

**SENATE CONCURRENT  
RESOLUTION No. 184**

**STATE OF NEW JERSEY  
216th LEGISLATURE**

INTRODUCED DECEMBER 7, 2015

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Cumberland, Gloucester and Salem)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Proposes constitutional amendment to require payments by State to State-administered retirement systems and establish in Constitution right of public employees to pension benefit; provides for enforcement of funding obligations and benefit rights.

**CURRENT VERSION OF TEXT**

As introduced.



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

4  
5 **BE IT RESOLVED** by the Senate of the State of New Jersey (the  
6 General Assembly concurring):

7  
8 1. The following proposed amendment to the Constitution of  
9 the State of New Jersey is agreed to:

10  
11 **PROPOSED AMENDMENT**

12  
13 a. Amend Article VII by adding a new Section IV to read as  
14 follows:

15 1. a. The State shall make its annual required contribution to  
16 each retirement system and pension fund for public employees  
17 administered by the State as that contribution is determined by the  
18 board of trustees of each system or fund in consultation with the  
19 actuary for that system or fund. The annual normal contribution  
20 plus the annual unfunded accrued liability contribution together  
21 shall be the annual required contribution. The actuary for each  
22 system or fund shall compute the annual required contribution  
23 based on an annual valuation of the assets and liabilities of the  
24 system or fund pursuant to consistent and generally accepted  
25 actuarial standards.

26 The State shall commence making its annual required  
27 contribution in full to each retirement system and pension fund for  
28 public employees administered by the State in the State fiscal year  
29 that commences July 1, 2021 and shall make the required  
30 contribution in full in each fiscal year thereafter. Commencing July  
31 1, 2017, the State shall make a payment to each retirement system  
32 and pension fund of at least 6/10ths of the full annual required  
33 contribution for each system and fund for that State fiscal year and  
34 a payment that increases by at least an additional 1/10th of the full  
35 annual required contribution for each system and fund for each  
36 subsequent fiscal year until payment of the full contribution is  
37 required to be made commencing July 1, 2021. The required  
38 contribution to be made by the State shall be paid in each State  
39 fiscal year to each system and fund on the following schedule: at  
40 least 25 percent by August 1; at least 50 percent by November 1; at  
41 least 75 percent by February 1; and at least 100 percent by May 1.

42 The amount of the contribution to be made to each retirement  
43 system and pension fund by the State shall be included in the  
44 general appropriation law for each State fiscal year. The payment  
45 of the required contributions to be made by the State pursuant to  
46 this subparagraph shall be an indefeasible obligation of the State.

**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       b. Vested members of a retirement system or pension fund for  
2 public employees administered by the State who were members of a  
3 system or fund prior to May 21, 2010 and who attained five years of  
4 service credit in the system or fund and were provided pursuant to  
5 law with a non-forfeitable right to receive benefits shall have an  
6 indefeasible non-forfeitable right to receive benefits as provided  
7 under the laws governing the system or fund upon the attainment of  
8 five years of service credit in the retirement system or fund. A  
9 "non-forfeitable right to receive benefits" shall mean that the  
10 benefits program, for any employee for whom the right has  
11 attached, cannot be reduced.

12       Vested members of a retirement system or pension fund for  
13 public employees administered by the State for whom the non-  
14 forfeitable right was not provided by law who attain ten years of  
15 service credit shall have an indefeasible right to receive the benefits  
16 earned each year under the laws governing the system or fund.

17       This paragraph shall not be construed to preclude forfeiture,  
18 suspension, or reduction in pension benefits for dishonorable  
19 service by a member.

20       c. Except as expressly provided in this paragraph and only to  
21 the extent so expressly provided, nothing in this paragraph shall be  
22 deemed to (1) limit the right of the State to alter, modify, or amend  
23 retirement systems and pension funds for public employees  
24 administered by the State, or (2) create in any member a right in the  
25 corpus or management of such a retirement system or pension fund.  
26 The rights reserved to the State in this paragraph shall not diminish  
27 or reduce the indefeasible obligations of the State and the  
28 indefeasible rights of members established by subparagraphs a. and  
29 b. of this paragraph.

