

[First Reprint]

ASSEMBLY, No. 5322

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED DECEMBER 14, 2017

Sponsored by:

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

SYNOPSIS

Changes PERS membership eligibility for certain elected public officials and provides for PERS reenrollment.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on December 18, 2017, with amendments.



1 AN ACT concerning the pension benefits of certain elected public
2 officials, and amending various parts of the statutory law and
3 supplementing P.L.1954, c.84.

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

7
8 1 section 7 of P.L.1954, c.84 (C.43:15A-7) is amended to read
9 as follows:

10 7. There is hereby established the Public Employees'
11 Retirement System of New Jersey in the Division of Pensions and
12 Benefits of the Department of the Treasury. The membership of the
13 retirement system shall include:

14 a. The members of the former "State Employees' Retirement
15 System of New Jersey" enrolled as such as of December 30, 1954,
16 who shall not have claimed for refund their accumulated deductions
17 in said system as provided in this section;

18 b. Any person becoming an employee of the State or other
19 employer after January 2, 1955 and every veteran, other than a
20 retired member who returns to service pursuant to subsection b. of
21 section 27 of P.L.1966, c.217 (C.43:15A-57.2) and other than those
22 whose appointments are seasonal, becoming an employee of the
23 State or other employer after such date, including a temporary
24 employee with at least one year's continuous service. The
25 membership of the retirement system shall not include those
26 persons appointed to serve as described in paragraphs (2) and (3) of
27 subsection a. of section 2 of P.L.2007, c.92 (C.43:15C-2), except a
28 person who was a member of the retirement system prior to the
29 effective date of sections 1 through 19 of P.L.2007, c.92 (C.43:15C-
30 1 through C.43:15C-15, C.43:3C-9, C.43:15A-7, C.43:15A-75 and
31 C.43:15A-135) and continuously thereafter; and

32 c. Every employee veteran in the employ of the State or other
33 employer on January 2, 1955, who is not a member of any
34 retirement system supported wholly or partly by the State.

35 d. Membership in the retirement system shall be optional for
36 elected officials other than veterans, and for school crossing guards,
37 who having become eligible for benefits under other pension
38 systems are so employed on a part-time basis. Elected officials
39 commencing service on or after the effective date of sections 1
40 through 19 of P.L.2007, c.92 (C.43:15C-1 through C.43:15C-15,
41 C.43:3C-9, C.43:15A-7, C.43:15A-75 and C.43:15A-135) shall not
42 be eligible for membership in the retirement system based on
43 service in the elective public office, except that an elected official
44 enrolled in the retirement system as of that effective date who
45 continues to hold that elective public office or, for an elected

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AAP committee amendments adopted December 18, 2017.

1 official specified in section 5 of P.L. , c. (C.) (pending
2 before the Legislature as this bill), another elective public office,
3 without a break in service shall be eligible to continue membership
4 in the retirement system under the terms and conditions of
5 enrollment. Service in the Legislature shall be considered a single
6 elective public office. Any part-time school crossing guard who is
7 eligible for benefits under any other pension system and who was
8 hired as a part-time school crossing guard prior to March 4, 1976,
9 may at any time terminate his membership in the retirement system
10 by making an application in writing to the board of trustees of the
11 retirement system. Upon receiving such application, the board of
12 trustees shall terminate his enrollment in the system and direct the
13 employer to cease accepting contributions from the member or
14 deducting from the compensation paid to the member. State
15 employees who become members of any other retirement system
16 supported wholly or partly by the State as a condition of
17 employment shall not be eligible for membership in this retirement
18 system. Notwithstanding any other law to the contrary, all other
19 persons accepting employment in the service of the State shall be
20 required to enroll in the retirement system as a condition of their
21 employment, regardless of age.

22 (1) Before or on November 1, 2008, no person in employment,
23 office or position, for which the annual salary or remuneration is
24 fixed at less than \$1,500.00, shall be eligible to become a member
25 of the retirement system.

