43:8B-1

LEGISLATIVE HISTORY CHECKLIST
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(Non-contributory pensions--definitions)

NJSA: 43:8B-1

LAWS OF: 1955 **CHAPTER:** 263

BILL NO: A511

SPONSOR(S): Mills, Farrell and Metzger

DATE INTRODUCED: May 2, 1955

COMMITTEE: **ASSEMBLY:** State, County & Municipal Government

SENATE: State, County & Municipal Government

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** May 23, 1955 Re-enacted 8-15-55

SENATE: June 9, 1955 Re-enacted 12-19-55

DATE OF APPROVAL: January 11, 1956

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT:

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: No

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

974.90 N.J. Commission to Study Non-contributory Pensions.
P418 First report. March, 1955.
1955

974.90 N.J. Commission to Study Non-contributory Pensions.
P418 Second report. January, 1956.
1956

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ASSEMBLY, No. 511

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1955

By Messrs. MILLS, FARRELL and METZGER

Referred to Committee on State, County and Municipal Government

AN ACT to establish a general system authorizing the granting of noncontributory pensions by counties, municipalities, and school districts in certain cases; and repealing sundry acts and parts of acts.

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

1. As used in this act:

(a) "Employee" means any person holding office, position, or employment in any county, municipality, or school district in the State.

(b) "Employer" means any county, municipality, or school district in the State.

(c) "Final average salary" means the average base compensation paid by the employer to the employee for the 5 years **[**immediately**]** *of his employment* preceding his retirement. **[**If he has less than 5 years' service, the final average salary shall be his average base compensation for his total service for the employer.**]**

(d) "Permanent and total disability." An employee is deemed to be permanently and totally disabled when it appears not only that he is physically or otherwise incapacitated for service, but that such incapacity will, in all reasonable probability, continue permanently. If an employee claims that such disability exists, the employer shall appoint a physician of skill and repute in his profession and resident of this State, who shall examine

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

the employee. The physician shall make a report of the employee's physical condition or other disability, and if a disability exists, whether in all reasonable probability it will continue permanently, and does and will continue to prevent the employee from giving service to his employer in the performance of his duties. *Any person who is retired for permanent and total disability hereunder, and who is under the age of 65 years, shall undergo an annual medical examination by a physician or physicians designated by the county, municipality or school district paying pension benefits based upon disability to such person. If upon examination it is determined that such disability no longer exists, the benefits payable hereunder for disability shall cease. If a person receiving pension benefits based upon disability refuses to submit to examination, the county, municipality or school district paying such benefits shall discontinue same until such person submits to a physical examination.*

(e) The Social Security system shall not be deemed a retirement system for the purposes of determining eligibility to a pension under this act.

2. Any employee who is not a member of and was not required by law at the time of appointment or employment, or at any time thereafter, to become a member of a contributory retirement system, **[***shall, at his request, or***]** may, at the discretion of his employer, be retired and granted a pension under the provisions of this act. No employee shall receive a pension under this act, if he is eligible to receive a pension for the same employment under any other law of this State.

3. The payment of pensions granted pursuant to this act shall be provided for in the budget of the employer.

4. In order to be eligible for a pension under the provisions of this act, an employee must be at least 65 years of age, *or have been employed by an employer for at least 40 years,* or *be* permanently and totally disabled.

5. The amount of pension granted under this act shall *be fixed by the employer according to uniform percentages of final average salary applicable generally to all employees of such employer subject to the provisions of this act, which percentages shall be adopted by resolution, but which shall*

not exceed an amount which, when added to the Social Security Old Age Insurance benefit for which the employee is or could be eiigible, will produce a total retirement allowance equal to:

(a) 30% of his final average salary if he has been employed by the employer for less than 20 years; or

(b) 50% of his final average salary if he has been employed by the employer for 20 years or more; *provided, however, that in the case of an employee having 35 years of public employment and being age 65, the* [*pension*] *total retirement allowance shall not be less than 25% of his final average salary.*

The amount of the pension, once established, shall not thereafter be reduced because of an increase in the amount of the employee's Social Security benefit.

No employee shall be eligible for pension benefits based upon disability hereunder unless he shall have at least 5 years of employment continuously, or in the aggregate, with the employer. No employee shall be eligible for pension benefits other than benefits based upon disability hereunder unless he shall have at least 15 years of employment continuously, or in the aggregate, with the employer.

