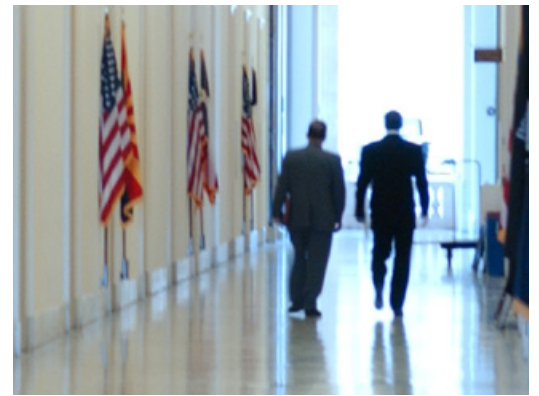


2011 NCPERS Legislative Issues Book



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The Voice for Public Pensions
National Conference on
Public Employee Retirement Systems



www.NCPERS.org



National Conference on Public Employee Retirement Systems.
444 N. Capitol St., NW, Suite 630, Washington, D.C. 20001
Tel: 1-877-202-5706 Fax: 202-624-1439 www.ncpers.org

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The National Conference on Public Employee Retirement Systems (NCPERS)

The National Conference on Public Employee Retirement Systems (NCPERS) is the largest trade association for public-sector pension funds, representing more than 500 funds throughout the United States and Canada. We are a unique network of public trustees, administrators, public officials, and investment professionals who collectively manage approximately \$2.9 trillion in pension assets. Our core missions are federal Advocacy, conducting Research vital to the public pension community, and Educating pension trustees and officials—it's who we ARE.

Who do we benefit? The approximately \$2.9 trillion in public pension assets in the United States is managed on behalf of 7.3 million public retirees and 14.5 million active public servants who provide vital services, such as law enforcement, fire and rescue, education, health care, and more, to our communities. Currently, NCPERS member pension funds provide a modest retirement benefit—an average of \$21,800 per year—that helps afford a secure retirement for our public servants and heroes.

Public pensions are financially sound and good for the economy. On average, the nation's public pension plans are well funded. Almost all public plans require employee contributions, and all public plans invest their assets in growth vehicles that earn additional income. Ac-

ording to a recent National Institute on Retirement Security study, state and local pension plans had a total economic impact of more than \$358 billion, supported more than 2.5 million American jobs, and provided more than \$57 billion in annual federal, state, and local tax revenue in a single year. Each taxpayer dollar invested in state and local pensions supported \$11.45 in total economic activity, while each dollar paid out in benefits supported \$2.36 in economic activity.

Public pensions are regulated by state and federal laws. All public plans are governed by federal and state laws that regulate how those plans are established and the level of benefits they can provide. Public plans are also governed by comprehensive financial reporting standards established by the Governmental Accounting Standards Board (GASB). These standards provide the framework for the annual financial audits that most governments contract to independent accounting firms. Because credit rating agencies pay close attention to the auditor's report in assessing a government's credit quality, there is significant incentive to adhere to the GASB's standards. Although public plans are not subject to many of the provisions of the federal Employee Retirement Income Security Act (ERISA) of 1974, state fiduciary laws governing public plans often reflect ERISA's language.

Public Employee Pension Transparency Act

Background

On December 2, 2010, Representatives Devin Nunes (R-CA), Paul Ryan (R-WI), and Darrell Issa (R-CA) introduced the Public Employee Pension Transparency Act (PEPTA). This bill would require state and local government pension plans to report to the Secretary of the Treasury the funded status of those plans. It would also require that the information be made publicly available via a searchable website. In addition, the legislation would prohibit the federal government from providing any financial assistance or bailouts to public pension funds in the future.

Specifically, PEPTA would require state and local governments to provide Treasury-specific funding information to the Treasury based on the market value of assets and liabilities using “risk free” rates; this would be in addition to their existing financial data disclosures. Public employee pension plans would also be required to report their liabilities using a uniform accounting standard. Noncompliant plan sponsors would be ineligible for issuing bonds exempt from federal taxation.

At the time this Issues Book went to print, it was expected that PEPTA would be reintroduced in the 112th Congress.

Legislative History

The Public Employee Pension Transparency Act was introduced in the House of Representatives on December 2, 2010. It is expected to be reintroduced in the 112th Congress.

NCPERS Position

NCPERS opposes the Public Employee Pension Transparency Act. This legislation represents a fundamental lack of understanding regarding the strong accounting rules and strict legal constraints already in place that require open and transparent governmental financial reporting and processes at the state and local levels.

