

ASSEMBLY, No. 2762

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 27, 1997

By Assemblymen AUGUSTINE and BAGGER

1 AN ACT providing for the payment of annuities to certain survivors of
2 deceased retirants from the Police and Firemen's Retirement System
3 of New Jersey and amending and supplementing P.L.1944, c.255.

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

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8 1. Section 1 of P.L.1944, c.255 (C.43:16A-1) is amended to read
9 as follows:

10 1. As used in this act:

11 (1) "Retirement system" or "system" shall mean the Police and
12 Firemen's Retirement System of New Jersey as defined in section 2 of
13 this act.

14 (2) (a) "Policeman" shall mean a permanent, full-time employee of
15 a law enforcement unit as defined in section 2 of P.L.1961, c.56
16 (C.52:17B-67) or the State, other than an officer or trooper of the
17 Division of State Police whose position is covered by the State Police
18 Retirement System, whose primary duties include the investigation,
19 apprehension or detention of persons suspected or convicted of
20 violating the criminal laws of the State and who:

21 (i) is authorized to carry a firearm while engaged in the actual
22 performance of his official duties;

23 (ii) has police powers;

24 (iii) is required to complete successfully the training requirements
25 prescribed by P.L.1961, c.56 (C.52:17B-66 et seq.) or comparable
26 training requirements as determined by the board of trustees; and

27 (iv) is subject to the physical and mental fitness requirements
28 applicable to the position of municipal police officer established by an
29 agency authorized to establish these requirements on a Statewide
30 basis, or comparable physical and mental fitness requirements as
31 determined by the board of trustees.

32 The term shall also include an administrative or supervisory
33 employee of a law enforcement unit or the State whose duties include
34 general or direct supervision of employees engaged in investigation,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 apprehension or detention activities or training responsibility for these
2 employees and a requirement for engagement in investigation,
3 apprehension or detention activities if necessary, and who is
4 authorized to carry a firearm while in the actual performance of his
5 official duties and has police powers.

6 (b) "Fireman" shall mean a permanent, full-time employee of a
7 firefighting unit whose primary duties include the control and
8 extinguishment of fires and who is subject to the training and physical
9 and mental fitness requirements applicable to the position of municipal
10 firefighter established by an agency authorized to establish these
11 requirements on a Statewide basis, or comparable training and physical
12 and mental fitness requirements as determined by the board of trustees.
13 The term shall also include an administrative or supervisory employee
14 of a firefighting unit whose duties include general or direct supervision
15 of employees engaged in fire control and extinguishment activities or
16 training responsibility for these employees and a requirement for
17 engagement in fire control and extinguishment activities if necessary.
18 As used in this paragraph, "firefighting unit" shall mean a municipal
19 fire department, a fire district, or an agency of a county or the State
20 which is responsible for control and extinguishment of fires.

21 (3) "Member" shall mean any policeman or fireman included in the
22 membership of the retirement system pursuant to this amendatory and
23 supplementary act, P.L.1989, c.204 (C.43:16A-15.6 et al.).

24 (4) "Board of trustees" or "board" shall mean the board provided
25 for in section 13 of this act.

26 (5) "Medical board" shall mean the board of physicians provided
27 for in section 13 of this act.

28 (6) "Employer" shall mean the State of New Jersey, the county,
29 municipality or political subdivision thereof which pays the particular
30 policeman or fireman.

31 (7) "Service" shall mean service as a policeman or fireman paid for
32 by an employer.

33 (8) "Creditable service" shall mean service rendered for which
34 credit is allowed as provided under section 4 of this act.

35 (9) "Regular interest" shall mean interest as determined by the
36 State Treasurer, after consultation with the Directors of the Divisions
37 of Investment and Pensions, the board of trustees and the actuary. It
38 shall bear a reasonable relationship to the percentage rate of earnings
39 on investments based on the market value of assets but shall not
40 exceed the assumed percentage rate of increase applied to salaries plus
41 3%, provided however that the board of trustees shall not set the
42 average percentage rate of increase applied to salaries below 6%.

