

Date of Hearing: April 23, 2013

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Paul Fong, Chair

AB 822 (Hall) – As Introduced: February 21, 2013

AS PROPOSED TO BE AMENDED

SUBJECT: Local government retirement plans.

SUMMARY: Requires an independent actuarial statement to be prepared and printed in the voter information portion of the sample ballot for local ballot measures that propose a change to employee retirement benefit plans. Requires a local ballot measure that proposes to change an employee retirement benefit plan to appear on the ballot only at a statewide general election. Specifically, this bill:

- 1) Requires a ballot measure that proposes to alter, replace, or eliminate the retirement benefit plan of employees of a local governmental entity to be submitted to voters only at an established statewide general election.
- 2) Specifies that the above provision applies to charter cities, charter cities and counties, and charter counties.
- 3) Requires the governing body of the local government entity to do all of the following whenever a local measure qualifies for the ballot that proposes to alter, replace, or eliminate the retirement benefit plan of employees of a local government entity, whether by initiative or legislative action:
 - a) Secure the services of an independent actuary to provide a statement, not to exceed 500 words in length, of the actuarial impact of the proposed measure upon future annual costs of the retirement benefit plan, including normal cost and any additional accrued liability; and,
 - b) Make public at a public meeting, at least two weeks prior to the election that the measure has qualified for, the future costs that will result from the changes to the retirement plan proposed by the measure.
- 4) Requires the actuarial statement to be printed in the voter information portion of the sample ballot preceding the arguments for and against the measure, if any.
- 5) Requires, if the entire text of the measure is not printed on the ballot, nor in the voter information portion of the sample ballot, the following statement to be printed immediately below the independent actuarial analysis, in no less than 10-point bold type:

“The above statement is an independent actuarial analysis of Ordinance or Measure _____. If you desire a copy of the ordinance or measure, please call the elections official’s office at (insert telephone number) and a copy will be mailed at no cost to you.”

- 6) Requires, if a measure described in this bill qualifies for the ballot pursuant to an initiative petition described in current law governing county, city, or district petitions, the proponents of the measure to pay an additional filing fee to pay for the costs of the actuarial impact statement in an amount to be established by the local governing body, not to exceed five hundred dollars (\$500). Provides that if the measure is adopted by the voters, the fee shall be refunded to the proponents.
- 7) Provides the following definitions:
 - a) "Actuary" means an actuary who is an associate or fellow of the Society of Actuaries;
 - b) "Future annual costs" includes, but is not limited to, annual dollar changes, or the total dollar changes involved when available, as well as normal cost and any change in accrued liability; and,
 - c) "Local government entity" includes a city, county, city and county, school district, community college district, county board of education, and special district.
- 8) Applies this bill's requirements regarding actuarial statements to a charter city, charter city and county, or charter county.
- 9) Makes findings and declarations that the security of public moneys and the fiscal integrity of local governmental entities in this state are matters of statewide concern and not a municipal affair.

EXISTING LAW:

- 1) Requires a charter or charter amendment proposed by a charter commission, whether elected or appointed by a governing body, for a city or city and county to be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election date, as specified, provided that there are at least 95 days before the election.
- 2) Requires the following city or city and county charter proposals to be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election, as specified, provided that there are at least 88 days before the election:
 - a) An amendment or repeal of a charter proposed by the governing body of a city or a city and county on its own motion;
 - b) An amendment or repeal of a city charter proposed by a petition signed by 15% of the registered voters of the city;
 - c) An amendment or repeal of a city and county charter proposed by a petition signed by 10% of the registered voters of the city and county; and,
 - d) A recodification of the charter proposed by the governing body on its own motion, provided that the recodification does not, in any manner, substantially change the provisions of the charter.

- 3) Requires the Legislature and local legislative bodies (except school districts or county offices of education) to secure the services of an actuary to provide a statement of the actuarial impact upon future annual costs, including normal cost and any additional accrued liability, before authorizing changes in public retirement plan benefits or other postemployment benefits. Requires local agencies to make public at a public meeting the future costs of changes in retirement benefits or other post-employment benefits at least two weeks before the adoption of any changes in public retirement plan benefits or other post-employment benefits, as specified.

