SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 2100

STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED AUGUST 23, 2010

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SYNOPSIS
Prohibits new employees of certain organizations from enrolling in State-
administered retirement system or health care plan of public employer.

CURRENT VERSION OF TEXT
Substitute as adopted by the Senate Budget and Appropriations Committee.

(Sponsorship Updated As Of: 1/10/2012)
AN ACT concerning eligibility for enrollment in a State-administered retirement system and in a health care benefits plan or program by certain employees and amending various parts of the statutory law.

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

1. N.J.S.18A:6-48 is amended to read as follows:

18A:6-48. a. The association may select such officers as may be necessary for the transaction of its business.

b. A person commencing service on or after the effective date of P.L. , c.   (pending before the Legislature as this bill) as an officer or employee of the association shall not be eligible on the basis of that service to enroll in a State-administered retirement system or in a health care benefits plan or program provided by the State or by a political subdivision of this State, as an employer, for its officers and employees. An officer or employee enrolled in a retirement system or health care benefits plan or program as of that effective date shall be eligible to continue in the retirement system or plan or program under the terms and conditions of the person’s enrollment if the person continues the service without a break.

(cf:  P.L.1970, c.104, s.4)

2. Section 3 of P.L.1983, c.108 (C.18A:18B-3) is amended to read as follows:

3. a. Any two or more boards of education may form and become members of a school board insurance group. A board of education may take this action by resolution of the board. Through membership in a school board insurance group, a board of education may participate in any joint self-insurance fund or funds, risk management programs or related services offered or provided by the group. The group shall have the power to establish a fund or funds for coverages authorized in section 2 of this act and to jointly purchase insurance or coverages under a master policy or contract of insurance for participating members. The group shall have the power to take other actions necessary to developing, administering, and providing risk management programs, joint self-insurance funds, joint insurance purchases, and related services.

b. The bylaws of the school board insurance group shall provide that any board of education may join the group, provided it agrees to comply with the standards for membership, including risk management programs, which shall be established by the group, and may be a member as long as it complies with the standards for membership.

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.
c. A school board insurance group may sue or be sued and shall appoint a natural person residing in this State or a corporation authorized to do business in this State as its agent for service of process. The group shall notify the commissioner of the appointment.

d. A school board insurance group is not an insurance company or an insurer under the laws of this State and the development, administration or provision by a group of joint self-insurance fund or funds, risk management programs and related services does not constitute the transaction of insurance nor doing an insurance business. A group shall not be subject to the provisions of Title 17, Subtitle 3, Insurance, of the Revised Statutes.

e. A person commencing service on or after the effective date of P.L. , c. (pending before the Legislature as this bill) as an officer or employee of a school board insurance group shall not be eligible on the basis of that service to enroll in a State-administered retirement system or in a health care benefits plan or program provided by the State or by a political subdivision of this State, as an employer, for its officers and employees. An officer or employee enrolled in a retirement system or health care benefits plan or program as of that effective date shall be eligible to continue in the retirement system or plan or program under the terms and conditions of the person’s enrollment if the person continues the service without a break.

(cf: P.L.1983, c.108, s.3)

3. Section 3 of P.L.1985, c.204 (C.18A:64A-25.35) is amended to read as follows:

a. Any two or more county colleges may form and become members of a county college insurance group. A county college may take this action by resolution of the board of trustees of the county college. Through membership in a county college insurance group, a county college may participate in any joint self-insurance fund or funds, risk management programs or related services offered or provided by the group. The group shall have the power to establish a fund or funds for coverages authorized in section 2 of this act and to jointly purchase insurance or coverages under a master policy or contract of insurance for participating members. The group shall have the power to take other actions necessary to developing, administering, and providing risk management programs, joint self-insurance funds, joint insurance purchases, and related services.

b. The bylaws of the county college insurance group shall provide that any county college may join the group; provided it agrees to comply with the standards for membership, including risk management programs, which shall be established by the group, and
may be a member as long as it complies with the standards for membership.

c. A county college insurance group may sue or be sued and shall appoint a natural person residing in this State or a corporation authorized to do business in this State as its agent for service of process. The group shall notify the commissioner of the appointment.

d. A county college insurance group is not an insurance company or an insurer under the laws of this State and the development, administration or provision by a group of joint self-insurance fund or funds, risk management programs and related services does not constitute the transaction of insurance or doing an insurance business. A group shall not be subject to the provisions of Title 17, Subtitle 3 of the Revised Statutes.

e. A person commencing service on or after the effective date of P.L. , c. (pending before the Legislature as this bill) as an officer or employee of a county college insurance group shall not be eligible on the basis of that service to enroll in a State-administered retirement system or in a health care benefits plan or program provided by the State or by a political subdivision of this State, as an employer, for its officers and employees. An officer or employee enrolled in a retirement system or health care benefits plan or program as of that effective date shall be eligible to continue in the retirement system or plan or program under the terms and conditions of the person’s enrollment if the person continues the service without a break.

