

ASSEMBLY, No. 3424

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 12, 2014

Sponsored by:

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District 6 (Burlington and Camden)

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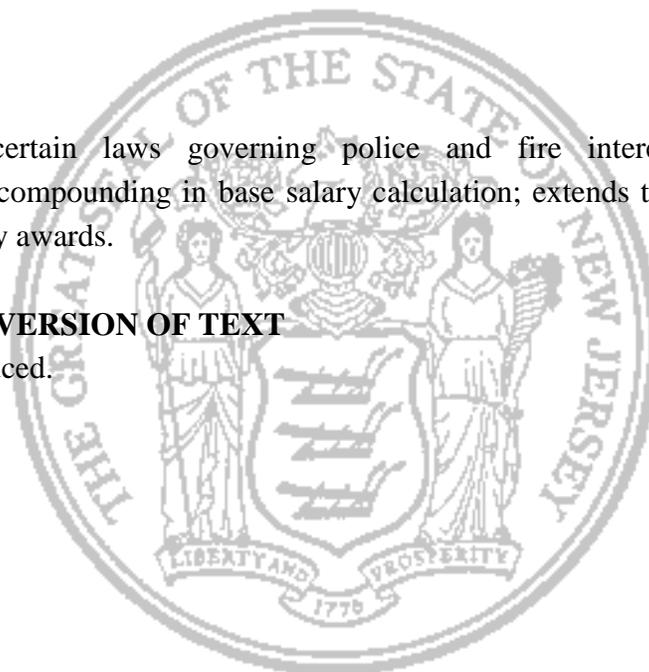
District 13 (Monmouth)

SYNOPSIS

Revises certain laws governing police and fire interest arbitration; incorporates compounding in base salary calculation; extends two-percent cap on base salary awards.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/17/2014)

1 AN ACT concerning police and fire interest arbitration and
2 amending P.L.1977, c.85 and P.L.2010, c.105.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 3 of P.L.1977, c.85 (C.34:13A-16) is amended to
8 read as follows:

9 3. a. (1) Negotiations between a public fire or police
10 department and an exclusive representative concerning the terms
11 and conditions of employment shall begin at least 120 days prior to
12 the day on which their collective negotiation agreement is to expire.
13 The parties shall meet at least three times during that 120-day
14 period. The first of those three meetings shall take place no later
15 than the 90th day prior to the day on which their collective
16 negotiation agreement is to expire. By mutual consent, the parties
17 may agree to extend the period during which the second and third
18 meetings are required to take place beyond the day on which their
19 collective negotiation agreement is to expire. A violation of this
20 paragraph shall constitute an unfair practice and the violator shall
21 be subject to the penalties prescribed by the commission pursuant to
22 rule and regulation.

23 Prior to the expiration of their collective negotiation agreement,
24 either party may file an unfair practice charge with the commission
25 alleging that the other party is refusing to negotiate in good faith.
26 The charge shall be filed in the manner, form and time specified by
27 the commission in rule and regulation. If the charge is sustained,
28 the commission shall order that the respondent be assessed for all
29 legal and administrative costs associated with the filing and
30 resolution of the charge; if the charge is dismissed, the commission
31 shall order that the charging party be assessed for all legal and
32 administrative costs associated with the filing and resolution of the
33 charge. The filing and resolution of the unfair practice charge shall
34 not delay or impair the impasse resolution process.

35 (2) Whenever those negotiations concerning the terms and
36 conditions of employment shall reach an impasse, the commission,
37 through the Division of Public Employment Relations shall, upon
38 the request of either party, or upon its own motion take such steps,
39 including the assignment of a mediator, as it may deem expedient to
40 effect a voluntary resolution of the impasse.

41 b. (1) In the event of a failure to resolve the impasse by
42 mediation, the Division of Public Employment Relations, at the
43 request of either party, shall invoke factfinding with
44 recommendation for settlement of all issues in dispute unless the
45 parties reach a voluntary settlement prior to the issuance of the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 factfinder's report and recommended terms of settlement.
2 Factfindings shall be limited to those issues that are within the
3 required scope of negotiations unless the parties to the factfinding
4 agree to factfinding on permissive subjects of negotiation.