FISCAL EFFECT: Unknown. State-mandated local program; contains reimbursement direction.

COMMENTS:

- 1) Author's Amendments: As currently drafted, the provisions of this bill that require a measure that proposes to change a municipal employee retirement benefit plan to appear on the ballot only at a statewide general election applies only to charter amendments and to the adoption or repeal of city or city and county charters. However, it is the author's intent that this requirement apply to all local ballot measures dealing with employee retirement benefit plans, not just measures involving city or city and county charters. In order to correctly reflect that intent, the author is proposing amendments to make this requirement applicable to all local ballot measures dealing with employee retirement benefit plans.

Additionally, this bill currently requires an actuarial statement of up to 500 words in length to be printed on the ballot when a measure appears on the ballot to alter, replace, or eliminate the retirement benefit plan of employees of a local government. These types of statements typically are not printed on the ballot itself, due in part to concerns about the amount of space that they would take up on the ballot. Instead, lengthier analyses of ballot measures and arguments for and against those measures typically appear in the voter information portion of the sample ballot instead. In light of this fact, the author is proposing amendments to require the actuarial statement to appear in the voter information portion of the sample ballot, instead of on the ballot itself.

This analysis reflects these proposed author's amendments.

- 2) Purpose of the Bill: According to the author:

Across California, there have been increased efforts to make changes to city employee compensation packages relative to pension benefits. The fiscal changes resulting from these initiatives can have far-reaching impact on the retirement security of workers and their families as well as dramatic and often unexpected impact on local budgets.

By enlisting the services of an actuary in this regard and providing public notice of an initiative's fiscal impact, voters can be confident in the information provided and accordingly, make informed decisions at the ballot box.

- 3) Actuarial Analyses of Proposed Pension Changes and Previous Legislation: The Public Employee Post-Employment Benefits Commission (Commission) was established by Executive Order S-25-06 to propose ways for addressing unfunded post-employment benefits. In early January 2008, the Commission delivered its final report to the Governor and the Legislature, which contained 34 recommendations for improving the functioning of public retirement systems and the delivery of other post-employment benefits, and for controlling the costs of public employee benefits.

SB 1123 (Wiggins), Chapter 371, Statutes of 2008, enacted several of the Commission's recommendations, including a requirement for local agencies to secure an actuary to provide an actuarial impact statement of future annual costs before authorizing changes in public retirement plan benefits or other post-employment benefits. AB 822 extends this requirement to local ballot measures that propose changes to local agency employee retirement benefits. This provision applies to cities and counties (including charter cities and charter counties), school districts, community college districts, county boards of education, and special districts.

- 4) Can This Bill Be Made Applicable to Charter Cities? The California Constitution generally give charter cities the right to adopt ordinances that conflict with general state laws, provided that the subject of the regulation is a municipal affair, rather than an issue of statewide concern. In fact, Section 5 of Article XI of the California Constitution expressly grants charter cities plenary authority to provide for the compensation of city employees. In light of this fact, and notwithstanding the findings and declarations in this bill that "ensuring an informed electorate with respect to the statewide integrity and security of government pension systems and ensuring the sufficiency of public safety services" are matters of statewide concern, it is not clear whether the provisions of this bill can be made applicable to charter cities.
- 5) Timing of Votes on Measures Dealing with Retirement Benefit Plans: As noted above, existing law already requires city and city and county charter proposals to be submitted to the voters only at a statewide primary or general election, or at a regularly scheduled municipal election. These requirements were enacted in 2011, as a response (in part) to a situation where the City of Bell adopted a charter in 2005 at an election scheduled just five days after Thanksgiving. That charter proposal was the only item on the ballot, and was promoted by city officials as a change that would give the city more local control. The ballot language included no mention of the fact, however, that the change also gave the city council the ability to set council members' salaries. Fewer than 400 voters turned out to vote on the charter proposal in the city of over 36,000 residents.

