

**18A:66-97 & 18A:66-110**  
**LEGISLATIVE HISTORY CHECKLIST**  
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**LAWS OF:** 2013                    **CHAPTER:** 16

**NJSA:** 18A:66-97 & 18A:66-110            (Updates provisions governing Board of Education Employees' Pension Fund of Essex County to comply with Internal Revenue Code)

**BILL NO:** S2159                    (Substituted for A2856)

**SPONSOR(S)** Codey and others

**DATE INTRODUCED:** July 30, 2012

**COMMITTEE:**                    **ASSEMBLY:** State Government  
**SENATE:** State Government, Wagering, Tourism & Historic Preservation

**AMENDED DURING PASSAGE:** No

**DATE OF PASSAGE:**                **ASSEMBLY:** December 17, 2012  
**SENATE:** October 4, 2012

**DATE OF APPROVAL:** January 25, 2013

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

**FINAL TEXT OF BILL** (Introduced version of bill enacted)

**S2159**

<b>SPONSOR'S STATEMENT:</b> (Begins on page 9 of introduced bill)	Yes
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> Yes
	<b>SENATE:</b> Yes

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at [www.njleg.state.nj.us](http://www.njleg.state.nj.us))

<b>FLOOR AMENDMENT STATEMENT:</b>	No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	No

**A2856**

<b>SPONSOR'S STATEMENT:</b> (Begins on page 9 of introduced bill)	Yes
<b>COMMITTEE STATEMENT:</b>	<b>ASSEMBLY:</b> Yes
	<b>SENATE:</b> No
<b>FLOOR AMENDMENT STATEMENT:</b>	No
<b>LEGISLATIVE FISCAL ESTIMATE:</b>	No

(continued)

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** No

LAW/RWH

P.L.2013, CHAPTER 16, *approved January 25, 2013*  
Senate, No. 2159

1 AN ACT concerning the Board of Education Employees' Pension  
2 Fund of Essex County and amending N.J.S.18A:66-97 and  
3 N.J.S.18A:66-110.

4

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

7

8 1. N.J.S.18A:66-97 is amended to read as follows:

9 18A:66-97. a. Until the effective date of P.L.2005, c.328, any  
10 pension fund created or to be created as provided in this article shall  
11 be under the control and management of the board of seven trustees,  
12 no more than three of whom shall be employees of the same board  
13 of education. The two trustees of the board added pursuant to this  
14 act, P.L.2001, c.454, shall be retirees of the pension fund elected by  
15 the retirees of the pension fund, and each such member shall serve  
16 for a term of two years. The first board selected as provided in  
17 section 18A:66-96 shall serve until the month of January following  
18 the incorporation of such association. At such time four members  
19 of the association shall be elected as trustees, in place of the four  
20 first selected, by a majority vote of the members of the association  
21 as follows: one for the term of one year, one for the term of two  
22 years, one for the term of three years, and one for the term of four  
23 years, who shall serve for the respective terms for which they are  
24 each chosen. Thereafter in the month of January of each year a  
25 member shall be chosen for a full term of four years to serve in  
26 place of the trustee whose term shall have expired.

27 b. After the effective date of P.L.2005, c.328, any pension fund  
28 created as provided in this article shall be under the control and  
29 management of the board of seven trustees, at least one of whom  
30 shall be an active member until the last active member of the fund  
31 retires and one of whom shall be a retiree. The remaining trustees  
32 may be either active members or retirees as the number of each may  
33 be determined by the bylaws of the board of trustees prior to an  
34 election. Commencing with the first January following the  
35 enactment of this act, P.L.2005, c.328, and continuing each January  
36 thereafter, two individuals shall be elected as trustees in the place of  
37 two sitting trustees by a majority vote, for a term of three years.  
38 Active member trustees shall be elected by a majority vote of the  
39 active members of the association, and retiree trustees shall be  
40 elected by a majority vote of the retirees of the pension fund. The

**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.

1 transition in trustee terms and the number of trustees elected shall  
2 be accomplished as determined by the board.

3 In any election for a trustee in which there is only one candidate  
4 for a position, a vote of retirees or active members shall not be held  
5 and the candidate shall be designated a trustee by a majority vote of  
6 the sitting board of trustees.

7 Any vacancy occurring among the board of trustees or in the  
8 office of chairperson, vice-chairperson, secretary, treasurer, or other  
9 officers of such corporation shall be filled in the manner provided  
10 in bylaws, and in the absence of such provision shall be filled by the  
11 board of trustees.

12 c. Any pension fund created as provided in this article shall be  
13 (1) a governmental plan under section 414(d) of the federal Internal  
14 Revenue Code; (2) a qualified pension plan under section 401(a) of  
15 the Internal Revenue Code; and (3) shall hold assets in a tax exempt  
16 trust under section 501 of the Internal Revenue Code.

17 d. In accordance with the provisions of section 401(a)(2) of the  
18 federal Internal Revenue Code, and subject to such exceptions as  
19 may be permitted for governmental plans under section 401(a)(2) of  
20 the federal Internal Revenue Code, at no time prior to the  
21 satisfaction of all liabilities with respect to members and their  
22 beneficiaries under any pension fund created as provided in this  
23 article shall any part of the corpus or income of the pension fund,  
24 within the taxable year or thereafter, be used for or diverted to  
25 purposes other than for the exclusive benefit of the members or  
26 their beneficiaries.

27 e. Notwithstanding any law, rule or regulation to the contrary,  
28 the contributions to and benefits payable under any pension fund  
29 created as provided in this article shall not exceed the limitations  
30 provided under section 415 of the federal Internal Revenue Code  
31 and the regulations issued by the United States Department of the  
32 Treasury under that code section, as applicable to a governmental  
33 plan as defined in section 414(d) of the federal Internal Revenue  
34 Code, and as indexed in accordance with section 415(d) of the  
35 federal Internal Revenue Code.

36 Any applicable limitation as adjusted under section 415(d) of the  
37 federal Internal Revenue code shall apply automatically to  
38 contributions to and benefits payable under any pension fund  
39 created as provided in this article as of January 1 following such  
40 adjustment. This automatic annual adjustment shall apply to  
41 members who have had a severance from employment. If this  
42 pension fund must be aggregated with another plan to determine the  
43 effect of section 415 of the federal Internal Revenue Code on a  
44 member's benefits or contributions, and such benefits or  
45 contributions must be reduced to comply with that code section,  
46 then such reduction shall be made pro rata between the plans in  
47 proportion to the member's creditable service in each plan.