43 (10) "Aggregate contributions" shall mean the sum of all the
44 amounts, deducted from the compensation of a member or contributed
45 by him or on his behalf, standing to the credit of his individual account
46 in the annuity savings fund.

- 1 (11) "Annuity" shall mean payments for life derived from the
2 aggregate contributions of a member.
- 3 (12) "Pension" shall mean payments for life derived from
4 contributions by the employer.
- 5 (13) "Retirement allowance" shall mean the pension plus the
6 annuity.
- 7 (14) "Earnable compensation" shall mean the full rate of the salary
8 that would be payable to an employee if he worked the full normal
9 working time for his position. In cases where salary includes
10 maintenance, the retirement system shall fix the value of that part of
11 the salary not paid in money which shall be considered under this act.
- 12 (15) "Average final compensation" shall mean the average annual
13 salary upon which contributions are made for the three years of
14 creditable service immediately preceding his retirement or death, or it
15 shall mean the average annual salary for which contributions are made
16 during any three fiscal years of his or her membership providing the
17 largest possible benefit to the member or his beneficiary.
- 18 (16) "Retirement" shall mean the termination of the member's
19 active service with a retirement allowance granted and paid under the
20 provisions of this act.
- 21 (17) "Annuity reserve" shall mean the present value of all payments
22 to be made on account of any annuity or benefit in lieu of any annuity
23 computed upon the basis of such mortality tables recommended by the
24 actuary as shall be adopted by the board of trustees, and regular
25 interest.
- 26 (18) "Pension reserve" shall mean the present value of all payments
27 to be made on account of any pension or benefit in lieu of any pension
28 computed upon the basis of such mortality tables recommended by the
29 actuary as shall be adopted by the board of trustees, and regular
30 interest.
- 31 (19) "Actuarial equivalent" shall mean a benefit of equal value
32 when computed upon the basis of such mortality tables recommended
33 by the actuary as shall be adopted by the board of trustees, and regular
34 interest.
- 35 (20) "Beneficiary" shall mean any person receiving a retirement
36 allowance or other benefit as provided by this act.
- 37 (21) "Child" shall mean a deceased member's or retirant's
38 unmarried child (a) under the age of 18, or (b) 18 years of age or older
39 and enrolled in a secondary school, or (c) under the age of 24 and
40 enrolled in a degree program in an institution of higher education for
41 at least 12 credit hours in each semester, provided that the member
42 died in active service as a result of an accident met in the actual
43 performance of duty at some definite time and place, and the death
44 was not the result of the member's willful misconduct, or (d) of any
45 age who, at the time of the member's or retirant's death, is disabled
46 because of mental retardation or physical incapacity, is unable to do

1 any substantial, gainful work because of the impairment and his
2 impairment has lasted or can be expected to last for a continuous
3 period of not less than 12 months, as affirmed by the medical board.

4 (22) "Parent" shall mean the parent of a member who was receiving
5 at least one-half of his support from the member in the 12-month
6 period immediately preceding the member's death or the accident
7 which was the direct cause of the member's death. The dependency of
8 such a parent will be considered terminated by marriage of the parent
9 subsequent to the death of the member.

10 (23) "Widower" shall mean the man to whom a member or retirant
11 was married at least one year before the date of her death and to
12 whom she continued to be married until the date of her death and who
13 has not remarried. In the event of the payment of an accidental death
14 benefit, the one-year qualification shall be waived.

15 (24) "Widow" shall mean the woman to whom a member or retirant
16 was married at least one-year before the date of his death and to
17 whom he continued to be married until the date of his death and who
18 has not remarried. In the event of the payment of an accidental death
19 benefit, the one year qualification shall be waived.

20 (25) "Fiscal year" shall mean any year commencing with July 1, and
21 ending with June 30, next following.