(cf: P.L.1985, c.204, s.3)

4. R.S.40:23-6 is amended to read as follows:

40:23-6. a. A county may agree to contribute and expend in any year, for membership in and the service of the New Jersey Association of Counties and the County Officers Association of New Jersey, such sums as said county may determine.

b. A person commencing service on or after the effective date of P.L. , c. (pending before the Legislature as this bill) as an officer or employee of the New Jersey Association of Counties shall not be eligible on the basis of that service to enroll in a State-administered retirement system or in a health care benefits plan or program provided by the State or by a political subdivision of this State, as an employer, for its officers and employees. An officer or employee enrolled in a retirement system or health care benefits plan or program as of that effective date shall be eligible to continue in the retirement system or plan or program under the terms and conditions of the person’s enrollment if the person continues the service without a break.

(cf: P.L.1979, c.159, s.1)
5. Section 3 of P.L.1983, c.372 (C.40A:10-38) is amended to read as follows:

3. a. The commissioners of a joint insurance fund shall have the powers and authority granted to commissioners of individual local insurance funds under the provisions of subsections a., b., c., and e. of N.J.S.40A:10-10.

b. The commissioners may invest and reinvest the funds, including workers' compensation funds, as authorized under the provisions of subsection b. of N.J.S.40A:10-10. The commissioners may, subject to the cash management plan of the joint insurance fund adopted pursuant to N.J.S.40A:5-14, delegate any of the functions, powers and duties relating to the investment and reinvestment of these funds, including the purchase, sale or exchange of any investments, securities or funds to an investment or asset manager. Any transfer of investment power and duties made pursuant to this subsection shall be detailed in a written contract for services between the joint insurance fund and an investment or asset manager. The contract shall be filed with the Commissioner of Banking and Insurance and the Commissioner of Community Affairs. Compensation under such an arrangement shall not be based upon commissions related to the purchase, sale or exchange of any investments, securities or funds.

c. The commissioners may transfer moneys held in the fund to the Director of the Division of Investment in the Department of the Treasury for investment on behalf of the fund, pursuant to the written directions of the commissioners, signed by an authorized officer of the joint insurance fund, or any investment or asset manager designated by them. The commissioners shall provide a written notice to the director detailing the extent of the authority delegated to the investment or asset manager so designated to act on behalf of the joint insurance fund. Moneys transferred to the director for investment shall be invested subject to section 8 of P.L.1977, c.396 (C.40A:5-15.1), and in accordance with the standards governing the investment of other funds which are managed under the rules and regulations of the State Investment Council. In addition to the types of securities in which the joint insurance fund may invest pursuant to section 8 of P.L.1977, c.396 (C.40A:5-15.1), a joint insurance fund may invest in debt obligations of federal agencies or government corporations with maturities not to exceed 10 years from the date of purchase, excluding mortgage backed or derivative obligations, provided that the investments are purchased through the Division of Investment and are invested consistent with the rules and regulations of the State Investment Council.

d. Moneys transferred to the director for investment may not thereafter be withdrawn except: (1) pursuant to the written directions of the commissioners signed by an authorized officer of
the joint insurance fund, or any investment or asset manager
designated by them; (2) upon withdrawal or expulsion of a member
local unit from the fund; (3) termination of the fund; or (4) in
specific amounts in payment of specific claims, administrative
expenses or member dividends upon affidavit of the director or
other chief executive officer of the joint insurance fund.

e. The commissioners or the executive board, as the case may
be, of any joint insurance fund established pursuant to the
provisions of this act shall be subject to and operate in compliance
with the provisions of the "Local Fiscal Affairs Law" (N.J.S.40A:5-
1 et seq.), the "Local Public Contracts Law," P.L.1971, c.198
(C.40A:11-1 et seq.) and such other rules and regulations as govern
the custody, investment and expenditure of public funds by local
units.