- 1       f. Notwithstanding any law, rule or regulation to the contrary,  
2 for members of any pension fund created as provided in this article,  
3 the amount of compensation which may be used for member  
4 contributions and benefits shall not exceed the compensation  
5 limitation of section 401 (a) (17) of the federal Internal Revenue  
6 Code of 1986, (26U.S.C. s.401 (a) (17) ), as amended pursuant to  
7 section 13212 of the Omnibus Budget Reconciliation Act of 1993,  
8 Pub. L.103-66, 107 Stat. 312 or as hereafter amended or  
9 supplemented, to the extent applicable to governmental plans.
- 10       g. Notwithstanding any law, rule or regulation to the contrary,  
11 the form and timing of all distributions from any pension fund  
12 created as provided in this article to a member, or to the beneficiary  
13 of a member if the member dies before the member's entire interest  
14 has been distributed, shall conform to the required distribution  
15 provisions of section 401(a)(9) of the federal Internal Revenue  
16 Code and the regulations issued by the United States Department of  
17 the Treasury under that code section only to the extent applicable to  
18 a governmental plan as defined in section 414(d) of the federal  
19 Internal Revenue Code, including the incidental death benefit  
20 requirements of section 401(a)(9)(G) of the federal Internal  
21 Revenue Code. In addition, in no event shall payments under any  
22 such pension fund commence to be paid to a member later than the  
23 member's required beginning date, without regard to whether the  
24 member has filed application therefor. For this purpose, a member's  
25 required beginning date is the April 1 of the calendar year following  
26 the later of (1) the calendar year in which the member attains age  
27 70½ or (2) the calendar year in which the member retires. The  
28 actuarial adjustment described in section 401(a)(9)(C)(iii) of the  
29 federal Internal Revenue Code shall not apply.
- 30       h. In accordance with the provisions of section 401(a)(31) of  
31 the federal Internal Revenue Code, any pension fund created as  
32 provided in this article shall permit direct transfer of a distribution  
33 from the fund that is an eligible rollover distribution to an eligible  
34 retirement plan.
- 35       i. Any pension fund created as provided in this article shall  
36 operate in compliance with the federal "Uniformed Services  
37 Employment and Reemployment Rights Act of 1994," Pub.L.103-  
38 353 (38 U.S.C. s.4301 et seq.) and section 414(u) of the federal  
39 Internal Revenue Code. In addition, in accordance with section  
40 401(a)(37) of the federal Internal Revenue code, if a member dies  
41 on or after January 1, 2007 while performing qualified military  
42 service, as defined in section 414(u)(5) of the federal Internal  
43 Revenue Code, such member's designated beneficiaries shall be  
44 entitled to any additional benefits, other than benefit accruals  
45 relating to the period of qualified military service, that would have  
46 been provided under any pension fund created as provided in this  
47 article if the member had resumed and then terminated employment

1 on account of death.

2 (cf: P.L.2005, c.328, s.1)

3

4 2. N.J.S.18A:66-110 is amended to read as follows:

5 18A:66-110. Pensions shall be paid from the fund in the manner  
6 following:

7 a. A member of the pension fund who was a member on or  
8 before June 26, 1962 and who has or shall hereafter have credit in  
9 the pension fund for 30 years or more as an employee of a board of  
10 education in a county wherein the fund has been established and  
11 maintained shall, upon application to the board of trustees of the  
12 pension fund, be retired by such board of trustees and shall  
13 thereupon receive annually from the fund, for and during the  
14 remainder of his or her life, by way of pension, an amount equal to  
15 one-forty-fifth of the average annual compensation received in any  
16 three years of creditable service providing the largest possible  
17 benefit multiplied by the number of years for which he or she has  
18 credit in the pension fund, the amount to be determined by  
19 resolution of the board.

20 b. Upon the retirement of a member who has reached the age of  
21 60 years, the person so retired shall be entitled to receive during his  
22 or her life, by way of pension, one-forty-fifth of the average annual  
23 compensation received in any three years of creditable service  
24 providing the largest possible benefit multiplied by the number of  
25 years for which he or she has credit in the pension fund, the amount  
26 to be determined by resolution of the board. Upon the receipt of  
27 proper proof of death of a member who has retired on a service  
28 retirement allowance, there shall be paid to such person, if living, as  
29 he shall have nominated by written designation duly executed and  
30 filed with the board of trustees, otherwise to the executor or  
31 administrator of the member's estate an amount equal to one-half of  
32 the highest annual compensation received by the member in any  
33 year of creditable service.

34 c. A member of the fund who has credit therein for 10 years,  
35 who shall become incapacitated, either mentally or physically, and  
36 who cannot perform the regular duties of employment, or who is  
37 found unfit for the performance of his or her duties, upon the  
38 application of his employer or upon his own application or the  
39 application of someone acting in his behalf, shall be retired by the  
40 board of trustees of the pension fund and thereupon shall receive  
41 annually from the fund a retirement allowance as described in  
42 subsection b. of this section if he has reached or passed age 60 and  
43 if he is under age 60, an amount equal to nine-tenths of one-forty-  
44 fifth of the average annual compensation received in any three years  
45 of creditable service providing the largest possible benefit  
46 multiplied by the number of years of creditable service; provided,  
47 however, that in no event shall the pension be based upon less than  
48 17 years nor more than 30 years of service unless the member

1 would have had less than 17 years of service at age 60, in which  
2 event he shall be given credit for the years to age 60; however, a  
3 member who has not attained age 70 who shall become  
4 incapacitated, either mentally or physically, as a direct result of a  
5 traumatic event occurring in the performance of his or her duties of  
6 such employee, shall, upon the application of his employer or upon  
7 his own application or the application of someone acting in his  
8 behalf, be retired by the board of trustees of the pension fund, and,  
9 thereupon, if a report of the accident, in a form acceptable to the  
10 board of trustees of the pension fund, is filed with the said board of  
11 trustees within 60 days next following the accident and the  
12 application for retirement is filed with the said board of trustees  
13 within two years of the date of the accident, shall receive annually  
14 from the fund an amount equal to two-thirds of the annual salary  
15 being received by such employee on the date of the accident. The  
16 board of trustees may waive strict compliance with the time limits  
17 within which a report of the accident and an application for  
18 retirement must be filed with the board if it is satisfied: (1) that a  
19 report of the accident from which the disability is claimed to have  
20 resulted was filed with the employing board of education with  
21 reasonable promptitude and in no event later than 60 days after the  
22 accident, and (2) the applicant shall show that his failure to file a  
23 report with the board of trustees or to file his application for  
24 retirement within the time limited by law was due to mistake,  
25 inadvertence, ignorance of fact or law, inability, or to the fraud,  
26 misrepresentation or deceit of any person, or to a delay in the  
27 manifestation of the incapacity, or to any other reasonable cause or  
28 excuse, and (3) that the application for retirement was filed in good  
29 faith and the circumstances justify its favorable consideration.

30 The trustees of the pension fund shall have the power to  
31 determine whether or not any employee is permanently and totally  
32 disabled, and whether or not a disability of an employee is the  
33 direct result of a traumatic event occurring at some definite time  
34 and place in the performance of his or her duties as such employee.  
35 The claimant shall have the right to present physicians, witnesses or  
36 other testimony in his or her behalf before the board of trustees.  
37 The chairperson, or any other member of the board of trustees, may  
38 administer oaths to any physician or other persons called before the  
39 trustees regarding the employee's disability. The board of trustees  
40 shall decide, by resolution, whether the applicant is entitled to the  
41 benefit of this article.

42 Permanent and total disability resulting from a cardiovascular,  
43 pulmonary or muscular-skeletal condition which was not a direct  
44 result of a traumatic event occurring in the performance of duty  
45 shall be deemed an ordinary disability.

