

NEW JERSEY ASSOCIATION OF COUNTIES

County Government with a Unified Voice

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LEGISLATIVE UPDATE

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1. HEALTH BENEFITS AND PENSION REFORM

The General Assembly passed by a vote of 46-32 **SENATE, NO. 2937/ASSEMBLY, NO. 4133** (*Greenwald D-6/O'Scanlon R-12*), which makes various changes to the pension and healthcare benefits for public employees. Governor Christie is expected to sign the measure into law on Monday as the Senate must vote on amendments made by the General Assembly to **SENATE, NO. 2959/ASSEMBLY, NO. 4162** (*Sweeney D-3/Allen R-7*)(*Greenwald D-6/O'Scanlon R-12*), which in essence repeals the out-of-state prohibition provision contained in the pension and health benefits reform legislation. We'll make sure to provide you with a copy of this legislation as soon as it becomes available.

As noted in the legislation's statement, this bill makes various changes to the manner in which the Teachers' Pension and Annuity Fund (TPAF), the Judicial Retirement System (JRS), the Public Employees' Retirement System (PERS), the Police and Firemen's Retirement System (PFRS), and the State Police Retirement System (SPRS) operate and to the benefit provisions of those systems.

The bill establishes new pension committees as follows: one 8-member committee for the TPAF and one for the SPRS; two 8-member committees in the PERS, one for the State part of the PERS and one for the local part of the PERS; and, two 10-member committees in the PFRS, one for the State part of the PFRS and one for the local part of the PFRS. Half of the members of each committee will be appointed by the Governor to represent public employers and half appointed by certain unions whose members are in the retirement system. When a target funded ratio for the system or part of the system is achieved, each committee will have the discretionary authority to modify the: member contribution rate; formula for calculation of final compensation or final salary; fraction used to calculate a retirement allowance; age at which a member may be eligible and the benefits for service or early retirement; and benefits provided for disability retirement. A committee will not have authority to change the number of years required for vesting.

The term "target funded ratio" means a ratio of the actuarial value of assets against the actuarially determined accrued liabilities expressed as a percentage that will be 75 percent in State fiscal year 2012, and increased annually by equal increments in each of

the subsequent seven fiscal years, until the ratio reaches 80 percent at which it is to remain for all subsequent fiscal years. The committees of these systems will have the authority to reactivate the cost of living adjustment on pensions and modify the basis for the calculation of the cost of living adjustment and set the duration and extent of the activation. A committee must give priority consideration to the reactivation of the cost of living adjustment. The bill establishes a process using a super conciliator to resolve an impasse on a decision or matter regarding benefits before any of the newly established committees in the TPAF, PERS, PFRS, and SPRS.

With regard to employee benefits, the bill provides for increases in the employee contribution rates: from 5.5% to 6.5% plus an additional 1% phased-in over 7 years beginning in the first year, meaning after 12 months, after the bill's effective date for TPAF and PERS (including legislators, Law Enforcement Officer (LEO) members, and workers compensation judges); from 3% to 12% for JRS phased-in over seven years; from 8.5% to 10% for PFRS members and members of PERS Prosecutors Part; and from 7.5% to 9% for SPRS members. New members of TPAF and PERS will need 30 years of creditable service and age 65 for receipt of the early retirement benefit without a reduction of 1/4 of 1% for each month that the member is under age 65. TPAF and PERS members enrolled before November 1, 2008 are eligible for a service retirement benefit at age 60 and members enrolled on or after that date are eligible at age 62. New members will be eligible for a service retirement benefit at age 65. A new PFRS member's special retirement benefit will be 60% of final compensation, plus 1% of final compensation multiplied by the number of years of creditable service over 25 but not over 30, instead of the current benefit of 65% of final compensation plus 1% for each year of service over 25 but not over 30.

The bill repeals N.J.S.A.43:15A-47.2 and 43:16A-5.1 which provide that a member of PERS or PFRS may retire while holding an elective public office covered by PERS or PFRS and continue to receive the full salary for that office, if the member's PERS or PFRS retirement allowance is not based solely on service in the elected public office. It also provides that the PFRS or PERS retirees who were granted a retirement allowance under those sections prior to the bill's effective date and are currently in an elective office covered by either of those systems may continue to receive their pension benefit and salary for the elective office. Under the bill, the automatic cost-of-living adjustment will no longer be provided to current and future retirees and beneficiaries, unless it is reactivated as permitted by the bill.