5 (2) Notwithstanding the provisions of paragraph (2) of
6 subsection a. of this section or paragraph (1) of this subsection,
7 either party may petition the commission for arbitration on or after
8 the date on which their collective negotiation agreement expires.
9 The petition shall be filed in a manner and form prescribed by the
10 commission. The party filing the petition shall notify the other
11 party of its action. The notice shall be given in a manner and form
12 prescribed by the commission.

13 Any mediation or factfinding invoked pursuant to paragraph (2)
14 of subsection a. of this section or paragraph (1) of subsection b. of
15 this section shall terminate immediately upon the filing of a petition
16 for arbitration.

17 (3) Upon the filing of a petition for arbitration pursuant to
18 paragraph (2) of this subsection, an arbitrator selected pursuant to
19 paragraph (1) of subsection e. of this section shall conduct an initial
20 meeting as a mediation session to effect a voluntary resolution of
21 the impasse.

22 c. (Deleted by amendment, P.L.2010, c.105)

23 d. The resolution of issues in dispute shall be binding
24 arbitration under which the award on the unsettled issues is
25 determined by conventional arbitration. The arbitrator shall
26 determine whether the total net annual economic changes for each
27 year of the agreement are reasonable under the nine statutory
28 criteria set forth in subsection g. of this section and shall adhere to
29 the limitations set forth in section 2 of P.L.2010, c.105 (C.34:13A-
30 16.7). The non-petitioning party, within five days of receipt of the
31 petition, shall separately notify the commission in writing of all
32 issues in dispute. The filing of the written response shall not delay,
33 in any manner, the interest arbitration process.

34 e. (1) The commission shall take measures to assure the
35 impartial selection of an arbitrator or arbitrators from its special
36 panel of arbitrators. On the first business day following receipt of
37 an interest arbitration petition, the commission shall, independent
38 of and without any participation by either of the parties, randomly
39 select an arbitrator from its special panel of arbitrators. The
40 selection by the commission shall be final and shall not be subject
41 to review or appeal.

42 (2) Applicants for initial appointment to the commission's
43 special panel of arbitrators shall be chosen based on their
44 professional qualifications, knowledge, and experience, in
45 accordance with the criteria and rules adopted by the commission.
46 Such rules shall include relevant knowledge of local government
47 operations and budgeting. Appointment to the commission's special
48 panel of arbitrators shall be for a three-year term, with

1 reappointment contingent upon a screening process similar to that
2 used for determining initial appointments. Arbitrators currently
3 serving on the panel shall demonstrate to the commission their
4 professional qualification, knowledge and experience, in accordance
5 with the criteria and rules adopted by the commission, within one
6 year of the effective date of this act. Any arbitrator who does not
7 satisfactorily demonstrate such to the commission within the
8 specified time shall be disqualified.

9 (3) Arbitrators serving on the commission's special panel shall
10 be guided by and subject to the objectives and principles set forth in
11 the "Code of Professional Responsibility for Arbitrators of Labor-
12 Management Disputers" of the National Academy of Arbitrators,
13 the American Arbitration Association, and the Federal Mediation
14 and Conciliation Service.

15 (4) Arbitrators shall be required to complete annual training
16 offered by the State Ethics Commission. Any arbitrator failing to
17 satisfactorily complete the annual training shall be immediately
18 removed from the special panel.

19 The commission may suspend, remove, or otherwise discipline
20 an arbitrator for a violation of P.L.1977, c.85 (C.34:13A-14 et seq.),
21 section 4 of P.L.1995, c.425 (C.34:13A-16.1) or for good cause.
22 An arbitrator who fails to render an award within the time
23 requirements set forth in this section shall be fined \$1,000 for each
24 day that the award is late.

25 f. (1) At a time prescribed by the commission, the parties shall
26 submit to the arbitrator their final offers on each economic and non-
27 economic issue in dispute. The offers submitted pursuant to this
28 section shall be used by the arbitrator for the purposes of
29 determining an award pursuant to subsection d. of this section.

30 (2) In the event of a dispute, the commission shall have the
31 power to decide which issues are economic issues. Economic
32 issues include those items which have a direct relation to employee
33 income including wages, salaries, hours in relation to earnings, and
34 other forms of compensation such as paid vacation, paid holidays,
35 health and medical insurance, and other economic benefits to
36 employees.