22 (26) "Compensation" shall mean the base salary, for services as a
23 member as defined in this act, which is in accordance with established
24 salary policies of the member's employer for all employees in the same
25 position but shall not include individual salary adjustments which are
26 granted primarily in anticipation of the member's retirement or
27 additional remuneration for performing temporary duties beyond the
28 regular workday.

29 (27) "Department" shall mean any police or fire department of a
30 municipality or a fire department of a fire district located in a township
31 or a county police or park police department or the appropriate
32 department of the State or instrumentality thereof.

33 (28) "Final compensation" means the compensation received by the
34 member in the last 12 months of creditable service preceding his
35 retirement.

36 (29) (Deleted by amendment, P.L.1992, c.78).

37 (30) (Deleted by amendment, P.L.1992, c.78).

38 (31) "Former spouse" means a person to whom a retirant was
39 married for a continuous period of at least 10 years at any time during
40 the retirant's lifetime, but to whom the retirant was no longer married
41 at the time of the retirant's death, and who did not remarry prior to the
42 retirant's death.

43 (cf: P.L.1996, c.89, s.1)

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45 2. (New section) a. Upon the death after retirement of any
46 retirant from the retirement system, there shall be paid to a former

1 spouse of the retirant an annuity if, and to the extent that, the payment
2 of such an annuity shall have been expressly provided for in an election
3 under subsection b. of this section, or in the terms of any decree of
4 divorce or annulment or any court order or court-approved property
5 settlement agreement incident to such a decree. The amount of the
6 annuity payable under this section to such a former spouse shall not
7 exceed the difference between (1) the pension to which the former
8 spouse would be entitled under section 26 of P.L.1967, c.250
9 (C.43:16A-12.1) if the person were the widow or widower of the
10 deceased retirant, and (2) the amount of any annuity payable under this
11 subsection to any other former spouse of the decedent pursuant to an
12 election previously made under that subsection b. or under such a
13 decree, court order, or court-approved property settlement agreement
14 previously issued.

15 b. A member of or retirant from the retirement system who has a
16 former spouse may elect to receive, in lieu of any retirement allowance
17 to which that member is entitled under the provisions of P.L.1944,
18 c.255 (C.43:16A-1 et seq.), a reduced allowance payable throughout
19 the life of the member in order to provide a survivor annuity for that
20 former spouse under subsection a. of this section. The member or
21 retirant shall make such an election by filing notice thereof with the
22 board of trustees of the retirement system, which notice shall be in a
23 form to be prescribed by the director of the Division of Pensions and
24 Benefits. An election under this subsection by a member shall be made
25 at the time of retirement. An election hereunder by a retirant shall be
26 made within two years after the date on which the marriage of the
27 former spouse to the retirant is dissolved.

28 An election under this subsection shall be ineffective (1) to the
29 extent that it conflicts with a decree, order or agreement referred to
30 under subsection a. of this section which was issued or entered into,
31 as appropriate, before the date of that election, or would cause the
32 total of survivor annuities under this section to exceed the amount of
33 the pension to which a widow or widower of the retirant would be
34 entitled under the provisions of section 26 of P.L.1967, c.250
35 (C.43:16A-12.1), or (2) in the case of a retirant who is married, unless
36 it is made with the written consent of the spouse of the retirant.

37 c. (1) The retirement allowance under P.L.1944, c.255 (C.43:16A-
38 1 et seq.) of any retirant from the retirement system who has a former
39 spouse who is entitled to a survivor annuity pursuant to the provisions
40 of subsection a. of this section shall be actuarially reduced by an
41 amount as the actuary determines to be required to provide the
42 survivor annuity benefit.

43 (2) In the case of a retirant whose former spouse is entitled to such
44 a survivor benefit pursuant to an election under subsection b. of this
45 section or under the terms of a decree, court order or agreement,
46 which election, decree, order or agreement took effect after payment

1 to the retirant of the first installment of the retirement allowance, the
2 retirant shall, in addition to the reduction as provided under paragraph
3 (1) of this subsection, be liable for repayment to the retirement system
4 within two years after such effective date of the amount determined by
5 the Division of Pensions and Benefits as required to reflect the amount
6 by which the retirement allowance of the retirant would have been
7 reduced if the election had been continuously in effect since the date
8 of the member's retirement, including regular interest. The amount of
9 the payment shall be deducted from the retirement allowance payable
10 to the retirant, but in no event shall the amount of any such deduction
11 exceed 50% of the amount of that allowance. The retirant shall be
12 deemed to have consented to the deduction.

