

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 4313**

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**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

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ADOPTED MARCH 15, 2021

**Sponsored by:**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**SYNOPSIS**

Requires Administrative Law Judges to be enrolled in PERS; requires JRS rights and benefits be applied to such judges enrolled in PERS.

**CURRENT VERSION OF TEXT**

Substitute as adopted by the Assembly Judiciary Committee.



1 AN ACT concerning enrollment of Administrative Law Judges in the  
2 Public Employees' Retirement System and amending P.L.2007,  
3 c.92 and amending and supplementing P.L.1954, c.84.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. Section 2 of P.L.2007, c.92 (C.43:15C-2) is amended to read  
9 as follows:

10 2. a. The following persons shall be eligible and shall  
11 participate in the Defined Contribution Retirement Program:

12 (1) A person who commences service on or after the effective  
13 date of this section of P.L.2007, c.92 (C.43:15C-1 et al.) in an  
14 elective public office of this State or of a political subdivision  
15 thereof, except that it shall not include a person who holds elective  
16 public office on the effective date of this section and is enrolled in  
17 the Public Employees' Retirement System while that person  
18 continues to hold that elective public office or, for an elected  
19 official specified in section 5 of P.L.2017, c.344 (C.43:15A-7.5),  
20 another elective public office, without a break in service. Service in  
21 the Legislature shall be considered a single elective public office.

22 (2) A person who commences service on or after the effective  
23 date of this section in an employment, office or position of the State  
24 or of a political subdivision thereof, or an agency, board,  
25 commission, authority or instrumentality of the State or of a  
26 subdivision, pursuant to an appointment by the Governor that  
27 requires the advice and consent of the Senate, or pursuant to an  
28 appointment by the Governor to serve at the pleasure of the  
29 Governor only during his or her term of office. This paragraph  
30 shall not be deemed to include a person otherwise eligible for  
31 membership in the State Police Retirement System or the Judicial  
32 Retirement System. This paragraph shall not include Administrative  
33 Law Judges of the Office of Administrative Law, except such  
34 judges who waive transfer to the Public Employees' Retirement  
35 System pursuant to section 3 of P.L. , c. (C. )(pending before  
36 the Legislature as this bill).

37 (3) A person who commences service on or after the effective  
38 date of this section in an employment, office or position in a  
39 political subdivision of the State, or an agency, board, commission,  
40 authority or instrumentality of a subdivision, pursuant to an  
41 appointment by an elected public official or elected governing  
42 body, that requires the specific consent or approval of the elected  
43 governing body of the political subdivision that is substantially  
44 similar in nature to the advice and consent of the Senate for  
45 appointments by the Governor of the State as that similarity is

**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 determined by the elected governing body and set forth in an  
2 adopted ordinance or resolution, pursuant to guidelines or policy  
3 that shall be established by the Local Finance Board in the  
4 Department of Community Affairs or the Department of Education,  
5 as appropriate to the elected governing body. This paragraph shall  
6 not be deemed to include a person otherwise eligible for  
7 membership in the Teachers' Pension and Annuity Fund or the  
8 Police and Firemen's Retirement System, or a person who is  
9 employed or appointed in the regular or normal course of  
10 employment or appointment procedures and consented to or  
11 approved in a general or routine manner appropriate for and  
12 followed by the political subdivision, or the agency, board,  
13 commission, authority or instrumentality of a subdivision, or a  
14 person who holds a professional license or certificate to perform  
15 and is performing as a certified health officer, tax assessor, tax  
16 collector, municipal planner, chief financial officer, registered  
17 municipal clerk, construction code official, licensed uniform  
18 subcode inspector, qualified purchasing agent, or certified public  
19 works manager.

20 (4) A person who is granted a pension or retirement allowance  
21 under any pension fund or retirement system established under the  
22 laws of this State and elects to participate pursuant to section 1 of  
23 P.L.1977, c.171 (C.43:3C-3) upon being elected to public office.