46 Once in each year, the board of trustees may, and upon the  
47 member's application shall, require any member retired for a  
48 disability, who is under the age of 60, to undergo medical

1 examination by a physician or physicians designated by the board of  
2 trustees. The examination shall be made at the residence of the  
3 pensioner or any other place mutually agreed upon. If the physician  
4 or physicians thereupon report and certify to the board of trustees  
5 that the disabled pensioner is not permanently and totally  
6 incapacitated, either mentally or physically, for the performance of  
7 duty, and the board finds that said member is engaged in a gainful  
8 occupation, or could be engaged in a gainful occupation, and if the  
9 board concurs in the report, then the amount of the pension shall be  
10 reduced to an amount which, when added to the amount then being  
11 earned by him or her or an amount which he or she could earn if  
12 gainfully employed, shall not exceed the amount of compensation  
13 received by him or her at the time of his or her retirement, including  
14 any cost of living adjustment. If subsequent examination of such  
15 pensioner shows that his or her earnings have changed since the  
16 date of his or her last examination, then the amount of the pension  
17 shall be further altered, but the new pension shall not exceed the  
18 amount of the pension originally granted, nor shall the new pension,  
19 when added to the amount then being earned by the pensioner,  
20 exceed the salary or compensation received by him or her at the  
21 time of his or her retirement, including any cost of living  
22 adjustment.

23 d. At the time of retirement, any member may elect to receive  
24 his or her benefits in a retirement allowance payable throughout  
25 life, or he or she may, on retirement, elect to convert the benefits,  
26 otherwise payable to him or her, into a retirement allowance of the  
27 equivalent actuarial value computed on the basis of such mortality  
28 tables as shall be adopted by the board of trustees, in accordance  
29 with one of the optional forms following:

30 Option 1. A reduced retirement allowance, payable during life,  
31 with a provision that in the case of death, before the total pension  
32 payments have equaled the actuarial value computed as aforesaid,  
33 the balance shall be paid to his or her surviving designated  
34 beneficiary, duly acknowledged and filed with the board of trustees;  
35 and if none, then to the executor or administrator of his or her  
36 estate.

37 Option 2. A reduced retirement allowance, payable during the  
38 retired member's life, with the provision that after his or her death it  
39 will continue during the life of and be paid to his or her designated  
40 beneficiary, if such person survives him or her.

41 Option 3. A reduced retirement allowance, payable during the  
42 retired member's life, with the provision that after his or her death,  
43 an allowance at one-half of the rate of his or her reduced allowance  
44 will be continued during the life of and be paid to his or her  
45 designated beneficiary, if such person survives him or her.

46 Option 4. A reduced retirement allowance, payable during the  
47 retired member's life, with some other benefit payable after his or  
48 her death, provided the benefit is approved by the board of trustees.



1 Option 5. Some other benefit, which is equivalent to the full  
2 amount, three-quarters, one-half or one-quarter of the member's  
3 retirement allowance, shall be paid upon the member's death to the  
4 beneficiary designated by the member, and if that beneficiary dies  
5 before the member, the member's retirement allowance shall  
6 increase to the maximum retirement allowance for the member's  
7 lifetime, provided that such other benefit together with the  
8 member's lesser and maximum retirement allowances shall be  
9 certified by the actuary to be of equivalent actuarial value.

10 Except in the case of members who have elected to receive (1) a  
11 deferred retirement allowance pursuant to N.J.S.18A:66-113 or (2)  
12 an early retirement allowance pursuant to section 4 of P.L.1971,  
13 c.382 (C.18A:66-113.1) after separation from service pursuant to  
14 N.J.S.18A:66-113, if a member dies within 30 days after the date of  
15 retirement or the date of board approval, whichever is later, the  
16 member's retirement allowance shall not become effective and the  
17 member shall be considered an active member at the time of death.  
18 However, if the member dies after the date the application for  
19 retirement was filed with the system, the retirement will become  
20 effective if:

21 (1) The deceased member had designated a beneficiary under an  
22 optional settlement provided by this section; and

23 (2) The surviving beneficiary requests in writing that the board  
24 make such a selection. Upon formal action by the board approving  
25 that request, the request shall be irrevocable.

26 The board may select an Option 3 settlement on behalf of the  
27 beneficiary of a member who applied for and was eligible for  
28 retirement but who died prior to the effective date of the retirement  
29 allowance if all of the above conditions, with the exception of (1),  
30 are met.

31 The board of trustees shall, from time to time and as often as  
32 they deem it necessary, employ an actuary, who shall recommend,  
33 and the board shall keep in convenient form, such data as shall be  
34 necessary for actuarial valuations of the various funds created by  
35 this article. At least once in every five-year period, or more  
36 frequently as determined by the board of trustees, the actuary shall  
37 make an actuarial investigation into the mortality, service and salary  
38 experience of the members and beneficiaries of the retirement  
39 system, and shall make a valuation of the assets and liabilities of the  
40 various funds thereof, and upon the basis of such investigation the  
41 board of trustees shall:

42 (a) Adopt for the retirement system such mortality, service and  
43 other tables as shall be deemed necessary.

44 (b) Certify the rate of contribution which shall be made by each  
45 board of education to the pension fund as provided by this article.

46 Payments made pursuant to this subsection, as well as the  
47 pension fund documents associated therewith, shall comply with

1 section 401(a)(25) of the federal Internal Revenue Code.  
2 (cf: P.L.2005, c.328, s.4)

3

4 3. This act shall take effect on the 90th day after the date of  
5 enactment.

6

7

8

STATEMENT

9

10 This bill requires compliance with various sections of the federal  
11 Internal Revenue Code by pension funds for board of education  
12 employees of first-class counties, established pursuant to  
13 N.J.S.A.18A:66-94 et seq. The Board of Education Employees'  
14 Pension Fund of Essex County, which has been a closed pension  
15 system since 1980, is the only pension fund currently operating  
16 under those statutes. The bill amends provisions of the pension  
17 fund, as recommended by the fund's actuary, to comply with  
18 various sections of the federal Internal Revenue Code applicable to  
19 governmental plans.

20

21

22

23

24 \_\_\_\_\_  
25 Updates provisions governing Board of Education Employees'  
26 Pension Fund of Essex County to comply with Internal Revenue  
Code.

# SENATE, No. 2159

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JULY 30, 2012

**Sponsored by:**

**Senator RICHARD J. CODEY**

**District 27 (Essex and Morris)**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Co-Sponsored by:**

**Assemblymen Caputo, Giblin and Assemblywoman Spencer**

**SYNOPSIS**

Updates provisions governing Board of Education Employees' Pension Fund of Essex County to comply with Internal Revenue Code.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/18/2012)**

S2159 CODEY

2

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2 Fund of Essex County and amending N.J.S.18A:66-97 and  
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15 the retirees of the pension fund, and each such member shall serve  
16 for a term of two years. The first board selected as provided in  
17 section 18A:66-96 shall serve until the month of January following  
18 the incorporation of such association. At such time four members  
19 of the association shall be elected as trustees, in place of the four  
20 first selected, by a majority vote of the members of the association  
21 as follows: one for the term of one year, one for the term of two  
22 years, one for the term of three years, and one for the term of four  
23 years, who shall serve for the respective terms for which they are  
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30 shall be an active member until the last active member of the fund  
31 retires and one of whom shall be a retiree. The remaining trustees  
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35 enactment of this act, P.L.2005, c.328, and continuing each January  
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37 two sitting trustees by a majority vote, for a term of three years.  
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39 active members of the association, and retiree trustees shall be  
40 elected by a majority vote of the retirees of the pension fund. The  
41 transition in trustee terms and the number of trustees elected shall  
42 be accomplished as determined by the board.

