A)(i) Retiree health care benefits shall only be made available to new employees upon attaining the full retirement ages provided in subdivision (b)(1)(A)(i)-(iii); or
(ii) Retiree health care benefits may be offered by a public agency to one or more of its new employees prior to attaining the full retirement ages provided in subdivision (b)(1)(A)(i)-(iii), if the fiscal effect would be to reduce the normal cost to the public agency compared to the normal cost of providing the benefits only upon reaching the employee's full retirement age. Such an actuarially reduced benefit may only be provided to public employees beginning five or fewer years prior to attaining such full retirement ages.

(B) The public agency may not provide retiree health care benefits to any new public employee unless the new public employee has been both a full time employee of one or more public agencies for at least five consecutive years immediately preceding retirement and a full time employee of one or more public agencies for an aggregate of at least ten years. This subsection does not limit defined contribution plans or disability benefits for new public employees or death benefits for families of new public employees.

(C) To enhance the ability of public agencies to fund and pay retiree health care benefits for new public employees as and when due, from and after the effective date of this Act, no public agency may provide retroactive increases in retiree health care benefits for any current employee or new employee.

(D) To enhance the ability of public agencies to fund and pay retiree health care benefits for new public employees as and when due, during the first fiscal year of each public agency beginning after June 30, 2011, and during each fiscal year of the public agency thereafter, the public agency shall make payments to each plan or trust providing retiree health care benefits to current or new employees of that public agency in amounts that each plan's or trust's actuary determines will equal or exceed the normal cost for that fiscal year of any retiree health care plan benefits projected to be paid by the public agency to such current and new employees. This subdivision does not require payments with respect to any unfunded liability for fiscal years ending on or before June 30, 2011.

(3) All funds held in public agency defined benefit plans that benefit new public employees shall be used exclusively to provide pension benefits for public agency retirees and may not be diverted to any other purpose, including retiree health care benefits. All funds held in public agency retiree health care benefit plans that benefit new public employees shall be used exclusively for retiree health care benefits and shall not be diverted to any other purpose, including pension benefits.

(4) A public agency shall reserve the right to adjust the amount and rate of employee and agency contributions for pension and retiree health care benefits for new public employees in any manner the agency may from time to time find appropriate, subject to the limitations provided in this Section (including the limitation as to minimum employee contributions required by subdivision (b)(1)(F)). A public agency may not enter into any employment contract or collective bargaining agreement that limits or restricts, in any way, a public agency's ability to adjust the amount and rate of such contributions from time to time.

(5) As used in this section:

(A) "Defined benefit plan" means a plan providing a pension benefit determined by a formula based on factors such as age, years of service, and compensation.

(B) "New public employee" and "new employee" mean a person who becomes an employee of a public agency on or after July 1, 2011 and who has not been a full time employee of any public agency prior to July 1, 2011.

(C) "Normal cost" means the actuarially defined present value of the cost of projected benefits credited to employees for service in a stated period.

(D) "Peace officer or firefighter" means a new public employee who is a sworn peace officer or firefighter and either a patrol member (as defined in California Government Code section 20390, as that statute existed on January 1, 2009) or a state peace officer/firefighter member (as defined in California Government Code sections 20391-20398, as those statutes existed on January 1, 2009) or a new employee of a public agency who has duties and responsibilities that are substantially the same as the duties and responsibilities of a patrol member or a state peace officer/firefighter member.

(E) "Public agency" means this State or a local public agency of this State, including, but not limited to, a city, city and county, or county, including a charter city or charter county, district, school district, the Regents of the University of California, California State University, and each other political subdivision or public entity of, or organized under the laws of, this State, or any department, instrumentality, board, commission, authority, or agency thereof.

(F) "Public safety employee" means a new public employee who is a state safety member (as defined in California Government Code sections 20399-20416, as those statutes existed on January 1, 2009), or a new employee of a public agency who has duties and responsibilities that are substantially the same as the duties and responsibilities of a state safety member, and who is not a peace officer or firefighter employee.

(G) "Retiree health care benefits" means a plan or trust providing health care benefits to retirees, such as health care services (including acute and chronic care), payment of capitation fees (including those for the United States Medicare Program), other medical services, and dental and vision services.

(H) "Social Security benefits" and "Social Security contributions" mean benefits and contributions, respectively, under the United States Social Security Old-Age and Survivors Insurance Program.

(c)(1) The Legislature may adopt legislation implementing this Section and to further the purposes of this Section by a bill passed by roll call vote entered into the journal, two-thirds of the members concurring.

(2) Notwithstanding the limits provided for in subdivision (b)(1)(D):
(A) The Legislature may modify those limitations for new employees of the state or the University of California by a bill passed by roll call vote entered into the journal, three-fourths of the members concurring.

(B) A public agency other than the state or the University of California, may modify those limitations for employees of the public agency upon approval of two-thirds of the voters, in that agency, voting on the question in a regularly scheduled statewide general election.

(d) Nothing in this Section is intended to terminate, amend, modify or in any way limit or affect the retirement pension benefits, vested retiree health care benefits, disability, death or other benefits provided for current and retired employees of public agencies. Nothing in this Section is intended to require the termination or closure of any existing defined benefit plan.

(e) Nothing in this Section shall terminate, amend, modify or in any way affect the sole and exclusive fiduciary responsibility of the California Public Employees Retirement System, the California State Teachers' Retirement System, and the University of California Retirement System, or any other public pension retirement board or system over the assets held by each of those systems as provided by Section 17 of Article XVI or otherwise affect the management of those systems except as expressly provided in this Section.

SECTION 4. Severability

The provisions of this Act are severable. If any provision of this Act or its application is held invalid, that finding shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 5. Effective Date

This Act shall become effective immediately upon its approval by the voters pursuant to Section 10(a) of Article II.