24 (5) A member of the Teachers' Pension and Annuity Fund,  
25 Police and Firemen's Retirement System, State Police Retirement  
26 System, or the Public Employees' Retirement System for whom  
27 compensation is defined as the amount of base or contractual salary  
28 equivalent to the annual maximum wage contribution base for  
29 Social Security, pursuant to the Federal Insurance Contributions  
30 Act, for contribution and benefit purposes of those retirement  
31 systems, for whom participation in this retirement program shall be  
32 with regard to any excess over the maximum compensation only.

33 (6) A person in employment, office or position for which the  
34 annual salary or remuneration is less, or the hours of work per week  
35 are fewer, than that which is required to become a member of the  
36 Teachers' Pension and Annuity Fund or the Public Employees'  
37 Retirement System, or to make contributions to those systems as a  
38 member on the basis of any such employment, office or position,  
39 after November 1, 2008.

40 b. No person shall be eligible to participate in the retirement  
41 program with respect to any public employment, office, or position  
42 if:

43 (1) the base salary for that employment, office, or position is  
44 less than \$5,000 per year;

45 (2) the person is, on the basis of service in that employment,  
46 office, or position, eligible for membership or enrolled as a member  
47 of another State or locally-administered pension fund or retirement  
48 system established under the laws of this State including the

1 Alternate Benefit Program, except as otherwise specifically  
2 provided in subsection a. of this section;

3 (3) the person is receiving a benefit as a retiree from any other  
4 State or locally-administered pension fund or retirement system  
5 established under the laws of this State, except as provided in  
6 section 1 of P.L.1977, c.171 (C.43:3C-3); or

7 (4) the person is an officer or employee of a political  
8 subdivision of this State or of a board of education, or of any  
9 agency, authority or instrumentality thereof, who is ineligible for  
10 membership in the Public Employees' Retirement System pursuant  
11 to section 20 of P.L.2007, c.92 (C.43:15A-7.2).

12 c. A person eligible and required to participate in the  
13 retirement program pursuant to paragraph (5) of subsection a. of  
14 this section may elect to waive participation with regard to that  
15 employment, office, or position by filing, when first eligible, on a  
16 form required by the division, a written waiver with the Division of  
17 Pensions and Benefits that waives all rights and benefits that would  
18 otherwise be provided by the retirement program. Such a person  
19 may thereafter elect to participate in the retirement program by  
20 filing, on a form required by the division, a written election to  
21 participate in the retirement program and participation in the  
22 retirement program pursuant to such election shall commence on  
23 the January 1 next following the filing of the election to participate.

24 d. Service credited to a participant in the Defined Contribution  
25 Retirement Program shall not be recognized as service credit to  
26 determine eligibility for employer-paid health care benefits in  
27 retirement pursuant to P.L.1961, c.49 (C.52:14-17.25 et seq.),  
28 N.J.S.40A:10-16 et seq., P.L.1979, c.391 (C.18A:16-12 et al.) or  
29 any other law, rule or regulation.  
30 (cf: P.L.2017, c.344, s.3)

31

32 2. Section 7 of P.L.1954, c.84 (C.43:15A-7) is amended to read  
33 as follows:

34 7. There is hereby established the Public Employees'  
35 Retirement System of New Jersey in the Division of Pensions and  
36 Benefits of the Department of the Treasury. The membership of the  
37 retirement system shall include:

38 a. The members of the former "State Employees' Retirement  
39 System of New Jersey" enrolled as such as of December 30, 1954,  
40 who shall not have claimed for refund their accumulated deductions  
41 in said system as provided in this section;

42 b. Any person becoming an employee of the State or other  
43 employer after January 2, 1955 and every veteran, other than a  
44 retired member who returns to service pursuant to subsection b. of  
45 section 27 of P.L.1966, c.217 (C.43:15A-57.2) and other than those  
46 whose appointments are seasonal, becoming an employee of the  
47 State or other employer after such date, including a temporary  
48 employee with at least one year's continuous service. The

