11-0063 Amdt. #1 S

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

November 15, 2011

Initiative Coordinator
Office of the Attorney General
State of California
PO Box 994255
Sacramento, CA 94244-25550

Re: Request for Title and Summary for Proposed Initiative – Amendment #1

Dear Ms. McFarland:

Pursuant to Article II, Section 10(d) of the California Constitution, I am submitting the attached proposed statewide ballot measure ("Government Employee Pension Reform Act of 2012"—Version #1; AG #11-0063) to your office and request that you prepare a circulating title and summary of the measure as provided by law. I have also included with this letter the required signed statement pursuant to California Elections Code sections 9001 and 9608. My address as registered to vote is shown on Attachment 'A' to this letter.

Thank you for your time and attention to this important matter. Should you have any questions or require additional information, please contact the undersigned at DanielPellissier@californiapensionreform.com.

Very Truly Yours,

Daniel Pellissier

Version 1 Amendment 1

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO VOTERS

SECTION 1. STATEMENT OF FINDINGS

A. California government agencies recognize the value of providing adequate retirement benefits to their government employees. At the same time, government agencies have a responsibility to taxpayers to ensure such benefits are reasonable, adequately funded and do not drain funds needed for essential government services.

B. California's state and local pension systems present an immediate crisis. The California legislature's government reform agency, the Little Hoover Commission, issued a report in February, 2011 stating, *"California's pension plans are dangerously underfunded, the result of overly generous benefit promises, wishful thinking and an unwillingness to plan prudently."* The Commission also concluded the current governance structure of our pension funds *"lack oversight and accountability."* Taxpayers are left holding the bill for the excessive benefits promised by our politicians and our poorly managed pension funds. In fact, the problem is so serious, in October 2011, the City Managers' Department of the League of California Cities sent a letter to its board of directors indicating nothing short of an amendment to the state constitution was required to solve the government pension problem.

C. Under the federal law for private sector pension funds, a pension plan with assets less than 80 percent of its liabilities is deemed "at-risk" and the pension fund must take remedial financial measures. According to the Commission, all 10 of California's largest pension funds are presently at-risk, leaving generations of California taxpayers with over $240 billion in unfunded pension debt, or more than $20,000 for each California household.

D. In addition, the system is riddled with abuses. End-of-career "spiking" of a government employee's wage enables many to earn more in retirement than they ever earned while working and many retirees are receiving annual benefit increases that exceed the cost of living. Plans even allow pension payments to government employees who commit felonies in connection with their government employment. Pension board members and staff have been accused of conflicts of interest and failure to adequately perform their fiduciary duties to protect the fiscal integrity of their funds, especially by adopting unrealistic assumptions about future earnings and allowing large unfunded liabilities.

E. Raising taxes will not solve the problem. The level of taxation required to eliminate the hundreds of billions of unfunded pension liabilities would cripple our economy and thereby further reduce government revenues. Similarly, cutting government or reducing services to pay for the rising pension obligations is not possible without severely impacting critical government services like public safety, education and critical safety net services. As the Commission noted: *"Barring a miraculous market advance* *and sustained economic expansion, no government entity – especially at the local level – will be able to absorb the blow without severe cuts to services."*

F. Lastly, we cannot correct the problem simply by establishing a second, less costly, pension system for new workers. The Commission was very clear on this point, *"The situation is dire, and the menu of proposed changes that include, increasing contributions and introducing a second tier of benefits for new employees will not be enough to reduce unfunded liabilities."* The problem *"cannot be solved without addressing the pension liabilities of current employees."*

G. Government employees, survivors and beneficiaries deserve the benefits reasonably expected to be received and to preserve the basic character of earned retirement benefits. Taxpayers agree with these goals but also deserve to have a government pension system that is free from windfalls and other disproportionate benefits which bear no relationship to the fundamental principles of a sound retirement system. California must adopt constitutional rules for pensions that adequately balance governmental employees' needs with the taxpayers' ability to fund those pension systems in a long-term, sustainable fashion without unduly stressing government's ability to provide essential government services.

SECTION 2. STATEMENT OF PURPOSE

The people hereby enact the "Government Employee Pension Reform Act of 2012" to:

A. Provide fiscally responsible and adequately funded pension benefits for all past, current, and future government employees and retirees;

B. Authorize the government's exercise of its inherent police powers to protect essential government services, and temporarily require government employees, including those hired prior to the effective date of these provisions, to contribute a larger share of their pension benefit costs and to meet other requirements while their pension funds are at risk; and

C. Require Pension Boards to possess the necessary expertise to manage government pension assets and liabilities, to be free from conflicts of interest and to exercise their fiduciary responsibilities based on generally accepted principles of sound accounting.

SECTION 3. GOVERNMENT EMPLOYEE PENSION REFORM ACT OF 2012.

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

Sec. 12(a) The state and all other government agencies may provide reasonable and fiscally responsible pension or other retirement benefits for their government employees subject to the limitations provided herein.

