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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

**PAUL McCAULEY**
**13527 RYE STREET #2**
**SHERMAN OAKS, CA 91423**

April 19, 2010

Office of the Attorney General
Ms. Krystal Paris, Initiative Coordinator
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

Dear Ms. Paris:

I request a Title and Summary for the enclosed proposed statutory initiative, *The McCauley Pension Recovery Act.*

Also enclosed is the required proponent's affidavit pursuant to California Elections Code Section 9608 and residential address.

Would you please direct all correspondence and communications regarding the initiative to:

pmcca28169@aol.com

I am personally hearing-impaired and much prefer e-mail communications.

Enclosed is a check for $200.

Very truly yours,

# INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

SECTION 1. This measure shall be known and may be cited as *"The McCauley Pension Recovery Act.*

SECTION 2. THE PEOPLE OF THE STATE OF CALIFORNIA MAKE THE FOLLOWING FINDINGS AND DECLARATIONS:

1) Past promises made to public employees for future pension entitlements were excessive at the time made and were based upon undue influence by means of campaign contributions paid to the public officials who made the promises for the pensions. The People believe that there was no meeting of the minds between the taxpayers and the public employees and therefore no contractual obligation obtained.
2) The stock market collapse of 2008 has substantially impaired the taxpayers' ability to pay the promised pensions. Future stock market collapses will impair the taxpayers' ability to pay the promised pensions even more.
3) The tax burden that the public will be compelled to bear in order to fulfill the excessive promises for pensions that have been made will substantially impair the taxpayers' ability to pay for essential fire protection, police protection, public education, health care and to pay for other essential public services and necessities. In fact, the only means of paying these pensions will be the wholesale destruction of Proposition 13. The People enacted Proposition 13 to protect themselves from this very calamity.
4) The State of California and its political subdivisions require regular and substantial taxpayer investments in transportation systems, including public transit systems to replace private automobiles; energy infrastructure, including nuclear power plant construction; restoration of wetlands, coastland, mountains, and the deserts and to urgently respond to the impact of global warming.
5) The pension promises made, which appear to be largely unattainable even in the best of circumstances, will be wholly unattainable in a future economic recession, depression or inflationary environment, without impairing the public health and safety.
6) The pension promises made to public employees at all levels of government in California are so out of proportion to pensions of non-government employees as well as to pensions paid to public servants as recently as fifteen years ago as to cause a loss of confidence of the general public in the fairness in the administration of public affairs. The public employees have attempted to ensconce themselves as a praetorian elite, reducing taxpayers to the status of tax slaves. The public-employee greed cries out for adult supervision.
7) The State of California lacks the option of seeking renegotiation or repudiation of its pension commitments in United States Bankruptcy Court.
8) The excessive financial burdens on taxpayers to pay the promised pensions and to meet funding requirements of existing pension contracts will require a substantial curtailment of public employment at a time of weakening private-sector employment, causing an unacceptable level of job loss and unemployment.
9) Pension outlays in a number of major metropolitan areas in California already exceed salary and wage outlays for currently-active employees. More is paid to retirees of the Los Angeles Police Department than is paid to active Los Angeles Police Officers; this, at a time when

gang violence, drug abuse and other public disorders necessitate more police protection for the public safety.

10) Rising unemployment in California is eroding the tax base from which future public-employee pensions are to be paid as well as all other essential public services enumerated above and otherwise.

11) The cost of maintaining California's prison population and the cost of meeting federal mandates for health care for inmates as well as amelioration of overcrowding in the prisons necessitate that an increasing share of public revenues must be devoted to prison expenditures leaving less funds available to meet pension entitlements and essential public needs.

12) The People declare that it was former Governor Gerald Brown and his former Chief of Staff, Gray Davis, who laid the foundation for the approximate $500 billion in unfunded pension obligations and the approximate $180 billion in unfunded health insurance obligations to California's public employees. That former Governor Gerald Brown, now candidate for governor Gerald Brown, makes no apology for his error, makes no offer to correct his error and goes about the state sniffing about for campaign contributions from the very public-employee unions that are the root of California's fiscal bankruptcy.

