

43:15A-7

LEGISLATIVE HISTORY CHECKLIST

WASA 43:15A-7 (School crossing guards--terminate membership in PERS)

LAWS OF 1979 CHAPTER 430

Bill No. S3057

Sponsor(s) Weiss and others

Date Introduced Jan. 22, 1979

Committee: Assembly Education

Senate County and Municipal Government

Amended during passage ~~Yes~~

Date of Passage: Assembly Jan. 3, 1980

Senate May 21, 1979

Date of approval Feb. 14, 1980

Following statements are attached if available:

Sponsor statement Yes ~~xx~~

Committee Statement: Assembly Yes ~~xx~~

Senate Yes ~~xx~~

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing Yes ~~xx~~

Following were printed:

Reports ~~Yes~~ No

Hearings ~~Yes~~ No

Attorney General opinion (mentioned in press release)--attached.

9/1/73
EU

SENATE, No. 3057

STATE OF NEW JERSEY

INTRODUCED JANUARY 22, 1979

By Senators WEISS, DWYER, HAMILTON, GRAVES,
VREELAND and HAGEDORN

Referred to Committee on County and Municipal Government

AN ACT to amend the "Public Employees' Retirement System Act," approved June 28, 1954 (P. L. 1954, c. 84, C. 43:15A-1 et seq.), as said short title was amended by P. L. 1971, c. 213.

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

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

3 7. There is hereby established the Public Employees' Retirement
4 System of New Jersey in the Division of Pensions of the Depart-
5 ment of the Treasury. The membership of the retirement system
6 shall include:

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

11 b. Any person becoming an employee of the State or other em-
12 ployer after January 2, 1955 and every veteran, other than those
13 whose appointments are temporary or seasonal, becoming an
14 employee of the State or other employer after such date; and

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

18 d. Membership in the retirement system shall be optional for
19 elected officials other than veterans, and for school crossing guards,
20 who have become eligible for benefits under other pension systems
21 are so employed on a part-time basis. *Any such part-time school*
22 *crossing guard who is eligible for benefits under any other pension*
23 *system and who was hired as a part-time school crossing guard*
24 *prior to March 4, 1976, may at any time terminate his membership*

25 *in the retirement system by making an application in writing to the*
26 *board of trustees of the retirement system. Upon receiving such*
27 *application, the board of trustees shall terminate his enrollment in*
28 *the system and direct the employer to cease accepting contributions*
29 *from the member or deducting from the compensation paid to the*
30 *member. State employees who become members of any other retire-*
31 *ment system supported wholly or partly by the State as a condition*
32 *of employment shall not be eligible to membership in this retire-*
33 *ment system. Notwithstanding any other law to the contrary all*
34 *other persons accepting employment in the service of the State*
35 *shall be required to enroll in the retirement system as a condition*
36 *of their employment, regardless of age. No person in employment,*
37 *office or position, for which the annual salary or remuneration is*
38 *fixed at less than \$500.00, shall be eligible to become a member of*
39 *the retirement system.*

40 e. Membership of any person in the retirement system shall cease
41 if he shall discontinue his service for more than 2 consecutive years.

42 f. The accumulated deductions of the members of the former
43 "State Employees' Retirement System" which have been set aside
44 in a trust fund designated as Fund A as provided in section 5 of
45 this act and which have not been claimed for refund prior to
46 February 1, 1955 shall be transferred from said Fund A to the
47 Annuity Savings Fund of the Retirement System, provided for in
48 section 25 of this act. Each member whose accumulated deductions
49 are so transferred shall receive the same prior service credit,
50 pension credit, and membership credit in the retirement system as
51 he previously had in the former "State Employees' Retirement
52 System" and shall have such accumulated deductions credited to
53 his individual account in the Annuity Savings Fund. Any outstand-
54 ing obligation of such member shall be continued.