37 (3) Throughout formal arbitration proceedings the chosen
38 arbitrator may mediate or assist the parties in reaching a mutually
39 agreeable settlement.

40 All parties to arbitration shall present, at the formal hearing
41 before the issuance of the award, written estimates of the financial
42 impact of their last offer on the taxpayers of the local unit to the
43 arbitrator with the submission of their last offer.

44 (4) Arbitration shall be limited to those subjects that are within
45 the required scope of collective negotiations, except that the parties
46 may agree to submit to arbitration one or more permissive subjects
47 of negotiation.

1 (5) The decision of an arbitrator or panel of arbitrators shall
2 include an opinion and an award, and shall be rendered within **[45]**
3 90 calendar days of the commission's assignment of that arbitrator.

4 Each arbitrator's decision shall be accompanied by a written
5 report explaining how each of the statutory criteria played into the
6 arbitrator's determination of the final award. The report shall
7 certify that the arbitrator took the statutory limitations imposed on
8 the local levy cap into account in making the award.

9 Any arbitrator violating the provisions of this paragraph may be
10 subject to the commission's powers under paragraph (3) of
11 subsection e. of this section. The decision shall be final and
12 binding upon the parties and shall be irreversible, except:

13 (a) Within **[seven]** 14 calendar days of receiving an award, an
14 aggrieved party may file notice of an appeal of an award to the
15 commission on the grounds that the arbitrator failed to apply the
16 criteria specified in subsection g. of this section or violated the
17 standards set forth in N.J.S.2A:24-8 or N.J.S.2A:24-9. The appeal
18 shall be filed in a form and manner prescribed by the commission.
19 In deciding an appeal, the commission, pursuant to rule and
20 regulation and upon petition, may afford the parties the opportunity
21 to present oral arguments. The commission may affirm, modify,
22 correct or vacate the award or may, at its discretion, remand the
23 award to the same arbitrator or to another arbitrator, selected by lot,
24 for reconsideration. The commission's decision shall be rendered
25 no later than **[30]** 60 calendar days after the filing of the appeal
26 with the commission.

27 Arbitration appeal decisions shall be accompanied by a written
28 report explaining how each of the statutory criteria played into their
29 determination of the final award. The report shall certify that in
30 deciding the appeal, the commission took the local levy cap into
31 account in making the award.

32 An aggrieved party may appeal a decision of the commission to
33 the Appellate Division of the Superior Court.

34 (b) An arbitrator's award shall be implemented immediately.

35 (6) The parties shall share equally the costs of arbitration
36 subject to a fee schedule approved by the commission. The fee
37 schedule shall provide that the cost of services provided by the
38 arbitrator shall not exceed \$1,000 per day. The total cost of
39 services of an arbitrator shall not exceed **[\$7,500]** \$10,000. If the
40 parties cancel an arbitration proceeding without good cause, the
41 arbitrator may impose a fee of not more than \$500. The parties
42 shall share equally in paying that fee if the request to cancel or
43 adjourn is a joint request. Otherwise, the party causing such
44 cancellation shall be responsible for payment of the entire fee.

45 g. The arbitrator shall decide the dispute based on a reasonable
46 determination of the issues, giving due weight to those factors listed
47 below that are judged relevant for the resolution of the specific
48 dispute. In the award, the arbitrator or panel of arbitrators shall

1 indicate which of the factors are deemed relevant, satisfactorily
2 explain why the others are not relevant, and provide an analysis of
3 the evidence on each relevant factor; provided, however, that in
4 every interest arbitration proceeding, the parties shall introduce
5 evidence regarding the factor set forth in paragraph (6) of this
6 subsection and the arbitrator shall analyze and consider the
7 **【factors】** factor set forth in paragraph (6) of this subsection in any
8 award:

9 (1) The interests and welfare of the public. Among the items
10 the arbitrator or panel of arbitrators shall assess when considering
11 this factor are the limitations imposed upon the employer by
12 P.L.1976, c.68 (C.40A:4-45.1 et seq.).

13 (2) Comparison of the wages, salaries, hours, and conditions of
14 employment of the employees involved in the arbitration
15 proceedings with the wages, hours, and conditions of employment
16 of other employees performing the same or similar services and
17 with other employees generally:

18 (a) In private employment in general; provided, however, each
19 party shall have the right to submit additional evidence for the
20 arbitrator's consideration.