43 In any election for a trustee in which there is only one candidate  
44 for a position, a vote of retirees or active members shall not be held

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**Matter underlined thus is new matter.**

S2159 CODEY

1 and the candidate shall be designated a trustee by a majority vote of  
2 the sitting board of trustees.

3 Any vacancy occurring among the board of trustees or in the  
4 office of chairperson, vice-chairperson, secretary, treasurer, or other  
5 officers of such corporation shall be filled in the manner provided  
6 in bylaws, and in the absence of such provision shall be filled by the  
7 board of trustees.

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47 contributions and benefits shall not exceed the compensation  
48 limitation of section 401 (a) (17) of the federal Internal Revenue

S2159 CODEY

1 Code of 1986, (26U.S.C. s.401 (a) (17) ), as amended pursuant to  
2 section 13212 of the Omnibus Budget Reconciliation Act of 1993,  
3 Pub. L.103-66, 107 Stat. 312 or as hereafter amended or  
4 supplemented, to the extent applicable to governmental plans.

5 g. Notwithstanding any law, rule or regulation to the contrary,  
6 the form and timing of all distributions from any pension fund  
7 created as provided in this article to a member, or to the beneficiary  
8 of a member if the member dies before the member's entire interest  
9 has been distributed, shall conform to the required distribution  
10 provisions of section 401(a)(9) of the federal Internal Revenue  
11 Code and the regulations issued by the United States Department of  
12 the Treasury under that code section only to the extent applicable to  
13 a governmental plan as defined in section 414(d) of the federal  
14 Internal Revenue Code, including the incidental death benefit  
15 requirements of section 401(a)(9)(G) of the federal Internal  
16 Revenue Code. In addition, in no event shall payments under any  
17 such pension fund commence to be paid to a member later than the  
18 member's required beginning date, without regard to whether the  
19 member has filed application therefor. For this purpose, a member's  
20 required beginning date is the April 1 of the calendar year following  
21 the later of (1) the calendar year in which the member attains age  
22 70½ or (2) the calendar year in which the member retires. The  
23 actuarial adjustment described in section 401(a)(9)(C)(iii) of the  
24 federal Internal Revenue Code shall not apply.

25 h. In accordance with the provisions of section 401(a)(31) of  
26 the federal Internal Revenue Code, any pension fund created as  
27 provided in this article shall permit direct transfer of a distribution  
28 from the fund that is an eligible rollover distribution to an eligible  
29 retirement plan.

30 i. Any pension fund created as provided in this article shall  
31 operate in compliance with the federal "Uniformed Services  
32 Employment and Reemployment Rights Act of 1994," Pub.L.103-  
33 353 (38 U.S.C. s.4301 et seq.) and section 414(u) of the federal  
34 Internal Revenue Code. In addition, in accordance with section  
35 401(a)(37) of the federal Internal Revenue code, if a member dies  
36 on or after January 1, 2007 while performing qualified military  
37 service, as defined in section 414(u)(5) of the federal Internal  
38 Revenue Code, such member's designated beneficiaries shall be  
39 entitled to any additional benefits, other than benefit accruals  
40 relating to the period of qualified military service, that would have  
41 been provided under any pension fund created as provided in this  
42 article if the member had resumed and then terminated employment  
43 on account of death.

44 (cf: P.L.2005, c.328, s.1)

45

46 2. N.J.S.18A:66-110 is amended to read as follows:

47 18A:66-110. Pensions shall be paid from the fund in the manner  
48 following:

**S2159 CODEY**

1       a. A member of the pension fund who was a member on or  
2 before June 26, 1962 and who has or shall hereafter have credit in  
3 the pension fund for 30 years or more as an employee of a board of  
4 education in a county wherein the fund has been established and  
5 maintained shall, upon application to the board of trustees of the  
6 pension fund, be retired by such board of trustees and shall  
7 thereupon receive annually from the fund, for and during the  
8 remainder of his or her life, by way of pension, an amount equal to  
9 one-forty-fifth of the average annual compensation received in any  
10 three years of creditable service providing the largest possible  
11 benefit multiplied by the number of years for which he or she has  
12 credit in the pension fund, the amount to be determined by  
13 resolution of the board.

14       b. Upon the retirement of a member who has reached the age of  
15 60 years, the person so retired shall be entitled to receive during his  
16 or her life, by way of pension, one-forty-fifth of the average annual  
17 compensation received in any three years of creditable service  
18 providing the largest possible benefit multiplied by the number of  
19 years for which he or she has credit in the pension fund, the amount  
20 to be determined by resolution of the board. Upon the receipt of  
21 proper proof of death of a member who has retired on a service  
22 retirement allowance, there shall be paid to such person, if living, as  
23 he shall have nominated by written designation duly executed and  
24 filed with the board of trustees, otherwise to the executor or  
25 administrator of the member's estate an amount equal to one-half of  
26 the highest annual compensation received by the member in any  
27 year of creditable service.

28       c. A member of the fund who has credit therein for 10 years,  
29 who shall become incapacitated, either mentally or physically, and  
30 who cannot perform the regular duties of employment, or who is  
31 found unfit for the performance of his or her duties, upon the  
32 application of his employer or upon his own application or the  
33 application of someone acting in his behalf, shall be retired by the  
34 board of trustees of the pension fund and thereupon shall receive  
35 annually from the fund a retirement allowance as described in  
36 subsection b. of this section if he has reached or passed age 60 and  
37 if he is under age 60, an amount equal to nine-tenths of one-forty-  
38 fifth of the average annual compensation received in any three years  
39 of creditable service providing the largest possible benefit  
40 multiplied by the number of years of creditable service; provided,  
41 however, that in no event shall the pension be based upon less than  
42 17 years nor more than 30 years of service unless the member  
43 would have had less than 17 years of service at age 60, in which  
44 event he shall be given credit for the years to age 60; however, a  
45 member who has not attained age 70 who shall become  
46 incapacitated, either mentally or physically, as a direct result of a  
47 traumatic event occurring in the performance of his or her duties of  
48 such employee, shall, upon the application of his employer or upon

S2159 CODEY

1 his own application or the application of someone acting in his  
2 behalf, be retired by the board of trustees of the pension fund, and,  
3 thereupon, if a report of the accident, in a form acceptable to the  
4 board of trustees of the pension fund, is filed with the said board of  
5 trustees within 60 days next following the accident and the  
6 application for retirement is filed with the said board of trustees  
7 within two years of the date of the accident, shall receive annually  
8 from the fund an amount equal to two-thirds of the annual salary  
9 being received by such employee on the date of the accident. The  
10 board of trustees may waive strict compliance with the time limits  
11 within which a report of the accident and an application for  
12 retirement must be filed with the board if it is satisfied: (1) that a  
13 report of the accident from which the disability is claimed to have  
14 resulted was filed with the employing board of education with  
15 reasonable promptitude and in no event later than 60 days after the  
16 accident, and (2) the applicant shall show that his failure to file a  
17 report with the board of trustees or to file his application for  
18 retirement within the time limited by law was due to mistake,  
19 inadvertence, ignorance of fact or law, inability, or to the fraud,  
20 misrepresentation or deceit of any person, or to a delay in the  
21 manifestation of the incapacity, or to any other reasonable cause or  
22 excuse, and (3) that the application for retirement was filed in good  
23 faith and the circumstances justify its favorable consideration.