6. The following acts and parts of acts are hereby repealed: Sections 18:6–29; 18:6–36; 18:6–43; 18:6–44; 18:14–62 to 18:14–64, both inclusive; 40:37–149; 40:37–150; 43:6–8 to 43:6–14, both inclusive; 43:8–5 to 43:8–7, both inclusive; 43:9–1 to 43:9–8, both inclusive; 43:11–3; 43:12–1 to 43:12–55, both inclusive, of the Revised Statutes, and chapter 142 of the laws of 1938, chapter 156 of the laws of 1939, chapter 36 of the laws of 1940, chapter 214 of the laws of 1941, chapter 368 of the laws of 1941, chapter 369, of the laws of 1941, *chapter 255 of the laws of 1942,* chapter 194 of the laws of 1943, chapter 154 of the laws of 1944, chapter 223 of the laws of 1944, chapter 287 of the laws of 1945, chapter 216 of the laws of 1947, chapter 221 of the laws of 1947, chapter 285 of the laws of 1947, chapter 119 of the laws of 1948, chapter 224 of the laws of 1948, chapter 254 of the laws of 1948, chapter 228

of the laws of 1949, chapter 262 of the laws of 1949, chapter 293 of the laws of 1949, chapter 248 of the laws of 1950, chapter 223 of the laws of 1951, chapter 262 of the laws of 1951, chapter 283 of the laws of 1952, chapter 353 of the laws of 1952, chapter 301 of the laws of 1953, chapter 308 of the laws of 1953, chapter 309 of the laws of 1953, and chapter 362 of the laws of 1953.

7. No pensions may be granted under the provisions of any statute repealed by section 6 of this act after the date this act becomes effective. Any pension granted prior to the effective date of this act under the provisions of any statute repealed by section 6 of this act shall be continued in the same manner and under the same conditions as originally granted.

8. This act shall be known and may be cited as the "General Noncontributory Pension Act."

9. This act shall take effect immediately.

ASSEMBLY, No. 511

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1955

By Messrs. MILLS, FARRELL and METZGER

Referred to Committee on State, County and Municipal Government

AN ACT to establish a general system authorizing the granting of noncontributory pensions by counties, municipalities, and school districts in certain cases; and repealing sundry acts and parts of acts.

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

1. As used in this act:

(a) "Employee" means any person holding office, position, or employment in any county, municipality, or school district in the State.

(b) "Employer" means any county, municipality, or school district in the State.

(c) "Final average salary" means the average base compensation paid by the employer to the employee for the 5 years immediately preceding his retirement. If he has less than 5 years' service, the final average salary shall be his average base compensation for his total service for the employer.

(d) "Permanent and total disability." An employee is deemed to be permanently and totally disabled when it appears not only that he is physically or otherwise incapacitated for service, but that such incapacity will, in all reasonable probability, continue permanently. If an employee claims that such disability exists, the employer shall appoint a physician of skill and repute in his profession and resident of this State, who shall examine

the employee. The physician shall make a report of the employee's physical condition or other disability, and if a disability exists, whether in all reasonable probability it will continue permanently, and does and will continue to prevent the employee from giving service to his employer in the performance of his duties.

(c) The Social Security system shall not be deemed a retirement system for the purposes of determining eligibility to a pension under this act.

2. Any employee who is not a member of and was not required by law at the time of appointment or employment, or at any time thereafter, to become a member of a contributory retirement system, may, at the discretion of his employer, be retired and granted a pension under the provisions of this act. No employee shall receive a pension under this act, if he is eligible to receive a pension for the same employment under any other law of this State.

3. The payment of pensions granted pursuant to this act shall be provided for in the budget of the employer.

4. In order to be eligible for a pension under the provisions of this act, an employee must be at least 65 years of age, or permanently and totally disabled.

5. The amount of pension granted under this act shall not exceed an amount which, when added to the Social Security Old Age Insurance benefit for which the employee is or could be eligible, will produce a total retirement allowance equal to:

(a) 30% of his final average salary if he has been employed by the employer for less than 20 years; or

(b) 50% of his final average salary if he has been employed by the employer for 20 years or more.

The amount of the pension, once established, shall not thereafter be reduced because of an increase in the amount of the employee's Social Security benefit.