21 (b) In public employment in general; provided, however, each
22 party shall have the right to submit additional evidence for the
23 arbitrator's consideration.

24 (c) In public employment in the same or similar comparable
25 jurisdictions, as determined in accordance with section 5 of
26 P.L.1995, c.425 (C.34:13A-16.2); provided, however, that each
27 party shall have the right to submit additional evidence concerning
28 the comparability of jurisdictions for the arbitrator's consideration.

29 (3) The overall compensation presently received by the
30 employees, inclusive of direct wages, salary, vacations, holidays,
31 excused leaves, insurance and pensions, medical and hospitalization
32 benefits, and all other economic benefits received.

33 (4) Stipulations of the parties.

34 (5) The lawful authority of the employer. Among the items the
35 arbitrator or panel of arbitrators shall assess when considering this
36 factor are the limitations imposed upon the employer by P.L.1976,
37 c.68 (C.40A:4-45.1 et seq.).

38 (6) The financial impact on the governing unit, its residents, the
39 limitations imposed upon the local unit's property tax levy pursuant
40 to section 10 of P.L.2007, c.62 (C.40A:4-45.45), and taxpayers.
41 When considering this factor in a dispute in which the public
42 employer is a county or a municipality, the arbitrator or panel of
43 arbitrators shall take into account, to the extent that evidence is
44 introduced, how the award will affect the municipal or county
45 purposes element, as the case may be, of the local property tax; a
46 comparison of the percentage of the municipal purposes element or,
47 in the case of a county, the county purposes element, required to
48 fund the employees' contract in the preceding local budget year with

1 that required under the award for the current local budget year; the
2 impact of the award for each income sector of the property
3 taxpayers of the local unit; the impact of the award on the ability of
4 the governing body to (a) maintain existing local programs and
5 services, (b) expand existing local programs and services for which
6 public moneys have been designated by the governing body in a
7 proposed local budget, or (c) initiate any new programs and services
8 for which public moneys have been designated by the governing
9 body in a proposed local budget.

10 (7) The cost of living.

11 (8) The continuity and stability of employment including
12 seniority rights and such other factors not confined to the foregoing
13 which are ordinarily or traditionally considered in the determination
14 of wages, hours, and conditions of employment through collective
15 negotiations and collective bargaining between the parties in the
16 public service and in private employment.

17 (9) Statutory restrictions imposed on the employer. Among the
18 items the arbitrator or panel of arbitrators shall assess when
19 considering this factor are the limitations imposed upon the
20 employer by section 10 of P.L.2007, c.62 (C.40A:4-45.45).

21 h. A mediator, factfinder, or arbitrator while functioning in a
22 mediatory capacity shall not be required to disclose any files,
23 records, reports, documents, or other papers classified as
24 confidential received or prepared by him or to testify with regard to
25 mediation, conducted by him under this act on behalf of any party
26 to any cause pending in any type of proceeding under this act.
27 Nothing contained herein shall exempt such an individual from
28 disclosing information relating to the commission of a crime.

29 (cf: P.L.2010, c.105, s.1)

30

31 2. Section 2 of P.L.2010, c.105 (C.34:13A-16.7) is amended to
32 read as follows:

33 2. a. As used in this section:

34 "Base salary" means the salary provided pursuant to a salary
35 guide or table and any amount provided pursuant to a salary
36 increment, including any amount provided for longevity or length of
37 service. It also shall include any other item agreed to by the parties,
38 or any other item that was included in the base salary as understood
39 by the parties in the prior contract. Base salary shall not include
40 non-salary economic issues, pension and health and medical
41 insurance costs.

42 "Non-salary economic issues" means any economic issue that is
43 not included in the definition of base salary.

