

Memorandum

To: Distribution

From: Henry Matwiejewicz
Director's Office

Date: March 24, 2010

Subject: New Legislation Notice: Chapter 1, P.L. 2010

The following law has been recently enacted:

Chapter 1, P.L. 2010

(Formerly Senate Bill No. 2 (1R))

Sponsors: Scutari/O'Toole/Bateman/Oliver/DeCroce + 22

Date Approved: March 22, 2010.

Effective Date: May 21, 2010.

Division's Section(s) Affected by this Law: The entire Division.

Description:

This law makes a number of changes to different State-administered retirement systems concerning eligibility, the retirement allowance formula, the definition of compensation, the positions eligible for service credit, the non-forfeitable right to a pension, the prosecutor's part of the Public Employees Retirement System (PERS), special retirement under the Police and Firemen's Retirement System (PFRS) and employer contributions to the pension systems.

Specifically, the sections of this new law provide for the following:

Sections 1-7:

These sections shift the basis for membership in the Teachers' Pension and Annuity Fund (TPAF) and the PERS from the amount of compensation to the number of hours worked weekly. After the law's effective date, any person in public employment for which the hours of work are fixed at fewer than 35 per week for State employees, or 32 per week for political subdivision employees, is ineligible to become a new member of PERS and at fewer than 32 hours per week is ineligible to become a new member of TPAF. When determining eligibility, hours during which a person does not work due to the person's participation in a voluntary or mandatory furlough program will not be deducted in determining if a person's hours of work are fixed at fewer than 35 or 32 per week, as appropriate, for the purpose of eligibility.

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Persons ineligible for TPAF or PERS because the hours of work are fewer than required for PERS or TPAF membership may be eligible for enrollment in the Defined Contribution Retirement Program (DCRP), whose membership compensation threshold the law increases to \$5,000 from \$1,500.

Sections 8-13:

In 2001, legislation enhanced the PERS and TPAF benefits for members and retirees by 9 percent with a change of the multiplier from 1/60 to 1/55. Veterans and disability benefits were similarly enhanced. These sections return the multiplier for PERS and TPAF members to 1/60 and the other benefits to their pre-2001 level for persons who become members of PERS or TPAF after the law is enacted, except that it would not apply to veterans and disability benefits.

Sections 7, 14-19, and 22-23:

These sections impose a maximum compensation upon which contributions will be made for PFRS and State Police Retirement System (SPRS) purposes for police officers, firefighters, and State Police officers who become members of those systems on or after the law's effective date. The maximum amount will be the amount of base salary equivalent to the annual maximum wage contribution base for Social Security, pursuant to the federal Insurance Contributions Act. For 2010, that amount is \$106,800. Under this law, a new member for whom this annual maximum will be reached in any year will become a participant of the DCRP with regard to the remaining compensation, unless the member irrevocably elects to waive the participation. For the amount of compensation over the maximum compensation, 5.5 percent will be deducted as a contribution for the purposes of the DCRP. When a PFRS or SPRS member also becomes a participant in the DCRP, the life insurance and disability benefit provisions of that program will be available for that participant.

Sections 20-23:

These sections change the definition of compensation to be used to calculate retirement benefits for members of the PERS, TPAF, PFRS, and SPRS, who become members after the law's effective date, as well as to calculate, in certain cases, pension benefits for surviving family members, when available, and death benefit payments to beneficiaries.

The law provides that a member of the TPAF or PERS who is enrolled in the retirement system after the enactment date, would have the member's retirement allowance calculated using the average annual compensation for the last five years of service, or for any five fiscal years of membership providing the largest possible benefit to the member or the member's beneficiary. A member enrolled in the systems before the effective date would continue to have the member's allowance calculated in the manner provided by existing law using the average annual compensation for the last three years of service or

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for any three fiscal years of membership providing the largest possible benefit to the member or the member's beneficiary.

The law also changes the provisions of the PFRS and SPRS to provide that a member who is enrolled in one of these retirement systems after the effective date would have the member's retirement allowance calculated using the average annual compensation received by the member during any three fiscal years of membership providing the largest possible benefit. A member of the system before the effective date would continue to have the member's allowance calculated in the manner provided by existing law using the compensation in the final year of service.