One section of the bill provides that each member of the TPAF, JRS, Prison Officers' Pension Fund, PERS, Consolidated Police and Firemen's Pension Fund, PFRS, and SPRS will have a contractual right to the annual required contribution made by the employer or by any other public entity. The contractual right to the annual required contribution means that the employer or other public entity must make the annual required contribution on a timely basis to help ensure that the retirement system is securely

funded and that the retirement benefits to which the members are entitled by statute and in consideration for their public service and in compensation for their work will be paid upon retirement. The failure of the State or any other public employer to make the annually required contribution will be deemed to be an impairment of the contractual right of each employee. The Superior Court, Law Division will have jurisdiction over any action brought by a member of any system or fund or any board of trustees to enforce the contractual right set forth in this bill. The State and other public employers will submit to the jurisdiction of the Superior Court, Law Division and will not assert sovereign immunity in such an action. If a member or board prevails in litigation to enforce the contractual right set forth in this bill, the court may award that party their reasonable attorney's fees. That section also provides that the rights reserved to the State in current law to alter, modify, or amend such retirement systems and funds, or to create in any member a right in the corpus or management of a retirement system or pension fund, cannot diminish the contractual right of employees established by this bill.

In addition, the bill increases the membership of the State Investment Council from 13 to 16 members. It eliminates one representative from the SPRS, but adds one member from the State Troopers Fraternal Association. Two additional members are appointed by the Governor with the advice and consent of the Senate, and one additional appointment is added to the current one by the Governor from persons nominated by Public Employee Committee of the New Jersey State AFL-CIO, specifying that one of the two will be a representative of a police officers' or firefighters' union. The bill also provides that an elected member, as opposed to any member, of the boards of trustees for TPAF, PERS and PFRS will be eligible for designation to serve on the State Investment Council.

This bill requires all public employees and certain public retirees to contribute toward the cost of health care benefits coverage based upon a percentage of the cost of coverage. Under the bill, all active public employees will pay a percentage of the cost of health care benefits coverage for themselves and any dependents. However, lower compensated employees will pay a smaller percentage and more highly compensated employees will pay a higher percentage. In addition, the applicable percentage will vary based upon whether the employee has family, individual, or member with child or spouse coverage. The rates gradually increase based on an employee's compensation, at intervals of \$5,000. These rates will be phased in over several years for employees employed on the contribution's effective date who will pay $\frac{1}{4}$, $\frac{1}{2}$, and $\frac{3}{4}$ of the amount of the contribution rate during the first, second and third years, respectively, meaning during the three 12-month periods after the contribution rates become effective. The bill establishes a "floor" for employee contributions so that no employee will pay an amount that is less than 1.5% of the employee's compensation. Employees who pay for health care benefits coverage based upon a percentage of the cost of coverage will not also be required to pay the minimum contribution of 1.5% of compensation, as provided

by other laws. The contribution will commence on the bill's effective date for certain public employees and upon the expiration of a collective negotiation agreement for others.

Similar provisions in the bill apply to retirees of the State, employers other than the State, and units of local government who accrue 25 years of service after the bill's effective date, or on or after the expiration of an applicable collective bargaining agreement in effect on that date, and retire after that, who will be required to contribute a percentage of the cost of health care benefits coverage in retirement, but as based on their retirement benefit. These provisions will not apply to public employees who, on the effective date of the bill, have 20 or more years of service in one or more State or locally-administered retirement systems. A 1.5% "floor", for those retirees to whom the 1.5% contribution in current law applies, will also be applicable to these retirees.

The bill allows boards of education and units of local government, that do not participate in the SHBP or SEHBP, to enter into contracts for health care benefits coverage, as may be required to implement a collective negotiations agreement, and agree to different employee contribution rates if certain cost savings in the aggregate over the period of the agreement can be demonstrated. The savings must be certified to the Department of Education or the Department of Community Affairs, as appropriate. The departments are to approve or reject the certification, within 30 days of receipt. The certification is deemed approved if not rejected within that time. The agreement cannot be executed until that approval is received or the 30 day period has lapsed, whichever occurs first.