44 b. An arbitrator shall not render any award pursuant to section
45 3 of P.L.1977, c.85 (C.34:13A-16) which, **【 on an annual basis】** in
46 the first year of the collective negotiation agreement awarded by the
47 arbitrator, increases base salary items by more than 2.0 percent of
48 the aggregate amount expended by the public employer on base

1 salary items for the members of the affected employee organization
2 in the twelve months immediately preceding the expiration of the
3 collective negotiation agreement subject to arbitration **【provided,**
4 **however, the】** . In each subsequent year of the agreement awarded
5 by the arbitrator, base salary items shall not be increased by more
6 than 2.0 percent of the aggregate amount expended by the public
7 employer on base salary items for the members of the affected
8 employee organization in the immediately preceding year of the
9 agreement awarded by the arbitrator.

10 The parties may agree, or the arbitrator may decide, to distribute
11 the aggregate monetary value of the award over the term of the
12 collective negotiation agreement in unequal annual **【percentages】**
13 percentage increases, which shall not be greater than the
14 compounded value of a 2.0 percent increase per year over the
15 corresponding length of the collective negotiation agreement. An
16 award of an arbitrator shall not include base salary items and non-
17 salary economic issues which were not included in the prior
18 collective negotiations agreement.
19 (cf: P.L.2010, c.105, s.2)

20

21 3. Section 3 of P.L.2010, c.105 (C.34:13A-16.8) is amended to
22 read as follows:

23 3. a. There is established a task force, to be known as the Police
24 and Fire Public Interest Arbitration Impact Task Force.

25 b. The task force shall be comprised of eight members as
26 follows:

27 (1) four to be appointed by the Governor;

28 (2) two to be appointed by the Senate President; and

29 (3) two to be appointed by the Speaker of the General
30 Assembly.

31 c. All appointments shall be made within 30 days of the
32 effective date of P.L.2010, c.105 (C.34:13A-16.7 et al.). Vacancies
33 in the membership shall be filled in the same manner as the original
34 appointments. The members of the task force shall serve without
35 compensation but may be reimbursed, within the limits of funds
36 made available to the task force, for necessary travel expenses
37 incurred in the performance of their duties.

38 d. (1) The task force shall organize as soon as is practicable
39 upon the appointment of a majority of its members and shall select
40 a chairperson from among the appointees of the Governor and a
41 vice chairperson from among the appointees of the Legislature. The
42 Chair of the Public Employment Relations Commission shall serve
43 as non-voting executive director of the task force.

44 (2) The task force shall meet within 60 days of the effective date
45 of P.L.2010, c.105 (C.34:13A-16.7 et al.) and shall meet thereafter
46 at the call of its chair. In furtherance of its evaluation, the task
47 force may hold public meetings or hearings within the State on any
48 matter or matters related to the provisions of this act, and call to its

1 assistance and avail itself of the services of the Public Employment
2 Relations Commission and the employees of any State department,
3 board, task force or agency which the task force determines
4 possesses relevant data, analytical and professional expertise or
5 other resources which may assist the task force in discharging its
6 duties under this act. Each department, board, commission or
7 agency of this State is hereby directed, to the extent not inconsistent
8 with law, to cooperate fully with the task force and to furnish such
9 information and assistance as is necessary to accomplish the
10 purposes of this act. In addition, in order to facilitate the work of
11 the task force, the Public Employment Relations Commission shall
12 post on its website all collective negotiations agreements and
13 interest arbitration awards entered or awarded after the date of
14 enactment, including a summary of contract or arbitration award
15 terms in a standard format developed by the Public Employment
16 Relations Commission to facilitate comparisons. All collective
17 negotiations agreements shall be submitted to the Public
18 Employment Relations Commission within 15 days of contract
19 execution.

20 e. (1) It shall be the duty of the task force to study the effect
21 and impact of the arbitration award cap upon local property taxes;
22 collective bargaining agreements; arbitration awards; municipal
23 services; municipal expenditures; municipal public safety services,
24 particularly changes in crime rates and response times to emergency
25 situations; police and fire recruitment, hiring and retention; the
26 professional profile of police and fire departments, particularly with
27 regard to age, experience, and staffing levels; and such other
28 matters as the members deem appropriate and necessary to evaluate
29 the effects and impact of the arbitration award cap.

30 (2) Specifically, the task force shall study total compensation
31 rates, including factors subject to the arbitration award cap and
32 factors exempt from the arbitration award cap, of police and fire
33 personnel throughout the state and make recommendations thereon.
34 The task force also shall study the interest arbitration process and
35 make recommendations concerning its continued use in connection
36 with police and fire labor contracts disputes. The task force shall
37 make findings as to the relative growth in total compensation cost
38 attributable to factors subject to the arbitration award cap and to
39 factors exempt from the arbitration award cap, for both collective
40 bargaining agreements and arbitration awards.