13) For the reasons enumerated and to recover roughly one-half of the outlay for public-employee pensions in and throughout California, and outside California, and to relieve the pressure for revisions of Proposition 13, the People of the State of California propose to amend the Revenue and Taxation Code as follows:

SECTION 3. For purposes of this part, the following terms have the following meanings:

"Pension Taxable Income" means any income from ------

(A) a qualified trust under section 401(a) of the Internal Revenue Code of 1986 that is exempt under section 501(a) from taxation;
(B) a simplified employee pension as defined in section 408(k) of such Code;
(C) an annuity plan described in section 403(a) of such Code;
(D) an annuity contract described in section 403(b) of such Code;
(E) an individual retirement plan described in section 7701(a)(37) of such Code;
(F) an eligible deferred compensation plan (as defined in section 457 of such Code);
(G) a governmental plan (as defined in section 414(d) of such Code;
(H) a trust described in section 501(c)(18) of such Code, or;
(I) any plan, program, or arrangement described in section 3121(v)(2)(C) of such Code, if such income –

(i) is part of a series of substantially equal periodic payments(not less frequently than annually) made for –

(I) the life or life expectancy of the recipient (or the joint lives or joint life expectancies of the recipient and the designated beneficiary of the recipient), or

(II) a period of not less than 10 years, or

(ii) is a payment received after termination of employment under a plan, a program, or arrangement (to which such employment relates) maintained solely for the purpose of providing retirement benefits for employees in excess of the limitations imposed by 1 or more of sections 401(a)(17), 401(k), 401(m), 402(g), 403(b), 408(k), or 415 of such Code or any other limitation on contributions or benefits in such Code on plans to which any of such sections apply.

Such term includes any retired or retainer pay of a member or former member of a uniform service computed under chapter 71 of title 10, United States Code.

(J) The cost of health insurance premiums, or a health care plan, paid for the benefit of the taxpayer and/or members of the taxpayer's household by anyone other than the taxpayer, other than by means of *the McCauley-Rosen Wealth Tax and Oceans Preservation Act,* after its enactment.

(K) Except as provided in SECTION 4(j)(3)(a)(i), below, social security benefits are not to be counted as pension taxable income.

SECTION 4. Section 17041 of the Revenue and Taxation Code is amended to read:

17041. (a) There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident, except the head of a household as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of this state for the entire taxable year and for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions:

| If the taxable income is: | The tax is: |
|---|---|
| Not over $3,650 | 1% of the taxable income |
| Over $3,650 but not over $8,650 | $36.50 plus 2% of the excess over $3,650 |
| Over $8,650 but not over $13,650 | $136.50 plus 4% of the excess over $8,650 |
| Over $13,650 but not over $18,950 | $336.50 plus 6% of the excess over $13,650 |

| | |
|---|---|
| Over $18,950 but not over $23,950 | $654.50 plus 8% of the excess over $18,950 |
| Over $23,950 | $1,054.50 plus 9.3% of the excess over $23,950 |

(2) (A) For taxable years beginning on or after January 1, 2009, and before January 1, 2011, or January 1, 2011, or January 1, 2013, as applicable, the percentages specified in the table in paragraph (1) shall be increased by adding 0.25 percent to each percentage. This subparagraph shall become operative only if the Director of Finance does not provide notification to the Joint Legislative Budget Committee on or before April 1, 2009, pursuant to Section 99030 of the Government Code. This subparagraph shall cease to be operative for taxable years beginning on or after January 1, 2011, unless the Director of Finance makes the notification pursuant to Section 99040 of the Government Code, in which case this subparagraph shall cease to be operative for taxable years beginning on or after January 1, 2013.
(B) For taxable years beginning on or after January 1, 2009, and before January 1, 2011, or January 1, 2011, or January 1, 2013, as applicable, the percentages specified in the table in paragraph (1) shall be increased by adding 0.125 percent to each percentage. This subparagraph shall become operative only if the Director of Finance does not provide notification to the Joint Legislative Budget Committee on or before April 1, 2009, pursuant to Section 99030 of the Government Code. This subparagraph shall cease to be operative for taxable years beginning on or after January 1, 2011, unless the Director of Finance makes the notification pursuant to Section 99040 of the Government Code, in which case this subparagraph shall cease to be operative for taxable years beginning on or after January 1, 2013.

(b) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident, except the head of a household as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (a) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(c) (1)There shall be imposed for each taxable year upon the entire taxable income of every resident of this state who is not a part-year resident for that taxable year, when the resident is the head of a household, as defined in Section 17042, taxes in the following amounts and at the following rates upon the amount of taxable income computed for the taxable year as if the resident were a resident of the state for the entire taxable year and for all prior taxable years for carryover items, deferred income, suspended losses, or suspended deductions:

| If the taxable income is: | The tax is: |
|---|---|
| Not over $7,300 | 1% of the taxable income |
| Over $7,300 but not over $17,300 | $73 plus 2% of the excess over $7,300 |
| Over $17,300 but not over $22,300 | $273 plus 4% of the excess over $17,300 |
| Over $22,300 but not over $27,600 | $473 plus 6% of the excess over $22,300 |
| Over $27,600 but not over $32,600 | $791 plus 8% of the excess over $27,600 |
| Over $32,600 | $1,191 plus 9.3% of the excess over $32,600 |

(2) (A) For taxable years beginning on or after January 1, 2009, and before January 1, 2011, or January 1, 2011, or January 1, 2013, as applicable, the percentages specified in the table in paragraph (1) shall be increased by adding 0.25 percent to each percentage. This subparagraph shall become operative only if the Director of Finance does not provide notification to the Joint Legislative Budget Committee on or before April 1, 2009, pursuant to Section 99030 of the Government Code. This subparagraph shall cease to be operative for taxable years beginning on or after January 1, 2011, unless the Director of Finance makes the notification pursuant to Section 99040 of the Government Code, in which case this subparagraph shall cease to be operative for taxable years beginning on or after January 1, 2013.

