

August 29, 2011

Hon. Kamala D. Harris
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Dawn McFarland
Initiative Coordinator

Dear Attorney General Harris:

We have reviewed the proposed initiative measure that concerns state and local retirement plans and establishes a new state entity to administer defined pension benefits for non-governmental employees in California (A.G. File No. 11-0026). The proposal does not specify whether it seeks to amend the State Constitution or statutes or both.

This complex measure has many provisions that are unclear. The measure's provisions address the following issues, among others:

- ***Funded Status of Public Pension Systems.*** The measure appears to establish mechanisms intended to reduce unfunded liabilities—thereby improving the funded status—of state and local public pension systems. Subsection G of Section 4 of this measure and its appendices appear, for example, to establish mechanisms to reduce benefits of certain current and future retirees in some pension systems and withhold these adjusted savings within the public retirement trust fund from which they originated. If we understand these provisions correctly, they could, if implemented, reduce future state and local governmental costs in the long run. (Subsection Q [1] of Section 4, however, could perhaps be interpreted to prevent some governments from achieving some such cost savings in the short run.) Offsetting any such long-term cost reductions likely would be increases in other forms of public employee compensation and some increase in state government costs, such as those required under this measure to increase State Controller's Office pension oversight.
- ***Change in Retirement Ages.*** Subsection J of Section 4 of this measure increases the "minimum retirement age" for public employees to 59 years and six months. This provision seemingly only would apply during certain periods when this measure's mechanisms to improve pension system funded status are in effect. These provisions, if implemented, could result in some state or local savings over the long term.
- ***Changes in Pension System Cost-of-Living Adjustments (COLAs).*** The measure provides that in every year when a public pension system is less than 97 percent funded, a

reduced COLA for retiree benefits will be instituted. This provision could, if implemented, reduce state and local pension contributions costs by an unknown amount.

- ***State and Local Retiree Health Benefits.*** Subdivision K(4) of Section 4 of the measure appears to expand dramatically state and local agencies' requirements to pay for retiree health coverage for public employees.
- ***New State Entity.*** The measure also establishes a new state entity "that mirrors the California Public Employees' Retirement System" to administer defined pension benefits and retiree health care benefits for non-governmental employees in California. It is unclear to what extent such benefits and the costs of their administration would be paid for by these employees, their employers, and/or taxpayers (especially if the employers cease operation and/or seek bankruptcy protection in the future).
- ***System Actuarial Practices.*** Several provisions of this measure relate to public pension systems' actuarial practices, including provisions relating to systems' mortality tables and pooling of certain assets and liabilities. The latter provisions could potentially result in significant changes to pension costs for school and community college districts, as well as some other local governments.

Significant Legal Issues. Complicating our efforts to provide a fiscal estimate are the significant legal challenges that would face various provisions of this measure, including, but not limited to, likely claims that the measure would impair pension and other contracts with current and past public employees.

Not Possible to Provide an Estimate. Given all of these uncertainties, we are informing you that, in our opinion, a reasonable estimate of the net impact of this proposed initiative cannot be prepared within 25 working days from the date this proposed initiative was received. As required by subsection (c) of Section 9005 of the Elections Code, we are informing you that it is our opinion that the measure could result in a substantial net change in state or local finances if adopted, given the magnitude of the changes proposed in this measure.

Sincerely,

Mac Taylor
Legislative Analyst

Ana J. Matosantos
Director of Finance