

ASSEMBLY, No. 130

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Assemblywoman N.Munoz

SYNOPSIS

Requires eligibility checklist and audit for enrollment in PERS of certain public employees who provide professional services; imposes fine on certifying officer or supervisor for ineligible enrollments.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning the enrollment of certain public employees in
2 the Public Employees' Retirement System and supplementing
3 P.L.1954, c.84 (C.43:15A-1 et seq.) and Title 43 of the Revised
4 Statutes.

5

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

8

9 1. a. Upon the enrollment in the Public Employees' Retirement
10 System of a public officer or employee whose position requires that
11 the officer or employee render professional services as an attorney,
12 engineer, accountant, auditor, physician, or architect, the certifying
13 officer shall complete, sign, and submit at the time of enrollment a
14 certification that requires the certifying officer to answer a series of
15 questions for the purpose of verifying that the status of the public
16 officer or employee being enrolled is that of an employee and not
17 an independent contractor. The questions shall be based, to the
18 extent appropriate, on the employee test utilized by the federal
19 Internal Revenue Service. The certifying officer shall submit with
20 the certification a copy of the resolution or ordinance adopted by
21 the employer to create the position, the resolution adopted by the
22 employer to appoint the public officer or employee to that position,
23 and a copy of the oath of office taken by the public officer or
24 employee, if any.

25 This certification shall be in addition to any other certification
26 required pursuant to section 1 of P.L.2011, c.52 (C.43:3C-15) or
27 any other law or regulation. The form and content of the
28 certification shall be developed by the Division of Pensions and
29 Benefits in the Department of the Treasury and approved by the
30 Board of Trustees of the retirement system. The board of trustees
31 may require certifying officers to complete the certification for
32 positions that require the rendering of professional services other
33 than those specified above, as the board may determine to be
34 appropriate and necessary.

35 b. A certifying officer shall not seek advice or rely upon
36 representations from the public officer or employee who is being
37 enrolled when completing the certification required under
38 subsection a. of this section or when making any decision with
39 regard to the eligibility for enrollment in the retirement system of
40 that public officer or employee. The certifying officer shall seek
41 advice and rely upon the representations only from an impartial
42 individual or an employee of the Division of Pensions and Benefits.
43 The certification required by this subsection shall require the
44 signature of the certifying officer following a statement that the
45 certifying officer acknowledges compliance with this subsection.
46 The signature shall be in addition to the signature required under
47 subsection a. of this section.

1 c. The board of trustees of the retirement system shall establish
2 an audit program through which it shall conduct a continuous
3 review of the various public employers participating in the system
4 for the purpose of ensuring that only eligible public officers and
5 employees whose position requires the officer or employee to
6 render professional services are enrolled in the retirement system.
7 The audit program may be conducted in cooperation with or, upon
8 agreement, by another office or agency within the Executive Branch
9 of State government.

10 Every public employer whose employees are enrolled in the
11 retirement system, as well as enrolled officers and employees, and
12 any other public entity having relevant information, shall cooperate
13 fully with the board of trustees and the division and shall provide
14 all information, records, and documents requested by the board or
15 division in connection with an audit.

16 The audit program shall be initiated within 60 days following the
17 effective date of P.L. , c. (C.)(pending before the
18 Legislature as this bill) and the primary focus of the program for the
19 first 12 months shall be to verify the eligibility of those public
20 officers and employees who were enrolled prior to the effective
21 date.

22 d. Within six months following the effective date of P.L. ,
23 c. (C.)(pending before the Legislature as this bill), the
24 certifications required by subsections a. and b. of this section shall
25 be completed by all certifying officers for all applicable public
26 officers and employees who were enrolled prior to the effective
27 date.