30       d. The obligations and the rights set forth in this paragraph and  
31 in Article VIII, Section II, paragraph 2 shall be enforceable in the  
32 courts of this State. The courts of this State shall have jurisdiction  
33 over any action brought by a member of any system or fund or any  
34 board of trustees of such system or fund to enforce the obligations  
35 and rights set forth in this paragraph. The State shall submit to the  
36 jurisdiction of the courts and shall not assert sovereign immunity in  
37 such an action.

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

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

47       2. No money shall be drawn from the State treasury but for  
48 appropriations made by law. All moneys for the support of the State  
49 government and for all other State purposes as far as can be

1 ascertained or reasonably foreseen, shall be provided for in one  
2 general appropriation law covering one and the same fiscal year;  
3 except that when a change in the fiscal year is made, necessary  
4 provision may be made to effect the transition. No general  
5 appropriation law or other law appropriating money for any State  
6 purpose shall be enacted if the appropriation contained therein,  
7 together with all prior appropriations made for the same fiscal  
8 period, shall exceed the total amount of revenue on hand and  
9 anticipated which will be available to meet such appropriations  
10 during such fiscal period, as certified by the Governor. No general  
11 appropriation law for a fiscal year shall be enacted without  
12 including appropriations for the State contributions to each  
13 retirement system and pension fund for public employees  
14 administered by the State required pursuant to other provisions of  
15 this Constitution.

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

17

18 3. a. The Legislature shall not, in any manner, create in any  
19 fiscal year a debt or debts, liability or liabilities of the State, which  
20 together with any previous debts or liabilities shall exceed at any  
21 time one per centum of the total amount appropriated by the general  
22 appropriation law for that fiscal year, unless the same shall be  
23 authorized by a law for some single object or work distinctly  
24 specified therein. Regardless of any limitation relating to taxation in  
25 this Constitution, such law shall provide the ways and means,  
26 exclusive of loans, to pay the interest of such debt or liability as it  
27 falls due, and also to pay and discharge the principal thereof within  
28 thirty-five years from the time it is contracted; and the law shall not  
29 be repealed until such debt or liability and the interest thereon are  
30 fully paid and discharged. Except as hereinafter provided, no such  
31 law shall take effect until it shall have been submitted to the people  
32 at a general election and approved by a majority of the legally  
33 qualified voters of the State voting thereon.

34 b. On and after the date on which this subparagraph b. becomes  
35 part of the Constitution, the Legislature shall not enact any law that,  
36 in any manner, creates or authorizes the creation of a debt or  
37 liability of an autonomous public corporate entity, established either  
38 as an instrumentality of the State or otherwise exercising public and  
39 essential governmental functions, which debt or liability has a  
40 pledge of an annual appropriation as the ways and means to pay the  
41 interest of such debt or liability as it falls due and pay and  
42 discharge the principal of such debt, unless a law authorizing the  
43 creation of that debt for some single object or work distinctly  
44 specified therein shall have been submitted to the people at a  
45 general election and approved by a majority of the legally qualified  
46 voters of the State voting thereon. Voter approval shall not be  
47 required for any such law providing that the ways and means to pay  
48 the interest of and to pay and discharge the principal of such debt or  
49 liability shall be subject to appropriations of an independent non-

1 State source of revenue paid by third persons for the use of the  
2 single object or work thereof, or from a source of State revenue  
3 otherwise required to be appropriated pursuant to another provision  
4 of this Constitution.

