

**SENATE CONCURRENT  
RESOLUTION No. 123**

**STATE OF NEW JERSEY  
217th LEGISLATURE**

INTRODUCED SEPTEMBER 26, 2016

**Sponsored by:**

**Senator JOSEPH M. KYRILLOS, JR.**

**District 13 (Monmouth)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**SYNOPSIS**

Proposes constitutional amendment to authorize changes to pension and health care benefits of public employees and to require State to make annual pension payments in certain circumstances.

**CURRENT VERSION OF TEXT**

As introduced.



SCR123 KYRILLOS, OROHO

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1 **A CONCURRENT RESOLUTION** proposing to amend Article VII by  
2 adding a new Section IV to the Constitution of the State of New  
3 Jersey and amending Article VIII, Section II, paragraphs 2 and 3  
4 of the Constitution of the State of New Jersey.

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6 **BE IT RESOLVED** by the Senate of the State of New Jersey (the  
7 General Assembly concurring):

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9 1. The following proposed amendment to the Constitution of  
10 the State of New Jersey is agreed to:

11  
12 PROPOSED AMENDMENT

13  
14 a. Amend Article VII by adding a new Section IV to read as  
15 follows:

16 1. a. The terms, conditions, and provisions of a retirement  
17 system, fund, and program established by law and administered by  
18 the State, or established pursuant to law and administered by a  
19 political subdivision of the State, for public employees may be  
20 altered, modified, amended, and terminated by law with regard to  
21 any group of employees or all employees participating in the  
22 system, fund, and program. An alteration, modification,  
23 amendment, and termination shall not apply to an employee who  
24 has retired from the system, fund, or program if made after the date  
25 of the employee's retirement.

26 The terms, conditions, and provisions of a health care benefits  
27 plan and program established by law and administered by the State,  
28 or established pursuant to law and administered by a political  
29 subdivision of the State, for public employees may be altered,  
30 modified, amended, and terminated by law, at any time, with regard  
31 to any group of employees and retirees or all employees and retirees  
32 participating in the plan and program. Provided however, that there  
33 shall be enacted by law, before the first appropriations are required  
34 to be made pursuant to subsection b. of this paragraph, reforms to  
35 these health care benefit plans and programs established by law that  
36 shall result in cost savings to the State in each State fiscal year to  
37 substantially offset the annual appropriation for the contributions  
38 required to be made pursuant to subsection b. of this paragraph in  
39 each State fiscal year, which reforms shall include, but shall not be  
40 limited to, changes providing for an actuarial value no greater than  
41 82 percent for a health care benefits plan or program.

42 b. The State shall make its actuarial annual normal contribution  
43 and annual unfunded accrued liability contribution to a defined  
44 benefit retirement system or pension fund established by law and  
45 administered by the State for public employees as those

**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 contributions are determined by the actuary, and approved by the  
2 board of trustees, for that system or fund. The State shall  
3 commence making its actuarial annual normal contribution and  
4 annual unfunded accrued liability contribution in full in the State  
5 fiscal year that commences July 1, 2022 and shall make the  
6 contributions in full in each fiscal year thereafter. Commencing  
7 July 1, 2018, the State shall make a payment to each retirement  
8 system and pension fund of at least 6/10ths of the full contributions  
9 for each system and fund for that State fiscal year and a payment  
10 that increases by at least an additional 1/10th of the full  
11 contributions for each system and fund for each subsequent fiscal  
12 year until payment of the full contribution is required to be made  
13 commencing July 1, 2022. The contributions shall be included in  
14 the annual general appropriations law.

15 c. (1) If for a fiscal year for which the average of the revised  
16 revenue estimates of State revenue on hand and anticipated to be  
17 available to support appropriations during the fiscal year is  
18 determined to be at least one and one-half percent less than the total  
19 amount of State revenue on hand and anticipated to be available to  
20 support appropriations during the fiscal year, as certified by the  
21 Governor, the contributions required to be included in the annual  
22 general appropriations law for the fiscal year for a defined benefit  
23 retirement system or pension fund pursuant to subparagraph b. may  
24 be reduced by law by an amount equal to the portion of that lesser  
25 revised revenue estimate in excess of a one and one-half percent  
26 shortfall.