6. The following acts and parts of acts are hereby repealed: Sections 18:6–29; 18:6–36; 18:6–43; 18:6–44; 18:14–62 to 18:14–64, both inclusive; 40:37–149; 40:37–150; 43:6–8 to 43:6–14, both inclusive; 43:8–5 to 43:8–7, both inclusive; 43:9–1 to 43:9–8, both inclusive; 43:11–3; 43:12–1 to 43:12–55, both inclusive, of the Revised Statutes, and chapter 142 of the laws of 1938, chapter 156 of the laws of 1939, chapter 36 of the laws of 1940, chapter 214 of the laws of 1941, chapter 368 of the laws of 1941, chapter 369, of the laws of 1941, chapter 194 of the laws of 1943, chapter 154 of the laws of 1944, chapter 223 of the laws of 1944, chapter 287 of the laws of 1945, chapter 216 of the laws of 1947, chapter 221 of the laws of 1947, chapter 285 of the laws of 1947, chapter 119 of the laws of 1948, chapter 224 of the laws of 1948, chapter 254 of the laws of 1948, chapter 228 of the laws of 1949, chapter 262 of the laws of 1949, chapter 293 of the laws of 1949, chapter 248 of the laws of 1950, chapter 223 of the laws of 1951, chapter 262 of the laws of 1951, chapter 283 of the laws of 1952, chapter 353 of the laws of 1952, chapter 301 of the laws of 1953, chapter 308 of the laws of 1953, chapter 309 of the laws of 1953, and chapter 362 of the laws of 1953.

7. No pensions may be granted under the provisions of any statute repealed by section 6 of this act after the date this act becomes effective. Any pension granted prior to the effective date of this act under the provisions of any statute repealed by section 6 of this act shall be continued in the same manner and under the same conditions as originally granted.

8. This act shall be known and may be cited as the "General Noncontributory Pension Act."

9. This act shall take effect immediately.

COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 511

STATE OF NEW JERSEY

ADOPTED MAY 16, 1955

Amend page 3, section 6, line 8, after words "of 1941," insert the following: "Chapter 255 of the Laws of 1942,".

Amend page 2, section 2, line 3, after the word "system," insert the following: "shall, at his request, or".

Amend page 2, section 4, line 2, after the word "Age," insert the following: "or have been employed by an employer for at least 40 years," and between the words "or permanently" insert the word "be".

Amend page 2, section 5, line 8, after the word "more", insert the following: "; provided, however, that in the case of an employee having 35 years of public employment and being age 65, the pension shall not be less than 25% of his final average salary."

ASSEMBLY AMENDMENTS TO

ASSEMBLY, No. 511

STATE OF NEW JERSEY

ADOPTED AUGUST 15, 1955

Amend page 1, section 1, line 7, after the word "years" delete the word "immediately" and insert in lieu thereof the words "of his employment".

Amend page 1, section 1, lines 8, 9 and 10, delete the sentence "If he has less than 5 years' service, the final average salary shall be his average base compensation for his total service for the employer."

Amend page 2, section 1, line 21, after the word "duties." insert the following: "Any person who is retired for permanent and total disability hereunder, and who is under the age of 65 years, shall undergo an annual medical examination by a physician or physicians designated by the county, municipality or school district paying pension benefits based upon disability to such person. If upon examination it is determined that such disability no longer exists, the benefits payable hereunder for disability shall cease. If a person receiving pension benefits based upon disability refuses to submit to examination, the county, municipality or school district paying such benefits shall discontinue same until such person submits to a physical examination."

Amend page 2, section 2, lines 3 and 4, delete the words "shall, at his request, or".

Amend page 2, section 5, line 1, after the word "shall" insert the following: "be fixed by the employer according to uniform percentages of final average salary applicable generally to all employees of such employer subject to the provisions of this act, which percentages shall be adopted by resolution, but which shall".

Amend page 2, section 5, line 10, delete the word "pension" and insert in lieu thereof "total retirement allowance".

Amend page 2, section 5, line 11, after the word "benefit." insert a new paragraph as follows:

"No employee shall be eligible for pension benefits based upon disability hereunder unless he shall have at least 5 years of employment continuously, or in the aggregate, with the employer. No employee shall be eligible for pension benefits other than benefits based upon disability hereunder unless he shall have at least 15 years of employment continuously, or in the aggregate, with the employer.".

STATE OF NEW JERSEY
Executive Department

August 8, 1955

ASSEMBLY BILL NO. 511

To the General Assembly:

Pursuant to Article V, Section I, paragraph 14 (b) of the Constitution, I am returning herewith Assembly Bill No. 511, with my objections, for reconsideration.

This bill would establish a uniform non-contributory pension system. It is the recommendation of the legislative Commission to Study Non-Contributory Pensions, (J.R. 7, P.L. 1954) and is intended to replace many special pension acts as well as to forestall future special pension bills.

