

AMENDED IN SENATE JANUARY 5, 2016

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE APRIL 21, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 24

Introduced by Senator Hill

December 1, 2014

~~An act to amend Sections 22950.5, 22951, 22956, 22958, 22961, 22962, 22963, 22970.2, 22971, 22974.7, 22980, 22980.1, 22980.2, 22980.3, and 22980.4 of, to amend, repeal, and add Sections 22952, 22960, 22972, and 22973 of, and to add Section 22950.1 to, the Business and Professions Code, to amend Section 1947.5 of the Civil Code, to amend Section 48901 of the Education Code, to amend Section 7597 of the Government Code, to amend Sections 1234, 1286, 1530.7, 1596.795, 104495, 113953.3, 113977, 114332.3, 114371, 118910, 118925, 118935, 118948, and 119405 of, and to add Section 119406 to, the Health and Safety Code, to amend Section 6404.5 of the Labor Code, to amend Sections 308 and 640 of the Penal Code, to amend Sections 561 and 99580 of the Public Utilities Code, and to amend Sections 12523 and 12523.5 of the Vehicle Code, relating to electronic cigarettes. An act to amend Section 7522.02 of the Government Code, relating to public employees' retirement.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 24, as amended, Hill. ~~Electronic cigarettes: licensing and restrictions. California Public Employees' Pension Reform Act of 2013: joint powers authority: employees.~~

The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan for employees first hired on or after January 1, 2013. Existing law, the Joint Exercise of Powers Act, generally authorizes 2 or more public agencies, by agreement, to jointly exercise any common power, which may include hiring employees and establishing retirement systems. PEPRA authorizes a joint powers authority formed by the Cities of Brea and Fullerton on or after January 1, 2013, to provide its employees the defined benefit plan or formula that those employees received from their respective employers prior to the exercise of a common power, to which the employee is associated, by the joint powers authority to any employee of specified cities who is not a new member and subsequently is employed by the joint powers authority within 180 days of the city providing for the exercise of a common power, to which the employee was associated, by the joint powers authority.

This bill would authorize a joint powers authority formed by the Cities of Belmont, Foster City, and San Mateo on or after January 1, 2013, to provide employees who are not new members under PEPRA with the defined benefit plan or formula that was received by those employees from their respective employers on December 31, 2012, if they are employed by the joint powers authority within 180 days of the city providing for the exercise of a common power, to which the employee was associated, by the joint powers authority. The bill would prohibit the formation of a joint powers authority on or after January 1, 2013, in a manner that would exempt a new employee or a new member from the requirements of PEPRA.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Cities of Belmont, Foster City, and San Mateo.

~~(1) Existing law, the Stop Tobacco Access to Kids Enforcement Act (STAKE Act), establishes various requirements for distributors and retailers relating to tobacco sales to persons under 18 years of age. Existing law makes it a crime, punishable by a fine not to exceed \$500 or by imprisonment not exceeding 30 days in a county jail, to fail to post a notice, at each point of purchase, stating that the sale of tobacco products to persons under 18 years of age is illegal. Existing law also~~

permits enforcing agencies to assess various civil penalties for violations of the STAKE Act.

~~This bill would extend the requirements of the STAKE Act to the sale of electronic cigarettes to persons under 18 years of age. The bill would also extend the requirements of the STAKE Act to the sale of electronic cigarettes to persons under 21 years of age if SB 151 of the 2015–16 Regular Session is enacted and takes effect. The bill would require the State Department of Public Health to enforce the STAKE Act’s provisions with regard to sales of electronic cigarettes commencing July 1, 2016.~~

~~The bill would make the failure to post a notice, on and after July 1, 2016, at each point of purchase, stating that the sale of electronic cigarettes to persons under 18 years of age is illegal, a crime. The bill would impose the same notice requirements as applied to the sale of electronic cigarettes to persons under 21 years of age if SB 151 of the 2015–16 Regular Session is enacted and takes effect. By expanding the scope of existing crimes, the bill would impose a state-mandated local program.~~