26 (2) After November 1, 2008, a person who was a member of the
27 retirement system on that date and continuously thereafter shall be
28 eligible to be a member of the retirement system in employment,
29 office or position, for which the annual salary or remuneration is
30 fixed at \$1,500 or more.

31 (3) After November 1, 2008 and before or on the effective date
32 of P.L.2010, c.1, a person who was not a member of the retirement
33 system on November 1, 2008, or who was a member of the
34 retirement system on that date but not continuously thereafter, and
35 who is in employment, office or position, for which the annual
36 salary or remuneration is certified by the applicable public entity at
37 \$7,500 or more, shall be eligible to become a member of the
38 retirement system. The \$7,500 minimum annual salary or
39 remuneration amount shall be adjusted annually by the Director of
40 the Division of Pensions and Benefits, by regulation, in accordance
41 with changes in the Consumer Price Index but by no more than 4
42 percent. "Consumer Price Index" means the average of the annual
43 increase, expressed as a percentage, in the consumer price index for
44 all urban consumers in the New York City and Philadelphia
45 metropolitan statistical areas during the preceding calendar year as
46 reported by the United States Department of Labor.

47 (4) After the effective date of P.L.2010, c.1, no person in an
48 employment, office or position of the State, or an agency, board,

1 commission, authority or instrumentality of the State, for which the
2 hours of work are fixed at fewer than 35 per week shall be eligible
3 to become a member of the retirement system; and no person in
4 employment, office or position with a political subdivision of the
5 State, or an agency, board, commission, authority or instrumentality
6 of a political subdivision of the State, for which the hours of work
7 are fixed by an ordinance or resolution of the political subdivision,
8 or agency, board, commission, authority or instrumentality thereof,
9 at fewer than 32 per week shall be eligible to become a member of
10 the retirement system. Any hour or part thereof, during which the
11 person does not work due to the person's participation in a
12 voluntary or mandatory furlough program shall not be deducted in
13 determining if a person's hours of work are fixed at fewer than 35 or
14 32 per week, as appropriate, for the purpose of eligibility.

15 e. Membership of any person in the retirement system shall
16 cease if he shall discontinue his service for more than two
17 consecutive years.

18 f. The accumulated deductions of the members of the former
19 "State Employees' Retirement System" which have been set aside in
20 a trust fund designated as Fund A as provided in section 5 of this
21 act and which have not been claimed for refund prior to February 1,
22 1955 shall be transferred from said Fund A to the Annuity Savings
23 Fund of the Retirement System, provided for in section 25 of this
24 act. Each member whose accumulated deductions are so transferred
25 shall receive the same prior service credit, pension credit, and
26 membership credit in the retirement system as he previously had in
27 the former "State Employees' Retirement System" and shall have
28 such accumulated deductions credited to his individual account in
29 the Annuity Savings Fund. Any outstanding obligations of such
30 member shall be continued.

31 g. Any school crossing guard electing to terminate his
32 membership in the retirement system pursuant to subsection d. of
33 this section shall, upon his request, receive a refund of his
34 accumulated deductions as of the date of his appointment to the
35 position of school crossing guard. Such refund of contributions
36 shall serve as a waiver of all benefits payable to the employee, to
37 his dependent or dependents, or to any of his beneficiaries under the
38 retirement system.

39 h. A temporary employee who is employed under the federal
40 Workforce Investment Act shall not be eligible for membership in
41 the system. Membership for temporary employees employed under
42 the federal Job Training Partnership Act, Pub.L.97-300 (29
43 U.S.C.s.1501) who are in the system on September 19, 1986 shall
44 be terminated, and affected employees shall receive a refund of
45 their accumulated deductions as of the date of commencement of
46 employment in a federal Job Training Partnership Act program.
47 Such refund of contributions shall serve as a waiver of all benefits

1 payable to the employee, to his dependent or dependents, or to any
2 of his beneficiaries under the retirement system.

