

NEW JERSEY SCHOOL BOARDS ASSOCIATION

413 West State Street  
Trenton, NJ 08605-0909

1-888-886-5722

ANNUAL DELEGATE ASSEMBLY  
May 14, 2016

The following resolution was received from the  
South Plainfield Board of Education (Monmouth):

- WHEREAS, The South Plainfield Board of Education is a public employer under the laws of the State of New Jersey; and
- WHEREAS, Because the board is a public employer, all district employees must be enrolled in one of two state pension plans0the Teachers Pension and Annuity fund (“TPAF”) or the Public Employees Retirement System (“PERS”); and
- WHEREAS, As members of these pension plans, each district employee is required to contribute a portion of their salary to the state pension fund, which is then banked in the employee’s pension account until the employee retires and receives his or her retirement pension; and
- WHEREAS, As recently as April of 2015, the amount of the fund itself was approximately 41 billion collars, versus a total pension obligation of approximately 81 billion dollars, leaving an unfunded pension liability of nearly 40 billion dollars; and
- WHEREAS, Even when including the contributions to the fund from public employees, including South Plainfield School District employees, the pension fund has not been fully funded in a number of years and, given the current economic climate facing the state, may not be fully funded under the current funding scheme in the future; and
- WHEREAS, Despite its unfunded liability, the New Jersey pension fund is legally required to meet its contribution and retirement payout obligations each year; and
- WHEREAS, The board is concerned that the tenuous financial position of the current fund may cause employees that have regularly contributed to the fund from their own salaries to, through no fault of their own, lose their expected benefits from the fund or receive a substantially reduced benefit upon retirement; and
- WHEREAS, The board is further concerned that the responsibility to fund the pension system may eventually fall even more heavily on the district and its employees. Should the board, its employees and district taxpayers become responsible for an additional share of the pension fund, the district’s budget, programs, buildings and staff levels may all potentially be affected due to the associated costs and need to fund the pension fund shortfall; and

WHEREAS, Because the pension fund is governed by state law, the board believes that the solution to this problem can only come through decisive legislation action, rather than from stop-gap methods which may only extend or intensify the issue; and

WHEREAS, Many other school districts and public employees throughout New Jersey may have similar concerns or be facing similar situations, since the unfunded pension fund affects all current or future retirees in the state; now, therefore be it

1 RESOLVED, That the South Plainfield Board of Education finds, that, the pension fund  
2 shortfall has the potential to create an untenable burden on the district and its  
3 finances, and consequently has the potential to negatively affect the district as a  
4 whole, its staff, and the quality of education provided to its students; and,  
5 therefore, be it further  
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7 RESOLVED, That the pension shortfall may also have a debilitating effect on district  
8 employees who have diligently contributed to the fund throughout their service to  
9 the district; and, be it further  
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11 RESOLVED, That the board hereby petitions the New Jersey School Boards Association to  
12 lobby New Jersey's state legislators to reach a legislative solution to fully fund  
13 the state's pension funds as soon as possible, without requiring any additional  
14 costs to be passed through and become the financial responsibility of the board,  
15 the district or its employees; and, be it further  
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17 RESOLVED, That this resolution be placed on the agenda for consideration at the  
18 May 14, 2016 Delegate Assembly; and, be it further  
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20 RESOLVED, That the board urges other New Jersey school districts and municipalities to  
21 adopt a similar resolution in an effort to convince their state legislators to  
22 introduce or co-sponsor legislation to address the issues raised herein; and, be it  
23 finally  
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25 RESOLVED, That the board secretary shall forward a copy of this resolution to our state  
26 Representatives, the New Jersey School Boards Association, local municipal  
27 leaders, the board secretaries of each school district in the county, the County  
28 Office of Education and Office of the Commissioner of Education.

Adopted at a regular meeting of  
The South Plainfield Board of Education  
On December 16, 2015.

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Alexandre Ferreira  
Business Administrator/Board Secretary

## RESOLUTION NO. 6

### **SYNOPSIS**

Resolution No. 6 from the South Plainfield Board of Education (Middlesex County) proposes that NJSBA seek a legislative solution to require the state to fully fund the state's pension funds and safeguard boards of education and its employees from any financial responsibility to fund same.

### **BACKGROUND**

The South Plainfield Board of Education resolution seeks to legislatively address the state's persistent underfunding of its obligations to totally fund the employers' contributions to the Teachers' Pension and Annuity Fund (TPAF), *N.J.S.A. 18A:66-1 et. seq.*, and to safeguard both boards of education its employees from additional financial obligations to pay into the fund.

