

[Second Reprint]

ASSEMBLY, No. 1032

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblyman SEAN T. KEAN

District 30 (Monmouth and Ocean)

Assemblyman JON M. BRAMNICK

District 21 (Morris, Somerset and Union)

Co-Sponsored by:

Assemblyman Benson

SYNOPSIS

Reopens Workers Compensation Judges Part of PERS and requires Workers' Compensation Judges to be enrolled in PERS.

CURRENT VERSION OF TEXT

As amended by the General Assembly on May 20, 2021.



(Sponsorship Updated As Of: 5/18/2021)

1 AN ACT concerning enrollment of workers' compensation judges in
 2 the Public Employees' Retirement System and amending
 3 ²[P.L.2007, c.92 and amending and supplementing P.L.1954,
 4 c.84 (C.43:15A-1 et seq.)] various parts of the statutory law².

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

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

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

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

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

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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AJU committee amendments adopted March 15, 2021.

²Assembly floor amendments adopted May 20, 2021.

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

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

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

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

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

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

47 (2) the person is, on the basis of service in that employment,
48 office, or position, eligible for membership or enrolled as a member

1 of another State or locally-administered pension fund or retirement
2 system established under the laws of this State including the
3 Alternate Benefit Program, except as otherwise specifically
4 provided in subsection a. of this section;

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

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

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

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

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

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

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

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

1 State or other employer after such date, including a temporary
2 employee with at least one year's continuous service. The
3 membership of the retirement system shall not include those
4 persons appointed to serve as described in paragraphs (2) and (3) of
5 subsection a. of section 2 of P.L.2007, c.92 (C.43:15C-2), except a
6 person who was a member of the retirement system prior to the
7 effective date of sections 1 through 19 of P.L.2007, c.92 (C.43:15C-
8 1 through C.43:15C-15, C.43:3C-9, C.43:15A-7, C.43:15A-75 and
9 C.43:15A-135) and continuously thereafter. The membership of the
10 retirement system shall include Workers' Compensation Judges of
11 the Division of Workers' Compensation in the Department of Labor
12 and Workforce Development; and

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

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

47 (1) Before or on November 1, 2008, no person in employment,
48 office or position, for which the annual salary or remuneration is

1 fixed at less than \$1,500.00, shall be eligible to become a member
2 of the retirement system.

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

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

24 (4) After the effective date of P.L.2010, c.1, no person in an
25 employment, office or position of the State, or an agency, board,
26 commission, authority or instrumentality of the State, for which the
27 hours of work are fixed at fewer than 35 per week shall be eligible
28 to become a member of the retirement system; and no person in
29 employment, office or position with a political subdivision of the
30 State, or an agency, board, commission, authority or instrumentality
31 of a political subdivision of the State, for which the hours of work
32 are fixed by an ordinance or resolution of the political subdivision,
33 or agency, board, commission, authority or instrumentality thereof,
34 at fewer than 32 per week shall be eligible to become a member of
35 the retirement system. Any hour or part thereof, during which the
36 person does not work due to the person's participation in a
37 voluntary or mandatory furlough program shall not be deducted in
38 determining if a person's hours of work are fixed at fewer than 35 or
39 32 per week, as appropriate, for the purpose of eligibility.

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

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

1 act. Each member whose accumulated deductions are so transferred
2 shall receive the same prior service credit, pension credit, and
3 membership credit in the retirement system as he previously had in
4 the former "State Employees' Retirement System" and shall have
5 such accumulated deductions credited to his individual account in
6 the Annuity Savings Fund. Any outstanding obligations of such
7 member shall be continued.

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

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

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

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

1 Article I of the compact creating the Delaware River Port Authority
2 (R.S.32:3-2), as defined in section 3 of P.L.1997, c.150 (C.34:1B-
3 146), shall be eligible to continue membership while an employee
4 of such subsidiary or other corporation.