41 f. The task force shall annually report its findings, along with
42 any recommendations it may have, to the Governor and pursuant
43 to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature
44 **【annually, on or before April 1 of each year】**. The task force's final
45 report due on or before **【April 1, 2014】** December 31, 2017 shall
46 include, in addition to any other findings and recommendations, a
47 specific recommendation for any amendments to the arbitration

1 award cap. Upon the filing of its final report on or before **April 1,**
2 **2014** December 31, 2017, the task force shall expire.

3 (cf: P.L.2010, c.105, s.3)

4

5 4. Section 4 of P.L.2010, c.105 (C.34:13A-16.9) is amended to
6 read as follows:

7 4. This act shall take effect January 1, 2011; provided however,
8 section 2 of P.L.2010, c.105 (C.34:13A-16.7) shall apply only to
9 collective negotiations between a public employer and the exclusive
10 representative of a public police department or public fire
11 department that relate to **[a]** negotiated **[agreement]** agreements
12 expiring on that effective date or any date thereafter until **April 1,**
13 **2014** or on December 31, 2017, whereupon , after December 31,
14 2017, the provisions of section 2 of P.L.2010, c.105 (C.34:13A-
15 16.7) shall become inoperative for all parties except those whose
16 collective negotiations agreements expired prior to **April 1, 2014**
17 or on December 31, 2017 but for whom a final settlement has not
18 been reached. **[When final settlement between the parties in all**
19 **such negotiations is reached, the provisions of section 2 of this act**
20 **shall expire. In the case of a party that entered into a contract that**
21 **expires on the effective date of this act or any date thereafter until**
22 **April 1, 2014, and where the terms of that contract otherwise meet**
23 **the criteria set forth in section 2 of this act, that party shall not be**
24 **subject to the provisions of section 2 when negotiating a future**
25 **contract.]**

26 (cf: P.L.2010, c.105, s.4)

27

28 5. This act shall take effect immediately and shall be retroactive
29 to April 2, 2014.

30

31

32

STATEMENT

33

34 This bill makes several changes to the current law governing
35 arbitration awards in disputes between public employers and their
36 police and fire departments.

37 Under current law, any time after a collective negotiation
38 agreement between a public employer and a public police or fire
39 department expires, either party may petition the New Jersey Public
40 Employment Relations Commission (PERC) for arbitration.
41 Arbitrators in these cases are required to render their decision
42 within 45 days of the case being assigned to them. This bill extends
43 the time to render the decision to 90 days and requires the arbitrator
44 to conduct an initial meeting as a mediation session to effect a
45 voluntary resolution of the impasse. Current law allows an
46 aggrieved party seven days to file a notice of appeal of the
47 arbitrator's decision. This bill extends the time to appeal to 14

1 days. The bill also increases the time frame allotted PERC to
2 render its decision in an appeal of an arbitration award from 30 to
3 60 days. The bill further increases the maximum amount arbitrators
4 can be compensated for their services from \$7,500 to \$10,000.

5 Between January 1, 2011 and April 1, 2014, there was a two-
6 percent cap on base salary increases in arbitration awards. This
7 two-percent cap expired on April 1, 2014. The bill extends the two-
8 percent cap until December 31, 2017 and makes the cap retroactive
9 to April 2, 2014.

10 The bill also makes changes to the calculation of the two-percent
11 cap. Under current law, an arbitrator may not render an award
12 which, on an annual basis, increases the base salary items by more
13 than two-percent of the aggregate amount expended by the public
14 employer on base salary items for the members of the affected
15 employee organization in the year immediately preceding the
16 expiration of the agreement. Under the bill, after the first year of
17 the agreement, the award could not exceed two-percent of the base
18 salary items as annually compounded at the end of each agreement
19 year.

20 Finally, the bill extends the reporting requirements applicable to
21 the Police and Fire Public Interest Arbitration Impact Task Force
22 from April 1, 2014 to December 31, 2017 to comport with the
23 extension of the two-percent cap.