f. A person commencing service on or after the effective date
of P.L. , c. (pending before the Legislature as this bill) as an
officer or employee of a joint insurance fund shall not be eligible on
the basis of that service to enroll in a State-administered retirement
system or in a health care benefits plan or program provided by the
State or by a political subdivision of this State, as an employer, for
its officers and employees. An officer or employee enrolled in a
retirement system or health care benefits plan or program as of that
effective date shall be eligible to continue in the retirement system
or plan or program under the terms and conditions of the person’s
enrollment if the person continues the service without a break.
(cf: P.L.1995, c.374, s.1)

6. R.S.40:48-22 is amended to read as follows:
40:48-22. a. Any municipality, by resolution of its governing
body, may join with any other municipality or municipalities in the
formation of an organization of municipalities, for the purpose of
securing concerted action in behalf of such measures as the
organization shall determine to be in the common interest of the
organizing municipalities. The organization may meet at such times
and places as it may determine for the discussion of measures
deemed to affect the welfare of the several municipalities members
thereof; maintain an office, in charge of a secretary or other officer
or agent appointed by the organization; circulate literature and
information among the municipal officers of this state, and may
generally take such action as the organization in meeting shall
determine to be wise in support of such measures as it deems to be
in the interest of the several municipalities members thereof.

b. A person commencing service on or after the effective date
of P.L. , c. (pending before the Legislature as this bill) as an
officer or employee of an organization of municipalities shall not be
eligible on the basis of that service to enroll in a State-administered
retirement system or in a health care benefits plan or program
provided by the State or by a political subdivision of this State, as
an employer, for its officers and employees. An officer or
employee enrolled in a retirement system or health care benefits
plan or program as of that effective date shall be eligible to
continue in the retirement system or plan or program under the
terms and conditions of the person’s enrollment if the person
continues the service without a break.
(cf: R.S.40:48-22)

7. Section 4 of P.L.1972, c. 134 (C.40:56-68) is amended to
read as follows:

4. a. A pedestrian mall ordinance may be adopted if the
governing body of any municipality finds: (1) a street or part
thereof is not a part of any State highway, is located primarily in a
business district, is improved to its maximum feasible width with
regard to adjoining buildings and improvements, (2) reasonably
convenient alternate routes to other parts of the municipality and
State exist for private vehicles, (3) continued unlimited use of the
street or part thereof by private vehicles may constitute a hazard to
the health and safety of pedestrians, (4) abutting properties can
reasonably and adequately be provided with emergency vehicular
services and receive and deliver merchandise and materials from
other streets and alleys or by provisions for limited use of the
streets by emergency vehicles and carriers of such merchandise and
materials, and (5) it is in the best interests of the municipality and
the public and of benefit to adjacent properties to use such street
primarily for pedestrian purposes, and that pedestrian use is
determined to be the highest and best use of such street or part
thereof.

b. A special improvement district ordinance may be adopted if
the governing body of a municipality finds: (1) that an area within
the municipality, as described by lot and block numbers and by
street addresses in the enabling ordinance, would benefit from being
designated as a special improvement district; (2) that a district
management corporation would provide administrative and other
services to benefit the businesses, employees, residents and
consumers in the special improvement district; (3) that a special
assessment shall be imposed and collected by the municipality with
the regular property tax payment or payment in lieu of taxes or
otherwise, and that all or a portion of these payments shall be
transferred to the district management corporation to effectuate the
purposes of this amendatory and supplementary act and to exercise
the powers given to it by municipal ordinance; and (4) that it is in
the best interests of the municipality and the public to create a
special improvement district and to designate a district management
corporation; except that no district management corporation shall be
designated to receive any funds or to exercise any powers pursuant
to the provisions of this amendatory and supplementary act, unless
the board of directors of that corporation shall include at least one
member of the governing body of the municipality.

A person commencing service on or after the effective date of
P.L., c. (pending before the Legislature as this bill) as an officer
or employee of a district management corporation shall not be
eligible on the basis of that service to enroll in a State-administered
retirement system or in a health care benefits plan or program
provided by the State or by a political subdivision of this State, as
an employer, for its officers and employees. An officer or
employee enrolled in a retirement system or health care benefits
plan or program as of that effective date shall be eligible to
continue in the retirement system or plan or program under the
terms and conditions of the person’s enrollment if the person
continues the service without a break.