1 membership of the retirement system shall not include those  
2 persons appointed to serve as described in paragraphs (2) and (3) of  
3 subsection a. of section 2 of P.L.2007, c.92 (C.43:15C-2), except a  
4 person who was a member of the retirement system prior to the  
5 effective date of sections 1 through 19 of P.L.2007, c.92 (C.43:15C-  
6 1 through C.43:15C-15, C.43:3C-9, C.43:15A-7, C.43:15A-75 and  
7 C.43:15A-135) and continuously thereafter. The membership of the  
8 retirement system shall include Administrative Law Judges of the  
9 Office of Administrative Law; and

10 c. Every employee veteran in the employ of the State or other  
11 employer on January 2, 1955, who is not a member of any  
12 retirement system supported wholly or partly by the State.

13 d. Membership in the retirement system shall be optional for  
14 elected officials other than veterans, and for school crossing guards,  
15 who having become eligible for benefits under other pension  
16 systems are so employed on a part-time basis. Elected officials  
17 commencing service on or after the effective date of sections 1  
18 through 19 of P.L.2007, c.92 (C.43:15C-1 through C.43:15C-15,  
19 C.43:3C-9, C.43:15A-7, C.43:15A-75 and C.43:15A-135) shall not  
20 be eligible for membership in the retirement system based on  
21 service in the elective public office, except that an elected official  
22 enrolled in the retirement system as of that effective date who  
23 continues to hold that elective public office or, for an elected  
24 official specified in section 5 of P.L.2017, c.344 (C.43:15A-7.5),  
25 another elective public office, without a break in service shall be  
26 eligible to continue membership in the retirement system under the  
27 terms and conditions of enrollment. Service in the Legislature shall  
28 be considered a single elective public office. Any part-time school  
29 crossing guard who is eligible for benefits under any other pension  
30 system and who was hired as a part-time school crossing guard  
31 prior to March 4, 1976, may at any time terminate his membership  
32 in the retirement system by making an application in writing to the  
33 board of trustees of the retirement system. Upon receiving such  
34 application, the board of trustees shall terminate his enrollment in  
35 the system and direct the employer to cease accepting contributions  
36 from the member or deducting from the compensation paid to the  
37 member. State employees who become members of any other  
38 retirement system supported wholly or partly by the State as a  
39 condition of employment shall not be eligible for membership in  
40 this retirement system. Notwithstanding any other law to the  
41 contrary, all other persons accepting employment in the service of  
42 the State shall be required to enroll in the retirement system as a  
43 condition of their employment, regardless of age.

44 (1) Before or on November 1, 2008, no person in employment,  
45 office or position, for which the annual salary or remuneration is  
46 fixed at less than \$1,500.00, shall be eligible to become a member  
47 of the retirement system.

1 (2) After November 1, 2008, a person who was a member of the  
2 retirement system on that date and continuously thereafter shall be  
3 eligible to be a member of the retirement system in employment,  
4 office or position, for which the annual salary or remuneration is  
5 fixed at \$1,500 or more.

6 (3) After November 1, 2008 and before or on the effective date  
7 of P.L.2010, c.1, a person who was not a member of the retirement  
8 system on November 1, 2008, or who was a member of the  
9 retirement system on that date but not continuously thereafter, and  
10 who is in employment, office or position, for which the annual  
11 salary or remuneration is certified by the applicable public entity at  
12 \$7,500 or more, shall be eligible to become a member of the  
13 retirement system. The \$7,500 minimum annual salary or  
14 remuneration amount shall be adjusted annually by the Director of  
15 the Division of Pensions and Benefits, by regulation, in accordance  
16 with changes in the Consumer Price Index but by no more than 4  
17 percent. "Consumer Price Index" means the average of the annual  
18 increase, expressed as a percentage, in the consumer price index for  
19 all urban consumers in the New York City and Philadelphia  
20 metropolitan statistical areas during the preceding calendar year as  
21 reported by the United States Department of Labor.