- PEPTA conflicts with existing governmental accounting standards, increases state and local government costs, and undermines investor confidence in the municipal bond markets.
- State and local governments have not and are not seeking a so-called federal bailout for their retirement systems. On the contrary, for the past several years, state and local government employers, employees, retirees, and taxpayer organizations have been forging meaningful changes to their systems to improve and enhance pension sustainability over the long term. More states enacted significant legislation in

2010 to modify their retirement plans than in any other year in recent history. None of this activity presumes any federal financial assistance.

- State and local pension systems collectively have prefunded nearly four-fifths of their future pension liabilities – even when accounting for the steep losses in 2008 and earlier this decade. Although every investor was affected by the 2008 financial market disaster, state and local retirement systems have a strong track record in managing their assets and a much greater time to recover than do other retirement plans. The public-sector pension

model is a proven vehicle for preserving a secure retirement for American workers and for lessening reliance on public assistance.

- Pension fund asset values have been growing since March 2009, with the most recent data showing that current assets are approximately \$2.9 trillion. The Government Accountability Office found that, on the whole, public pensions are financially secure and positioned to meet their long-term pension obligations and that, even after the market decline, aggregate public pension funding levels are around 80 percent.

Healthcare Enhancement for Local Public Servants (HELPS II)

Background

For the 112th Congress, the legislative priority of NCPERS includes expanding the \$3,000 tax benefit for healthcare and/or long-term care premiums to all public retirees. In 2006, NCPERS successfully lobbied Congress to pass the Healthcare Enhancement for Local Public Safety (HELPS) Retirees Act. This act allows a yearly disbursement of up to \$3,000 pretax from a governmental-defined benefit pension, 403(b), or 457 plan to retired public safety officers for use toward healthcare insurance and/or long-term care premiums. The HELPS Retirees Act was signed into law on August 17, 2006, and took effect on January 1, 2007.

Prior to the HELPS Retirees Act, retirees paid for their health or long-term care premium with after-tax dollars. Eligible public safety retirees are now able to use pretax dollars from their qualified pension plans to pay for health premiums. For retirees who are in the 25 percent federal marginal tax rate bracket, this could be a tax savings of up to \$750 per year.

The Healthcare Enhancement for Local Public Servants (HELPS II) legislation would expand this benefit to allow eligible retirees to use up to \$3,000 pretax toward healthcare and/or long-term care premiums.

In addition, HELPS II would make the following significant improvements to the original HELPS law::

1. Remove the requirement that the \$3,000 tax benefit be administered by pension plans.
2. Index the \$3,000 benefit to inflation.
3. Add survivor benefit..

Legislative History

Representative Joseph Crowley (D-NY) introduced HELPS II in the House of Representatives. Congress did not act on the bill during the 111th Congress. NCPERS expects that the legislation will be reintroduced by Representative Crowley early in the 112th Congress.

NCPERS Position

NCPERS supports Healthcare Enhancement for Local Public Servants (HELPS II).

Our provision would permit eligible retirees to use up to \$3,000 annually for healthcare insurance and long-term care premiums on a pretax basis.

Defined Benefit Plan Fixes for Public Safety Employees

Background

Internal Revenue Code Section 72(t)(10) allows retired public safety employees beginning at age 50 to take distributions from their defined benefit (DB) pension plans without paying the 10 percent early distribution tax. Section 72(t)(10) recognizes that, due to the nature of the profession and, in many cases, to mandatory retirement ages, public safety employees typically retire earlier than do those in the general population.

Unfortunately, since implementation of Section 72(t)(10) in August 2006, two issues have arisen that need to be corrected. First, public safety employees between the ages of 50 and 55 who chose to roll over their distributions into a 457 plan and then decide to take distributions from the 457 plan are subjected to the 10 percent early distribution tax until age 59 1/2.

Second, public safety employees who retired before age 55 and before enactment of 72(t)(10) and opted to annuitize their benefit to avoid the 10 percent early distribution tax and who, after the enactment, decided to take a modified distribution from their plans are subjected to a 10 percent recapture tax on the previous annuitized distributions.

Legislative History

Bills in both the House of Representatives and the Senate were introduced in the 111th Congress to correct the 72(t)(10) implementation issues. NCPERS expects a new bill to be introduced in the 112th Congress by Senator Bill Nelson (D-FL) and John Cornyn (R-TX).

NCPERS Position

NCPERS supports fixes to Section 72(t)(10) that would:

1. Exempt qualified retired public safety employees between the ages of 50 and 55 from the 10 percent early distribution tax on 457 distributions that have been rolled over from defined benefit pension plans.
2. Exempt from the 10 percent recapture tax qualified retired public safety employees who opted for annuitized benefits prior to enactment the Pension Protection Act Section 828, but who now want to modify their distribution.