5 k. An employee of a renaissance school project established
6 pursuant to P.L.2011, c.176 (C.18A:36C-1 et seq.) upon
7 commencement of employment.
8 (cf: P.L.2018, c.129, s.2)
9

10 ²§3. (New section) a. Notwithstanding the provisions of
11 any other law to the contrary, Workers' Compensation Judges of the
12 Division of Workers' Compensation in the Department of Labor and
13 Workforce Development appointed on or after the effective date of
14 P.L. , c. (pending before the Legislature as this bill) shall be
15 enrolled in the Public Employees' Retirement System. Membership
16 in the Public Employees' Retirement System shall be a condition of
17 employment for service as a judge of compensation for each judge
18 enrolled after that effective date.

19 Notwithstanding enrollment in the system, the laws and
20 regulations governing the system shall not apply to workers'
21 compensation judges covered by this section. Those judges shall be
22 subject to and governed by the laws and regulation of the Judicial
23 Retirement System, established pursuant to P.L.1973, c.140
24 (C.43:6A1 et seq.), in the same manner as a judge enrolled in the
25 Judicial Retirement System. For all purposes, those workers'
26 compensation judges covered by this section shall be deemed
27 members of the Judicial Retirement System but for enrollment in
28 the Public Employees' Retirement System.

29 b. A workers' compensation judge who is a participant in the
30 Defined Contribution Retirement Program, established pursuant to
31 P.L.2007, c.92 (C.43:15C-1 et seq.), on the effective date of P.L. ,
32 c. (pending before the Legislature as this bill) or a participant in
33 the Workers' Compensation Judges Part of the Public Employees'
34 Retirement System on the effective date of P.L. , c. (pending
35 before the Legislature as this bill), shall be transferred out of the
36 program or the part within 90 days following that effective date and
37 covered by the provisions of section a. of this section. A judge may
38 elect not to be transferred and covered by the provisions of
39 subsection a. of this section by filing a statement within 30 days
40 following that effective date with the Division of Pensions and
41 Benefits in the Department of the Treasury waiving all rights and
42 benefits which would otherwise be provided in accordance with
43 subsection a. of this section.

44 The account in the program or the part for each judge transferred
45 and covered by the provisions of subsection a. of this section shall
46 be adjusted to reflect the transfer and each judge shall be given
47 service credit for the provisions of subsection a. of this section for
48 service starting on the judge's date of appointment.

1 The actuary for the Public Employees' Retirement System, in
2 consultation with the actuary for the Judicial Retirement System,
3 shall determine the unfunded accrued liability resulting from the
4 transfer and coverage of judges under subsection a. of this section
5 in the same manner provided for the determination of the unfunded
6 accrued liability of the retirement system by section 24 of P.L.1954,
7 c.84 (C.43:15A-24). This unfunded accrued liability shall be
8 amortized in the manner provided by section 24 over an
9 amortization period of 20 years. Accrued liability and normal
10 contributions for workers compensation judges shall be paid by
11 transfers from the Second Injury Fund as provided by subsection j.
12 of R.S.34:15-94. The Commissioner of Labor and Workforce
13 Development may, with the authorization of and appropriation by
14 the Legislature, pay the unfunded accrued liability in a lump sum or
15 over a period of time shorter than 20 years.

16 ¹The value of the account of a workers' compensation judge who
17 is transferred out of the program shall be transferred from the
18 Defined Contribution Retirement Program to the Public Employees'
19 Retirement System in accordance with the rollover requirements of
20 the federal Internal Revenue Code and relevant regulations as a
21 qualified rollover distribution from one qualified retirement plan to
22 another qualified retirement plan, and shall not be a taxable
23 distribution to the workers' compensation judge. The transfer shall
24 be in accordance with a rule, method, or process that shall not result
25 in the transfer being deemed a distribution includible in federal
26 gross income for the workers' compensation judge.¹²

27
28 ²3. Section 2 of P.L.2001, c.259 (C.43:15A-143) is amended to
29 read as follows:

30 2. a. Notwithstanding the provisions of any other law, workers
31 compensation judges shall be members of the Workers Compensation
32 Judges Part, established pursuant to this act, P.L.2001, c.259
33 (C.43:15A-142 et seq.), of the Public Employees' Retirement System,
34 established pursuant to P.L.1954, c.84 (C.43:15A-1 et seq.), **【**if
35 enrolled in the part prior to the effective date of P.L.2007, c.92
36 (C.43:15C-1 et al.)**】** and shall be subject to the same membership and
37 benefit provisions as State employees, except as provided by P.L.2001,
38 c.259. Membership in the retirement system shall be a condition of
39 employment for service as a judge of compensation **【**for a judge
40 enrolled in the part prior to the effective date of P.L.2007, c.92
41 (C.43:15C-1 et al.)**】**.