3 i. Membership in the retirement system shall be optional for a
4 special service employee who is employed under the federal Older
5 American Community Service Employment Act, Pub.L.94-135 (42
6 U.S.C.s.3056). Any special service employee employed under the
7 federal Older American Community Service Employment Act,
8 Pub.L.94-135 (42 U.S.C.s.3056), who is in the retirement system on
9 the effective date of P.L.1996, c.139 may terminate membership in
10 the retirement system by making an application in writing to the
11 board of trustees of the retirement system. Upon receiving the
12 application, the board shall terminate enrollment in the system and
13 the member shall receive a refund of accumulated deductions as of
14 the date of commencement of employment in a federal Older
15 American Community Service Employment Act program. This
16 refund of contributions shall serve as a waiver of all benefits
17 payable to the employee, to any dependent or dependents, or to any
18 beneficiary under the retirement system.

19 j. An employee of the South Jersey Port Corporation who was
20 employed by the South Jersey Port Corporation as of the effective
21 date of P.L.1997, c.150 (C.34:1B-144 et al.) and who shall be re-
22 employed within 365 days of such effective date by a subsidiary
23 corporation or other corporation, which has been established by the
24 Delaware River Port Authority pursuant to subdivision (m) of
25 Article I of the compact creating the Delaware River Port Authority
26 (R.S.32:3-2), as defined in section 3 of P.L.1997, c.150 (C.34:1B-
27 146), shall be eligible to continue membership while an employee
28 of such subsidiary or other corporation.
29 (cf: P.L.2010, c.1, s.3)

30

31 2. Section 75 of P.L.1954, c.84 (C.43:15A-75) is amended to
32 read as follows:

33 75. (a) If this act is so adopted it shall become effective in the
34 county or municipality adopting it on June 30 of the following year.
35 Membership in the Public Employees' Retirement System shall be
36 optional with the employees of the county, board of education or
37 municipality in the service on the day the act becomes effective or
38 on June 30, 1966, whichever is earlier, in such county, board of
39 education or municipality except in the case of public employee
40 veterans who on such date are members. An employee who elects
41 to become a member within one year after this act so takes effect
42 shall be entitled to prior service covering service rendered to the
43 county, board of education or municipality prior to July 1, 1966 or
44 prior to the date this act so becomes effective, whichever is earlier.
45 Membership shall be compulsory for all employees entering the
46 service of the county, board of education or municipality on July 1,
47 1966 or after the date this act becomes effective, whichever is
48 earlier. Where any such employee entering the service of the

1 county, board of education or municipality after the date this act so
2 becomes effective has had prior service for which evidence
3 satisfactory to the retirement system is presented, as an employee in
4 such county, board of education or municipality before the date
5 upon which this act so becomes effective, or July 1, 1966,
6 whichever is earlier, such employee shall be entitled to prior service
7 covering service rendered to the county, board of education or
8 municipality prior to the date this act so becomes effective, or July
9 1, 1966, whichever is earlier.

10 (b) Notwithstanding the provisions of section 74 of this act and
11 subsection (a) of this section, every person, other than a non-veteran
12 elected official, becoming an employee of a county, board of
13 education, municipality or school district after June 30, 1966, who
14 is not eligible to become a member of another retirement system,
15 shall be required to become a member of the Public Employees'
16 Retirement System. Notwithstanding the provisions of section 74
17 of this act and subsection (a) of this section, membership in the
18 retirement system shall be optional with any elected official who is
19 not a veteran, regardless of the date he assumes office, and with any
20 other person in the employ of any county, board of education,
21 municipality or school district on June 30, 1966, provided such
22 elected official or other person is not then a member and is not
23 required to be a member of the retirement system pursuant to
24 another provision of this act, and provided further that such person
25 is not eligible to be a member of another retirement system.
26 Elected officials commencing service on or after the effective date
27 of sections 1 through 19 of P.L.2007, c.92 (C.43:15C-1 through
28 C.43:15C-15, C.43:3C-9, C.43:15A-7, C.43:15A-75 and C.43:15A-
29 135) shall not be eligible for membership in the retirement system
30 based on service in the elective public office, except that an elected
31 official enrolled in the retirement system as of that effective date
32 who continues to hold that elective public office or, for an elected
33 official specified in section 5 of P.L. , c. (C.) (pending
34 before the Legislature as this bill), another elective public office,
35 without a break in service shall be eligible to continue membership
36 in the retirement system under the terms and conditions of
37 enrollment.

