August 29, 2011 ***Advisory***

P.L. 2011 Chapter 78

Pension Benefits

Chapter 78, P.L. 2011 was signed into law effective June 28, 2011. The law changes several aspects of the Teachers' Pension and Annuity Fund (TPAF) and the Public Employees' Retirement System (PERS) operation and some benefit provisions of those systems. The Division of Pensions and Benefits is in the process of implementing the provisions of Chapter 78, and we will provide additional information as it becomes available.

This advisory will be updated regularly as NJEA receives more clarifications.

The law mandates the following:

Increase in Employee Pension Contribution Rates

Chapter 78 changes the employee contribution percentage for pension benefits from 5.5% to 6.5% for ALL active members of TPAF and PERS, effective immediately. However, that increase will begin as soon as the necessary administrative procedures for collection are established and will not be applied retroactively to the effective date.

An additional 1% increase will be phased in over 7 years starting after 12 months from the law's effective date for ALL active members of TPAF and PERS.

The contribution increases will be implemented in two phases:

The first phase applies to all employees who are members of PERS and TPAF employed in all covered service positions. The increase will become effective with the first payroll on or after October 1, 2011. For Local Government employees, Local Board of Education employees, and State employees who are not compensated through the State Centralized Payroll Unit or not reported on a biweekly payroll schedule, the increase is effective with the first payroll amount to be paid on or after October 1, 2011, which is reported to the Division of Pensions and Benefits as compensation for the fourth calendar quarter of year 2011.

The second phase of the employee contribution increase from 6.5% to 7.5% applies to ALL active members of PERS and TPAF and will be phased in equally over a seven year period beginning July 2012. The contribution rate will increase by 0.14% every year starting July 2012 until the 7.5% contribution level is reached in July 2018. The minimum pension loan repayment amounts and payments for the purchase of service credit after the effective date of the law will need to be adjusted accordingly.

Pension Plan Provisions Changes

The law creates Tier 5 for members of TPAF and PERS:

• New members to the pension system on or after June 28, 2011 will be eligible for a service retirement benefit at age 65.
• New members to the pension system on or after June 28, 2011 will need 30 years of creditable service for receipt of the early retirement benefit with a reduction of 1/4 of 1% for each month (3% per year) that the member is under age 65.

Members are new to the system at their original date of hire and/or after they incur two or more years break in service (including medical leave of absence).

Automatic Cost-of-Living Adjustment (COLA) Suspension

The law suspends the payment of COLA to ALL current and future retirees and beneficiaries until the state pension fund reaches certain level of funding (target funded ratio).

Creation of New Pension Committees

Chapter 78 establishes new pension committees:

• One eight-member committee in the TPAF; and
• Two eight-member committees in the PERS, one for the State part and one for the local part of the PERS.

Four members of each committee will be appointed by the Governor to represent public employers. The other four will be appointed by the unions representing members of those retirement system. The committees will be formed when the pension fund reaches certain level of funding (the "target funded ratio" for the system or part of the system is achieved). Every committee will have the discretionary authority to change the plan provisions including:

• employee contribution rate;
• benefit formula multiplier;
• final compensation period;
• minimum age at which a member becomes eligible to retire either for service or early retirement;
• disability retirement provisions; and
• COLA.

The committee will not have authority to change the vesting period requirements.

The committee will give priority consideration to the reactivation of the COLA before any other benefit changes. It will be able to reactivate the COLA and change the basis for its calculation, as well as set the duration and extent of the activation.

The committee will not implement any pension benefit change if the direct or indirect result of that change will cause the system's funded ratio to fall below the target funded ratio at any time during the 30 years following the implementation of such decision.

Definition of Target Funded Ratio

The new law defines "target funded ratio" to be the ratio of the actuarial value of assets to the actuarial accrued liability. The target ratio will be expressed as a percentage that will equal to 75% in fiscal year 2012, and increased annually in the next seven fiscal years, until the ratio reaches 80%. It will remain at 80% level for all subsequent fiscal years.

Changes in Pension Funding

The law changes the methodology for calculating the unfunded accrued liability payment portion of the employer's annual pension contribution to the TPAF and PERS. The unfunded actuarial accrued liability (UAAL) will be amortized for each plan over an open-ended thirty year period and paid in level dollars. Beginning with the July 1, 2019 actuarial valuation, the UAAL will be amortized over a closed thirty year period until the remaining period reaches twenty. After that the amortization period will revert to an open-ended twenty year period.

Contractual Rights to Employer Pension Contributions

The new law provides that each member of the TPAF and PERS will have a contractual right to the annual required contribution made by the employer (State) or by any other public entity. That means that the employer (State) or other public entity must make a required contribution on a timely basis to securely fund the retirement system and to provide the retirement benefits to which the members are entitled by statute.

The failure of the State or any other public employer to make the annually required contribution will be deemed to be a violation of the contractual right of each employee. The Superior Court, Law Division will have jurisdiction over any action brought by a member of any system or fund or any board of trustees to enforce the contractual right set forth in this law. The law also provides that the rights reserved to the State in current law to alter, modify, or amend such retirement systems and funds **cannot diminish the contractual right of employees established by this law.**

Changes in Investment Council

Chapter 78, P.L. 2011 increases the membership of the State Investment Council from 13 to 16 members. Two additional members are appointed by the Governor with the advice and consent of the Senate, and one member is added from persons nominated by Public Employee Committee of the New Jersey State AFL-CIO. The law also provides that an elected member of the boards of trustees for TPAF and PERS will be eligible for designation to serve on the State Investment Council.

Super Conciliator

The law establishes a process using a super conciliator to resolve an impasse on a decision or matter regarding pension benefits before any new committees in the TPAF and PERS.

Additional Pension Plan Compliance Provisions

Chapter 78, P.L. 2011 codifies in law various provisions necessary to maintain the qualified plan status of the State retirement systems under the federal Internal Revenue Code. It intends to bring the defined contribution plans into compliance with U.S. Department of Treasury regulations affecting administration of plans administered under section 403(b) of the Internal Revenue Code.