

18A:66-71

LEGISLATIVE HISTORY CHECKLIST

NJSA: 18A:66-71

(TPAF-purchase of service credit-satisfaction of service credit)

LAWS OF: 1984

CHAPTER: 206

Bill No: A2619

Sponsor(s): Pellecchia

Date Introduced: September 20, 1984

Committee: Assembly: -----

Senate: -----

Amended during passage: Yes

Substituted for S2246 (not attached since identical to A2619). Amendments during passage denoted by asterisks.

Date of Passage: Assembly: October 11, 1984

Senate: October 22, 1984

Date of Approval: December 4, 1984

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: ~~No~~ Yes

Following were printed:

Reports: No

Hearings: No

Attorney General opinion, referred to in sponsor's statement--attached.

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ASSEMBLY, No. 2619

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 20, 1984

By Assemblyman PELLECCIA

AN ACT concerning the "Teachers' Pension and Annuity Fund Law" and amending N. J. S. 18A:66-71.

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

1 1. N. J. S. 18A:66-71 is amended to read as follows:

2 18A:66-71. a. Any public employee veteran member in office,  
3 position or employment of this State or of a county, municipality,  
4 or school district, board of education or other employer who (1)  
5 has or shall have attained the age of 60 years and has or shall  
6 have been for 20 years continuously or in the aggregate in office,  
7 position or employment of this State or of a county, municipality  
8 or school district, board of education or other employer or (2) has  
9 or shall have attained the age of 55 years and has or shall have  
10 been for 25 years continuously or in the aggregate in that office,  
11 position or employment, shall have the privilege of retiring for  
12 service and of receiving, instead of the retirement allowance pro-  
13 vided under N. J. S. 18A:66-44, a retirement allowance of one-half  
14 of the compensation received during the last year of employment  
15 upon which contributions to the annuity savings fund or contingent  
16 reserve fund are made.

17 b. (Deleted by amendment, *P. L. 1984, c. 69.*)

18 c. Any public employee veteran member who has been for 20  
19 years in the aggregate in office, position or employment of this  
20 State or of a county, municipality or school district, board of edu-  
21 cation or other employer as of January 1, 1955, shall have the  
22 privilege of retiring for ordinary disability and of receiving, in-

**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 printed in italics *thus* is new matter.

23   stead of the retirement allowance provided under N. J. S.  
24   18A:66-41, a retirement allowance of one-half of the compensation  
25   received during the last year of employment upon which contribu-  
26   tions to the annuity savings fund or contingent reserve fund are  
27   made. Such retirement shall be subject to the provisions govern-  
28   ing ordinary disability retirement in N. J. S. 18A:66-39 and N. J. S.  
29   18A:66-40.

30   d. The death benefit provided in N. J. S. 18A:66-44 shall apply  
31   in the case of any member retiring under the provisions of sub-  
32   section a. of this section and in the case of any member who has  
33   previously retired under the provisions of subsection b. of this  
34   section before said subsection was amended by this act. The death  
35   benefit provided in N. J. S. 18A:66-41 shall apply in the case of  
36   any member retiring under the provisions of subsection c. of this  
37   section.

38   e. *A member who purchases service credit pursuant to any pro-*  
39   *vision of the "Teachers' Pension and Annuity Fund Law" (N. J. S.*  
40   *18A:66-1 et seq.) is entitled to apply the credit for the purpose of*  
41   *satisfying any of the service requirements of that act.*

1   2. This act shall take effect immediately and apply to all retire-  
2   ment applications filed on or after July 1, 1984.

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#### STATEMENT

This bill would amend the provisions of N. J. S. 18A:66-71, which itself was recently amended by passage of P. L. 1984, c. 69. In *Moss v. TPAF*, 178 N. J. Super. 460 (App. Div. 1981), the court held that pension credit purchased for out-of-State service by a TPAF member could be used for purposes of satisfying the service requirements of N. J. S. 18A:66-71. In a recent opinion provided to the Director of the Division of Pensions, the Attorney General's Office advised the director that in its opinion, N. J. S. 18A:66-71 as amended by P. L. 1984, c. 69, requires that the service to be used for veterans retirement allowances is now limited to service rendered in New Jersey public employment, and further that pension credit based upon the purchase of out-of-State service could no longer be used for purposes of satisfying the service requirements of N. J. S. 18A:66-71. The Division of Pensions has indicated that it will follow the Attorney General's opinion with respect to all applications filed September 4, 1984 or thereafter. This bill would make clear that in amending N. J. S. 18A:66-71 through passage of P. L. 1984, c. 69, the Legislature did not in any way intend to upset the court's holding in *Moss*, and that the Legislature did not intend to preclude the use of pension credit based upon out-of-State

service for purposes of satisfying the service requirements of N. J. S. 18A:66-71 as amended by P. L. 1984, c. 69. In fact, the amendment of N. J. S. 18A:66-71 through passage of P. L. 1984, c. 69 was intended to liberalize the benefits available under N. J. S. 18A:66-71, not restrict such benefits. This bill would make clear that the passage of P. L. 1984, c. 69 was not intended to and did not affect the right of TPAF members to use pension credit based upon out-of-State service for the purposes of satisfying the service requirements of N. J. S. 18A:66-71.