38 The provisions of this subsection shall not apply to any person
39 whose position is temporary or seasonal, nor to any person in
40 office, position or employment for which the annual salary or
41 remuneration, or the number of hours of work, is fixed at less than
42 that which is required for membership pursuant to section 7 of
43 P.L.1954, c.84 (C.43:15A-7) as applicable to the member, nor to
44 any person whose position is not covered by the old age and
45 survivors' insurance provisions of the federal Social Security Act.
46 After the effective date of P.L.2010, c.1, the provisions of this
47 subsection shall not apply to any person in office, position or
48 employment for which the hours of work are fewer per week than

1 those required for membership pursuant to subsection d. of section
2 7 of P.L.1954, c.84 (C.43:15A-7), unless the person shall have been
3 a member since that effective date continuously. No credit shall be
4 allowed to any person becoming a member of the retirement system
5 pursuant to this subsection for service rendered to the employer
6 prior to July 1, 1966, until the provisions of section 74 of this act
7 have been complied with, in which event such credit shall be
8 allowed in accordance with the provisions of subsection (a) of this
9 section; except that the governing body of any county, board of
10 education or municipality may, by resolution, consent to the
11 allowance of such credit and file a certified copy of such resolution
12 with the board of trustees of the Public Employees' Retirement
13 System.

14 (cf: P.L.2010, c.1, s.6)

15

16 3. Section 2 of P.L.2007, c.92 (C.43:15C-2) is amended to read
17 as follows:

18 2. a. The following persons shall be eligible and shall
19 participate in the Defined Contribution Retirement Program:

20 (1) A person who commences service on or after the effective
21 date of this section of P.L.2007, c.92 (C.43:15C-1 et al.) in an
22 elective public office of this State or of a political subdivision
23 thereof, except that it shall not include a person who holds elective
24 public office on the effective date of this section and is enrolled in
25 the Public Employees' Retirement System while that person
26 continues to hold that elective public office or, for an elected
27 official specified in section 5 of P.L. , c. (C.) (pending
28 before the Legislature as this bill), another elective public office,
29 without a break in service. Service in the Legislature shall be
30 considered a single elective public office.

31 (2) A person who commences service on or after the effective
32 date of this section in an employment, office or position of the State
33 or of a political subdivision thereof, or an agency, board,
34 commission, authority or instrumentality of the State or of a
35 subdivision, pursuant to an appointment by the Governor that
36 requires the advice and consent of the Senate, or pursuant to an
37 appointment by the Governor to serve at the pleasure of the
38 Governor only during his or her term of office. This paragraph shall
39 not be deemed to include a person otherwise eligible for
40 membership in the State Police Retirement System or the Judicial
41 Retirement System.

42 (3) A person who commences service on or after the effective
43 date of this section in an employment, office or position in a
44 political subdivision of the State, or an agency, board, commission,
45 authority or instrumentality of a subdivision, pursuant to an
46 appointment by an elected public official or elected governing
47 body, that requires the specific consent or approval of the elected
48 governing body of the political subdivision that is substantially

1 similar in nature to the advice and consent of the Senate for
2 appointments by the Governor of the State as that similarity is
3 determined by the elected governing body and set forth in an
4 adopted ordinance or resolution, pursuant to guidelines or policy
5 that shall be established by the Local Finance Board in the
6 Department of Community Affairs or the Department of Education,
7 as appropriate to the elected governing body. This paragraph shall
8 not be deemed to include a person otherwise eligible for
9 membership in the Teachers' Pension and Annuity Fund or the
10 Police and Firemen's Retirement System, or a person who is
11 employed or appointed in the regular or normal course of
12 employment or appointment procedures and consented to or
13 approved in a general or routine manner appropriate for and
14 followed by the political subdivision, or the agency, board,
15 commission, authority or instrumentality of a subdivision, or a
16 person who holds a professional license or certificate to perform
17 and is performing as a certified health officer, tax assessor, tax
18 collector, municipal planner, chief financial officer, registered
19 municipal clerk, construction code official, licensed uniform
20 subcode inspector, qualified purchasing agent, or certified public
21 works manager.