55 g. *Any school crossing guard electing to terminate his member-*
56 *ship in the retirement system pursuant to subsection d. of this*
57 *section shall, upon his request, receive a refund of his accumulated*
58 *deductions as of the date of his appointment to the position of*
59 *school crossing guard. Such refund of contributions shall serve as*
60 *a waiver of all benefits payable to the employee, to his dependent or*
61 *dependents, or to any of his beneficiaries under the retirement*
62 *system.*

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this act is to allow any part-time school crossing guard hired before March 4, 1976, who is eligible for benefits under another pension system to terminate membership in the Public Employees' Retirement System and to receive a refund of his contributions thereto. Pursuant to the provisions of P. L. 1975, c. 344, membership in the system is already optional for such employees hired on March 4, 1976, or thereafter.

REFERENCE USE ONLY

SENATE COUNTY AND MUNICIPAL GOVERNMENT
COMMITTEE

STATEMENT TO
SENATE, No. 3057

STATE OF NEW JERSEY

DATED: APRIL 23, 1979

Senate Bill No. 3057 would permit any part-time school crossing guard hired before March 4, 1976, who is eligible for benefits under another pension system, to terminate membership in the Public Employee's Retirement System and to receive a refund of his contributions thereto. Pursuant to P. L. 1975, c. 344, membership in PERS is already optional for school crossing guards hired on March 4, 1976, or thereafter.

ASSEMBLY EDUCATION COMMITTEE

STATEMENT TO

SENATE, No. 3057

STATE OF NEW JERSEY

DATED: NOVEMBER 26, 1979

The Assembly Education Committee favorably reports this bill and endorses the statement of the Senate Education Committee.

2-14-90

A-3639, sponsored by Assemblyman Richard Van Wagner (D-Monmouth), which amends the statutes regarding New Jersey's Emergency Transportation Tax to bring it into conformity with the New York State Personal Income Tax Law.

The Emergency Transportation Tax is paid by New York residents who work in New Jersey.

The bill reduces the maximum tax rate on wages, salaries, fees and other personal services from the current 12 percent to 11 percent in 1980 and then to ten percent in 1981 and thereafter.

It also repeals the provisions in the law relating to deductions for allowable expenses attributable to items of tax preference, and it increases the amount of net capital loss that may be deducted against gross income.

A-1131 sponsored by former Assemblyman John H. Froude (D-Middlesex), which increases the maximum permissible height for the handlebar grips of a motorcycle from 15 inches above the seat to the shoulder height of the operator of vehicle when seated.

S-3057, sponsored by Senator Laurence S. Weiss (D-Middlesex), which permits part-time school crossing guards hired prior to March 4, 1976, who are eligible for benefits under any other pension system, to terminate membership in the Public Employees' Retirement System. Upon such termination, the individual is entitled to a refund of his contributions.

X A law adopted in 1975 was interpreted in an attorney general opinion to extend such an option only to those part-time school crossing guards hired after the effective date of the act, March 3, 1976. This bill extends that option to part-time school guards employed prior to March 4, 1976.

Check
Pensions
Education

7 # 6



State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
EDUCATION AND PUBLIC EMPLOYMENT SECTION
STATE HOUSE ANNEX
TRENTON 08625

WILLIAM F. HYLAND
ATTORNEY GENERAL

ROBERT J. DEL TUFO
FIRST ASSISTANT ATTORNEY GENERAL

October 14, 1976

STEPHEN SKILLMAN
ASSISTANT ATTORNEY GENERAL
DIRECTOR

MARY ANN BURGESS
DEPUTY ATTORNEY GENERAL
CHIEF

William J. Joseph, Director
Division of Pensions
20 West Front Street
Trenton, New Jersey 08625

Re: Optional Enrollment of Part-Time
School Crossing Guards
AAA M76-2661

Dear Director Joseph:

The membership section of the Public Employees' Retirement System, N.J.S.A. 43:15A-7, has been amended by L. 1975 c. 344 to provide that membership in the system will be optional not only for elected officials other than veterans but also for "school crossing guards, who having become eligible for benefit under other pension systems are so employed on a part-time basis." You have asked for our opinion as to the meaning of "part-time", "eligible for benefits" and "other pension systems" contained in this amendment to insure its proper application to future cases.