42 A workers compensation judge who becomes a member of the
43 retirement system on or after the effective date of P.L.2007, c.92
44 (C.43:15C-1 et al.) shall not be a member of the Workers
45 Compensation Judges Part and the provisions of P.L.2001, c.259
46 (C.43:15A-142 et seq.) shall not apply to such judge or the judge's
47 survivors**】**.

1 b. A Workers' Compensation Judge of the Division of Workers'
2 Compensation in the Department of Labor and Workforce
3 Development who is a participant in the Defined Contribution
4 Retirement Program, established pursuant to P.L.2007, c.92
5 (C.43:15C-1 et seq.), on the effective date of P.L. , c. (pending
6 before the Legislature as this bill) shall be transferred and enrolled in
7 the Workers' Compensation Judges Part of the Public Employees'
8 Retirement System within 90 days following that effective date. The
9 account in the Defined Contribution Retirement Program or the Public
10 Employees' Retirement Program for each judge transferred and
11 enrolled shall be transferred to the Workers' Compensation Judges
12 Part of the Public Employees' Retirement System and each judge shall
13 be given service credit in the Workers' Compensation Judges Part of
14 the Public Employees' Retirement System for service starting on the
15 judge's date of appointment. The unfunded liability for the benefits
16 provided by the transfer and enrollment of such judges shall be paid by
17 transfers from the Second Injury Fund as provided by section 13 of
18 P.L.2001, c.259 (C.43:15A-154) to the Workers' Compensation
19 Judges Part of the Public Employees' Retirement System.

20 Service credit transferred from a participant in the Defined
21 Contribution Retirement Program under this subsection shall be
22 recognized as service credit to determine eligibility for employer-paid
23 health care benefits in retirement pursuant to P.L.1961, c.49 (C.52:14-
24 17.25 et seq.), or any other law, rule or regulation.

25 The actuary for the Public Employees' Retirement System shall
26 determine the unfunded accrued liability resulting from the transfer
27 and coverage of judges under this subsection a. of this section in the
28 same manner provided for the determination of the unfunded accrued
29 liability of the retirement system by section 24 of P.L.1954, c.84
30 (C.43:15A-24). This unfunded accrued liability shall be amortized in
31 the manner provided by section 24 over an amortization period of 20
32 years. Accrued liability and normal contributions for workers
33 compensation judges shall be paid by transfers from the Second Injury
34 Fund as provided by subsection j. of R.S.34:15-94. The Commissioner
35 of Labor and Workforce Development may, with the authorization of
36 and appropriation by the Legislature, pay the unfunded accrued
37 liability in a lump sum or over a period of time shorter than 20 years.

38 c. The value of the account of a workers' compensation judge who
39 is transferred out of the program shall be transferred from the Defined
40 Contribution Retirement Program to the Public Employees'
41 Retirement System in accordance with the rollover requirements of the
42 federal Internal Revenue Code and relevant regulations as a qualified
43 rollover distribution from one qualified retirement plan to another
44 qualified retirement plan, and shall not be a taxable distribution to the
45 workers' compensation judge. The transfer shall be in accordance
46 with a rule, method, or process that shall not result in the transfer
47 being deemed a distribution includible in federal gross income for the
48 workers' compensation judge.

1 d. A workers compensation judge who retired on or after May 20,
2 2021 and who was not transferred and enrollment pursuant to this
3 subsection shall be retroactively transferred and enrolled in the
4 Workers Compensation Judges Part of the Public Employees'
5 Retirement System pursuant to this section and the retirement
6 allowance calculated and paid from the date of retirement based on
7 that enrollment in Workers Compensation Judges Part of the Public
8 Employees' Retirement System, provided the retiree complies with
9 any terms and conditions for that transfer, enrollment, and calculation
10 as required by the Division of Pensions and Benefits and the board of
11 trustees of the Public Employees' Retirement System.²
12 (cf: P.L.2007, c.92, s.22)
13
14 4. This act shall take effect immediately.