22 (4) A person who is granted a pension or retirement allowance
23 under any pension fund or retirement system established under the
24 laws of this State and elects to participate pursuant to section 1 of
25 P.L.1977, c.171 (C.43:3C-3) upon being elected to public office.

26 (5) A member of the Teachers' Pension and Annuity Fund,
27 Police and Firemen's Retirement System, State Police Retirement
28 System, or the Public Employees' Retirement System for whom
29 compensation is defined as the amount of base or contractual salary
30 equivalent to the annual maximum wage contribution base for
31 Social Security, pursuant to the Federal Insurance Contributions
32 Act, for contribution and benefit purposes of those retirement
33 systems, for whom participation in this retirement program shall be
34 with regard to any excess over the maximum compensation only.

35 (6) A person in employment, office or position for which the
36 annual salary or remuneration is less, or the hours of work per week
37 are fewer, than that which is required to become a member of the
38 Teachers' Pension and Annuity Fund or the Public Employees'
39 Retirement System, or to make contributions to those systems as a
40 member on the basis of any such employment, office or position,
41 after November 1, 2008.

42 b. No person shall be eligible to participate in the retirement
43 program with respect to any public employment, office, or position
44 if:

45 (1) the base salary for that employment, office, or position is
46 less than \$5,000 per year;

47 (2) the person is, on the basis of service in that employment,
48 office, or position, eligible for membership or enrolled as a member

1 of another State or locally-administered pension fund or retirement
2 system established under the laws of this State including the
3 Alternate Benefit Program, except as otherwise specifically
4 provided in subsection a. of this section;

5 (3) the person is receiving a benefit as a retiree from any other
6 State or locally-administered pension fund or retirement system
7 established under the laws of this State, except as provided in
8 section 1 of P.L.1977, c.171 (C.43:3C-3); or

9 (4) the person is an officer or employee of a political
10 subdivision of this State or of a board of education, or of any
11 agency, authority or instrumentality thereof, who is ineligible for
12 membership in the Public Employees' Retirement System pursuant
13 to section 20 of P.L.2007, c.92 (C.43:15A-7.2).

14 c. A person eligible and required to participate in the
15 retirement program pursuant to paragraph (5) of subsection a. of
16 this section may elect to waive participation with regard to that
17 employment, office, or position by filing, when first eligible, on a
18 form required by the division, a written waiver with the Division of
19 Pensions and Benefits that waives all rights and benefits that would
20 otherwise be provided by the retirement program. Such a person
21 may thereafter elect to participate in the retirement program by
22 filing, on a form required by the division, a written election to
23 participate in the retirement program and participation in the
24 retirement program pursuant to such election shall commence on
25 the January 1 next following the filing of the election to participate.

26 d. Service credited to a participant in the Defined Contribution
27 Retirement Program shall not be recognized as service credit to
28 determine eligibility for employer-paid health care benefits in
29 retirement pursuant to P.L.1961, c.49 (C.52:14-17.25 et seq.),
30 N.J.S.40A:10-16 et seq., P.L.1979, c.391 (C.18A:16-12 et al.) or
31 any other law, rule or regulation.

32 (cf: P.L.2010, c.1, s.7)

33

34 4. Section 1 of P.L.1972, c.167 (C.43:15A-135) is amended to
35 read as follows:

36 1. Members of the Legislature commencing service on or after
37 the effective date of sections 1 through 19 of P.L.2007, c.92
38 (C.43:15C-1 through C.43:15C-15, C.43:3C-9, C.43:15A-7,
39 C.43:15A-75 and C.43:15A-135) shall not be eligible for
40 membership in the retirement system based on service in that
41 elective office. An elected official specified in section 5 of
42 P.L. , c. (C.)(pending before the Legislature as this bill) who
43 was enrolled in the retirement system as of that effective date as an
44 elected public official and who continued to hold elective public
45 office shall be eligible to continue membership in the retirement
46 system under the terms and conditions of enrollment if thereafter
47 elected to the Legislature without a break in service as an elected
48 official. A member of the Legislature enrolled in the retirement

