

**ASSEMBLY CONCURRENT
RESOLUTION No. 3**

STATE OF NEW JERSEY

216th LEGISLATURE

INTRODUCED DECEMBER 14, 2015

Sponsored by:
Assemblyman VINCENT PRIETO
District 32 (Bergen and Hudson)

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.



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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.
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5 **BE IT RESOLVED** by the General Assembly of the State of New
6 Jersey (the Senate 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.

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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 infeasible 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 infeasible 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 infeasible obligations of the State and the
28 infeasible 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.
44

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

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

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

18

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

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

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1 the interest of and to pay and discharge the principal of such debt or
2 liability shall be subject to appropriations of an independent non-
3 State source of revenue paid by third persons for the use of the
4 single object or work thereof, or from a source of State revenue
5 otherwise required to be appropriated pursuant to another provision
6 of this Constitution.

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

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

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

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

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

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

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

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

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

12 b. In every municipality the following question:
13

		<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>
	YES	

	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

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 provisions set forth in subsection c. of N.J.S.A.43:3C-9.5, as

1 enacted by section 26 of P.L.2011, c.78, commonly referred to as
2 Chapter 78. However, currently these provisions cannot be
3 enforced by the courts of this State.

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

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

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

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

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

46 To ease the financial burden on the State, the amendment
47 requires the State to make its full pension contribution payment
48 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.