The rationale for requiring charter proposals to be submitted to voters only at statewide primary or general elections, or at regularly scheduled municipal elections, was that a city charter is akin to a Constitution for charter cities—a foundational set of rules that govern the essential operations of the city that adopts it. In light of that fact, requiring charter proposals to be voted on at regularly scheduled elections helps ensure broader voter participation in establishing those foundational rules, and helps prevent situations like the one in the City of Bell where votes on charter proposals are deliberately scheduled at a time when few voters will participate.

This bill proposes an even more restrictive standard for when local ballot measures that propose to alter, replace, or eliminate the retirement benefit plan of local government employees may appear on the ballot, requiring such measures to be considered by voters only at the statewide general election. The stated rationale for this proposed policy change is that local retirement-related proposals can have dramatic impacts on local budgets, as well as far-reaching impacts on the retirement security of California workers and their families. However, it is unclear whether local retirement-related proposals differ in this respect from other local ballot measures that voters may be asked to consider. For instance, local ballot measures dealing with taxes or with the issuance of bonds could have very significant impacts on local budgets, yet they would not be required to appear only at statewide general elections under this bill. The committee may wish to consider whether retirement-related proposals are materially different from other local government ballot measures that voters are asked to consider, and if so, whether such differences warrant a requirement that retirement-related proposals be considered only at statewide general election ballots while local measures not dealing with retirement benefits continue to appear on the ballot at other times.

6) Arguments in Support: According to the sponsor of this bill, California Professional Firefighters:

A review of the last few election cycles reveals the popular emergence of local ordinances and ballot measures seeking to alter, replace or eliminate retirement benefit plans applicable to the employees of a local government entity.

Frequently, these retirement-related proposals are promulgated by the local governing body for placement before voters on their respective local ballot...

The increasing trend in local ballot measures and ordinances seeking to modify municipal employee pension plans raises a public interest concern, specifically with respect to the accuracy of such a proposal's fiscal analysis, particularly if the analysis isn't conducted by a qualified actuarial expert.

For example, the City of San Diego estimated the cost for implementing Proposition B would be \$54 million over the first three years. However, based on the first year cost it is likely that the three year cost may be three times what was projected during the election....

Additionally, fewer voters actually participate in the local direct democracy process because many initiatives appear in primary elections when voter participation is historically and consistently much lower than in general elections. Just as the Legislature and Governor recognized last year with the approval of SB 202, there is a need to bring the local initiative process back to its original intent and invite greater voter participation at the ballot box, especially when considering that local municipal retirement-related proposals, like their statewide counterparts, can have far-reaching impacts on the retirement security of California workers and their families as well as dramatic and often unexpected impacts on local budgets.

- 7) Related Legislation: SB 311 (Padilla), which is pending on the Senate Floor, would require a city charter or amendments to a city charter to be submitted to the voters only at a statewide general election.
- 8) Previous Legislation: AB 1344 (Feuer & Alejo), Chapter 692, Statutes of 2011, required a city charter or amendments to a city charter to be submitted to the voters at an established statewide general, statewide primary, or regularly scheduled municipal election, among other provisions.

SB 202 (Hancock), Chapter 558, Statutes of 2011, provided that state initiative and referendum measures that qualify for the ballot on or after July 1, 2011, shall appear on the ballot only at the November statewide general election or at a statewide special election, among other provisions.

- 9) Double Referral: On April 10, 2013, the Assembly Committee on Local Government approved this bill by a vote of 7-1.

REGISTERED SUPPORT / OPPOSITION:

Support

California Professional Firefighters (sponsor)
American Federation of State, County and Municipal Employees, AFL-CIO
Association for Los Angeles Deputy Sheriffs
California Labor Federation
California State Association of Electrical Workers
California State Pipe Trades Council
Coalition of California Utility Employees
Glendale City Employees Association
Laborers' International Union of North America Local 777
Laborers' International Union of North America Local 792
Organization of SMUD Employees
San Bernardino Public Employees Association
San Luis Obispo County Employees Association
Santa Rosa City Employees Association
Western States Council of Sheet Metal Workers

Opposition

None on file.

Analysis Prepared by: Ethan Jones / E. & R. / (916) 319-2094