SENATE CONCURRENT RESOLUTION No. 29

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator DECLAN J. O'SCANLON, JR.
District 13 (Monmouth)
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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

Introduced Pending Technical Review by Legislative Counsel.

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

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

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

PROPOSED AMENDMENT

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

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

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

b. The State shall make its actuarial annual normal contribution and annual unfunded accrued liability contribution to a defined benefit retirement system or pension fund established by law and 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 <u>thus</u> is new matter.

contributions are determined by the actuary, and approved by the board of trustees, for that system or fund. The State shall commence making its actuarial annual normal contribution and annual unfunded accrued liability contribution in full in the State fiscal year that commences July 1, 2023 and shall make the contributions in full in each fiscal year thereafter. Commencing July 1, 2019, the State shall 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 contribution is required to be made commencing July 1, 2023. The contributions shall be included in the annual general appropriations law.

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

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

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

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

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

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

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

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

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

3. a. The Legislature shall not, in any manner, create in any fiscal year a debt or debts, liability or liabilities of the State, which together with any previous debts or liabilities shall exceed at any

time one per centum of the total amount appropriated by the general appropriation law for that fiscal year, unless the same shall be authorized by a law for some single object or work distinctly specified therein. Regardless of any limitation relating to taxation in this Constitution, such law shall provide the ways and means, exclusive of loans, to pay the interest of such debt or liability as it falls due, and also to pay and discharge the principal thereof within thirty-five years from the time it is contracted; and the law shall not be repealed until such debt or liability and the interest thereon are fully paid and discharged Except as hereinafter provided, no such law shall take effect until it shall have been submitted to the people at a general election and approved by a majority of the legally qualified voters of the State voting thereon.

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

c. No voter approval shall be required for any such law under subparagraphs a. or b. of this paragraph authorizing the creation of a debt or debts in a specified amount or an amount to be determined in accordance with such law for the refinancing of all or a portion of any outstanding debts or liabilities of the State, or of an autonomous public corporate entity, established either as an instrumentality of the State or otherwise exercising public and essential governmental functions, heretofore or hereafter created, so long as such law shall require that the refinancing provide a debt service savings determined in a manner to be provided in such law and that the proceeds of such debt or debts and any investment income therefrom shall be applied to the payment of the principal of, any redemption premium on, and interest due and to become due on such debts or liabilities being refinanced on or prior to the

redemption date or maturity date thereof, together with the costs associated with such refinancing.

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

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

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

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

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

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

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

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

b. In every municipality the following question:

	YES	CONSTITUTIONAL AMENDMENT AUTHORIZING CHANGES TO PUBLIC EMPLOYEE PENSION AND HEALTH CARE BENEFITS AND REQUIRING THE STATE TO MAKE PENSION PAYMENTS 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? 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? 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, 2023 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.

	NO	INTERPRETIVE STATEMENT 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. 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. 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. 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, 2023 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. 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.

STATEMENT

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, 2023 and would make the contributions in full in each fiscal year thereafter. Commencing July 1, 2019, 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, 2023.

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 phase-in to full funding of annual pension payments becomes constitutionally mandatory. 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.

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

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

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

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

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

Common sense and mathematics make clear the need for benefit reform, but confirmation also comes from the nonpolitical agencies that assess New Jersey's finances. Moody's Investors Service wrote in April 2015: "Without meaningful structural changes to the state's budget, such as pension reform that dramatically improves pension affordability, the state's structural imbalance will continue

to grow, and the state's [credit] rating will continue to fall." S&P Global wrote in August 2015: "A positive rating action or outlook revision would require the implementation of credible pension reform."

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