24 The trustees of the pension fund shall have the power to  
25 determine whether or not any employee is permanently and totally  
26 disabled, and whether or not a disability of an employee is the  
27 direct result of a traumatic event occurring at some definite time  
28 and place in the performance of his or her duties as such employee.  
29 The claimant shall have the right to present physicians, witnesses or  
30 other testimony in his or her behalf before the board of trustees.  
31 The chairperson, or any other member of the board of trustees, may  
32 administer oaths to any physician or other persons called before the  
33 trustees regarding the employee's disability. The board of trustees  
34 shall decide, by resolution, whether the applicant is entitled to the  
35 benefit of this article.

36 Permanent and total disability resulting from a cardiovascular,  
37 pulmonary or muscular-skeletal condition which was not a direct  
38 result of a traumatic event occurring in the performance of duty  
39 shall be deemed an ordinary disability.

40 Once in each year, the board of trustees may, and upon the  
41 member's application shall, require any member retired for a  
42 disability, who is under the age of 60, to undergo medical  
43 examination by a physician or physicians designated by the board of  
44 trustees. The examination shall be made at the residence of the  
45 pensioner or any other place mutually agreed upon. If the physician  
46 or physicians thereupon report and certify to the board of trustees  
47 that the disabled pensioner is not permanently and totally  
48 incapacitated, either mentally or physically, for the performance of



1 duty, and the board finds that said member is engaged in a gainful  
2 occupation, or could be engaged in a gainful occupation, and if the  
3 board concurs in the report, then the amount of the pension shall be  
4 reduced to an amount which, when added to the amount then being  
5 earned by him or her or an amount which he or she could earn if  
6 gainfully employed, shall not exceed the amount of compensation  
7 received by him or her at the time of his or her retirement, including  
8 any cost of living adjustment. If subsequent examination of such  
9 pensioner shows that his or her earnings have changed since the  
10 date of his or her last examination, then the amount of the pension  
11 shall be further altered, but the new pension shall not exceed the  
12 amount of the pension originally granted, nor shall the new pension,  
13 when added to the amount then being earned by the pensioner,  
14 exceed the salary or compensation received by him or her at the  
15 time of his or her retirement, including any cost of living  
16 adjustment.

17 d. At the time of retirement, any member may elect to receive  
18 his or her benefits in a retirement allowance payable throughout  
19 life, or he or she may, on retirement, elect to convert the benefits,  
20 otherwise payable to him or her, into a retirement allowance of the  
21 equivalent actuarial value computed on the basis of such mortality  
22 tables as shall be adopted by the board of trustees, in accordance  
23 with one of the optional forms following:

24 Option 1. A reduced retirement allowance, payable during life,  
25 with a provision that in the case of death, before the total pension  
26 payments have equaled the actuarial value computed as aforesaid,  
27 the balance shall be paid to his or her surviving designated  
28 beneficiary, duly acknowledged and filed with the board of trustees;  
29 and if none, then to the executor or administrator of his or her  
30 estate.

31 Option 2. A reduced retirement allowance, payable during the  
32 retired member's life, with the provision that after his or her death it  
33 will continue during the life of and be paid to his or her designated  
34 beneficiary, if such person survives him or her.

35 Option 3. A reduced retirement allowance, payable during the  
36 retired member's life, with the provision that after his or her death,  
37 an allowance at one-half of the rate of his or her reduced allowance  
38 will be continued during the life of and be paid to his or her  
39 designated beneficiary, if such person survives him or her.

40 Option 4. A reduced retirement allowance, payable during the  
41 retired member's life, with some other benefit payable after his or  
42 her death, provided the benefit is approved by the board of trustees.

43 Option 5. Some other benefit, which is equivalent to the full  
44 amount, three-quarters, one-half or one-quarter of the member's  
45 retirement allowance, shall be paid upon the member's death to the  
46 beneficiary designated by the member, and if that beneficiary dies  
47 before the member, the member's retirement allowance shall  
48 increase to the maximum retirement allowance for the member's

S2159 CODEY

1 lifetime, provided that such other benefit together with the  
2 member's lesser and maximum retirement allowances shall be  
3 certified by the actuary to be of equivalent actuarial value.

4 Except in the case of members who have elected to receive (1) a  
5 deferred retirement allowance pursuant to N.J.S.18A:66-113 or (2)  
6 an early retirement allowance pursuant to section 4 of P.L.1971,  
7 c.382 (C.18A:66-113.1) after separation from service pursuant to  
8 N.J.S.18A:66-113, if a member dies within 30 days after the date of  
9 retirement or the date of board approval, whichever is later, the  
10 member's retirement allowance shall not become effective and the  
11 member shall be considered an active member at the time of death.  
12 However, if the member dies after the date the application for  
13 retirement was filed with the system, the retirement will become  
14 effective if:

15 (1) The deceased member had designated a beneficiary under an  
16 optional settlement provided by this section; and

17 (2) The surviving beneficiary requests in writing that the board  
18 make such a selection. Upon formal action by the board approving  
19 that request, the request shall be irrevocable.

20 The board may select an Option 3 settlement on behalf of the  
21 beneficiary of a member who applied for and was eligible for  
22 retirement but who died prior to the effective date of the retirement  
23 allowance if all of the above conditions, with the exception of (1),  
24 are met.

25 The board of trustees shall, from time to time and as often as  
26 they deem it necessary, employ an actuary, who shall recommend,  
27 and the board shall keep in convenient form, such data as shall be  
28 necessary for actuarial valuations of the various funds created by  
29 this article. At least once in every five-year period, or more  
30 frequently as determined by the board of trustees, the actuary shall  
31 make an actuarial investigation into the mortality, service and salary  
32 experience of the members and beneficiaries of the retirement  
33 system, and shall make a valuation of the assets and liabilities of the  
34 various funds thereof, and upon the basis of such investigation the  
35 board of trustees shall:

36 (a) Adopt for the retirement system such mortality, service and  
37 other tables as shall be deemed necessary.

38 (b) Certify the rate of contribution which shall be made by each  
39 board of education to the pension fund as provided by this article.

40 Payments made pursuant to this subsection, as well as the  
41 pension fund documents associated therewith, shall comply with  
42 section 401(a)(25) of the federal Internal Revenue Code.