~~The bill would provide that the STAKE Act does not invalidate existing local government ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products, or prohibit local governments from adopting ordinances regulating the distribution or sale of cigarettes, electronic cigarettes, or tobacco products that are more restrictive than state law.~~

~~(2) Existing law prohibits a person from selling or otherwise furnishing an electronic cigarette to minors, and makes a violation punishable as an infraction.~~

~~The bill would prohibit a person from knowingly selling or otherwise furnishing an electronic cigarette to persons under 18 years of age, and makes a violation punishable as a misdemeanor or subject to a civil action, as specified. The bill would prohibit a person from selling or otherwise furnishing an electronic cigarette to persons under 21 years of age if SB 151 of the 2015–16 Regular Session is enacted and takes effect. By expanding the scope of an existing crime, the bill would impose a state-mandated local program.~~

~~The bill would require that cartridges for electronic cigarettes and solutions for filling electronic cigarettes be in child-proof packaging to protect children from opening and ingesting the contents.~~

~~(3) Existing law, the Cigarette and Tobacco Products Licensing Act, requires the State Board of Equalization to administer a statewide~~

program to license manufacturers, importers, distributors, wholesalers, and retailers of cigarettes and tobacco products. Existing law makes a violation of the Cigarette and Tobacco Products Licensing Act a misdemeanor punishable by a fine not to exceed \$5,000, by imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. Existing law also permits the State Board of Equalization to assess various civil penalties for violations of the Cigarette and Tobacco Products Licensing Act.

The bill would require the State Board of Equalization to administer a statewide program to license retailers of electronic cigarettes. The bill would require retailers to apply for a license to sell electronic cigarettes and pay a specified license fee, commencing July 1, 2016, and to display the license at each retail location commencing September 30, 2016. The bill would require the State Board of Equalization to use the revenue from this license fee only for purposes of administering the licensure program for retailers selling electronic cigarettes. The bill would also make retailers of electronic cigarettes subject to various civil and criminal penalties if they fail to comply with licensing requirements.

(4) Existing law prohibits the smoking of cigarettes and other tobacco products in a variety of specified areas. Under existing law, a violation of some of these provisions is punishable as a crime.

This bill would prohibit the use of electronic cigarettes in a variety of specified areas where the smoking of cigarettes and other tobacco products is prohibited. The bill would also make corresponding changes. The bill would make the use of electronic cigarettes in some of these restricted locations a violation punishable as a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: *yes-no*.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7522.02 of the Government Code is
- 2 amended to read:
- 3 7522.02. (a) (1) Notwithstanding any other law, except as
- 4 provided in this article, on and after January 1, 2013, this article

1 shall apply to all state and local public retirement systems and to
2 their participating employers, including the Public Employees'
3 Retirement System, the State Teachers' Retirement System, the
4 Legislators' Retirement System, the Judges' Retirement System,
5 the Judges' Retirement System II, county and district retirement
6 systems created pursuant to the County Employees Retirement
7 Law of 1937 (Chapter 3 (commencing with Section 31450) of Part
8 3 of Division 4 of Title 3), independent public retirement systems,
9 and to individual retirement plans offered by public employers.
10 However, this article shall be subject to the Internal Revenue Code
11 and Section 17 of Article XVI of the California Constitution. The
12 administration of the requirements of this article shall comply with
13 applicable provisions of the Internal Revenue Code and the
14 Revenue and Taxation Code.

15 (2) Notwithstanding paragraph (1), this article shall not apply
16 to the entities described in Section 9 of Article IX of, and Sections
17 4 and 5 of Article XI of, the California Constitution, except to the
18 extent that these entities continue to be participating employers in
19 any retirement system governed by state statute. Accordingly, any
20 retirement plan approved before January 1, 2013, by the voters of
21 any entity excluded from coverage by this section shall not be
22 affected by this article.