1 system as of that effective date who continues to hold office as a
2 member of the Legislature without a break in service shall be
3 eligible to continue membership in the retirement system under the
4 terms and conditions of the member's enrollment, except that during
5 service in the Legislature, a legislator shall be a member of the
6 retirement system on the basis of only one position of service in an
7 elected office or of employment with a participating employer, as
8 designated by the retirement system pursuant to section 28 of
9 P.L.2010, c.1 (C.43:15A-25.2).
10 (cf: P.L.2010, c.1, s.27)
11

12 5. (New section) a. The Division of Pensions and Benefits in
13 the Department of the Treasury shall reenroll in the Public
14 Employees' Retirement System, established pursuant to P.L.1954,
15 c.84 (C.43:15A-1 et seq.), any person holding elective public office
16 on the effective date of this act, P.L. , c. (pending before the
17 Legislature as this bill), who was a member of the retirement
18 system as of the effective date of sections 1 through 19 of P.L.2007,
19 c.92 (C.43:15C-1 through C.43:15C-15, C.43:3C-9, C.43:15A-7,
20 C.43:15A-75 and C.43:15A-135) on the basis of holding an elective
21 public office and who was elected to another elective public office
22 after that effective date, provided the person has at least 15 years of
23 continuous service in elective public offices of this State. The
24 person shall be eligible for membership in the retirement system
25 based on service in another elective office pursuant to the sections 7
26 and 75 of P.L.1954, c.84 (C.43:15A-7 and C.43:15A-75), or section
27 1 of P.L.1972, c.167 (C.43:15A-135), as amended by P.L. ,
28 c. (pending before the Legislature as this bill). This reenrollment
29 provision shall include any person holding elective public office on
30 the effective date of this act, P.L. , c. (pending before the
31 Legislature as this bill), who is receiving a retirement allowance
32 from the retirement system on that effective date. ¹For the purposes
33 of this section, a person shall be deemed to have met the
34 requirement for holding elective public office on the effective date
35 of this act, P.L. , c. (pending before the Legislature as this bill), if
36 the person's term of office expired within 30 days before that
37 effective date.¹

38 As of the date of enrollment in the system, the elected official's
39 participation, if any, in another State-administered retirement
40 program on the basis of that elective public office shall be
41 suspended. The elected public official may elect to waive
42 enrollment in the Public Employees' Retirement System by signing
43 a form prepared by the division.

44 b. An elected public official eligible for enrollment in the
45 Public Employees' Retirement System pursuant to subsection a. of
46 this section may request, in writing, within 180 days of the effective
47 date of this act, P.L. , c. (pending before Legislature as this bill),
48 that the official's enrollment in the system be made retroactive to

1 the date of his or her assumption of another elective office without a
2 break in service as required by sections 7 and 75 of P.L.1954, c.84
3 (C.43:15A-7 and 43:15A-75), or section 1 of P.L.1972, c.167
4 (C.43:15A-135), as amended by P.L. , c. (pending before the
5 Legislature as this bill). The division shall grant the request only if
6 the elected official complies with such terms and conditions as may
7 be imposed by the division to ensure compliance with federal law,
8 to ensure that the elected official will not be eligible to receive a
9 benefit from both the Public Employee's Retirement System and
10 another State-administered retirement program for the same period
11 of service in the elective public office, and to ensure that the
12 employer is reimbursed for any contributions made to the other
13 program by either the program or the elected official unless those
14 contributions may be rolled over into the PERS. Before fulfilling
15 the request, the division shall inform the elected official, in writing,
16 of the terms and conditions for granting the request, and shall
17 include an estimate of any resulting loss of contributions and
18 earnings, penalties that may be imposed by federal or State law, and
19 contributions to be paid to the system by the employee and
20 employer 'or former employer' for the period of retroactive
21 enrollment.

22

23 6. This act shall take effect immediately.