As reflected in South Plainfield's resolution, the underfunding of the state's obligations to the various pension funds, including TPAF, has persisted for close to two decades. (It is estimated that the state's pension debt is growing by \$10 Million a day. \*\*)

Governor Christie convened the New Jersey Pension and Health Benefit Study Commission, which issued a Report in February 2015, addressing the pension funds as follows:

The Commission envisions retirement benefits reform as a two-part process: freezing the accrual of benefits under the existing pension plans, and creating new retirement plans under which employees will accrue future retirement benefits. This approach would enable both current and new employees to accrue future benefits that are secure and affordable —adjectives that cannot be used to describe the current plans. \*

A Supplemental Report was issued in February 2016 recommending that the pension obligation be shifted to local employers, i.e. school districts and municipalities, among others, while simultaneously lowering health benefits for public employees, in order to reap savings to pay for the pension obligation. \*\*

The New Jersey Supreme Court also weighed in on the underfunding debacle. In *Burgos v. State of New Jersey*, 222 *N.J.* 175 (2015) the Court held: 1) Chapter 78, *P.L.* 2011, *c.* 78, which amended *N.J.S.A. § 43:3C-9.5(c)*, did not create a legally enforceable contract that was entitled to constitutional protection; and the Debt Limitation Clause, *N.J. Const. Art. VIII, § 2, para. 3*, interdicted the creation, in this manner, of a legally

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\*Report of the NJ Pension and Health Benefits Commission, February 24, 2015; pp. 19-21.

\*\* Supplemental Report of the NJ Pension and Health Benefits Commission, February 11, 2016; pp.17-20.

binding enforceable contract compelling multi-year financial payments in the sizable amounts called for by Chapter 78; and 2) under the Appropriations Clause, [N.J. Const. Art. VIII, § 2, para. 2](#), the Legislature had the sole authority to appropriate funds; therefore, the Judiciary had no authority to redress the legislature's refusal to take action.

The legislature too is weighing in on this matter. Senate President Stephen Sweeney introduced Senate Concurrent Resolution No. 184 (SCR-184) on December 7, 2015; Speaker Vincent Prieto introduced its lower house counterpart, ACR-3, soon thereafter on December 14, 2015. The Concurrent Resolutions propose a constitutional amendment to obligate the state to make its payments into the pension systems each year and to establish in the Constitution the rights of public employees, vested in these pension systems, to receive earned pension benefits. While current law provides a “non-forfeitable right” to receive a pension benefit for vested public employees who were employed before May 21, 2010, the amendment would incorporate that right into the Constitution for all employees.

Additionally, the state would have until July 1, 2021 (i.e., Fiscal Year 2022) to start making each year’s pension payment in full. Until then, the state would make a partial, but increasing, payment each year. The payment would be made on a quarterly basis, rather than near the end of each fiscal year, which is when the state typically makes such payment.

Under the State Constitution, a proposed constitutional amendment must obtain approval of three-fifths of the total membership of both houses of the legislature (i.e., 24 “yes” votes in the Senate and 48 in the General Assembly) in order to be placed on the ballot for consideration by the electorate. However, an amendment may also go to the voters if it receives simple majority approval by the legislature in two consecutive calendar years. After going through the committee process and receiving the constitutionally-mandated public hearing, the amendments passed both houses of the Legislature on January 7, 2016. However, neither version received the necessary “supermajority” approval to send the amendment directly to the voters at the next general election. The proposed amendments were reintroduced in February 2016 as SCR-2 and ACR-109. While there has been no further progress on the resolutions to date, it is widely anticipated that they will be voted on and approved in sufficient time to place them on the November 2016 ballot. If that occurs, the amendment will go into effect upon receiving majority approval of the voters.

NJSBA policy is specific that the state, which legislatively determined the pension benefits to be offered, should pay public school employers’ full pension contribution in support of employees’ pension benefits. FC/4145.

In 1984, by recommendation of NJSBA’s Public School Employee Pension Committee, and again in 1992, on recommendation of NJSBA’s Ad Hoc Pension Committee, NJSBA adopted policy opposing the return of the employer’s funding of TPAF to local districts; and affirming that the state should pay the full employer’s contribution to TPAF and Social Security. Current NJSBA policy maintains this position.