23 (3) (A) Notwithstanding paragraph (1), this article shall not
24 apply to a public employee whose interests are protected under
25 Section 5333(b) of Title 49 of the United States Code until a federal
26 district court rules that the United States Secretary of Labor, or
27 his or her designee, erred in determining that the application of
28 this article precludes certification under that section, or until
29 January 1, 2016, whichever is sooner.

30 (B) If a federal district court upholds the determination of the
31 United States Secretary of Labor, or his or her designee, that
32 application of this article precludes him or her from providing a
33 certification under Section 5333(b) of Title 49 of the United States
34 Code, this article shall not apply to a public employee specified
35 in subparagraph (A).

36 (4) Notwithstanding paragraph (1), this article shall not apply
37 to a multiemployer plan authorized by Section 302(c)(5) of the
38 federal Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public
39 employer began participation in that plan prior to January 1, 2013,

1 and the plan is regulated by the federal Employee Retirement
2 Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.).

3 (b) The benefit plan required by this article shall apply to public
4 employees who are new members as defined in Section 7522.04.

5 (c) (1) Individuals who were employed by any public employer
6 before January 1, 2013, and who became employed by a subsequent
7 public employer for the first time on or after January 1, 2013, shall
8 be subject to the retirement plan that would have been available
9 to employees of the subsequent employer who were first employed
10 by the subsequent employer on or before December 31, 2012, if
11 the individual was subject to concurrent membership for which
12 creditable service was performed in the previous six months or
13 reciprocity established under any of the following provisions:

14 (A) Article 5 (commencing with Section 20350) of Chapter 3
15 of Part 3 of Division 5 of Title 2.

16 (B) Chapter 3 (commencing with Section 31450) of Part 3 of
17 Division 4 of Title 3.

18 (C) Any agreement between public retirement systems to provide
19 reciprocity to members of the systems.

20 (D) Section 22115.2 of the Education Code.

21 (2) An individual who was employed before January 1, 2013,
22 and who, without a separation from employment, changed
23 employment positions and became subject to a different defined
24 benefit plan in a different public retirement system offered by his
25 or her employer shall be subject to that defined benefit plan as it
26 would have been available to employees who were first employed
27 on or before December 31, 2012.

28 (d) If a public employer, before January 1, 2013, offers a defined
29 benefit pension plan that provides a defined benefit formula with
30 a lower benefit factor at normal retirement age and results in a
31 lower normal cost than the defined benefit formula required by
32 this article, that employer may continue to offer that defined benefit
33 formula instead of the defined benefit formula required by this
34 article, and shall not be subject to the requirements of Section
35 7522.10 for pensionable compensation subject to that formula.
36 However, if the employer adopts a new defined benefit formula
37 on or after January 1, 2013, that formula must conform to the
38 requirements of this article or must be determined and certified by
39 the retirement system's chief actuary and the retirement board to
40 have no greater risk and no greater cost to the employer than the

1 defined benefit formula required by this article and must be
2 approved by the Legislature. New members of the defined benefit
3 plan may only participate in the lower cost defined benefit formula
4 that was in place before January 1, 2013, or a defined benefit
5 formula that conforms to the requirements of this article or is
6 approved by the Legislature as provided in this subdivision.

7 (e) If a public employer, before January 1, 2013, offers a
8 retirement benefit plan that consists solely of a defined contribution
9 plan, that employer may continue to offer that plan instead of the
10 defined benefit pension plan required by this article. However, if
11 the employer adopts a new defined benefit pension plan or defined
12 benefit formula on or after January 1, 2013, that plan or formula
13 must conform to the requirements of this article or must be
14 determined and certified by the retirement system’s chief actuary
15 and the system’s board to have no greater risk and no greater cost
16 to the employer than the defined benefit formula required by this
17 article and must be approved by the Legislature. New members of
18 the employer’s plan may only participate in the defined
19 contribution plan that was in place before January 1, 2013, or a
20 defined contribution plan or defined benefit formula that conforms
21 to the requirements of this article. This subdivision shall not be
22 construed to prohibit an employer from offering a defined
23 contribution plan on or after January 1, 2013, either with or without
24 a defined benefit plan, whether or not the employer offered a
25 defined contribution plan prior to that date.