43 (cf: P.L.2005, c.328, s.4)

44

45 3. This act shall take effect on the 90th day after the date of  
46 enactment.

**S2159 CODEY**

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STATEMENT

This bill requires compliance with various sections of the federal Internal Revenue Code by pension funds for board of education employees of first-class counties, established pursuant to N.J.S.A.18A:66-94 et seq. The Board of Education Employees' Pension Fund of Essex County, which has been a closed pension system since 1980, is the only pension fund currently operating under those statutes. The bill amends provisions of the pension fund, as recommended by the fund's actuary, to comply with various sections of the federal Internal Revenue Code applicable to governmental plans.

SENATE STATE GOVERNMENT, WAGERING, TOURISM &  
HISTORIC PRESERVATION COMMITTEE

STATEMENT TO

**SENATE, No. 2159**

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 13, 2012

The Senate State Government, Wagering, Tourism and Historic Preservation Committee reports favorably Senate Bill No. 2159.

This bill requires compliance with various sections of the federal Internal Revenue Code by pension funds for board of education employees of first-class counties, established pursuant to N.J.S.A.18A:66-94 et seq. The Board of Education Employees' Pension Fund of Essex County, which has been a closed pension system since 1980, is the only pension fund currently operating under those statutes. The bill amends provisions of the pension fund, as recommended by the fund's actuary, to comply with various sections of the federal Internal Revenue Code applicable to governmental plans.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

**SENATE, No. 2159**

**STATE OF NEW JERSEY**

DATED: DECEMBER 10, 2012

The Assembly State Government Committee reports favorably Senate Bill No. 2159.

This bill requires compliance with various sections of the federal Internal Revenue Code by pension funds for board of education employees of first-class counties, established pursuant to N.J.S.A. 18A:66-94 et seq. The Board of Education Employees' Pension Fund of Essex County, which has been a closed pension system since 1980, is the only pension fund currently operating under those statutes. The bill amends provisions of the pension fund, as recommended by the fund's actuary, to comply with various sections of the federal Internal Revenue Code applicable to governmental plans.

Senate Bill No. 2159 is identical to Assembly Bill No. 2856 of 2012.

# ASSEMBLY, No. 2856

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED MAY 10, 2012

**Sponsored by:**

**Assemblyman JOHN F. MCKEON**

**District 27 (Essex and Morris)**

**Assemblywoman MILA M. JASEY**

**District 27 (Essex and Morris)**

**Co-Sponsored by:**

**Assemblymen Caputo, Giblin and Assemblywoman Spencer**

**SYNOPSIS**

Updates provisions governing Board of Education Employees' Pension Fund of Essex County to comply with Internal Revenue Code.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 9/28/2012)**

1 AN ACT concerning the Board of Education Employees' Pension  
2 Fund of Essex County and amending N.J.S.18A:66-97 and  
3 N.J.S.18A:66-110.

4

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

7

8 1. N.J.S.18A:66-97 is amended to read as follows:

9 18A:66-97. a. Until the effective date of P.L.2005, c.328, any  
10 pension fund created or to be created as provided in this article shall  
11 be under the control and management of the board of seven trustees,  
12 no more than three of whom shall be employees of the same board  
13 of education. The two trustees of the board added pursuant to this  
14 act, P.L.2001, c.454, shall be retirees of the pension fund elected by  
15 the retirees of the pension fund, and each such member shall serve  
16 for a term of two years. The first board selected as provided in  
17 section 18A:66-96 shall serve until the month of January following  
18 the incorporation of such association. At such time four members  
19 of the association shall be elected as trustees, in place of the four  
20 first selected, by a majority vote of the members of the association  
21 as follows: one for the term of one year, one for the term of two  
22 years, one for the term of three years, and one for the term of four  
23 years, who shall serve for the respective terms for which they are  
24 each chosen. Thereafter in the month of January of each year a  
25 member shall be chosen for a full term of four years to serve in  
26 place of the trustee whose term shall have expired.

27 b. After the effective date of P.L.2005, c.328, any pension fund  
28 created as provided in this article shall be under the control and  
29 management of the board of seven trustees, at least one of whom  
30 shall be an active member until the last active member of the fund  
31 retires and one of whom shall be a retiree. The remaining trustees  
32 may be either active members or retirees as the number of each may  
33 be determined by the bylaws of the board of trustees prior to an  
34 election. Commencing with the first January following the  
35 enactment of this act, P.L.2005, c.328, and continuing each January  
36 thereafter, two individuals shall be elected as trustees in the place of  
37 two sitting trustees by a majority vote, for a term of three years.  
38 Active member trustees shall be elected by a majority vote of the  
39 active members of the association, and retiree trustees shall be  
40 elected by a majority vote of the retirees of the pension fund. The  
41 transition in trustee terms and the number of trustees elected shall  
42 be accomplished as determined by the board.

43 In any election for a trustee in which there is only one candidate  
44 for a position, a vote of retirees or active members shall not be held

**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.**

1 and the candidate shall be designated a trustee by a majority vote of  
2 the sitting board of trustees.

3 Any vacancy occurring among the board of trustees or in the  
4 office of chairperson, vice-chairperson, secretary, treasurer, or other  
5 officers of such corporation shall be filled in the manner provided  
6 in bylaws, and in the absence of such provision shall be filled by the  
7 board of trustees.

8 c. Any pension fund created as provided in this article shall be  
9 (1) a governmental plan under section 414(d) of the federal Internal  
10 Revenue Code; (2) a qualified pension plan under section 401(a) of  
11 the Internal Revenue Code; and (3) shall hold assets in a tax exempt  
12 trust under section 501 of the Internal Revenue Code.

13 d. In accordance with the provisions of section 401(a)(2) of the  
14 federal Internal Revenue Code, and subject to such exceptions as  
15 may be permitted for governmental plans under section 401(a)(2) of  
16 the federal Internal Revenue Code, at no time prior to the  
17 satisfaction of all liabilities with respect to members and their  
18 beneficiaries under any pension fund created as provided in this  
19 article shall any part of the corpus or income of the pension fund,  
20 within the taxable year or thereafter, be used for or diverted to  
21 purposes other than for the exclusive benefit of the members or  
22 their beneficiaries.

23 e. Notwithstanding any law, rule or regulation to the contrary,  
24 the contributions to and benefits payable under any pension fund  
25 created as provided in this article shall not exceed the limitations  
26 provided under section 415 of the federal Internal Revenue Code  
27 and the regulations issued by the United States Department of the  
28 Treasury under that code section, as applicable to a governmental  
29 plan as defined in section 414(d) of the federal Internal Revenue  
30 Code, and as indexed in accordance with section 415(d) of the  
31 federal Internal Revenue Code.

32 Any applicable limitation as adjusted under section 415(d) of the  
33 federal Internal Revenue code shall apply automatically to  
34 contributions to and benefits payable under any pension fund  
35 created as provided in this article as of January 1 following such  
36 adjustment. This automatic annual adjustment shall apply to  
37 members who have had a severance from employment. If this  
38 pension fund must be aggregated with another plan to determine the  
39 effect of section 415 of the federal Internal Revenue Code on a  
40 member's benefits or contributions, and such benefits or  
41 contributions must be reduced to comply with that code section,  
42 then such reduction shall be made pro rata between the plans in  
43 proportion to the member's creditable service in each plan.

