

# ASSEMBLY, No. 5589

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED JUNE 8, 2023

**Sponsored by:**

**Assemblyman RAJ MUKHERJI**

**District 33 (Hudson)**

**Assemblyman GARY S. SCHAER**

**District 36 (Bergen and Passaic)**

**Assemblywoman VICTORIA A. FLYNN**

**District 13 (Monmouth)**

**Co-Sponsored by:**

**Assemblyman Giblin**

**SYNOPSIS**

Makes local government business administrators eligible for membership in PERS; provides for transfer from Defined Contribution Retirement Program to PERS.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/30/2023)**

1 AN ACT concerning the membership of business administrators in  
2 the Public Employees' Retirement System and amending  
3 P.L.2007, c.92 and supplementing P.L.1954, c.84 (C.43:15A-1 et  
4 seq.).

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

8  
9 1. Section 2 of P.L.2007, c.92 (C.43:15C-2) is amended to read  
10 as follows:

11 2. a. The following persons shall be eligible and shall  
12 participate in the Defined Contribution Retirement Program:

13 (1) A person who commences service on or after the effective  
14 date of this section of P.L.2007, c.92 (C.43:15C-1 et al.) in an  
15 elective public office of this State or of a political subdivision  
16 thereof, except that it shall not include a person who holds elective  
17 public office on the effective date of this section and is enrolled in  
18 the Public Employees' Retirement System while that person  
19 continues to hold that elective public office or, for an elected  
20 official specified in section 5 of P.L.2017, c.344 (C.43:15A-7.5),  
21 another elective public office, without a break in service. Service in  
22 the Legislature shall be considered a single elective public office.

23 (2) A person who commences service on or after the effective  
24 date of this section in an employment, office or position of the State  
25 or of a political subdivision thereof, or an agency, board,  
26 commission, authority or instrumentality of the State or of a  
27 subdivision, pursuant to an appointment by the Governor that  
28 requires the advice and consent of the Senate, or pursuant to an  
29 appointment by the Governor to serve at the pleasure of the  
30 Governor only during his or her term of office. This paragraph  
31 shall not be deemed to include a person otherwise eligible for  
32 membership in the State Police Retirement System or the Judicial  
33 Retirement System. This paragraph shall not include Workers'  
34 Compensation Judges of the Division of Workers' Compensation in  
35 the Department of Labor and Workforce Development.

36 (3) A person who commences service on or after the effective  
37 date of this section in an employment, office or position in a  
38 political subdivision of the State, or an agency, board, commission,  
39 authority or instrumentality of a subdivision, pursuant to an  
40 appointment by an elected public official or elected governing  
41 body, that requires the specific consent or approval of the elected  
42 governing body of the political subdivision that is substantially  
43 similar in nature to the advice and consent of the Senate for  
44 appointments by the Governor of the State as that similarity is  
45 determined by the elected governing body and set forth in an

**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 adopted ordinance or resolution, pursuant to guidelines or policy  
2 that shall be established by the Local Finance Board in the  
3 Department of Community Affairs or the Department of Education,  
4 as appropriate to the elected governing body. This paragraph shall  
5 not be deemed to include a person otherwise eligible for  
6 membership in the Teachers' Pension and Annuity Fund or the  
7 Police and Firemen's Retirement System, or a person who is  
8 employed or appointed in the regular or normal course of  
9 employment or appointment procedures and consented to or  
10 approved in a general or routine manner appropriate for and  
11 followed by the political subdivision, or the agency, board,  
12 commission, authority or instrumentality of a subdivision, or a  
13 person who holds a professional license or certificate to perform  
14 and is performing as a certified health officer, tax assessor, tax  
15 collector, municipal planner, chief financial officer, registered  
16 municipal clerk, construction code official, licensed uniform  
17 subcode inspector, qualified purchasing agent, or certified public  
18 works manager, or a business administrator as defined in section 2  
19 of P.L. , c. (C. )(pending before the Legislature as this bill).