(b) The following limitations shall apply to a retirement plan funded, in whole or in part, by a government agency and provided for the benefit of government employees hired on or after July 1, 2013:

(1) The retirement plan shall not have the potential to accumulate debt or unfunded liabilities owed by the government agency. Any defined benefit or annuity offered may not be underwritten by, or become the obligation of, a government agency or government pension fund.

(2) A government employee shall contribute an amount at least equal to the amount contributed by the government employer to any retirement plan. In no event may a government employer make any contribution to a plan which is the responsibility of a government employee.

(3) A government employer shall not contribute in the aggregate: (i) more than six percent (6 percent) of the base wage of a government employee, excluding public safety employees; nor (ii) more than nine percent (9 percent) of a public safety employee's base wage; to all of the retirement plans for which such government employee is eligible.

(4) Notwithstanding paragraphs (1) and (3), a government employer, whose government employees are not covered by federal Social Security, shall also provide a defined retirement replacement benefit that as precisely as possible matches the Social Security defined retirement benefit the government employee would otherwise receive. The amount of the defined retirement replacement benefit is to be measured by the benefit to the government employee, not the cost to the government employer. The cost of the defined retirement replacement benefit shall be shared equally by the government employer and the government employee as required by paragraph (2). In addition, any pension fund used to provide such defined retirement replacement benefit must be managed in a manner to minimize debt and long term cost. For public safety employees with at least thirty (30) years of service, notwithstanding the full retirement age under the Social Security Act, the full retirement replacement benefit shall be available at or after the age fifty-eight (58).

(5) All death and disability benefits must be provided outside the retirement system. Nothing in this provision shall prevent a governmental entity from providing such benefits.

(6) All government agencies shall retain exclusive authority to modify the terms of the retirement plan provided to its government employees at any time.

(7) On or before June 30, 2013, the legislative body of all government agencies providing pension or other retirement benefits shall enact laws providing for new retirement benefits for future government employees consistent with the provisions of this section.

(c) The following provisions shall apply to a retirement plan funded, in whole or in part, by a government agency and provided for the benefit of government employees whose employment commenced before July 1, 2013:

(1) No government employee who retires after June 30, 2016 shall receive pension benefits based upon a base wage greater than their highest annual average base wage over a period of three years.

(2) Within 120 days after the conclusion of a retirement plan's fiscal year, the responsible administrator shall obtain an independent review of the plan's assets and liabilities, including as a liability any outstanding balances of pension obligation bonds issued after July 1, 2011, using accounting standards and assumptions established by federal law for evaluating the funded status of private sector pension plans, including the Employee Retirement Income Security Act (ERISA). If, using market values, the plan's assets are less than eighty percent (80 percent) of the plan's liabilities (the "at-risk" funding level), the responsible administrator shall immediately notify the public and the government employer that the retirement plan does not meet the minimum funding level and is at-risk.

(3) If a government employer receives the notice pursuant to paragraph (c)(2) for any of its retirement plans indicating the retirement plan does not meet the minimum funding level and is at-risk, the government employer shall:

(i) Appropriate, or cause to be appropriated from a reserve account established pursuant to section 5 of Article XIIIB, an amount necessary to fund the plan above the at risk funding level; or

(ii) Make a finding and declare that the amount needed to fund their retirement plan above the at risk funding level required by paragraph (i) is not available without impairing the government employer's ability to provide essential government services. The failure of a government employer to make a sufficient appropriation required in subsection (i) or to make a finding and declaration under this subsection within 30 days of receiving the notice pursuant to paragraph (c)(2) shall be deemed to be a finding and declaration that funds are not available without impairing essential government services for the purposes of this section.

(4) If the government employer makes a finding and declaration pursuant to paragraph (c)(3)(ii), notwithstanding any other provision of law, including section 9 of Article I, or contract:

(i) The government agency shall immediately limit its contribution to the normal cost of the retirement plan to six percent (6 percent) of a government employee's base wage or nine percent (9 percent) in the case of public safety employees. Government employees not covered by Social Security benefits shall receive an additional government employer contribution to their normal cost obligation equal to the cost of the defined retirement replacement benefit provided to its new government employees in subdivision (b)(4).

(ii) The government employee shall contribute the balance of the normal cost; provided however, in no event shall the obligation of the government employee under this section increase by more than 3 percent of the government employee's base wage per year. Furthermore, if the government employer and government employee's contributions so calculated leads to a contribution of less than 100 percent of the normal cost, the government employer shall make such additional contribution to ensure so that between the government employer and government employee 100 percent of the normal cost is contributed to the retirement plan.

(iii) To the extent the government employer's obligation to the normal cost is less than it was at the time of the finding, such savings shall be contributed to reduce the unfunded liability of such fund. The government employer also shall have the right to require the government employee to make additional contributions to the unfunded liability of the retirement plan as the government employer determines to be necessary and equitable, provided that the aggregate increase of the government employee's contribution to the normal cost and the unfunded liability in the aggregate does not exceed 3 percent of the government employee's base wage per year.

(iv) Once a finding and declaration in paragraph (c)(3)(ii) is made, the provisions of this paragraph shall remain in effect until such government employer's retirement plan exceeds the at risk funding level provided in paragraph (2) at which time the limitations of this paragraph shall cease.