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 26   tions to the annuity savings fund or contingent reserve fund are  
 27   made. Such retirement shall be subject to the provisions govern-  
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 33   previously retired under the provisions of subsection b. of this  
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 36   any member retiring under the provisions of subsection c. of this  
 37   section.

38   e. *A member who purchases service credit pursuant to any pro-*  
 39   *vision of the "Teachers' Pension and Annuity Fund Law" (N. J. S.*  
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 41   *satisfying any of the service requirements of that act.*

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#### STATEMENT

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BILLS SIGNED  
PAGE TWO  
DECEMBER 4, 1984

A-2619, sponsored by Assemblyman Ozzie Pellecchia, D-Passaic, to insure that veteran members of the Teachers Pension and Annuity Fund (TPAF) may utilize purchased pension credit for service rendered outside the State to satisfy the special veteran retirement requirements.

A-2749, sponsored by Assemblyman Robert Littell, R-Sussex, to validate bond referendum proceedings in the Borough of Franklin School District.

A-2700, sponsored by Assemblyman Michael Adubato, D-Essex, to make a number of technical changes in the law which provided relief for those holding claims against the insolvent Ambassador Insurance Company.

# # # #



State of New Jersey

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Tel. 609-292-6058

September 4, 1984

Douglas R. Forrester, Director  
Division of Pensions  
20 West Front Street  
Trenton, New Jersey 08625

Re: Whether Out-of-State Service Credit Purchased  
by Members of PERS and TPAF may be Applied  
Toward Years of Service Necessary for Special  
Veterans' Retirement Benefits  
AAA No. M84-6234

Dear Director Forrester:

You have asked whether out-of-state service credit purchased by veteran members of the Teachers' Pension and Annuity Fund (TPAF) and the Public Employees' Retirement System (PERS) may be used toward those members' special veterans' service retirements. N.J.S.A. 18A:66-71 (TPAF) and N.J.S.A. 43:15A-61 (PERS) extend to veteran members, who have accumulated the requisite years of service, the privilege of retiring on a service allowance based on one-half (1/2) of the compensation received during their last year of public employment. Qualifying for such a retirement is significant in that it provides higher benefits than are afforded under a regular "service retirement" or an "early retirement." For the following reasons, you are advised that PERS veteran members may apply their out-of-state service credit toward the requisite years of service for special veterans' retirement benefits, whereas TPAF veteran members may not apply out-of-state service credit towards a special veterans' retirement.

In Moss v. Teachers' Pension & Annuity Fund, 178 N.J. Super. 460 (App. Div. 1981), a veteran member of TPAF had purchased more than two-years of pension credit based on his out-of-state experience. The statute under consideration in Moss read as follows in pertinent part:

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b. Any public employee veteran becoming a member after January 1, 1955, who shall be in office, position or employment of this State or of a county, municipality or school district, board of education or other employer, and who shall have attained 62 years of age and who has 20 years of aggregate service credit in such office, position or employment shall have the privilege of retiring for service and receiving...a retirement allowance of  $\frac{1}{2}$  of the compensation received during the last year of employment...[N.J.S.A. 18A:66-71(b);  
emphasis supplied]

The court noted that the term "aggregate service credit" is not defined, and that further the provision authorizing the purchase of out-of-state credit, N.J.S.A. 18A:66-13, makes "no distinction between credit for veterans' retirement purposes and credit for the other forms of retirement." Id. at 463. Additionally, the court pointed out that N.J.S.A. 18A:66-15, which governs how service credit is to be applied for retirement purposes, does not indicate "that special 'service credit' rules apply to veterans' retirement, and had the Legislature so intended, it would have said so." Id. at 464. The court also found significant that N.J.S.A. 18A:66-15 considered two types of service creditable for retirement purposes: "actual service rendered" and "service to which he is entitled." Id. at 464. Based on the foregoing analysis, the court concluded that out-of-state service credit fell within the latter classification and that the 20 years required for a veterans' retirement could include purchased out-of-state credit in combination with service actually rendered in New Jersey. Id. at 464. The court held:

[TPAF's] theory disregards the statute's use of the term "service credit," as opposed to only "service." If actual in-state service were necessary, the Legislature would not have used the phrase "service credit," which we have noted, includes both service rendered and service purchased. Moreover, [TPAF's] interpretation would vitiate the effect of N.J.S.A., 18A:66-13, which authorizes the purchase of out-of-state credit for all retirement purposes; nowhere in the act has the Legislature decreed that out-of-state credit may not be claimed in the context of veterans' retirement.

