

**Assembly Constitutional Amendment**

**No. 8**

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**Introduced by Assembly Member Richman**

April 14, 2005

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Assembly Constitutional Amendment No. 8—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by adding Section 8 to Article XX thereof, relating to public pension or retirement benefits.

LEGISLATIVE COUNSEL'S DIGEST

ACA 8, as introduced, Richman. Public employee defined contribution and hybrid plan.

The California Constitution reserves a role for the elected officials of this state in the governance of public pension systems through several means, including the power to determine the appropriateness of retirement benefits for public employees.

This measure would establish the California Public Employee Defined Contribution and Hybrid Plans. The measure would provide that on and after July 1, 2007, any person hired by a public agency shall enroll only in a hybrid plan or in a defined contribution plan, as defined, of a public pension or retirement system, and is prohibited from enrolling in a defined benefit plan, as defined. The measure would permit an active member of a defined benefit plan, during a specified period, to transfer a sum equal to the member's interest in the defined benefit plan to a defined contribution plan or hybrid plan.

The measure would prescribe contribution rates and other requirements for defined contribution plans and hybrid plans, would require disability and death benefits to be provided under those plans, and would specify the entities responsible for administering those plans.

The measure would require that any statute implementing the measure be enacted only if approved by a 2/3 vote of the membership of each house of the Legislature.

Vote: 2/3. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

1 WHEREAS, California's state and local governments face  
2 severe budget crises because elected officials spend more than  
3 they receive in taxes. A fair and balanced approach to restoring  
4 long-term fiscal responsibility must include limiting the cost of  
5 government employee pensions, which have grown dramatically  
6 in recent years, threatening the long-term investments California  
7 needs in education, infrastructure, health care, and public safety;  
8 and

9 WHEREAS, California has among the nation's most generous  
10 public pension plans, providing some employees with more than  
11 100 percent of their final years' salary at age 50. During the past  
12 20 years, most private employers have moved to defined  
13 contribution plans, such as 401(k) plans, to limit costs, promote  
14 responsible budgeting, and improve fiscal accountability; and

15 WHEREAS, The struggle to meet the demands of generous  
16 pension plans negotiated by elected officials has increased state  
17 and local government debt by more than \$12 billion, leaving  
18 more than \$30 billion in additional unfunded costs for future  
19 retirees. Creating defined contribution and hybrid plans for all  
20 state and local government employees will eliminate new  
21 unfunded liabilities; and

22 WHEREAS, Under current law, existing state and local  
23 government employees cannot have their retirement plans  
24 changed by this measure. Promises made to all current public  
25 employee retirement system members will be kept under this  
26 measure. A switch from defined benefits to defined contribution  
27 and hybrid plans will only affect employees hired by public  
28 agencies on or after July 1, 2007; and

29 WHEREAS, Unlike current government pension plans,  
30 defined contribution and hybrid plans allow employees to  
31 enhance their credit standing, control their assets, move some or  
32 all of their pension assets from one job to another, and pass along  
33 remaining funds to their heirs; and

1 WHEREAS, Defined contribution and hybrid plans will make  
2 government officials more accountable for spending public  
3 money, reduce the long-term cost of retirement plans, provide  
4 greater budget predictability, and help restore fiscal  
5 responsibility to state and local budgets; now, therefore, be it

6 *Resolved by the Assembly, the Senate concurring,* That the  
7 Legislature of the State of California at its 2005-06 First  
8 Extraordinary Session commencing on the sixth day of January  
9 2005, two-thirds of the membership of each house concurring,  
10 hereby proposes to the people of the State of California, that the  
11 Constitution of the State be amended as follows:

12 First—That Section 8 is added to Article XX thereof, to read:

13 SEC. 8. (a) The California Public Employee Defined  
14 Contribution and Hybrid Plans are hereby established and shall  
15 be offered by all public agencies to their employees as provided  
16 in this section.

17 (b) Notwithstanding any other provision of law or this  
18 Constitution, on and after July 1, 2007, any person hired as a new  
19 employee by a public agency shall not enroll in a defined benefit  
20 plan and shall enroll only in a hybrid plan offered by his or her  
21 employer, unless he or she elects to enroll in a defined  
22 contribution plan.

23 (c) On and after July 1, 2007, and before January 1, 2008, any  
24 active member of a defined benefit plan offered by any public  
25 agency may transfer a sum equal to the net present value of that  
26 member’s interest in the defined benefit plan to a defined  
27 contribution plan or a hybrid plan as defined in this section.

28 (d) As used in this section, the following terms apply:

29 (1) “Defined benefit plan” means a plan providing a pension  
30 benefit determined by a formula based on age, service credit, and  
31 salary.

32 (2) “Normal retirement age” means 55 years of age for public  
33 safety employees and 65 years of age or the applicable retirement  
34 age under Social Security for all other employees.

35 (3) “Public agency” includes, but is not limited to, the State of  
36 California, and any city, city and county, or county, including a  
37 charter city or charter county, district, school district, University  
38 of California, California State University or other political  
39 subdivision or public entity of, or organized under the laws of,  
40 this State, or any department, instrumentality, or agency thereof.

1 (4) “Public safety employees” means sworn peace officers and  
2 firefighters.

3 (5) “Salary” means an employee’s base salary excluding  
4 overtime pay, shift differential, vacation pay, and all other  
5 additional payments or allowances.

