SENATE CONCURRENT RESOLUTION No. 2

STATE OF NEW JERSEY
217th LEGISLATURE

INTRODUCED FEBRUARY 4, 2016

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)

Co-Sponsored by:
Senators Weinberg, Rice, Whelan and Van Drew

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.

(Sponsorship Updated As Of: 6/24/2016)
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 4/8ths 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 1/8th 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.

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  
an 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  
esential 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>
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<tbody>
<tr>
<td></td>
<td>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?</td>
</tr>
<tr>
<td></td>
<td>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.</td>
</tr>
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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.
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 a payment to each retirement
system and pension fund of at least 4/8ths of the full annual
contribution is required. The payment will increase by at least an
additional 1/8th 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.
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.