22 (4) After the effective date of P.L.2010, c.1, no person in an  
23 employment, office or position of the State, or an agency, board,  
24 commission, authority or instrumentality of the State, for which the  
25 hours of work are fixed at fewer than 35 per week shall be eligible  
26 to become a member of the retirement system; and no person in  
27 employment, office or position with a political subdivision of the  
28 State, or an agency, board, commission, authority or instrumentality  
29 of a political subdivision of the State, for which the hours of work  
30 are fixed by an ordinance or resolution of the political subdivision,  
31 or agency, board, commission, authority or instrumentality thereof,  
32 at fewer than 32 per week shall be eligible to become a member of  
33 the retirement system. Any hour or part thereof, during which the  
34 person does not work due to the person's participation in a  
35 voluntary or mandatory furlough program shall not be deducted in  
36 determining if a person's hours of work are fixed at fewer than 35 or  
37 32 per week, as appropriate, for the purpose of eligibility.

38 e. Membership of any person in the retirement system shall  
39 cease if he shall discontinue his service for more than two  
40 consecutive years.

41 f. The accumulated deductions of the members of the former  
42 "State Employees' Retirement System" which have been set aside in  
43 a trust fund designated as Fund A as provided in section 5 of this  
44 act and which have not been claimed for refund prior to February 1,  
45 1955 shall be transferred from said Fund A to the Annuity Savings  
46 Fund of the Retirement System, provided for in section 25 of this  
47 act. Each member whose accumulated deductions are so transferred  
48 shall receive the same prior service credit, pension credit, and

1 membership credit in the retirement system as he previously had in  
2 the former "State Employees' Retirement System" and shall have  
3 such accumulated deductions credited to his individual account in  
4 the Annuity Savings Fund. Any outstanding obligations of such  
5 member shall be continued.

6 g. Any school crossing guard electing to terminate his  
7 membership in the retirement system pursuant to subsection d. of  
8 this section shall, upon his request, receive a refund of his  
9 accumulated deductions as of the date of his appointment to the  
10 position of school crossing guard. Such refund of contributions  
11 shall serve as a waiver of all benefits payable to the employee, to  
12 his dependent or dependents, or to any of his beneficiaries under the  
13 retirement system.

14 h. A temporary employee who is employed under the federal  
15 Workforce Investment Act shall not be eligible for membership in  
16 the system. Membership for temporary employees employed under  
17 the federal Job Training Partnership Act, Pub.L.97-300  
18 (29 U.S.C.s.1501) who are in the system on September 19, 1986  
19 shall be terminated, and affected employees shall receive a refund  
20 of their accumulated deductions as of the date of commencement of  
21 employment in a federal Job Training Partnership Act program.  
22 Such refund of contributions shall serve as a waiver of all benefits  
23 payable to the employee, to his dependent or dependents, or to any  
24 of his beneficiaries under the retirement system.

25 i. Membership in the retirement system shall be optional for a  
26 special service employee who is employed under the federal Older  
27 American Community Service Employment Act, Pub.L.94-135 (42  
28 U.S.C.s.3056). Any special service employee employed under the  
29 federal Older American Community Service Employment Act,  
30 Pub.L.94-135 (42 U.S.C.s.3056), who is in the retirement system on  
31 the effective date of P.L.1996, c.139 may terminate membership in  
32 the retirement system by making an application in writing to the  
33 board of trustees of the retirement system. Upon receiving the  
34 application, the board shall terminate enrollment in the system and  
35 the member shall receive a refund of accumulated deductions as of  
36 the date of commencement of employment in a federal Older  
37 American Community Service Employment Act program. This  
38 refund of contributions shall serve as a waiver of all benefits  
39 payable to the employee, to any dependent or dependents, or to any  
40 beneficiary under the retirement system.