5 c. No voter approval shall be required for any such law under  
6 subparagraphs a. or b. of this paragraph authorizing the creation of  
7 a debt or debts in a specified amount or an amount to be determined  
8 in accordance with such law for the refinancing of all or a portion  
9 of any outstanding debts or liabilities of the State, or of an  
10 autonomous public corporate entity, established either as an  
11 instrumentality of the State or otherwise exercising public and  
12 essential governmental functions, heretofore or hereafter created, so  
13 long as such law shall require that the refinancing provide a debt  
14 service savings determined in a manner to be provided in such law  
15 and that the proceeds of such debt or debts and any investment  
16 income therefrom shall be applied to the payment of the principal  
17 of, any redemption premium on, and interest due and to become due  
18 on such debts or liabilities being refinanced on or prior to the  
19 redemption date or maturity date thereof, together with the costs  
20 associated with such refinancing.

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

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

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

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

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

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

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

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

7 b. In every municipality the following question:  
8

	YES	<p style="text-align: center;">CONSTITUTIONAL AMENDMENT CONCERNING STATE PENSION PAYMENTS AND PUBLIC EMPLOYEE PENSION BENEFITS</p> <p>Do you approve amending the Constitution to require the State to make its payment to the pension systems for public employees each year and to establish in the Constitution the rights of public employees vested in these pension systems to receive earned pension benefits?</p> <p>The State would have until July 1, 2021 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 would be made on a quarterly basis.</p>
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	NO	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>This amendment to the Constitution concerns the State's payment to the pension systems for public employees and the pension benefits of those employees.</p> <p>Current law, adopted in 2011, required the State to make its pension payment each year. The New Jersey Supreme Court ruled that the State could not be compelled to make the payment because of certain provisions in the Constitution. This amendment is a response to that ruling.</p> <p>This amendment would require the State to make its pension payment each year as a constitutional obligation. The obligation would be enforceable in the State courts. Payment of the full amount would start July 1, 2021. Until then, partial, but increasing, payments would be made each year. Quarterly payments would be made on the first day of August, November, February, and May of each year.</p> <p>This amendment requires the annual State budget law to include the pension payment.</p> <p>Current law provides a non-forfeitable right to receive a pension benefit for vested public employees who were employed before May 21, 2010. This amendment would incorporate that right into the Constitution. This amendment would establish the right of vested public employees hired after May 21, 2010 to receive earned pension benefits after ten years of service. These rights would be enforceable in the State courts. This amendment does not increase any pension benefit.</p>
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STATEMENT

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The purpose of this amendment to the State Constitution is to require the State to fund the pensions of public employees on a timely basis. Current law requires the State to do this under the

1 provisions set forth in subsection c. of N.J.S.A.43:3C-9.5, as  
2 enacted by section 26 of P.L.2011, c.78, commonly referred to as  
3 Chapter 78. However, currently these provisions cannot be  
4 enforced by the courts of this State.

5 Chapter 78 requires the State and local government employers to  
6 make annual contributions to the various pension systems  
7 administered by the State: Teachers' Pension and Annuity Fund;  
8 Judicial Retirement System; Prison Officers' Pension Fund; Public  
9 Employees' Retirement System; Consolidated Police and Firemen's  
10 Pension Fund; Police and Firemen's Retirement System; and State  
11 Police Retirement System. The pension funding provisions of  
12 Chapter 78 were part of a historic bipartisan compromise, endorsed  
13 by the Governor, to ensure the solvency of the public employee  
14 pension systems. Chapter 78 increased pension contributions by  
15 public employees and suspended the payment of cost of living  
16 adjustments (COLA) to retirees until certain funding threshold  
17 levels are achieved. Chapter 78 also established a constitutionally  
18 protected contractual right to the payment of the annual required  
19 contributions to the pension systems by the State and all other  
20 public employers.