6 (e) As used in this section, a “defined contribution plan”  
7 means a plan providing a pension benefit that is equal to the  
8 combined employer and employee contributions plus interest and  
9 net investment earnings, less administrative expenses and other  
10 costs, that meets the following requirements:

11 (1) The plan shall be administered by the Public Employees’  
12 Retirement System, the State Teachers’ Retirement System, or  
13 the University of California Retirement System. However, local  
14 government agencies and districts may contract with private fund  
15 managers to administer their plans if the administrative expenses  
16 are lower than those imposed by the retirement system.

17 (2) Except as otherwise provided in paragraph (3), the  
18 employer’s contribution to the plan may not exceed the following  
19 rates:

20 (A) Fourteen percent of salary for public safety employees  
21 who are excluded from coverage under Social Security.

22 (B) Ten percent of salary for teachers and other employees,  
23 other than public safety employees, who are excluded from  
24 coverage under Social Security.

25 (C) Seven percent of salary for all employees not described in  
26 subparagraph (A) or (B).

27 (3) An employer’s contribution to the plan may exceed the rate  
28 prescribed in paragraph (2) for any one or more employee groups  
29 only in the following circumstances:

30 (A) With respect to employees of the State, if the increased  
31 employer contribution rate is approved by a majority of the  
32 voters voting on the proposition at a statewide election.

33 (B) With respect to employees of local agencies and districts,  
34 if the increased employer contribution rate is approved by  
35 two-thirds of the voters voting on the proposition at an election  
36 within the jurisdiction of the local agency or district.

37 (C) With respect to employees of the University of California,  
38 if the Regents of the University of California find that the  
39 increased employer contribution rate is necessary for recruiting

1 and retaining employees in identified employee classes or  
2 positions.

3 (4) Disability and death benefits shall be provided under the  
4 plan. The cost of providing disability and death benefits for  
5 employees shall be paid from a portion of the employer's  
6 contribution to the plan, unless otherwise paid by the State.

7 (f) As used in this section, a "hybrid plan" means a plan that is  
8 comprised of a defined benefit component that provides a  
9 pension benefit determined by a formula based on age, service  
10 credit, and salary, and a defined contribution component that  
11 provides a pension benefit equal to the employer and employee  
12 contributions to that component of the plan plus interest and net  
13 investment earnings, less administrative expenses, and that meets  
14 the following requirements:

15 (1) The plan shall be administered by the Public Employees'  
16 Retirement System, the State Teachers' Retirement System, or  
17 the University of California Retirement System.

18 (2) The employer's contribution to the plan may not exceed  
19 the contribution the employer would be authorized to make on  
20 the employee's behalf to a defined contribution plan under  
21 paragraph (2) or (3) of subdivision (e).

22 (3) Employer and employee contributions to the plan shall first  
23 be allocated to the defined benefit component of the plan, with  
24 the remaining contributions allocated to the defined contribution  
25 component of the plan.

26 (4) An employee may not retire under the plan, except for  
27 disability, until he or she has attained normal retirement age.

28 (5) With respect to the defined benefit component of the plan:

29 (A) The actuarial normal cost of the defined benefit for each  
30 class of employees may not exceed the maximum employer  
31 contribution described in paragraph (2) or (3) of subdivision (e)  
32 for that class of employees.

33 (B) The actuarial normal cost and payments for any unfunded  
34 liability shall be paid in equal amounts by the employer and  
35 employees, subject to the maximum employer contribution  
36 described in paragraph (2) or (3) of subdivision (e).

37 (C) The aggregate employer and employee contributions shall  
38 equal the actuarial normal cost and payments for any unfunded  
39 liability for each fiscal year. However, in any fiscal year in which  
40 the actuarial value of assets exceeds the accrued actuarial liability

1 by 25 percent or more, the aggregate employee and employer  
2 contributions shall be reduced, during that fiscal year, to 90  
3 percent of the actuarial normal cost.

4 (D) The defined benefits shall be calculated based upon the  
5 employee's highest average salary over a period of three  
6 consecutive years.

7 (E) Disability and death benefits shall be provided under the  
8 plan. The cost of providing disability and death benefits for  
9 employees shall be paid from assets of the defined benefit  
10 component of the plan, unless otherwise paid by the State.

11 (F) Surplus assets shall be retained in the plan solely for the  
12 payment of the defined benefits, disability and death benefits,  
13 and administrative costs of the plan.

14 (g) An employee of a public agency who is hired on or after  
15 July 1, 2007, shall not be eligible for employer-paid retiree health  
16 benefits until he or she attains normal retirement age and retires.  
17 This subdivision shall not apply to an employee who retires for  
18 disability. This subdivision applies only to employees of public  
19 agencies who provide health care benefits to retirees.

20 (h) After this section becomes effective, the Legislature may  
21 enact a statute that implements this section or that amends any  
22 statute that implements this section only by a bill passed in each  
23 house of the Legislature by rollcall vote entered in the journal,  
24 two-thirds of the membership concurring.

25 Second—That if this measure and any other measure relating  
26 to retirement plans of public employees appear on the same  
27 statewide election ballot, the provisions of that other measure  
28 shall be deemed to be in conflict with this measure. If this  
29 measure shall receive a greater number of affirmative votes than  
30 that other measure, the provisions of this measure shall prevail in  
31 their entirety, and the provisions of the other measure shall be  
32 null and void.

33 Third—That the provisions of this act are severable. If any  
34 provision of this act or its application is held invalid, that  
35 invalidity shall not affect other provisions or applications that can  
36 be given effect without the invalid provision or application.

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