(cf: P.L.1984, c.151, s.5)

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

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

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

b. Any person becoming an employee of the State or other
employer after January 2, 1955 and every veteran, other than a
retired member who returns to service pursuant to subsection b. of
section 27 of P.L.1966, c.217 (C.43:15A-57.2) and other than those
whose appointments are seasonal, becoming an employee of the
State or other employer after such date, including a temporary
employee with at least one year's continuous service. The
membership of the retirement system shall not include those
persons appointed to serve as described in paragraphs (2) and (3) of
subsection a. of section 2 of P.L.2007, c.92 (C.43:15C-2), except a
person who was a member of the retirement system prior to the
effective date of sections 1 through 19 of P.L.2007, c.92 (C.43:15C-
1 through C.43:15C-15, C.43:3C-9, C.43:15A-7, C.43:15A-75 and
C.43:15A-135) and continuously thereafter; and

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

d. Membership in the retirement system shall be optional for
elected officials other than veterans, and for school crossing guards,
who having become eligible for benefits under other pension
systems are so employed on a part-time basis. Elected officials commencing service on or after the effective date of sections 1 through 19 of P.L.2007, c.92 (C.43:15C-1 through C.43:15C-15, C.43:3C-9, C.43:15A-7, C.43:15A-75 and C.43:15A-135) shall not be eligible for membership in the retirement system based on service in the elective public office, except that an elected official enrolled in the retirement system as of that effective date who continues to hold that elective public office without a break in service shall be eligible to continue membership in the retirement system under the terms and conditions of enrollment. Service in the Legislature shall be considered a single elective public office. Any part-time school crossing guard who is eligible for benefits under any other pension system and who was hired as a part-time school crossing guard prior to March 4, 1976, may at any time terminate his membership in the retirement system by making an application in writing to the board of trustees of the retirement system. Upon receiving such application, the board of trustees shall terminate his enrollment in the system and direct the employer to cease accepting contributions from the member or deducting from the compensation paid to the member. State employees who become members of any other retirement system supported wholly or partly by the State as a condition of employment shall not be eligible for membership in this retirement system. Notwithstanding any other law to the contrary, all other persons accepting employment in the service of the State shall be required to enroll in the retirement system as a condition of their employment, regardless of age. Before or on the effective date of P.L.2008, c.89, no person in employment, office or position, for which the annual salary or remuneration is fixed at less than $1,500.00, shall be eligible to become a member of the retirement system. After the effective date of P.L.2008, c.89, a person who was a member of the retirement system on that effective date and continuously thereafter shall be eligible to be a member of the retirement system in employment, office or position, for which the annual salary or remuneration is fixed at $1,500 or more. After the effective date of P.L.2008, c.89, a person who was not a member of the retirement system on that effective date, or who was a member of the retirement system on that effective date but not continuously thereafter, and who is in employment, office or position, for which the annual salary or remuneration is certified by the applicable public entity at $7,500 or more, shall be eligible to become a member of the retirement system. The $7,500 minimum annual salary or remuneration amount shall be adjusted annually by the Director of the Division of Pensions and Benefits, by regulation, in accordance with changes in the Consumer Price Index but by no more than 4 percent. "Consumer Price Index" means the average of the annual increase, expressed as a percentage, in the consumer price index for all urban consumers in the New York City and
Philadelphia metropolitan statistical areas during the preceding
calendar year as reported by the United States Department of Labor.

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

f. The accumulated deductions of the members of the former
"State Employees' Retirement System" which have been set aside in
a trust fund designated as Fund A as provided in section 5 of this
act and which have not been claimed for refund prior to February 1,
1955 shall be transferred from said Fund A to the Annuity Savings
Fund of the Retirement System, provided for in section 25 of this
act. Each member whose accumulated deductions are so transferred
shall receive the same prior service credit, pension credit, and
membership credit in the retirement system as he previously had in
the former "State Employees' Retirement System" and shall have
such accumulated deductions credited to his individual account in
the Annuity Savings Fund. Any outstanding obligations of such
member shall be continued.

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

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

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

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

k. An officer or employee of a nonprofit organization that is an
educational foundation, or substantially similar entity, created by or
on behalf of an institution of higher education in this State for the
purpose of receiving donations shall not be eligible for membership
in the system on the basis of that employment.

(cf: P.L.2008, c.89, s.7)

9. Section 65 of P.L.1954, c.84 (C.43:15A-65) is amended to
read as follows:

65. (a) All employees of any public agency or organization of
this State, which employs persons engaged in service to the public,
shall be eligible to participate in the Public Employees' Retirement
System; provided the employer consents thereto by resolution and
files a certified copy of such resolution with the board of trustees of
the Public Employees' Retirement System and the board of trustees
approves thereof by resolution. Such organization shall be referred
to in this act as the employer. If the participation of such
employees is so approved then the employer shall contribute to the
contingent reserve fund on account of its members at the same rate
per centum as would be paid by employers other than the State.