(B) For taxable years beginning on or after January 1, 2009, and before January 1, 2011, or January 1, 2011, or January 1, 2013, as applicable, the percentages specified in the table in paragraph (1) shall be increased by adding 0.125 percent to each percentage. This subparagraph shall become operative only if the Director of Finance does not provide notification to the Joint Legislative Budget Committee on or before April 1, 2009, pursuant to Section 99030 of the Government Code. This subparagraph shall cease to be operative for taxable years beginning on or after January 1, 2011, unless the Director of Finance makes the notification pursuant to Section 99040 of the Government Code, in which case this subparagraph shall cease to be operative for taxable years beginning on or after January 1, 2013.

(d) (1) There shall be imposed for each taxable year upon the taxable income of every nonresident or part-year resident when the nonresident or part-year resident is the head of a household, as defined in Section 17042, a tax as calculated in paragraph (2).

(2) The tax imposed under paragraph (1) shall be calculated by multiplying the "taxable income of a nonresident or part-year resident," as defined in subdivision (i), by a rate (expressed as a percentage) equal to the tax computed under subdivision (c) on the entire taxable income of the nonresident or part-year resident as if the nonresident or part-year resident were a resident of this state for the taxable year and as if the nonresident or part-year resident were a resident of this state for all prior taxable years for any carryover items, deferred income, suspended losses, or suspended deductions, divided by the amount of that income.

(e) There shall be imposed for each taxable year upon the taxable income of every estate, trust, or common trust fund taxes equal to the amount computed under subdivision (a) for an individual having the same amount of taxable income.

(f) ~~The~~ A tax imposed by this part is not a surtax.

(g) (1) Section 1(g) of the Internal Revenue Code, relating to certain unearned income of minor children taxed as if the parent's income, shall apply, except as otherwise provided.

(2) Section 1(g) (7) (B) (ii) (II) of the Internal Revenue Code, relating to income included on a parent's return, is modified, for purposes of this part, by substituting "1 percent" for "15 percent."

(h) For each taxable year beginning on or after January 1, 1988, the Franchise Tax Board shall recompute the income tax brackets prescribed in subdivisions (a) and (c). That computation shall be made as follows:

(1) The California Department of Industrial Relations shall transmit annually to the Franchise Tax Board the percentage change in the California Consumer Price Index for all items from June of the prior calendar year to June of the current calendar year, no later than August 1 of the current calendar year.

(2) The Franchise Tax Board shall do both of the following:

(A) Compute an inflation adjustment factor by adding 100 percent to the percentage change figure that is furnished pursuant to paragraph (1) and dividing the result by 100.

(B) Multiply the preceding taxable year income tax brackets by the inflation adjustment factor determined in subparagraph (A) and round off the resulting products to the nearest one dollar ($1).

(i) (1) For purposes of this part, the term "taxable income of a nonresident or part-year resident" includes each of the following:

(A) For any part of the taxable year during which the taxpayer was a resident of this state (as defined by Section 17014), all items of gross income and all deductions, regardless of source.

(B) For any part of the taxable year during which the taxpayer was not a resident of this state, gross income and deductions derived from sources within this state, determined in accordance with Article 9 of Chapter 3 (commencing with Section 17301) and Chapter 11 (commencing with Section 17951).

(2) For purposes of computing "taxable income of a nonresident or part-year resident" under paragraph (1), the amount of any net operating loss sustained in any taxable year during any part of which the taxpayer was not a resident of this state shall be limited to the sum of the following:

(A) The amount of the loss attributable to the part of the taxable year in which the taxpayer was a resident.

(B) The amount of the loss which, during the part of the taxable year the taxpayer is not a resident, is attributable to California source income and deductions allowable in arriving at taxable income of a nonresident or part-year resident.

(3) For purposes of computing "taxable income of a nonresident or part-year resident" under paragraph (1), any carryover items, deferred income, suspended losses, or suspended deductions shall only be includable or allowable to the extent that the carryover item, deferred income, suspended loss, or suspended deduction was derived from sources within this state, calculated as if the nonresident or part-year resident, for the portion of the year he or she was a nonresident, had been a nonresident for all prior years.