27 (2) If for a fiscal year for which the average of the revised  
28 revenue estimates of State revenue on hand and anticipated to be  
29 available to support appropriations during the fiscal year is  
30 determined to be at least one-half of one percent greater than the  
31 total amount of State revenue on hand and anticipated to be  
32 available to support appropriations during the present fiscal year, as  
33 certified by the Governor, the contributions required to be included  
34 in the annual general appropriations law for that fiscal year for a  
35 defined benefit retirement system or pension fund pursuant to  
36 subparagraph b. shall be increased by a supplemental appropriation  
37 made by law by at least one-half of the amount that is in excess of  
38 the one and one-half percent increase.

39 (3) The average of the revised revenue estimates of State  
40 revenue on hand and anticipated to be available to support  
41 appropriations during the fiscal year shall be the average of revenue  
42 estimates that shall be provided to the State Legislature by the State  
43 Treasurer and the Legislative Budget and Finance Officer during  
44 the State Legislature's deliberations on the annual general  
45 appropriations law for the fiscal year, which estimates shall be  
46 provided in writing for the current fiscal year on or before May 31  
47 annually.

1 (4) The increases or reductions of appropriations as are made by  
2 law as provided for pursuant to subsections (1) and (2) of this  
3 subparagraph c. of this paragraph shall apply, and shall be  
4 distributed, to each applicable system and fund in proportion to the  
5 amount that each applicable system's or fund's actuarial annual  
6 normal contribution and annual unfunded accrued liability  
7 contribution bears to the total of all such systems' or funds'  
8 actuarial annual normal contribution and annual unfunded accrued  
9 liability contributions.

10 d. The provisions of this paragraph shall apply to the retirement  
11 systems, funds, and programs and health care benefit plans and  
12 programs established prior to or on or after, and to public  
13 employees and retirees participating in such systems, funds, plans,  
14 and programs prior to or on or after, the date on which this  
15 paragraph is made part of the Constitution.

16 e. The provisions of this paragraph shall be given effect  
17 notwithstanding any other provision of this Constitution, provided,  
18 however, that the appropriation obligation in subparagraph b. of this  
19 paragraph is subject to and subordinate to appropriations for State  
20 general obligation bonds heretofore authorized in accordance with  
21 Article VIII, Section II, paragraph 3 of this Constitution.

22 b. Amend Article VIII, Section II, paragraphs 2 and 3 to read  
23 as follows:

24 2. No money shall be drawn from the State treasury but for  
25 appropriations made by law. All moneys for the support of the  
26 State government and for all other State purposes as far as can be  
27 ascertained or reasonably foreseen, shall be provided for in one  
28 general appropriation law covering one and the same fiscal year;  
29 except that when a change in the fiscal year is made, necessary  
30 provision may be made to effect the transition. No general  
31 appropriation law or other law appropriating money for any State  
32 purpose shall be enacted if the appropriation contained therein,  
33 together with all prior appropriations made for the same fiscal  
34 period, shall exceed the total amount of revenue on hand and  
35 anticipated which will be available to meet such appropriations  
36 during such fiscal period, as certified by the Governor. No general  
37 appropriation law for a fiscal year shall be enacted without  
38 including appropriations for the State contributions to each  
39 retirement system and pension fund for public employees  
40 administered by the State required pursuant to other provisions of  
41 this Constitution.