44 f. Notwithstanding any law, rule or regulation to the contrary,  
45 for members of any pension fund created as provided in this article,  
46 the amount of compensation which may be used for member  
47 contributions and benefits shall not exceed the compensation  
48 limitation of section 401 (a) (17) of the federal Internal Revenue



1 Code of 1986, (26 U.S.C. s.401 (a) (17) ), as amended pursuant to  
2 section 13212 of the Omnibus Budget Reconciliation Act of 1993,  
3 Pub. L.103-66, 107 Stat. 312 or as hereafter amended or  
4 supplemented, to the extent applicable to governmental plans.

5 g. Notwithstanding any law, rule or regulation to the contrary,  
6 the form and timing of all distributions from any pension fund  
7 created as provided in this article to a member, or to the beneficiary  
8 of a member if the member dies before the member's entire interest  
9 has been distributed, shall conform to the required distribution  
10 provisions of section 401(a)(9) of the federal Internal Revenue  
11 Code and the regulations issued by the United States Department of  
12 the Treasury under that code section only to the extent applicable to  
13 a governmental plan as defined in section 414(d) of the federal  
14 Internal Revenue Code, including the incidental death benefit  
15 requirements of section 401(a)(9)(G) of the federal Internal  
16 Revenue Code. In addition, in no event shall payments under any  
17 such pension fund commence to be paid to a member later than the  
18 member's required beginning date, without regard to whether the  
19 member has filed application therefor. For this purpose, a member's  
20 required beginning date is the April 1 of the calendar year following  
21 the later of (1) the calendar year in which the member attains age  
22 70½ or (2) the calendar year in which the member retires. The  
23 actuarial adjustment described in section 401(a)(9)(C)(iii) of the  
24 federal Internal Revenue Code shall not apply.

25 h. In accordance with the provisions of section 401(a)(31) of the  
26 federal Internal Revenue Code, any pension fund created as  
27 provided in this article shall permit direct transfer of a distribution  
28 from the fund that is an eligible rollover distribution to an eligible  
29 retirement plan.

30 i. Any pension fund created as provided in this article shall  
31 operate in compliance with the federal "Uniformed Services  
32 Employment and Reemployment Rights Act of 1994," Pub.L.103-  
33 353 (38 U.S.C. s.4301 et seq.) and section 414(u) of the federal  
34 Internal Revenue Code. In addition, in accordance with section  
35 401(a)(37) of the federal Internal Revenue code, if a member dies  
36 on or after January 1, 2007 while performing qualified military  
37 service, as defined in section 414(u)(5) of the federal Internal  
38 Revenue Code, such member's designated beneficiaries shall be  
39 entitled to any additional benefits, other than benefit accruals  
40 relating to the period of qualified military service, that would have  
41 been provided under any pension fund created as provided in this  
42 article if the member had resumed and then terminated employment  
43 on account of death.

44 (cf: P.L.2005, c.328, s.1)

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46 2. N.J.S.18A:66-110 is amended to read as follows:

47 18A:66-110. Pensions shall be paid from the fund in the manner  
48 following:

1       a. A member of the pension fund who was a member on or  
2 before June 26, 1962 and who has or shall hereafter have credit in  
3 the pension fund for 30 years or more as an employee of a board of  
4 education in a county wherein the fund has been established and  
5 maintained shall, upon application to the board of trustees of the  
6 pension fund, be retired by such board of trustees and shall  
7 thereupon receive annually from the fund, for and during the  
8 remainder of his or her life, by way of pension, an amount equal to  
9 one-forty-fifth of the average annual compensation received in any  
10 three years of creditable service providing the largest possible  
11 benefit multiplied by the number of years for which he or she has  
12 credit in the pension fund, the amount to be determined by  
13 resolution of the board.

14       b. Upon the retirement of a member who has reached the age of  
15 60 years, the person so retired shall be entitled to receive during his  
16 or her life, by way of pension, one-forty-fifth of the average annual  
17 compensation received in any three years of creditable service  
18 providing the largest possible benefit multiplied by the number of  
19 years for which he or she has credit in the pension fund, the amount  
20 to be determined by resolution of the board. Upon the receipt of  
21 proper proof of death of a member who has retired on a service  
22 retirement allowance, there shall be paid to such person, if living, as  
23 he shall have nominated by written designation duly executed and  
24 filed with the board of trustees, otherwise to the executor or  
25 administrator of the member's estate an amount equal to one-half of  
26 the highest annual compensation received by the member in any  
27 year of creditable service.

28       c. A member of the fund who has credit therein for 10 years,  
29 who shall become incapacitated, either mentally or physically, and  
30 who cannot perform the regular duties of employment, or who is  
31 found unfit for the performance of his or her duties, upon the  
32 application of his employer or upon his own application or the  
33 application of someone acting in his behalf, shall be retired by the  
34 board of trustees of the pension fund and thereupon shall receive  
35 annually from the fund a retirement allowance as described in  
36 subsection b. of this section if he has reached or passed age 60 and  
37 if he is under age 60, an amount equal to nine-tenths of one-forty-  
38 fifth of the average annual compensation received in any three years  
39 of creditable service providing the largest possible benefit  
40 multiplied by the number of years of creditable service; provided,  
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42 17 years nor more than 30 years of service unless the member  
43 would have had less than 17 years of service at age 60, in which  
44 event he shall be given credit for the years to age 60; however, a  
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5 trustees within 60 days next following the accident and the  
6 application for retirement is filed with the said board of trustees  
7 within two years of the date of the accident, shall receive annually  
8 from the fund an amount equal to two-thirds of the annual salary  
9 being received by such employee on the date of the accident. The  
10 board of trustees may waive strict compliance with the time limits  
11 within which a report of the accident and an application for  
12 retirement must be filed with the board if it is satisfied: (1) that a  
13 report of the accident from which the disability is claimed to have  
14 resulted was filed with the employing board of education with  
15 reasonable promptitude and in no event later than 60 days after the  
16 accident, and (2) the applicant shall show that his failure to file a  
17 report with the board of trustees or to file his application for  
18 retirement within the time limited by law was due to mistake,  
19 inadvertence, ignorance of fact or law, inability, or to the fraud,  
20 misrepresentation or deceit of any person, or to a delay in the  
21 manifestation of the incapacity, or to any other reasonable cause or  
22 excuse, and (3) that the application for retirement was filed in good  
23 faith and the circumstances justify its favorable consideration.

24 The trustees of the pension fund shall have the power to  
25 determine whether or not any employee is permanently and totally  
26 disabled, and whether or not a disability of an employee is the  
27 direct result of a traumatic event occurring at some definite time  
28 and place in the performance of his or her duties as such employee.  
29 The claimant shall have the right to present physicians, witnesses or  
30 other testimony in his or her behalf before the board of trustees.  
31 The chairperson, or any other member of the board of trustees, may  
32 administer oaths to any physician or other persons called before the  
33 trustees regarding the employee's disability. The board of trustees  
34 shall decide, by resolution, whether the applicant is entitled to the  
35 benefit of this article.

