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

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

The State shall commence making its annual required contribution in full to each retirement system and pension fund for public employees administered by the State in the State fiscal year that commences July 1, 2021 and shall make the required contribution in full in each fiscal year thereafter. Commencing July 1, 2017, the State shall make a payment to each retirement system and pension fund of at least 6/10ths of the full annual required contribution 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 annual required contribution for each system and fund for each subsequent fiscal year until payment of the full contribution is required to be made commencing July 1, 2021. The required contribution to be made by the State shall be paid in each State fiscal year to each system and fund on the following schedule: at least 25 percent by August 1; at least 50 percent by November 1; at least 75 percent by February 1; and at least 100 percent by May 1.

The amount of the contribution to be made to each retirement system and pension fund by the State shall be included in the general appropriation law for each State fiscal year. The payment of the required contributions to be made by the State pursuant to 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.
b. Vested members of a retirement system or pension fund for public employees administered by the State who were members of a system or fund prior to May 21, 2010 and who attained five years of service credit in the system or fund and were provided pursuant to law with a non-forfeitable right to receive benefits shall have an indefeasible non-forfeitable right to receive benefits as provided under the laws governing the system or fund upon the attainment of five years of service credit in the retirement system or fund. A "non-forfeitable right to receive benefits" shall mean that the benefits program, for any employee for whom the right has attached, cannot be reduced.

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

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

c. Except as expressly provided in this paragraph and only to the extent so expressly provided, nothing in this paragraph shall be deemed to (1) limit the right of the State to alter, modify, or amend retirement systems and pension funds for public employees administered by the State, or (2) create in any member a right in the corpus or management of such a retirement system or pension fund.

The rights reserved to the State in this paragraph shall not diminish or reduce the indefeasible obligations of the State and the indefeasible rights of members established by subparagraphs a. and b. of this paragraph.

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

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 a. 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. 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.
(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 indefeasible 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:

<table>
<thead>
<tr>
<th>YES</th>
<th>CONSTITUTIONAL AMENDMENT CONCERNING STATE PENSION PAYMENTS AND PUBLIC EMPLOYEE PENSION BENEFITS</th>
</tr>
</thead>
</table>

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?

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.
## INTERPRETIVE STATEMENT

This amendment to the Constitution concerns the State’s payment to the pension systems for public employees and the pension benefits of those employees.

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.

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.

This amendment requires the annual State budget law to include the pension payment.

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.

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

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

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

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

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

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

To ease the financial burden on the State, the amendment
requires the State to make its full pension contribution payment
commencing July 1, 2021, and in each fiscal year thereafter, but
requires partial increasing contributions over a period of four years, starting in State fiscal year 2017 when only 60 percent of the payment is required. Quarterly payments are required to accelerate the return on investment of the pension systems. Under current law, State instrumentalities and local governments will continue to be obligated to make full payments.

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

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

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

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