42 (cf: Art.VIII, Sec.II, par.2)

43 3. a. The Legislature shall not, in any manner, create in any  
44 fiscal year a debt or debts, liability or liabilities of the State, which  
45 together with any previous debts or liabilities shall exceed at any  
46 time one per centum of the total amount appropriated by the general  
47 appropriation law for that fiscal year, unless the same shall be  
48 authorized by a law for some single object or work distinctly

1 specified therein. Regardless of any limitation relating to taxation  
2 in this Constitution, such law shall provide the ways and means,  
3 exclusive of loans, to pay the interest of such debt or liability as it  
4 falls due, and also to pay and discharge the principal thereof within  
5 thirty-five years from the time it is contracted; and the law shall not  
6 be repealed until such debt or liability and the interest thereon are  
7 fully paid and discharged. Except as hereinafter provided, no such  
8 law shall take effect until it shall have been submitted to the people  
9 at a general election and approved by a majority of the legally  
10 qualified voters of the State voting thereon.

11 b. On and after the date on which this subparagraph b. becomes  
12 part of the Constitution, the Legislature shall not enact any law that,  
13 in any manner, creates or authorizes the creation of a debt or  
14 liability of an autonomous public corporate entity, established either  
15 as an instrumentality of the State or otherwise exercising public and  
16 essential governmental functions, which debt or liability has a  
17 pledge of an annual appropriation as the ways and means to pay the  
18 interest of such debt or liability as it falls due and pay and  
19 discharge the principal of such debt, unless a law authorizing the  
20 creation of that debt for some single object or work distinctly  
21 specified therein shall have been submitted to the people at a  
22 general election and approved by a majority of the legally qualified  
23 voters of the State voting thereon. Voter approval shall not be  
24 required for any such law providing that the ways and means to pay  
25 the interest of and to pay and discharge the principal of such debt or  
26 liability shall be subject to appropriations of an independent non-  
27 State source of revenue paid by third persons for the use of the  
28 single object or work thereof, or from a source of State revenue  
29 otherwise required to be appropriated pursuant to another provision  
30 of this Constitution.

31 c. No voter approval shall be required for any such law under  
32 subparagraphs a. or b. of this paragraph authorizing the creation of  
33 a debt or debts in a specified amount or an amount to be determined  
34 in accordance with such law for the refinancing of all or a portion  
35 of any outstanding debts or liabilities of the State, or of an  
36 autonomous public corporate entity, established either as an  
37 instrumentality of the State or otherwise exercising public and  
38 essential governmental functions, heretofore or hereafter created, so  
39 long as such law shall require that the refinancing provide a debt  
40 service savings determined in a manner to be provided in such law  
41 and that the proceeds of such debt or debts and any investment  
42 income therefrom shall be applied to the payment of the principal  
43 of, any redemption premium on, and interest due and to become due  
44 on such debts or liabilities being refinanced on or prior to the  
45 redemption date or maturity date thereof, together with the costs  
46 associated with such refinancing.

SCR123 KYRILLOS, OROHO

6

1 d. All money to be raised by the authority of such law shall be  
2 applied only to the specific object stated therein, and to the payment  
3 of the debt thereby created.

4 e. This paragraph shall not be construed to refer to any money  
5 that has been or may be deposited with this State by the government  
6 of the United States. Nor shall anything in this paragraph contained  
7 apply to the creation of any debts or liabilities for purposes of war,  
8 or to repel invasion, or to suppress insurrection or to meet an  
9 emergency caused by disaster or act of God. Nor shall anything in  
10 this paragraph apply to the obligation of the State to make  
11 contributions to each retirement system and pension fund for public  
12 employees administered by the State as required pursuant to other  
13 provisions of this Constitution.

14 (cf: Art.VIII, Sec.II, par.3; amended effective December 4, 2008)

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16 2. When this proposed amendment to the Constitution is finally  
17 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it  
18 shall be submitted to the people at the next general election  
19 occurring more than three months after the final agreement and  
20 shall be published at least once in at least one newspaper of each  
21 county designated by the President of the Senate, the Speaker of the  
22 General Assembly and the Secretary of State, not less than three  
23 months prior to the general election.