41 j. An employee of the South Jersey Port Corporation who was  
42 employed by the South Jersey Port Corporation as of the effective  
43 date of P.L.1997, c.150 (C.34:1B-144 et al.) and who shall be re-  
44 employed within 365 days of such effective date by a subsidiary  
45 corporation or other corporation, which has been established by the  
46 Delaware River Port Authority pursuant to subdivision (m) of  
47 Article I of the compact creating the Delaware River Port Authority  
48 (R.S.32:3-2), as defined in section 3 of P.L.1997, c.150 (C.34:1B-

1 146), shall be eligible to continue membership while an employee  
2 of such subsidiary or other corporation.

3 k. An employee of a renaissance school project established  
4 pursuant to P.L.2011, c.176 (C.18A:36C-1 et seq.) upon  
5 commencement of employment.  
6 (cf: P.L.2018, c.129, s.2)  
7

8 3. (New section) a. Notwithstanding the provisions of any  
9 other law to the contrary, Administrative Law Judges of the Office  
10 of Administrative Law appointed on or after the effective date of  
11 P.L. , c. (pending before the Legislature as this bill) shall be  
12 enrolled in the Public Employees' Retirement System. Membership  
13 in the Public Employees' Retirement System shall be a condition of  
14 employment for service as an administrative law judge for each  
15 judge enrolled after that effective date.

16 Notwithstanding enrollment in the system, the laws and  
17 regulations governing the system shall not apply to administrative  
18 law judges covered by this section. Those judges shall be subject to  
19 and governed by the laws and regulations of the Judicial Retirement  
20 System, established pursuant to P.L.1973, c.140 (C.43:6A-1 et  
21 seq.), in the same manner as a judge enrolled in the Judicial  
22 Retirement System. For all purposes, those administrative law  
23 judges covered by this section shall be deemed members of the  
24 Judicial Retirement System but for enrollment in the Public  
25 Employees' Retirement System.

26 b. An administrative law judge who is a participant in the  
27 Defined Contribution Retirement Program, established pursuant to  
28 P.L.2007, c.92 (C.43:15C-1 et seq.), on the effective date of  
29 P.L. , c. (pending before the Legislature as this bill) shall be  
30 transferred out of the program within 90 days following that  
31 effective date and covered by the provisions of section a. of this  
32 section. A judge may elect not to be transferred and covered by the  
33 provisions of subsection a. of this section by filing a statement  
34 within 30 days following that effective date with the Division of  
35 Pensions and Benefits in the Department of the Treasury waiving all  
36 rights and benefits which would otherwise be provided in  
37 accordance with subsection a. of this section.

38 The account in the program for each judge transferred and  
39 covered by the provisions of subsection a. of this section shall be  
40 adjusted to reflect the transfer and each judge shall be given service  
41 credit for the provisions of subsection a. of this section for service  
42 starting on the judge's date of appointment.

43 The actuary for the Public Employees' Retirement System, in  
44 consultation with the actuary for the Judicial Retirement System,  
45 shall determine the unfunded accrued liability resulting from the  
46 transfer and coverage of judges under subsection a. of this section  
47 in the same manner provided for the determination of the unfunded  
48 accrued liability of the retirement system by section 24 of P.L.1954,



1 c.84 (C.43:15A-24). This unfunded accrued liability shall be  
2 amortized in the manner provided by section 24 over an  
3 amortization period of 20 years. The unfunded accrued liability  
4 resulting from the transfer and coverage of administrative law  
5 judges under subsection a. of this section shall be paid by the State  
6 to the retirement system.

7 The value of the account of an administrative law judge who is  
8 transferred out of the program shall be transferred from the Defined  
9 Contribution Retirement Program to the Public Employees'  
10 Retirement System in accordance with the rollover requirements of  
11 the federal Internal Revenue Code and relevant regulations as a  
12 qualified rollover distribution from one qualified retirement plan to  
13 another qualified retirement plan, and shall not be a taxable  
14 distribution to the administrative law judge. The transfer shall be in  
15 accordance with a rule, method, or process that shall not result in  
16 the transfer being deemed a distribution includible in federal gross  
17 income for the administrative law judge.

18

19 4. This act shall take effect immediately.