The law would affect the calculation of a family member's pension benefit, when such a benefit is available, and the amount of a death benefit to a beneficiary whenever current law provides for the use of final compensation or final salary, as those terms are redefined by this law, for the purpose of that calculation. In some instances, the current law provides that the calculations for benefits be based on the compensation or salary received in the last year of service or at the time of death; in these instances, there would be no change as a result of this law.

Sections 24-28:

For the purposes of the PERS and the TPAF, these sections provide that a person would be eligible for membership in the retirement system based upon only one position and requires the retirement system to designate the position providing the higher or highest compensation for the person with such concurrent positions as the basis for eligibility for membership and the compensation base for contributions and pensions calculations. A member who leaves a designated position or acquires a different or additional position will receive a new designation by the retirement system, if appropriate. These provisions will not apply to a person who, on the effective date of the law, is a member of the retirement system and holds more than one office, position, or employment covered by the retirement system with one or more employers, while the member continues to hold without a break in service more than one of those offices, positions, or employment. Under the law, contributions would be deducted only from the member's compensation for the position designated, and for the purpose of calculating the member's retirement benefit, only that compensation would be considered. Service in a position other than the one designated will not be deemed creditable service for the purposes of the retirement system.

Section 29:

This section would remove public employees who become members after the law's effective date of the TPAF, the Judicial Retirement System (JRS), the Prison Officers' Pension Fund, the PERS, the Consolidated Police and Firemen's Pension Fund, the PFRS, and the SPRS from the law that provides vested members with a non-forfeitable right to receive benefits, as provided under the laws governing the retirement system or fund, upon the attainment of five years of service credit in the retirement system or fund.

Section 30:

This section closes the Prosecutors Part of the PERS to new members. The Prosecutors Part was added to PERS in 2001. With the enactment of this law, all prosecutors taking office after the law's effective date will be enrolled in the "regular" PERS system, except that a county prosecutor who is appointed by the Governor with the advice and consent of the Senate will be enrolled in the DCRP. "Prosecutor" is defined in the law as a county prosecutor, first assistant prosecutor or assistant prosecutor; the Director of the Division of Criminal Justice in the Department of Law and Public Safety; an assistant director, deputy director, assistant attorney general or deputy attorney general in that department and assigned to that division; or a criminal investigator in the Division of Criminal Justice in the Department of Law and Public Safety who is not eligible for enrollment in the PFRS.

Section 31-33:

These sections eliminate the provision in the PFRS that would permit a member of the PFRS to retire, at any age after 25 years of service credit, on a special retirement allowance of 70 percent of final compensation after the retirement system reaches a funded level of 104 percent.

Sections 34-37:

These sections provide that, with regard to any provision of this law made applicable to a person who becomes a member of a State-administered retirement system on or after the law's effective date, that provision would not apply to a person who at the time of enrollment in the retirement system on or after that effective date transfers service credit, as permitted, from another State-administered retirement system or fund of which the person was a member immediately prior to the effective and continuously thereafter, but would apply to a former member of the retirement system who has been granted a retirement allowance and is reenrolled in the retirement system on or after that effective date after becoming employed again in a position that makes the person eligible to be a member of the retirement system. These sections are in line with recent prior enactments in this regard.

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Section 38:

This section of the law requires the State, beginning July 1, 2011, to make in full the annual employer's contribution, as computed by the actuaries, to the TPAF, the JRS, the Prison Officers' Pension Fund, the PERS, the Consolidated Police and Firemen's Pension Fund, the PFRS, and the SPRS. The State would be in compliance with this requirement provided the State makes a payment, to each State-administered retirement system or fund, of at least 1/7th of the full contribution, as computed by the actuaries, in the State fiscal year commencing July 1, 2011 and makes a payment in each subsequent fiscal year that increases by at least an additional 1/7th until payment of the full contribution is made in the eighth fiscal year and thereafter. This phase-in is for the purpose of allowing the State to make gradual adjustments to the annual appropriations act.

To view the new law, click here: [Chapter 1, P.L. 2010](#)