As previously noted, the statutes analyzed in Moss were N.J.S.A. 18A:66-71(b) (which defines eligibility for a special veterans' retirement in TPAF), N.J.S.A. 18A:66-13 (which authorizes the purchase of out-of-state service credit) and N.J.S.A. 18A:66-15

(which defines creditable service for retirement purposes). Their cognate provisions appear in the PERS Act at N.J.S.A. 43:15A-61(b), N.J.S.A. 43:15A-73.1 and N.J.S.A. 43:15A-39 respectively. As with the TPAF Act, nowhere in the PERS Act is there any indication that the Legislature intended that the purchase of out-of-state service credit can not be applied in the context of veterans' retirement. Accordingly, a veteran member of PERS, who otherwise qualifies for a veterans' retirement under N.J.S.A. 43:15A-61(b), may have included in the make-up of his 20 years of "aggregate service credit," actual service rendered in New Jersey public employment plus purchased out-of-state prior service.

N.J.S.A. 18A:66-71 has been recently amended by L. 1984, c. 69, and reads in relevant part:

- a. Any public employee veteran member in office, position or employment of this State or a county, municipality, or school district, board of education or other employer who (1) has or shall have attained the age of 60 years and has or shall have been for 20 years continuously or in the aggregate in office, position or employment of this State or of a county, municipality or school district, board of education or other employer or (2) has or shall have attained the age of 55 years and has or shall have been for 25 years continuously or in the aggregate in that office, position or employment, shall have the privilege of retiring for service and of receiving...a retirement allowance of one-half of the compensation received during the last year of employment...[emphasis supplied]

Significantly, the words "service credit," do not appear in the amended language. It is now required of TPAF veteran members, in order to qualify for a special veterans' retirement benefit, that the 20 or 25 requisite years of service must be actually rendered in New Jersey public employment. This conclusion is borne out by the plain, clear and unambiguous language of the statute. A veteran member of TPAF is now eligible for a special veterans' retirement if he is 60 years-of-age and has or shall have been for "20 years...in office, position or employment of this State or of a county, municipality or school district, board of education or other employer." Moreso, a veteran member in TPAF eligible at age 55 must now establish that he "has or shall have been for 25 years...in that office, position or employment." The wording and manifest intent of this amended provision is unmistakable. Only New Jersey public service may be considered for a veterans' retirement in TPAF. When there is no uncertainty or

ambiguity as to the meaning of a provision, the statute must speak for itself and be construed according to its own terms. Bass v. Allen Home Improvement Co., 8 N.J. 219, 226 (1951).

N.J.S.A. 18A:66-13 and N.J.S.A. 18A:66-15, which authorize the purchase of out-of-state credit and govern how service credit should be applied for retirement purposes, make no distinction between credit for veterans' retirement purposes and credit for the other forms of retirement. It is a fundamental principle of statutory construction that when there appears to be a conflict between a general and a specific act on the same subject, the latter shall prevail. Kingsley v. Wes Outdoor Advertising Co., 55 N.J. 336, 339 (1970). It is also well-settled that where a specific statute is enacted after a general provision, the former will be regarded as an exception to or qualification of the prior general one. 2A Sutherland, Statutory Construction (4th ed. 1973), §51.05 at 315. N.J.S.A. 18A:66-71(a), dealing with the qualifications for veterans' special benefits, was amended to its present form in July 1984, whereas N.J.S.A. 18A:66-13 and N.J.S.A. 18A:66-15, dealing with all forms of retirement, were enacted in 1966. Accordingly, it may be assumed that the Legislature intended the more specific rule controlling a veterans' retirement to govern over the rule generally dealing with the award of service credit applicable to all other forms of retirement.

In sum, you are advised that veteran members in PERS may apply purchased out-of-state service credit toward a special veterans' retirement benefit. However, as a result of a recent amendment to the TPAF statutes, TPAF veteran members are precluded from applying such purchased service credit toward their eligibility for a special veterans' retirement benefit. Veteran members of TPAF must render the requisite 20 or 25 years of public service in New Jersey.

Very truly yours,

IRWIN I. KIMMELMAN  
Attorney General of New Jersey

By: Ellis I. Medoway  
Ellis I. Medoway  
Deputy Attorney General

c: Peter J. Gorman,  
Supervising Research Analyst  
Division of Pensions