(b) Notwithstanding the provisions of subsection (a) of this
section, every person becoming an employee of a public agency or
organization of this State, which employs persons engaged in
service to the public, after June 30, 1966, who is not eligible to
become a member of any other retirement system, shall be required
to participate in the Public Employees' Retirement System.
Notwithstanding the provisions of subsection (a) of this section,
membership in the Public Employees' Retirement System shall be
optional with any person in the employ of any such public agency
or organization on June 30, 1966, provided such person is not
required to be a member pursuant to another provision of this act,
and provided further that such person is not eligible to be a member of any other retirement system. The provisions of this subsection shall not apply to any person whose position is temporary or seasonal, nor to any person in office, position or employment for which the annual salary or remuneration is fixed at less than that which is required for membership pursuant to section 7 of P.L.1954, c.84 (C.43:15A-7) as applicable to the member, nor to any person whose position is not covered by the old-age and survivors' insurance provisions of the federal Social Security Act. The public agency or organization employing any such person who becomes a member of the retirement system pursuant to this subsection shall contribute to the contingent reserve fund on account of such employees at the same rate per centum as would be paid by employers other than the State.

(c) A person commencing service on or after the effective date of P.L. , c. (pending before the Legislature as this bill) as an officer or employee of an organization or association of counties or municipalities, such as the New Jersey State League of Municipalities and the New Jersey Association of Counties, or a substantially similar successor organization or association, or a joint insurance group or fund for political subdivisions of this State, shall not be eligible for membership in the retirement system based on that service. An officer or employee enrolled in the retirement system as of that effective date shall be eligible to continue in the retirement system under the terms and conditions of the person’s enrollment if the person continues the service without a break.

(cf: P.L.2008, c.89, s.9)

10. Section 71 of P.L.1954, c.84 (C.43:15A-71) is amended to read as follows:

71. The words "public agency or organization" as used in this act shall be construed to mean and include any agency or organization which operates public works or is engaged in service to the public for 1 or more municipalities, local boards of health, or counties, and whose revenue is derived from other than State funds, but shall not be construed to include any subdivision of any county, municipality, school district, privately owned public utility or service or any religious, educational or charitable organization.

An organization or association of counties or municipalities, such as the New Jersey State League of Municipalities and the New Jersey Association of Counties, and a substantially similar successor organization or association, and a joint insurance group or fund for political subdivisions of this State shall not be considered a public agency or organization with regard to its officers and employees commencing service on or after the effective date of P.L. , c. (pending before the Legislature as this bill).

(cf: P.L.1954, c.84, s.71)
11. This act shall take effect immediately.

STATEMENT

The purpose of this bill is to eliminate the eligibility for enrollment in any State-administered retirement system, such as the Public Employees’ Retirement System (PERS), for newly hired officers and employees of the New Jersey State League of Municipalities (N.J.S.A.40:48-22), the New Jersey Association of Counties (N.J.S.40:23-6), the New Jersey School Boards Association (N.J.S.A.18A:6-48), any school board insurance group (N.J.S.A.18A:18B-3), any county college joint insurance group (N.J.S.A.18A:64A-25.35), any county or municipal joint insurance fund (N.J.S.A.40A:10-38), and any corporation designated to manage a special improvement district established by municipal ordinance (N.J.S.A.40:56-68). The bill also eliminates the eligibility of these new officers and employees for health care benefits coverage through the State Health Benefits Program or through any health care benefits plan or program provided by the State or a political subdivision of this State, as an employer, for its officers and employees.

A person commencing service on or after the effective date of the bill as an officer or employee of such an organization, association, group, fund, or corporation would no longer be eligible for enrollment, on the basis of that service, in a retirement system or in a health care benefits plan or program for public employees. Officers or employees who are enrolled in a retirement system or in a health care benefits plan or program before the bill’s effective date and who continue to serve that particular organization, association, group, fund or corporation without a break would not be affected by the bill.

In addition, the bill amends the PERS law (N.J.S.A.43:15A-7) to prohibit any officer or employee of a nonprofit organization that is an educational foundation, or substantially similar entity, created by or on behalf of an institution of higher education in this State for the purpose of receiving donations from becoming a member of the PERS on the basis of that employment.