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25 3. This proposed amendment to the Constitution shall be  
26 submitted to the people at that election in the following manner and  
27 form:

28 There shall be printed on each official ballot to be used at the  
29 general election, the following:

30 a. In every municipality in which voting machines are not used,  
31 a legend which shall immediately precede the question as follows:

32 If you favor the proposition printed below make a cross (X), plus  
33 (+), or check (✓) in the square opposite the word "Yes." If you are  
34 opposed thereto make a cross (X), plus (+) or check (✓) in the  
35 square opposite the word "No."

36 b. In every municipality the following question:

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	YES	<p>CONSTITUTIONAL AMENDMENT AUTHORIZING CHANGES TO PUBLIC EMPLOYEE PENSION AND HEALTH CARE BENEFITS AND REQUIRING THE STATE TO MAKE PENSION PAYMENTS</p> <p>Do you approve amending the Constitution to authorize changes to be made by law to pension benefits for public employees at any time before retirement?</p> <p>Do you approve amending the Constitution to authorize changes to be made by law to health care benefits for public employees and retirees at any time?</p> <p>Do you approve amending the Constitution to require the State to make its payment each year to each pension system for public employees? Starting July 1, 2022 the full payment would have to be made. The Legislature would enact laws on health care benefit reform for public employees and retirees. The reforms must limit to 82 percent the average share of health care costs paid by a plan. The reforms must be enacted before the first required State pension payment. The reforms would result in State cost savings that will substantially offset these annual State payments. The payment each year to each such pension system is required to be increased if there is a revenue surplus. The payment may be decreased if there is a revenue shortfall in a fiscal year.</p>
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	NO	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>This amendment to the Constitution concerns changes to the pension and health care benefits provided to public employees. It also concerns the State’s annual payment to pension systems for public employees.</p> <p>With regard to pension benefits, current law provides a non-forfeitable right to vested public employees who were employed before May 21, 2010. This amendment would authorize changes to those pension benefits regardless of this right that was established by law.</p> <p>This amendment would authorize changes to be made by law to the health care benefits provided to public employees and retirees at any time. Reforms to health care benefits will be enacted that result in State cost savings that will substantially offset the annual State pension payments. The reforms must be enacted before the State begins making required annual pension payments. The reforms must limit to 82 percent the total average cost a plan will cover for benefits.</p> <p>This amendment also would require the State to make its full annual pension payment to any pension system. The State would have until July 1, 2022 to start making each year’s pension payment in full. Until then, the State would make a partial, but increasing, payment each year. The payment in each fiscal year to each such pension system will be increased if there is a revenue surplus, or may be decreased if there is a revenue shortfall during the fiscal year.</p> <p>Current law, adopted in 2011, required the State to make its pension payments each year. The New Jersey Supreme Court ruled that the State could not be compelled to make the payments because of certain provisions in the Constitution. This amendment adds to the Constitution a requirement to make the payments.</p>
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STATEMENT

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This proposed constitutional amendment is one component of a three-part package that is essential to ensuring New Jersey's long-term fiscal viability. The package will responsibly require a return to full pension payments, cover a portion of the costs with health benefit reforms, and create a task force to oversee implementation and resolve issues of detail. The viability and affordability of New Jersey's public pension and health benefit systems are integral to the State's overall fiscal condition and thus bear strongly on other key areas of concern, from funding priorities such as school aid, hospital aid and safety-net programs to controlling and reducing property taxes.

This proposed amendment to the Constitution would authorize changes to be made by law to the pension benefits earned by public employees during their employment. The benefits could not be changed after an employee retires. Also, this amendment would ensure changes can be made by law to the health care benefits provided to public employees and retirees. The amendment authorizes changes for both current and future benefits for current and future public employees and retirees.