20 (4) A person who is granted a pension or retirement allowance  
21 under any pension fund or retirement system established under the  
22 laws of this State and elects to participate pursuant to section 1 of  
23 P.L.1977, c.171 (C.43:3C-3) upon being elected to public office.

24 (5) A member of the Teachers' Pension and Annuity Fund,  
25 Police and Firemen's Retirement System, State Police Retirement  
26 System, or the Public Employees' Retirement System for whom  
27 compensation is defined as the amount of base or contractual salary  
28 equivalent to the annual maximum wage contribution base for  
29 Social Security, pursuant to the Federal Insurance Contributions  
30 Act, for contribution and benefit purposes of those retirement  
31 systems, for whom participation in this retirement program shall be  
32 with regard to any excess over the maximum compensation only.

33 (6) A person in employment, office or position for which the  
34 annual salary or remuneration is less, or the hours of work per week  
35 are fewer, than that which is required to become a member of the  
36 Teachers' Pension and Annuity Fund or the Public Employees'  
37 Retirement System, or to make contributions to those systems as a  
38 member on the basis of any such employment, office or position,  
39 after November 1, 2008.

40 b. No person shall be eligible to participate in the retirement  
41 program with respect to any public employment, office, or position  
42 if:

43 (1) the base salary for that employment, office, or position is  
44 less than \$5,000 per year;

45 (2) the person is, on the basis of service in that employment,  
46 office, or position, eligible for membership or enrolled as a member  
47 of another State or locally-administered pension fund or retirement  
48 system established under the laws of this State including the

1 Alternate Benefit Program, except as otherwise specifically  
2 provided in subsection a. of this section;

3 (3) the person is receiving a benefit as a retiree from any other  
4 State or locally-administered pension fund or retirement system  
5 established under the laws of this State, except as provided in  
6 section 1 of P.L.1977, c.171 (C.43:3C-3); or

7 (4) the person is an officer or employee of a political  
8 subdivision of this State or of a board of education, or of any  
9 agency, authority or instrumentality thereof, who is ineligible for  
10 membership in the Public Employees' Retirement System pursuant  
11 to section 20 of P.L.2007, c.92 (C.43:15A-7.2).

12 c. A person eligible and required to participate in the  
13 retirement program pursuant to paragraph (5) of subsection a. of  
14 this section may elect to waive participation with regard to that  
15 employment, office, or position by filing, when first eligible, on a  
16 form required by the division, a written waiver with the Division of  
17 Pensions and Benefits that waives all rights and benefits that would  
18 otherwise be provided by the retirement program. Such a person  
19 may thereafter elect to participate in the retirement program by  
20 filing, on a form required by the division, a written election to  
21 participate in the retirement program and participation in the  
22 retirement program pursuant to such election shall commence on  
23 the January 1 next following the filing of the election to participate.

24 d. Service credited to a participant in the Defined Contribution  
25 Retirement Program shall not be recognized as service credit to  
26 determine eligibility for employer-paid health care benefits in  
27 retirement pursuant to P.L.1961, c.49 (C.52:14-17.25 et seq.),  
28 N.J.S.40A:10-16 et seq., P.L.1979, c.391 (C.18A:16-12 et al.) or  
29 any other law, rule or regulation.

30 (cf: P.L.2021, c.140, s.1)

31

32 2. (New section) a. A business administrator, who, as of the  
33 effective date of this act, P.L. , c. (pending before the  
34 Legislature as this bill), is employed by a political subdivision of  
35 the State, or an agency, board, commission, authority, or  
36 instrumentality of a subdivision, and participating in the Defined  
37 Contribution Retirement Program on the basis of service in that  
38 position shall be enrolled as a member of the Public Employees'  
39 Retirement System within 90 days following the effective date of  
40 this act if the employee meets the eligibility requirements for  
41 membership in the retirement system at the time of enrollment that  
42 would apply to an employee who commences service on or after the  
43 effective date of this act. The retirement system shall notify in  
44 writing, within 15 days following the effective date of this act, all  
45 eligible employees of the enrollment required pursuant to this  
46 section.