Mandatory Social Security Coverage

Background

The Social Security system provides coverage for all private-sector employees. However, when the system was established in 1935, state and local government employees were excluded. Over the years, even though public-sector employees are given the choice of joining Social Security, many choose not to be included. Instead, they rely on their own retirement and benefit programs tailored to their occupational needs. In many instances, these retirement programs predate the Social Security system. These state and local government retirement systems are prefunded and, in most cases, require a contribution by both the employer and the employee.

Whereas the public pension systems enjoy solvency and stability, the Social Security system is projected to run out of money in approximately 50 years. One proposal to extend the solvency date of Social Security is to cover all public-sector employees under Social Security. Although mandatory Social Security coverage would extend the solvency date by two years, all agree that in the long term, it would burden the Social Security system even more and ruin public-sector pension plans that have succeeded in providing comfortable retirements to countless public employees.

Legislative History

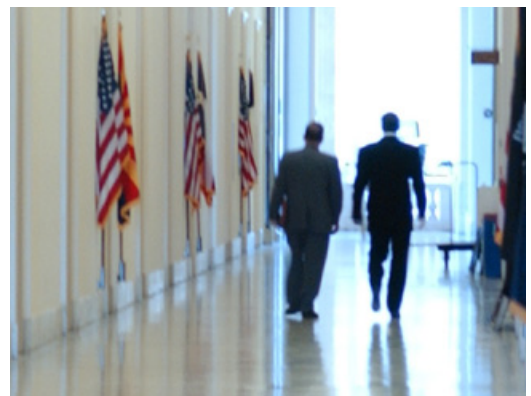
If Social Security becomes an issue in the 112th Congress, we anticipate additional legislation and more discussions about mandatory coverage of public-sector employees.

NCPERS Positions

NCPERS supports comprehensive reform of the financial regulatory system. Public pension funds have a significant stake in financial markets and regulation of those markets. First and foremost, tens of millions of American workers and their families rely or will rely on retirement benefits paid by pension fund plans as either their primary source of income in retirement.

- **NCPERS opposes expanding Social Security coverage to noncovered state and local government employees.** Public-sector employers were required to create separate pension plans for their employees when they were excluded from Social Security. Requiring Social Security coverage would undermine these plans and place unnecessary financial burdens on state and local government employers and employees.

- **Making Social Security mandatory would have little impact on the projected funding shortfalls of Social Security.** However, such a move would greatly affect public employees. Public employees not covered would be required to pay an additional 6.2 percent in payroll taxes, in addition to what they are now required to contribute to their public pension plans. The same would be true for the employer.
- **Mandatory Social Security coverage would be costly to states and localities.** States and local employers would be required to pay an additional 6.2 percent in payroll taxes, on top of what they already contribute to the pension fund. This additional burden would increase California's annual expenditures by more than \$2.3 billion. Ohio would be forced to pay an additional \$1 billion annually, and Texas, Illinois, Colorado, Massachusetts, and Louisiana all would pay hundreds of millions of dollars more each year.
- **Mandatory Social Security would be disruptive to existing retirement programs.** Many public employers would be unable to absorb the higher costs. They would be required to continue funding their respective retirement plans, in addition to the Social Security tax. Many of these plans are established constitutionally; to make such a change would require legislative action and/or constitutional amendments.



We the People of the United States, in order to form a more perfect Union, secure the Blessings of Liberty to ourselves and our Posterity, do hereby ordain and establish this Constitution for the United States of America.

Article I.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, who shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and when elected, be an Inhabitant of that State in which he shall be chosen. Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and to three fifths of all other Persons. The actual Enumeration shall be made within every subsequent Term of ten Years, in such Manner as Congress shall by Law direct. The Number of Representatives shall not exceed one for every thirty thousand, but each State shall have at Least one Representative, and until such Enumeration shall be made, the State of New Jersey shall have three, Massachusetts five, New Hampshire three, Maryland three, Virginia five, New York six, New Jersey four, Delaware one, Maryland six, North Carolina five, South Carolina three, and Georgia three.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for a Term of six Years; and until such Enumeration shall be made, the State of New Jersey shall have two, New York three, Pennsylvania three, Delaware one, Maryland two, Virginia three, North Carolina two, South Carolina two, and Georgia three.

Section 4. The House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

Section 5. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for a Term of six Years; and until such Enumeration shall be made, the State of New Jersey shall have two, New York three, Pennsylvania three, Delaware one, Maryland two, Virginia three, North Carolina two, South Carolina two, and Georgia three.



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