The provisions concerning contributions for health care benefits will expire four years after the effective date. A public employer and employees who are in negotiations for the next collective negotiations agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in the bill must conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract. The public employers and public employees will remain bound by the health care contribution provisions of the bill, notwithstanding the expiration of those sections, until the full amount of the contribution has been implemented in accordance with the schedule set forth in the bill. Employees subject to any collective negotiations agreement in effect on the effective date of the bill, that has an expiration date on or after the expiration of the health care contribution provisions of the bill, will be subject to those provisions, upon expiration of that collective negotiations agreement, until the health care contribution schedule set forth in the bill is fully implemented. After full implementation, those contribution levels will become part of the parties' collective negotiations and will then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

A public employee whose amount of contribution in retirement was determined in accordance with the expired sections of law will be required to contribute the amount so determined in retirement, notwithstanding that the law has expired, with the retirement allowance, and any future cost of living adjustment thereto, used to identify the percentage of the cost of coverage. The increased employee contributions under the bill for pension benefits and the contributions for health care benefits will begin upon the implementation of necessary administrative actions for collection and will not be applied retroactively to this bill's effective date.

The bill also creates two new committees, one for the State Health Benefits Program and one for the School Employees' Health Benefits Program and confers on the committees the responsibility for plan design. Half of the committee members will be appointed by the Governor to represent public employers and half by certain unions who represent public employees in the State. The bill establishes a process using a super conciliator to resolve an impasse on a matter before a committee. The bill requires the committees for both programs to set the amounts for maximums, co-pays, deductibles, and other such participant costs; provide employees with the option to select one level of at least three levels of coverage each for family, individual, individual and spouse, and individual and dependent, or equivalent categories, for each plan offered by the program differentiated by out of pocket costs to employees including with regard to co-payments and deductibles; and provide for a high deductible health plan that conforms to the Internal Revenue Code Section 223.

Various provisions of the bill contain a number of changes to the law that are necessary to maintain the qualified plan status of the retirement systems under the federal Internal Revenue Code; for compliance with Statements Nos. 43 and 45 of the Governmental Accounting Standards Board, Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions (GASB 43/45); and to bring the defined contribution plans into compliance with U.S. Department of Treasury regulations affecting administration of plans administered under section 403(b) of the Internal Revenue Code. Modifications pertaining to the Supplemental Annuity Collective Trust are also being made by the bill.

The Department of the Treasury estimates that increases in State and local employee contributions to the various State and local pension funds, in accordance with the provisions of the bill, will be \$3.9 billion in the first ten years and \$120 billion over 30 years. In addition, the Department of the Treasury projected increases in employee contributions for health care benefits and plan changes will provide savings, in the first year, of \$10 million to the State and \$5 million to boards of education and units of local government. Those savings will increase to \$1.4 billion and \$1.6 billion to the State, and boards of education and units of local government, respectively, by the 10th year. The Administration did not provide the committee with any information about the underlying assumptions for its fiscal estimate

2. PUBLIC EMPLOYEE WHISTLEBLOWER

Although the Senate is scheduled to vote on **SENATE, NO. 2839** (*Weinberg D-37*) on Monday, Senator Weinberg has asked that the bill be removed from the board list at this time, and would like to meet with NJAC and the New Jersey State League of Municipalities to discuss our concerns in more detail. We look forward to working with the Senator and very much appreciate the fact that she is willing to work with us on crafting more palatable language. We have a meeting scheduled for July 6th and plan to reach out to our county counsels for suggestions.

In summary this legislation provides protection against employer retaliation for an employee who makes disclosures, provides testimony, or refuses to participate in any activity, policy or practice of the employer under certain circumstances. Although NJAC is a strong advocate of transparency in local government, we're concerned with the overly broad definitions of "Abuse of authority," "Gross mismanagement," and "Substantial waste of public funds," contained in this legislation and how these definitions comport with existing laws. NJAC is also concerned with the fact that the above definitions require employees to demonstrate a gross deviation from the standard of care or competence that a reasonable person would observe in the same situation. Opinions on what constitutes this new standard will undoubtedly vary among jurisdictions and ultimately lead to costly and even frivolous litigation. NJAC has the same concerns with respect to determining what rises to the level of a substantial waste of public funds.

3. COOPERATIVE PURCHASING

On Monday, the Senate will vote on **SENATE, NO. 2721/ASSEMBLY, NO. 2786** (*Greenwald D-6*) (*Beach D-6/Gordon D38*), which permits local units to participate in cooperative purchasing agreements through the use of a nationally-recognized and accepted cooperative purchasing agreement that has been developed utilizing a competitive bidding process by another contracting unit within the State, or within any other state, when available. NJAC supports this legislation as it's permissive and promotes shared services through cooperative purchasing. Although the Senate is expected to pass the measure, it's unclear at this point if Governor Christie plans to sign it into law as the Office of State Treasurer has some concerns with the bill's impact on public purchasing in this State.