26 (f) (1) If, on or after January 1, 2013, the Cities of Brea and
27 Fullerton form a joint powers authority pursuant to the provisions
28 of the Joint Exercise of Powers Act (Article 1 (commencing with
29 Section 6500) of Chapter 5), that joint powers authority may
30 provide employees the defined benefit plan or formula that those
31 employees received from their respective employers prior to the
32 exercise of a common power, to which the employee is associated,
33 by the joint powers authority to any employee of the City of Brea,
34 the City of Fullerton, or a city described in paragraph (2) who is
35 not a new member and subsequently is employed by the joint
36 powers authority within 180 days of the city providing for the
37 exercise of a common power, to which the employee was
38 associated, by the joint powers authority.

39 (2) On or before January 1, 2017, a city in Orange County that
40 is contiguous to the City of Brea or the City of Fullerton may join

1 the joint powers authority described in paragraph (1) but not more
2 than three cities shall be permitted to join.

3 (3) The formation of a joint powers authority on or after January
4 1, 2013, shall not act in a manner as to exempt a new employee
5 or a new member, as defined by Section 7522.04, from the
6 requirements of this article. New members may only participate
7 in a defined benefit plan or formula that conforms to the
8 requirements of this article.

9 (g) *(1) If, on or after January 1, 2013, the Cities of Belmont,*
10 *Foster City, and San Mateo form a joint powers authority pursuant*
11 *to the provisions of the Joint Exercise of Powers Act (Article 1*
12 *(commencing with Section 6500) of Chapter 5), that joint powers*
13 *authority may provide employees the defined benefit plan or*
14 *formula that those employees received from their respective*
15 *employers prior to the exercise of a common power, to which the*
16 *employee is associated, by the joint powers authority to any*
17 *employee of the City of Belmont, the City of Foster City, or the*
18 *City of San Mateo who is not a new member and subsequently is*
19 *employed by the joint powers authority within 180 days of the city*
20 *providing for the exercise of a common power, to which the*
21 *employee was associated, by the joint powers authority.*

22 (2) *The formation of a joint powers authority on or after January*
23 *1, 2013, shall not act in a manner as to exempt a new employee*
24 *or a new member, as defined by Section 7522.04, from the*
25 *requirements of this article. New members may only participate*
26 *in a defined benefit plan or formula that conforms to the*
27 *requirements of this article.*

28 ~~(g)~~

29 (h) The Judges' Retirement System and the Judges' Retirement
30 System II shall not be required to adopt the defined benefit formula
31 required by Section 7522.20 or 7522.25 or the compensation
32 limitations defined in Section 7522.10.

33 ~~(h)~~

34 (i) This article shall not be construed to provide membership in
35 any public retirement system for an individual who would not
36 otherwise be eligible for membership under that system's
37 applicable rules or laws.

38 ~~(i)~~

39 (j) On and after January 1, 2013, each public retirement system
40 shall modify its plan or plans to comply with the requirements of

1 this article and may adopt regulations or resolutions for this
2 purpose.

3 *SEC. 2. The Legislature finds and declares that a special law*
4 *is necessary and that a general law cannot be made applicable*
5 *within the meaning of Section 16 of Article IV of the California*
6 *Constitution because of the need to clarify the benefit eligibility*
7 *rules under the California Public Employees' Pension Reform Act*
8 *of 2013 and maintain the integrity of that act and further its*
9 *purpose.*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, June 1, 2015. (JR11)**

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