Initially it should be observed that where possible a liberal construction is given to pension statutes in order to effect the legislative purpose. Getty v. Board of Trustees, TPAF, 53 N.J. 591 (1969); Salz v. State House Comm'n, 32 N.J. Super. 230, 235 (App. Div. 1954) aff'd 18 N.J. 106 (1955). Further, a Statement accompanied L. 1975 c. 344 which provides assistance in interpreting its future application. The Statement provides:

"Many school crossing guards are elderly people who seek this employment because it is part-time employment and provides them with a supplement to the pension benefits they receive under Social Security and other pension programs. Presently, these

people are required to have deducted from their pay, payments to the Public Employees' Retirement System.

"Many communities rely on the willingness of senior citizens to perform this work, but find that mandatory participation in the Public Employees' Retirement System discourages these older people from accepting such work."

With the above in mind it is apparent that the Legislature intended to extend to any school crossing guard an optional enrollment status provided certain criteria are satisfied.

By referring to school crossing guards "employed on a part-time basis" the Legislature is referring to the nature of the work itself, i.e. employment daily for a period in the morning and a period in the afternoon to assist children traveling to and from school. It is "part-time" in the sense that the individual, unlike other employees of the school district, does not perform services for the entire school day or work on a typical eight hour shift. Thus a school crossing guard who performs other services for the Board of Education during the course of the school day would be more than simply a part-time school crossing guard and would be subject to compulsory enrollment. You are accordingly advised that a school crossing guard is part-time if he performs all of the services required of solely that position and so long as the time requirement is less than the hours prescribed for other employees in other positions with the employing school district.

The second prerequisite of being "eligible for benefits" from another program would not at first appear to require the individual to be in actual receipt of a pension benefit, but only that he be qualified to receive a benefit should he so apply. However the Statement accompanying the bill clearly indicates the Legislature intended to afford optional enrollment status to individuals who are employed as crossing guards to earn funds as a supplement to their income from other pension plans. You are accordingly advised that in order to be entitled to optional enrollment status the crossing guard must not only be qualified to receive a pension benefit if he so desires, but must also be in actual receipt of that pension benefit which is to be supplemented by part-time employment.

Lastly, the school crossing guard must be receiving benefits "under other pension systems" to qualify for optional enrollment status. The court in In Re Paterson Redevelopment Agency, 141 N.J. Super. 414 (App. Div. 1976) recently had occasion to define the

phrase "other retirement system" for the purpose of its operation in N.J.S.A. 43:15A-65b. The court held that

"it is clear that the statutory term 'other retirement system' encompasses only governmentally-operated public employees retirement systems authorized by a specific retirement system act. It does not include a contract for an annuity with a private insurance company or other private pension plan arrangement not specifically authorized or established by the Legislature."

Thus you are advised that the phrase "under other pension systems" does not confer optional enrollment status to school crossing guards who are receiving benefits from an individual annuity contract or a private pension plan. The individual must be receiving benefits from a statutorily created and governmentally operated pension system. Moreover, the legislative intent evidenced by the Statement accompanying L. 1975 c. 344 is not to confine its application to individuals in receipt of pension benefits pursuant to New Jersey legislative enactments but also to encompass the situation where pension benefits are payable pursuant to the Social Security Act or other federal laws or the laws of any other state.

In conclusion, you are advised that a school crossing guard is an optional enrollee in PERS where he performs no other services other than those required of a school crossing guard for the school district and is actually receiving periodic retirement benefits from a statutorily created pension system operated by the State of New Jersey, the federal government or any other state. School crossing guards who do not satisfy all the above criteria continue to be compulsory enrollees in PERS.

Very truly yours,

WILLIAM F. HYLAND
Attorney General

By Stacy L. Moore, Jr.
Stacy L. Moore, Jr.
Deputy Attorney General

SLM:mp

1000

1 11 1975