## RELEVANT NJSBA POLICY

### File Code 1430:

#### State Role in Education

- A. The NJSBA believes the authority for management of public schools should rest with local boards of education and state authority over school districts should not exceed the scope necessary to fulfill the constitutional mandate for a thorough and efficient system of free public education. *[Authority: DA 10/78-CR Graduation Requirements, DA 6/80-A, DA 6/93-SR, DA 6/95-SR]*

### File Code 4145:

#### Pension System

- A. The NJSBA believes that the pension system should be continuously monitored by the State to ensure that it is providing a cost-effective, affordable, and fiscally-sound approach to employees' retirement benefits that contains costs and provides reliable pension benefits to retired school employees at an affordable and predictable cost to the state. *[Authority: DA 12/90-6, DA 12/90-7, DA 6/92-CR (Pension), DA 11/96 SR]*
- B. The NJSBA believes in a comprehensive approach to improving the pension system and opposes piecemeal amendments to pension statutes. Benefits should only be improved after a source for funding those improvements is clearly identified as part of legislation. *[Authority: DA 12/84-CR (Pension), DA 6/92-CR (Pension), DA 11/96 SR]*
- C. The NJSBA believes that the state's public employee retirement system should not be "raided" if such action would threaten the plans' ability to fund their obligations. *[Authority: DA 6/92-CR (Pension), DA 11/96 SR, DA 5/02-SR, DA 11/06-SR, DA 11/11-SR]*

#### State Budgeting of Pension Costs

The NJSBA believes that the budgetary item reflecting funding of the Teachers Pension and Annuity Fund (TPAF), Premium for Non-Contributory Insurance, Social Security and Pension Adjustment Act should be cited as a separate and distinct program within the state budget, in order to accurately show actual state aid to fund local education and direct TPAF pension costs. *[Authority: DA 12/84-CR (Pension), DA 6/91-CR (QEA), DA 6/92-CR (Pension), DA 11/96-SR, DA 5/02-SR, DA 11/06-SR, DA 11/11-SR]*

#### TPAF and Social Security Contributions

- A. The NJSBA believes that local districts should not have to pay for the pension, social security and other benefits of those TPAF members whose salaries are funded in whole or in part by federal program monies. *[Authority: DA 5/70-14, DA 8/92 SR, DA 11/96 SR]*

- B. The NJSBA believes that the state should pay the full employer's contribution to TPAF and Social Security. [Authority: DA 12/84-CR (Pension), DA 6/91-CR (QEA), DA 6/92-CR (Pension), DA 11/96-SR, DA 5/02-SR, DA 11/06-SR, DA 11/11-SR]

## **DISCUSSION**

NJSBA's current policy generally reflects the intention of South Plainfield's resolution in that it places sole responsibility for funding the local school district employer's contribution to TPAF on the state. FC/4145.

NJSBA has steadfastly opposed transferring financial responsibility to local districts, most recently in opposing the recommendations of the Governor's New Jersey Pension and Health Benefit Study Commission recommendations to transfer the employer's financial contribution to local school districts.

NJSBA policy clearly opposes enhancing pension benefits by stating that a funding source to pay for any enhancements must be identified in the legislation that seeks to improve those benefits. FC/4145.

NJSBA policy is written in support of boards of education as representing the management side of local school districts. NJSBA policies generally do not address public employee rights and interests; specifically they do not address safeguarding employees from contributing to rising costs of pension benefits. NJSBA was created by the legislature to support local boards of education. N.J.S.A. 18A:6-45 *et. seq.* However, NJSBA does support the state monitoring the pension system to assure it is operated in a fiscally sound manner, assuring reliable benefits to public school employees; and opposes "raiding" the system. Doing so could potentially threaten the ability of the system to fund its obligations. FC/ 4145.

## **STATEMENT OF REASONS**

1. NJSBA policy specifically seeks to keep the state responsible for public school employer's pension contributions; and to limit statutory enhancements unless a funding source is identified in enabling legislation.
2. NJSBA policy does not address employee safeguards as it relates to their contribution to their pension benefits.

## 1 **RECOMMENDATION**

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3 The Resolutions Subcommittee recommends approval of this resolution with the  
4 following **additional** policy language in NJSBA's *Manual of Positions and Policies on*  
5 *Education*:

6

7 **The NJSBA believes** it should oppose any measure to transfer the obligation to  
8 fund the pension system from the state to local districts.