1       b. The business administrator shall be given service credit in the  
2 Public Employees' Retirement System for service starting on the  
3 date of the appointment of the business administrator.

4       Service credit transferred from a participant in the Defined  
5 Contribution Retirement Program under this act shall be recognized  
6 as service credit to determine eligibility for employer-paid health  
7 care benefits in retirement pursuant to P.L.1961, c.49 (C.52:14-  
8 17.25), or any other law, rule, or regulation.

9       For retirement tier determination, as tier is defined by the  
10 Division of Pensions and Benefits, an eligible employee's tier shall  
11 be determined by their participation date in the Defined  
12 Contribution Retirement Program or their original enrollment date  
13 in the Public Employees' Retirement System, if applicable,  
14 whichever is earlier.

15       c. The actuary for the Public Employees' Retirement System  
16 shall determine the unfunded accrued liability resulting from the  
17 transfer and coverage of business administrators under subsection a.  
18 of this section in the same manner provided for the determination of  
19 the unfunded accrued liability of the retirement system by section  
20 24 of P.L.1954, c.84 (C.43:15A-24). This unfunded accrued  
21 liability shall be amortized in the manner provided by section 24  
22 over an amortization period of 20 years.

23       d. The value of the account of a business administrator who is  
24 transferred out of the program shall be transferred from the Defined  
25 Contribution Retirement Program to the Public Employees'  
26 Retirement System in accordance with the relevant provisions of the  
27 federal Internal Revenue Code and Internal Revenue Service  
28 guidance as a direct trustee-to-trustee transfer. The transfer shall be  
29 in accordance with a rule, method, or process that shall not result in  
30 the transfer being deemed a distribution includible in federal gross  
31 income for the business administrator.

32       e. As used in this section, "business administrator" means the  
33 executive and administrative officer of any political subdivision of  
34 the State, or any agency, board, commission, authority, or  
35 instrumentality of the State or of a subdivision serving, in a position  
36 with the title of business administrator, municipal or county  
37 administrator, municipal or county manager, city manager, town  
38 manager, village manager, borough manager, township manager, or  
39 any functional equivalent, as the case may be.

40  
41       3. This act shall take effect immediately.

#### 42 43 44                   STATEMENT

45  
46       This bill makes business administrators serving in local  
47 governments eligible for membership in the Public Employees'  
48 Retirement System (PERS). Business administrators currently

1 participate in the Defined Contribution Retirement Program  
2 (DCRP). The bill defines “business administrator” as the executive  
3 and administrative officer of any political subdivision of the State  
4 or any agency, board, commission, authority, or instrumentality of  
5 the State or of a subdivision serving in a position with the title of  
6 business administrator, municipal or county administrator,  
7 municipal or county manager, city manager, town manager, village  
8 manager, borough manager, township manager, or any functional  
9 equivalent, as the case may be.

10 The bill provides for the transfer to the PERS of a business  
11 administrator who is participating in the DCRP within 90 days  
12 following the effective date of the bill if the employee meets the  
13 eligibility requirements for membership in the PERS at the time of  
14 enrollment. The bill requires the PERS notify eligible business  
15 administrators of the required enrollment within 15 days after the  
16 effective date.

17 The bill specifies that service credit transferred from a  
18 participant in the DCRP would be recognized as service credit in  
19 the PERS to determine eligibility for employer-paid health care  
20 benefits in retirement pursuant to current law. The bill also  
21 specifies that the membership tier will be determined by the  
22 member’s participation date in the DCRP or their original  
23 enrollment date in the PERS, if applicable, whichever is earlier.

24 Additionally, the actuary for the PERS is required to determine  
25 the unfunded accrued liability resulting from the transfer of the  
26 business administrators. This unfunded accrued liability will be  
27 amortized over a period of 20 years.

28 The value of the account in the DCRP of the business  
29 administrator will be transferred to the PERS in accordance with  
30 relevant provisions of the federal Internal Revenue Code and  
31 Internal Revenue Service guidance.

32 The bill will take effect immediately.