(5) If the government employer makes a finding and declaration pursuant to paragraph (c)(3)(ii), the government employee shall have the right to withdraw from further participation in such plan and enter into the plan available to new government employees pursuant to Section 12 (b) above.

(d) All government agencies that provide pension or other retirement benefits for their government employees may also separately provide death and disability benefits for the benefit of their government employees, regardless of the date of hire. The cost of such death and disability benefits is not subject to the cost limitations established in this section.

(e) Nothing in this section shall limit the amount of a government employer's contribution to a government employee's health care benefit.

(f) No government agency shall provide a retroactive increase in retirement plan contributions or benefits or in the formula by which such benefits are calculated.

(g) Any increase, if any, in payments to government employee retirees granted after December 31, 2012, shall not exceed the annual percentage increase, if any, given to Social Security recipients in the most recent twelve month period. Except as provided in the immediately preceding sentence, nothing in this section shall repeal, modify, change or impair the pension, retiree health, or other retirement benefits of persons who are receiving or are entitled to receive such benefits as a result of that person's retirement or separation from government agency employment prior to the enactment of this section.

(h) Nothing in this section shall provide for retirement benefits to Members of the Legislature pursuant to section 4.5 of Article IV.

(i) No pension benefit attributable to funds provided by a government agency shall be paid to a government retiree who has been convicted of a felony arising out of his or her service to such government agency.

(j) On and after the effective date of this section, a government employee shall not make contributions to receive additional retirement service credit for any time that does not qualify as government service or military service by the pension or retirement system.

(k) Every government employer and government employee shall make full normal cost contributions to a defined benefit plan unless the funded status of that plan as calculated in section (c)(2) is greater than one hundred twenty percent (120 percent).

(l) No additional retirement plans or deferred compensation benefits may be created or used to circumvent the intentions or limitations of these provisions.

(m) Pension and other retirement benefits only vest upon the performance of the work for which the benefit is earned and all pension and other retirement benefits are subject to prospective modification at the sole discretion of the government agency.

(n) As used in this section:

(1) "Base wage" means salary or hourly wage, excluding, but such exclusion is not limited to, overtime pay, bonus pay, severance pay, premium pay, per diems, allowances for transportation, housing, equipment and clothing and payments for accrued but unused vacation and sick days.

(2) "Government agency" includes, but is not limited to, the state, counties, cities, charter counties, charter cities, charter city and counties, school district, special districts, boards, and commissions.

(3) "Government employee" and "employee" mean a person who is or becomes an employee of a government agency, excluding judges subject to the provisions of section 20 of Article VI.

(4) "Government employer" means a government agency employing one or more government employees.

(5) "Normal cost" means the annual cost attributable, under the actuarial cost method selected by the pension plan, to current and future years as of a particular valuation date excluding any payment in respect of an unfunded actuarial liability.

(6) "Other retirement benefits" include, but are not limited to, a defined contribution plan providing government employer and government employee contributions to a plan or trust for the benefit of a government employee and benefits under the federal Social Security system.

(7) "Pension" or "pension benefits" means a plan or trust providing a pension benefit determined by a formula based on factors such as age, years of service, and compensation.

(8) "Public safety employee" means a government employee who is a state safety member as provided for by statute enacted by the Legislature.

(9) "Retirement plan" means an annuity, defined contribution plan, pension, deferred compensation, Social Security replacement plan or other retirement benefit. Health care benefits are not included in this definition and the limitations of this Act.

(10) "State" means the state of California and every political subdivision of the state, including, but not limited to, the Regents of the University of California, California State University, and agencies thereof.

SECTION 4. INDEPENDENT AND EXPERT PENSION BOARDS

Section 17.5 of Article XVI is added to read:

Sec. 17.5(a) Notwithstanding section 17(f), commencing July 1, 2013, every board of a government pension or retirement system shall be comprised of board members, at least a majority of whom: (1) have demonstrated expertise in the financial, legal, accounting, health care, actuarial, investment, life insurance or benefits consultant fields; and (2) are not members or beneficiaries of any California government pension plan or retirement system, or have immediate family members who are members or beneficiaries of such a plan or system.

(b) The Director of the Department of Finance shall serve as a voting member of any state or local government pension fund with total liabilities that exceed $5 billion.

(c) The Legislature shall establish the criteria and process for determining the eligibility and selection of board members pursuant to this section.

SECTION 5. GENERAL PROVISIONS

A. 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.

B. This Act shall become effective immediately upon its approval by the voters pursuant to Section 10(a) of Article II. No government agency may enter into any employment contract or collective bargaining agreement providing for retirement benefits in excess of the limitations imposed by this Act. To the extent any current statute or constitutional provision adopted prior to the adoption of this Act is explicitly or implicitly inconsistent with the language or purposes of this Act, such statute or constitutional provision shall, upon the effective date of this Act, be rendered inapplicable, null and void.

C. Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this act, following its approval by the voters, the proponent, or in his or her absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, and on discretionary review by the Supreme Court of California and/or the Supreme Court of the United States. The fees and costs of defending the action shall be a charge on funds appropriated to the Attorney General, which shall be satisfied promptly.