21 This amendment to the Constitution is necessary to reverse a  
22 2015 decision of the New Jersey Supreme Court, *Burgos v. State*,  
23 222 N.J. 175, which held the contractual obligation of the State to  
24 make its annual required contributions to the pension systems  
25 unenforceable because it was "subject to appropriation" and  
26 contravened the Debt Limitation Clause of the Constitution unless  
27 approved by the voters. This amendment overrules that holding and  
28 ensures that the commitment and requirement for annual funding to  
29 eventually reach full funding for the pension systems are protected  
30 by the New Jersey Constitution.

31 In *Burgos*, the Supreme Court relied on certain provisions of the  
32 New Jersey Constitution, including the Debt Limitation and  
33 Appropriations Clauses, to declare unenforceable the contractual  
34 promise made in statute to public employees that the State will  
35 make its annual required contributions to the pension systems.  
36 Therefore, this amendment provides that its provisions will be given  
37 effect notwithstanding any other provision of the Constitution.

38 As a result of the State's failure to fund the pension systems at  
39 levels determined to be necessary by the actuaries of the pension  
40 systems, the pension systems are approaching insolvency.

41 Notwithstanding the enactment of Chapter 78, in each of the last  
42 three State fiscal years, the Governor has made contributions to the  
43 pension systems that were less than that required of the State by  
44 law. The purpose of this amendment to the Constitution is to ensure  
45 full funding of the pension systems under generally accepted  
46 actuarial principles.

47 To ease the financial burden on the State, the amendment  
48 requires the State to make its full pension contribution payment  
49 commencing July 1, 2021, and in each fiscal year thereafter, but



1 requires partial increasing contributions over a period of four years,  
2 starting in State fiscal year 2017 when only 60 percent of the  
3 payment is required. Quarterly payments are required to accelerate  
4 the return on investment of the pension systems. Under current law,  
5 State instrumentalities and local governments will continue to be  
6 obligated to make full payments.

7 This amendment requires the pension payment to be included in  
8 the annual State budget law. However, the appropriation obligation  
9 would be subject to and subordinate to appropriations for State  
10 general obligation bonds heretofore authorized in accordance with  
11 Article VIII, Section II, paragraph 3 of the Constitution.

12 This amendment to the Constitution also incorporates in the  
13 Constitution subsections a. and b. of N.J.S.A.43:3C-9.5 to protect  
14 the contractual right of vested members of pension systems hired  
15 prior to May 21, 2010, the effective date of P.L. 2010, c. 1, to the  
16 pension benefits in effect upon the attainment by a public employee  
17 of five years of service credit in a pension system. This means that  
18 the pension benefit program for any employee for whom the right  
19 has attached, inclusive of all pension service earned during their  
20 employment, cannot be reduced. The amendment also establishes  
21 the rights of all other employees, meaning that they will have vested  
22 contractual rights to earned pension benefits after ten years of  
23 service credit, and to the benefit earned each year thereafter;  
24 however, the benefit formula can be reduced prospectively. These  
25 provisions of the amendment are necessary because the Supreme  
26 Court in the *Burgos* case left unresolved the issue as to whether  
27 laws that create non-forfeitable and vested rights to pension benefits  
28 are enforceable. The amendment does not alter current law that  
29 authorizes pension service credit or benefits to be reduced or  
30 forfeited for an employee's crime or misconduct.

31 This amendment does not impose any obligations on the State  
32 concerning post-retirement health care benefits, which will continue  
33 to be addressed through lawmaking and the State budget process.

34 The substantive constitutional rights and obligations established  
35 by this amendment are enforceable by the courts of this State,  
36 which can issue declaratory, injunctive, or other orders appropriate  
37 to secure compliance with these rights and obligations. This too is  
38 a necessary part of the amendment because in the *Burgos* decision,  
39 the Court expressed concern that under the separation of powers  
40 doctrine it would be inappropriate for the courts to enmesh  
41 themselves in the enforcement of contractual rights to pension  
42 contributions and benefits. By providing for enforcement through  
43 the courts, the amendment allows State courts to issue necessary  
44 remedial orders to ensure compliance with the State's pension  
45 payment obligations.