Specifically, the bill, as originally introduced, would permit any county, municipality or school district to retire any public employee who is not a member of and was not required by law to become a member of a contributory retirement system and who is either 65 years of age or permanently and totally disabled. The maximum benefits payable thereunder would be (a) 30% of final average salary if the employee has under 20 years' service and (b) 50% of final average salary if over 20 years' service. Prior to passage, several amendments, referred to hereinafter, were made.

I am in accord with the basic objective of this legislation and the recommendations of the Study Commission. There are, however, certain defects which require the return of this bill for amendment.

The bill permits counties, municipalities and school districts to grant non-contributory pensions and disability benefits to employees who are 65 years of age or over without regard to the length of service of such employee. Thus, disability or pension benefits could be given to an employee with only 1 day of service if he were 65 years of age or over, in an amount up to 30% of final average salary. I fear that this liberality could lead to abuses or unwarranted expenditure of public funds. I am accordingly recommending that a minimum requirement of 5 years of service for disability benefits and 15 years of service for pension benefits be incorporated in the bill.

With regard to benefits for permanent and total disability, no provision is made for periodic re-examinations, up to age 65, to establish the continuance of such disability. Such a provision is usually included in pension acts, and I am recommending an amendment accordingly,

The bill fixes certain maximum amounts to such pensions and also fixes a minimum of 25% after 35 years' service and age 65. It allows discretion within these limits to the county, municipality or school district allowing the pension. It would be possible under the bill for pension and disability benefits to be fixed at varying percentages of final average salary so that each case might be dealt with separately without regard to uniform percentages within the county, municipality or school district. This could lead to inequality and discrimination. I believe that the bill should be amended so that all pensions and disability benefits shall be at percentages uniform within each county, municipality or school district as the governing body of each shall determine.

By amendment to the bill the words "shall at his request" were inserted so as to give the employee an absolute right to a pension. This was done upon the assumption that the employer had an absolute discretion to fix the pension from zero to the maximum. I have grave doubts that the language would permit this construction and fear the courts would conclude that the Legislature did not intend to give a mandatory right merely to a nominal sum. Inasmuch as there was no intention to impose such liability upon all counties, municipalities and school districts as would result from a mandatory non-contributory pension system, I am recommending, in the interest of clarification, the deletion of the words quoted above.

Finally, section 5 (b), in an amendment to the original bill, inadvertently contains the word "pension" rather than the term "total retirement allowance". If the word "pension" remained, the provision might be construed to mean that employees within the category there referred to could receive both pension and social security benefits totalling together more than 50% of the salary. I am recommending a change accordingly.

STATE OF NEW JERSEY
Executive Department

Accordingly, I am returning Assembly Bill No. 511 for reconsideration and with the recommendation that the bill be amended as follows:

On page 1, section 1, line 7, after the word "years" delete the word "immediately" and insert in lieu thereof the words "of his employment".

On page 1, section 1, lines 8, 9 and 10, delete the sentence "If he has less than 5 years' service, the final average salary shall be his average base compensation for his total service for the employer."

On page 2, section 1, line 21, after the word "duties," insert the following: "Any person who is retired for permanent and total disability hereunder, and who is under the age of 65 years, shall undergo an annual medical examination by a physician or physicians designated by the county, municipality or school district paying pension benefits based upon disability to such person. If upon examination it is determined that such disability no longer exists, the benefits payable hereunder for disability shall cease. If a person receiving pension benefits based upon disability refuses to submit to examination, the county, municipality or school district paying such benefits shall discontinue same until such person submits to a physical examination."

On page 2, section 2, lines 3 and 4, delete the words "shall, at his request, or".

On page 2, section 5, line 1, after the word "shall" insert the following: "be fixed by the employer according to uniform percentages of final average salary applicable generally to all employees of such employer subject to the provisions of this act, which percentages shall be adopted by resolution, but which shall".

On page 2, section 5, line 10, delete the word "pension" and insert in lieu thereof "total retirement allowance".

On page 2, section 5, line 11, after the word "benefit." insert a new paragraph as follows:

"No employee shall be eligible for pension benefits based upon disability hereunder unless he shall have at least 5 years of employment continuously, or in the aggregate, with the employer. No employee shall be eligible for pension benefits other than benefits based upon disability hereunder unless he shall have at least 15 years of employment continuously, or in the aggregate, with the employer."

Respectfully,

ROBERT B. MEYNER

GOVERNOR

(SEAL)

Attest:

ROBERT J. BURKHARDT

Secretary to the Governor