36 Permanent and total disability resulting from a cardiovascular,  
37 pulmonary or muscular-skeletal condition which was not a direct  
38 result of a traumatic event occurring in the performance of duty  
39 shall be deemed an ordinary disability.

40 Once in each year, the board of trustees may, and upon the  
41 member's application shall, require any member retired for a  
42 disability, who is under the age of 60, to undergo medical  
43 examination by a physician or physicians designated by the board of  
44 trustees. The examination shall be made at the residence of the  
45 pensioner or any other place mutually agreed upon. If the physician  
46 or physicians thereupon report and certify to the board of trustees  
47 that the disabled pensioner is not permanently and totally  
48 incapacitated, either mentally or physically, for the performance of

1 duty, and the board finds that said member is engaged in a gainful  
2 occupation, or could be engaged in a gainful occupation, and if the  
3 board concurs in the report, then the amount of the pension shall be  
4 reduced to an amount which, when added to the amount then being  
5 earned by him or her or an amount which he or she could earn if  
6 gainfully employed, shall not exceed the amount of compensation  
7 received by him or her at the time of his or her retirement, including  
8 any cost of living adjustment. If subsequent examination of such  
9 pensioner shows that his or her earnings have changed since the  
10 date of his or her last examination, then the amount of the pension  
11 shall be further altered, but the new pension shall not exceed the  
12 amount of the pension originally granted, nor shall the new pension,  
13 when added to the amount then being earned by the pensioner,  
14 exceed the salary or compensation received by him or her at the  
15 time of his or her retirement, including any cost of living  
16 adjustment.

17 d. At the time of retirement, any member may elect to receive  
18 his or her benefits in a retirement allowance payable throughout  
19 life, or he or she may, on retirement, elect to convert the benefits,  
20 otherwise payable to him or her, into a retirement allowance of the  
21 equivalent actuarial value computed on the basis of such mortality  
22 tables as shall be adopted by the board of trustees, in accordance  
23 with one of the optional forms following:

24 Option 1. A reduced retirement allowance, payable during life,  
25 with a provision that in the case of death, before the total pension  
26 payments have equaled the actuarial value computed as aforesaid,  
27 the balance shall be paid to his or her surviving designated  
28 beneficiary, duly acknowledged and filed with the board of trustees;  
29 and if none, then to the executor or administrator of his or her  
30 estate.

31 Option 2. A reduced retirement allowance, payable during the  
32 retired member's life, with the provision that after his or her death it  
33 will continue during the life of and be paid to his or her designated  
34 beneficiary, if such person survives him or her.

35 Option 3. A reduced retirement allowance, payable during the  
36 retired member's life, with the provision that after his or her death,  
37 an allowance at one-half of the rate of his or her reduced allowance  
38 will be continued during the life of and be paid to his or her  
39 designated beneficiary, if such person survives him or her.

40 Option 4. A reduced retirement allowance, payable during the  
41 retired member's life, with some other benefit payable after his or  
42 her death, provided the benefit is approved by the board of trustees.

43 Option 5. Some other benefit, which is equivalent to the full  
44 amount, three-quarters, one-half or one-quarter of the member's  
45 retirement allowance, shall be paid upon the member's death to the  
46 beneficiary designated by the member, and if that beneficiary dies  
47 before the member, the member's retirement allowance shall  
48 increase to the maximum retirement allowance for the member's

1 lifetime, provided that such other benefit together with the  
2 member's lesser and maximum retirement allowances shall be  
3 certified by the actuary to be of equivalent actuarial value.

4 Except in the case of members who have elected to receive (1) a  
5 deferred retirement allowance pursuant to N.J.S.18A:66-113 or (2)  
6 an early retirement allowance pursuant to section 4 of P.L.1971,  
7 c.382 (C.18A:66-113.1) after separation from service pursuant to  
8 N.J.S.18A:66-113, if a member dies within 30 days after the date of  
9 retirement or the date of board approval, whichever is later, the  
10 member's retirement allowance shall not become effective and the  
11 member shall be considered an active member at the time of death.  
12 However, if the member dies after the date the application for  
13 retirement was filed with the system, the retirement will become  
14 effective if:

15 (1) The deceased member had designated a beneficiary under an  
16 optional settlement provided by this section; and

17 (2) The surviving beneficiary requests in writing that the board  
18 make such a selection. Upon formal action by the board approving  
19 that request, the request shall be irrevocable.

20 The board may select an Option 3 settlement on behalf of the  
21 beneficiary of a member who applied for and was eligible for  
22 retirement but who died prior to the effective date of the retirement  
23 allowance if all of the above conditions, with the exception of (1),  
24 are met.

25 The board of trustees shall, from time to time and as often as  
26 they deem it necessary, employ an actuary, who shall recommend,  
27 and the board shall keep in convenient form, such data as shall be  
28 necessary for actuarial valuations of the various funds created by  
29 this article. At least once in every five-year period, or more  
30 frequently as determined by the board of trustees, the actuary shall  
31 make an actuarial investigation into the mortality, service and salary  
32 experience of the members and beneficiaries of the retirement  
33 system, and shall make a valuation of the assets and liabilities of the  
34 various funds thereof, and upon the basis of such investigation the  
35 board of trustees shall:

36 (a) Adopt for the retirement system such mortality, service and  
37 other tables as shall be deemed necessary.

38 (b) Certify the rate of contribution which shall be made by each  
39 board of education to the pension fund as provided by this article.

40 Payments made pursuant to this subsection, as well as the  
41 pension fund documents associated therewith, shall comply with  
42 section 401(a)(25) of the federal Internal Revenue Code.

43 (cf: P.L.2005, c.328, s.4)

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45 3. This act shall take effect on the 90th day after the date of  
46 enactment.

1 STATEMENT

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This bill requires compliance with various sections of the federal Internal Revenue Code by pension funds for board of education employees of first-class counties, established pursuant to N.J.S.A.18A:66-94 et seq. The Board of Education Employees' Pension Fund of Essex County, which has been a closed pension system since 1980, is the only pension fund currently operating under those statutes. The bill amends provisions of the pension fund, as recommended by the fund's actuary, to comply with various sections of the federal Internal Revenue Code applicable to governmental plans.

ASSEMBLY STATE GOVERNMENT COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 2856**

**STATE OF NEW JERSEY**

DATED: DECEMBER 10, 2012

The Assembly State Government Committee reports favorably Assembly Bill No. 2856.

This bill requires compliance with various sections of the federal Internal Revenue Code by pension funds for board of education employees of first-class counties, established pursuant to N.J.S.A. 18A:66-94 et seq. The Board of Education Employees' Pension Fund of Essex County, which has been a closed pension system since 1980, is the only pension fund currently operating under those statutes. The bill amends provisions of the pension fund, as recommended by the fund's actuary, to comply with various sections of the federal Internal Revenue Code applicable to governmental plans.

Assembly Bill No. 2856 is identical to Senate Bill No. 2159 of 2012.