13 d. Any reduction in a retirement allowance for the purpose of
14 providing to a former spouse a survivor annuity under this section
15 shall be terminated if the former spouse remarries or dies.

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17 3. (New section) a. A former spouse of a retirant from the
18 retirement system who died on or before the 60th day following the
19 effective date of this act shall be entitled to a survivor annuity if (1)
20 the former spouse's marriage to the retirant was dissolved on or after
21 January 1, 1987, (2) the former spouse was married to the retirant for
22 a period of at least 10 years during the active service of the retirant as
23 a member of the retirement system, (3) the former spouse is not
24 entitled to any other retirement or survivor benefit from any pension
25 fund or retirement system established under the laws of this State, (4)
26 the former spouse has not remarried since the dissolution of the
27 marriage to the retirant, (5) the former spouse files an application for
28 the survivor annuity with the board of trustees of the retirement
29 system within one year after the effective date of this act, and (6) the
30 former spouse is at least 50 years of age at the time that application is
31 filed. The survivor annuity shall commence on the first day of the
32 second month following the month in which the retirant dies or the
33 former spouse's application under this subsection is received by the
34 board, whichever occurs later.

35 b. The amount of the survivor annuity payable under this
36 subsection shall be one-half of the retirement allowance, exclusive of
37 any adjustment under the "Pension Adjustment Act", P.L.1958, c.143
38 (C.43:3B-1 et seq.), to which the retirant was entitled, but shall not
39 exceed the amount of the pension to which the former spouse would
40 be entitled under section 26 of P.L.1967, c.250 (C.43:16A-12.1) if the
41 former spouse were the widow or widower of the retirant.

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43 4. This act shall take effect immediately.

STATEMENT

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This bill provides for payment by the Police and Firemen's Retirement System (PFRS) to a former spouse of a PFRS retirant of a survivor's annuity. The amount of the annuity, or the total amount of all such annuities, with respect to the former spouse or spouses of a particular retirant could not exceed the amount of the pension to which a surviving spouse of that retirant would be entitled. Eligibility of a former spouse or spouses of a retirant for the survivor annuity would not affect the eligibility of a surviving current spouse of the retirant for, or the amount of, the widow or widower's pension already provided under the PFRS statute.

The legislation authorizes the PFRS to pay a former spouse survivor benefit upon the election of the PFRS member at or after retirement, or under the terms of a decree of divorce or annulment or court order or court-approved property settlement agreement incident to such a decree. To qualify for the benefit, the former spouse would be required to have been married to the retirant for at least 10 years. The cost of the benefit would be financed through an actuarial reduction of the retirement allowance payable to the retirant.

In addition, the legislation provides limited retroactive relief to the surviving former spouse of a PFRS retirant who shall have died before, or within 60 days of, the date on which the legislation takes effect as law, provided (1) the former spouse was married to the retirant for at least 10 years, (2) the marriage was dissolved on or after January 1, 1987, (3) the former spouse is not entitled to any other retirement or survivor benefit from a New Jersey public pension fund or retirement system, (4) the former spouse has not remarried since the dissolution of the marriage to the retirant, (5) the former spouse files an application for the survivor annuity with the board of trustees of the retirement system within one year after the effective date of the legislation, and (6) the former spouse is at least 50 years of age at the time that application is filed.

This legislation is modelled on similar provisions (5 U.S.C.A. §§8339 and 8341) of the federal "Civil Service Retirement Spouse Equity Act of 1984", P.L.98-615, 98 Stat. 3195.

Provides for payment of annuity to former spouse of deceased PFRS retirant in certain cases.