(j) (1) For each taxable year beginning on and after January 1, 2012, there shall be imposed on every taxpayer who is a resident and whose pension taxable income for the year exceeds $40,000 an additional tax according to the following schedule. The additional tax is in addition to all other taxes provided for in this section.

| | |
|---|---|
| Over $40,000 but not over $50,000............................ | $5,000 plus 20% of the pension taxable income over $40,000 |
| Over $50,000 but not over $75,000............................ | $7,000 plus 35% of the pension taxable income over $50,000 |
| Over $75,000 but not over $100,000............................ | $15,750 plus 40% of the pension taxable income over $75,000 |
| Over $100,000 but not over $150,000............................ | $25,750 plus 50% of the pension taxable income over $100,000 |

| | |
|---|---|
| Over $150,000 ........................ | $50,750 plus 60% of the pension taxable income over $150,000 |

(j) (2) For taxpayers who are seventy-five years of age or older as of the date of enactment, there shall be allowed a credit of $10,500 against the tax computed in subdivision (j) (1). Under no circumstances shall the additional tax so computed be less than zero.

(j)(3) For persons who were nonresidents of California on the date of enactment and for persons who become nonresidents thereafter, an excise tax on the actuarially-determined value of excess vested pension benefits shall be computed and paid in lieu of the additional tax. Persons whose pension taxable income exceeds $40,000 in any taxable year shall be liable for the excise tax. The excise tax shall be calculated at the rate of fifty percent (50%) on the amount by which:

(a) The actuarially-determined value of all vested pension benefits of all pension trusts in which the individual has a vested interest, calculated on the individual's life expectancy, exceeds the fair market value of an assumed annuity of $40,000 paid out over the annuitant's life expectancy. For taxpayers who are seventy-five years of age or older on the date of enactment, there shall be allowed a $250,000 credit against the excise tax so computed. For purposes of determining the actuarial value of pension benefits payable at any future date, a discount factor of 5% shall be applied.

(i) The excise tax so determined shall be due and payable upon assessment and the Franchise Tax Board may, in addition to all other remedies provided by law, impose a charging order upon any or all payer(s) of a taxpayer's pension benefits to assure their immediate collection. There shall be excepted from the foregoing a pecuniary amount that is the equivalent of the annual social security benefit that the taxpayer would have earned had his or her pension entitlement(s) been computed under the Federal Insurance and Contributions Act. In any circumstance that calculation of such pecuniary amount is not possible, or at the taxpayer's election, then such social security equivalent amount shall be $1,500 per month in the case of a taxpayer who is sixty-five years of age or younger at date of assessment, $2,500 per month for a taxpayer who is older than sixty-five years of age but less than seventy-five years of age at the date of assessment and $5,000 per month for taxpayers who are seventy-five years of age or older at the date of assessment. The pecuniary amount shall be reduced, but not below zero, for any taxpayer who is receiving social security benefits, to the extent of the social security benefits he or she is receiving. For purposes of reducing the pecuniary amount for social security benefits received, members of the taxpayer's household will be treated as if he or she is the taxpayer.

(b) The Franchise Tax Board shall have the right to collect the tax provided for in this subdivision at its source or from any other property owned by the taxpayer.

(c) The Franchise Tax Board shall use the same actuarial assumptions in calculating the value of vested pension benefits provided for in this subdivision.

(d) This subdivision shall apply only to vested pension benefits obtained through employment of any person within the State of California and derived from sources within California. It applies to persons who earned vested pension benefits as well as to persons who are successors in interest to any such vested pension benefits.

(e) For persons who were nonresidents on the date of enactment, the excise tax shall be determined and assessed as of the date of enactment. For persons who were residents on the date of enactment but who became nonresidents at any time after the date of enactment, the excise tax shall be computed and assessed as of the date non-residency begins.

(j)(4) In the event P.L. 104-95 is revoked in its entirety, subparagraph (j) (3) (a) shall become inoperative as of the effective date of its revocation. Taxpayers who have paid an excise tax pursuant to subparagraph (j) (3) (a) at any time shall be entitled to a refund, without interest, for the full amount so paid. Under no circumstances shall any taxpayer be required to pay both an additional tax and an excise tax on the same pension taxable income.

(j)(5) No person receiving a benefit of any kind whatsoever in consideration of the loss of life of a police officer or a firefighter/paramedic in the line of duty shall be liable for the tax provided by this measure.

SECTION 5. The provisions of this measure are severable. If any provision of this measure or the application of the provisions of this measure is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SECTION 6. This measure is operative for each taxable year beginning on and after January 1, 2012 or the earliest date provided by law.