In addition, this amendment to the Constitution provides that the State would have to make its full actuarial annual normal contribution and annual unfunded accrued liability contribution to the system as those contributions are determined by the actuary, and approved by the board of trustees, of the system. The State would commence making its actuarial annual normal contribution and annual unfunded accrued liability contribution in full in the State fiscal year that commences July 1, 2022 and would make the contributions in full in each fiscal year thereafter. Commencing July 1, 2018, the State is to make a payment to each retirement system and pension fund of at least 6/10ths of the full contributions for each system and fund for that State fiscal year and a payment that increases by at least an additional 1/10th of the full contributions for each system and fund for each subsequent fiscal year until payment of the full contributions is required to be made commencing July 1, 2022.

The amendment also requires enactment of reforms to health care benefit plans and programs for current and future public employees and retirees that result in cost savings to the State in each State fiscal year to substantially offset the annual appropriation for the pension contributions required to be made in each State fiscal year. The reforms must be enacted before the State begins making required annual pension payments. The reforms must limit to 82 percent the total average cost a plan will cover for benefits.

The payment in each fiscal year to each such pension system must be increased if there is a revenue surplus, or may be decreased if there is a revenue shortfall during the fiscal year.

1 The contributions would be included in the annual general  
2 appropriations law and the appropriations of the contributions in  
3 that law may be supplemented or decreased under certain revenue  
4 surplus or shortfall determinations made during a fiscal year.

5 New Jersey's state-administered retirement systems are collectively  
6 in a dire state of underfunding. There is no serious disagreement  
7 among policymakers that regular State payments must be made in  
8 amounts as close as possible to the actuarially required contribution  
9 until full payments can be made on a sustained basis. The only  
10 significant disagreement is on which course of action to take in  
11 funding those contributions: to do the responsible work of identifying  
12 how to pay for them, or to simply create a constitutional mandate to  
13 make the contributions without a credible plan to cover the cost. Yet  
14 history has shown that when State officials fail to plan for the costs  
15 they incur, the taxpayers suffer the consequences.

16 This proposed constitutional amendment is part of a comprehensive  
17 plan to take the responsible approach. This plan is to move health  
18 benefits for public employees closer to those that most workers for  
19 large companies receive, and mandate that the resulting savings go  
20 towards paying down New Jersey's pension debt. Retirement system  
21 changes will also ensure that pension system costs will not again  
22 balloon to unaffordable levels.

23 Without such changes to public employee benefits, it will be  
24 mathematically impossible to make full pension payments in the short  
25 term except with extreme cuts in State services or in priorities such as  
26 education aid, or raising taxes to a level that would pummel taxpayers  
27 and stunt its economy. The Pension and Health Benefit Study  
28 Commission estimated that the amount of money needed would equal  
29 raising the sales tax to 10 percent or increasing income taxes by 29  
30 percent. Anything close to those levels of taxation would be clearly  
31 disastrous, wiping out jobs and pushing even more families out of the  
32 State.

33 Those who claim that full pension payments can be made without  
34 reforming benefits owe it to the taxpaying public to be honest with  
35 them about how they, the taxpayers, will pay the cost. Responsible  
36 policymakers will show taxpayers their plan in advance, rather than  
37 take the lamentably common route of cementing a huge fiscal  
38 obligation first, and only later sending them the bill.

39 Common sense and mathematics make clear the need for benefit  
40 reform, but confirmation also comes from the nonpolitical agencies  
41 that assess New Jersey's finances. Moody's Investors Service wrote in  
42 April 2015: "Without meaningful structural changes to the state's  
43 budget, such as pension reform that dramatically improves pension  
44 affordability, the state's structural imbalance will continue to grow,  
45 and the state's [credit] rating will continue to fall." S&P Global wrote  
46 in August 2015: "A positive rating action or outlook revision would  
47 require the implementation of credible pension reform."

**SCR123 KYRILLOS, OROHO**

11

1       The package of which this measure is a part is designed to ensure  
2 the continuation of retirement and health benefits for public employees  
3 in a fiscally responsible manner that will protect all New Jersey  
4 residents from the calamitous results of failure to properly address the  
5 State's most serious and pressing budgetary issues.