28
29 2. A certifying officer or the officer's immediate supervisor
30 who knowingly and willfully violates a provision of law or
31 regulation concerning the enrollment of a public officer or
32 employee in a State-administered retirement system that results in
33 the enrollment or continued enrollment of a public officer,
34 employee, or other person who is ineligible for such enrollment
35 shall be subject to a civil penalty of \$1,000 for an initial violation,
36 \$2,500 for a second violation that occurs within 10 years of an
37 initial violation, and \$5,000 for a third violation or subsequent
38 violation that occurs within 10 years of an initial violation. This
39 penalty shall be collected and enforced in proceedings in
40 accordance with the "Penalty Enforcement Law of 1999,"
41 P.L.1999, c.274 (C.2A:58-10 et seq.), and the rules of court
42 governing actions for the collection of civil penalties. The Superior
43 Court shall have jurisdiction of proceedings for the collection and
44 enforcement of the penalty imposed by this section. This penalty
45 shall be in addition to any other penalty that may be imposed by
46 law.

1 Appropriate disciplinary proceedings may be initiated against the
2 certifying officer or immediate supervisor against whom a penalty
3 has been imposed.

4
5 3. This act shall take effect on the first day of the third month
6 following enactment.

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9 STATEMENT

10
11 This bill requires the completion of specific certifications by
12 certifying officers of public employers who enroll certain public
13 officers and employees in the Public Employee's Retirement
14 System (PERS).

15 For each enrollment in the PERS of a public officer or employee
16 whose position requires that the officer or employee render
17 professional services as an attorney, engineer, accountant, auditor,
18 physician, or architect, the certifying officer must complete, sign,
19 and submit at the time of enrollment a certification that requires the
20 certifying officer to answer a series of questions for the purpose of
21 verifying that the status of the public officer or employee being
22 enrolled is that of an employee and not an independent contractor.
23 The questions will be based, to the extent appropriate, on the
24 employee test utilized by the federal Internal Revenue Service. The
25 certifying officer must also submit with the certification a copy of
26 the resolution or ordinance adopted by the employer to create the
27 position, the resolution adopted by the employer to appoint the
28 individual to the position, and a copy of the oath of office taken by
29 the individual. The bill also requires this certification to be
30 completed by all certifying officers for all applicable public officers
31 and employees who were enrolled prior to the bill's effective date.

32 The bill prohibits a certifying officer from seeking advice or
33 relying upon representations of the individual who is the subject of
34 the enrollment when completing the certification or when making
35 any decision with regard to the eligibility for enrollment. The
36 certifying officer must seek advice and rely upon representations
37 only from an impartial individual or an employee of the Division of
38 Pensions and Benefits.

39 The bill requires the board of trustees of the PERS to establish an
40 audit program through which it will conduct a continuous review of
41 the various public employers participating in the system for the
42 purpose of ensuring that only eligible officers and employees who
43 render professional services are enrolled in the retirement system.
44 The audit program must be initiated within 60 days following the
45 bill's effective date and the primary focus of the program for the
46 first 12 months must be to verify the eligibility of public officers
47 and employees enrolled prior to the effective date.

1 The provisions of this bill described above are based on the
2 recommendations of the Office of the State Comptroller as set forth
3 in its report of July 17, 2012 entitled “Improper Participation by
4 Professional Service Providers in the State Pension System.”

5 In addition, the bill provides for the imposition of civil penalties
6 against a certifying officer or the officer’s immediate supervisor
7 who knowingly and willfully violate any provision of law or
8 regulation concerning the enrollment of a public officer or
9 employee in a State-administered retirement system that results in
10 the enrollment or continued enrollment of a public officer,
11 employee, or other person who is ineligible for such enrollment.
12 The penalty will be a fine of \$1,000 for an initial violation, \$2,500
13 for a second violation that occurs within 10 years of an initial
14 violation, and \$5,000 for a third violation or subsequent violation
15 that occurs within 10 years of an initial violation. The penalty will
16 be collected and enforced in proceedings in accordance with the
17 "Penalty Enforcement Law of 1999" and the rules of court
18 governing actions for the collection of civil penalties.