

**Restoration of the 3.0% Annual Cost of Living Adjustment (COLA) for Retired Classified RI Government Workers who Retired Prior to November 18, 2011**

**Submitted by Thomas C, Marcello**

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**05/7/2024**

1. **Premise:** Retired Classified State of Rhode Island workers who currently collect a pension are entitled by RIGL 36-10-35 to a 3.0% Annual Cost of Living Adjustment (COLA) as part of a deferred compensation benefit for which they performed their retirement eligible service.

From the beginning, the State has followed a homogenized approach to the pension issue. There are several classes of retirees involved. **The class with the strongest case are those retirees who were collecting a 3% COLA authorized by RIGL 36-10-35 who retired prior to the November 18, 2011 passage of the Rhode Island Retirement Security Act (RIRSA)**

The State might have had some justification with other employee groups to take some action, but not in the case of those who retired prior to the November 18, 2011 passage of pension legislation and were collecting retirement benefits.

Since the passage of RIRSA, there have been numerous E-Mails/letters sent to the Governor McKee, General Treasurer DiOssa, former General Treasurer Magaziner, Speaker of the RI House, President of the RI Senate, individual RI House Representatives and Senators, US Senators Jack Reed and Sheldon Whitehouse, US Representatives at the time Jim Langevin and David Cicilline and the RI Emergency Funding Board Members during the Covid Emergency.

These E-mails/letters made very innovative policy and funding alternatives to finance the reinstatement of the COLA for pre-reform retirees. Other than programmed mail server acknowledgements that an E-mail was received, not one individual had the courtesy to contact the sender to respond to the E-mail/letter content.

In short, it was the Rhode Island General Assembly that passed RIRSA on November 18, 2011 and it is only the legislature that can correct this reform that was approved by a sham settlement agreement.

During the 2023 General Assembly session, R.I. Gen. Laws § 36-10.2-11 Section 36-10.2-11 established a Pension Advisory working group –“(a) The general treasurer shall establish and convene an advisory working group to assist in the review and analysis of the impacts of the Rhode Island Retirement Security Act of 2011 on the state's public retirement systems and their current and retired members....(c) On or before March 1, 2024, the general treasurer shall forward a report containing the findings, recommendations and proposed options for consideration to the governor, speaker of the house and president of the senate..”

The following Points to Consider are an overview of what has transpired for the last 12 years.

## 2. Points to Consider

- a. Upon retirement, state retirees signed off their state position, in exchange, the retiree was given three options to collect retirement funds based on choosing a survivor benefit. The promise of receiving a yearly COLA was part of the counseling activities during the retirement process, and a major factor in the choice each individual retiree made in relation to survivor benefits. Documents were signed to initiate the retirement amount. Hypothetically, if the state can change the rules, retirees should be able to change the original retirement decisions, or even demand their former position back.
- b. There is no formal organization representing Retired Classified State Employees that is not affiliated with a union. A current organization affiliated with the suit, Rhode Island Public

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Employees Coalition is a subset of AFSCME. The interests of Retired Classified State of Rhode Island workers were lost in a blended settlement. While there was litigation regarding this, there was no group representing non-union pre-2011 retirees. The settlement agreement reached between union attorneys and state lawyers instead focused on then current employees and union retirees, the latter both pre and post 2011. These groups had different interests as well as different rights than non-union pre-reform 2011 retirees. As to the settlement voting, non-union retirees did not have the right to vote on the settlement unless they joined a union-sponsored group. In fact, not all retirees or their beneficiaries were sent ballots, and the voting procedures conducted by the union were seriously flawed. For example, after ballots were sent to union members and their affiliates, (AFSME-RI Retirement Chapter 94), any ballot not received was counted as a YES. **Retirees and beneficiaries not associated with the AFSME-RI Retirement Chapter 94 or other affiliates were not sent ballots.** Also, the State or Courts had no oversight of the voting process.

The settlement imposed on non-union retirees ignored numerous cases in other jurisdictions that held that COLAs could not legislatively be removed from persons who already had retired. (The States of Oregon and New Jersey are examples of this.)

This process was under reported in the media, and It appears this was a strategy to try to force a settlement. Former Governor Gina Raimondo even expressed a desire to resurrect this settlement and intimated that retiree benefits would be reduced if it was not approved. (Ref: Providence Journal Bulletin, January 1, 2014 Page A-2)

There has never been consideration given to the COLA cost pertaining to those who retired prior to the November 18, 2011 (Pre-reform retirees) passage of pension legislation and were collecting retirement benefits. These retirees are the oldest in the pension system and the percentage of those retirees who die would steadily increase.

- c. When the statutory changes of 2009-2011 were enacted, full COLAs were to be revived when the ERSRI fund reached an 80% funding level. **The law further provided that audited revenues in excess of the May estimate of the Revenue Estimates Committee (REC) had to be transferred to the state pension within 30 days of the final audit of the May revenue estimates. The purpose of that section was to expedite the reduction of the unfunded liability.**

Under an amendment enacted in 2016, the excess revenues after the said May REC audits are to be transferred to the pension fund **ONLY when there is a budget surplus in the budget year when the Governor submits his/her budget.** Given the perennial projected budget deficits by design, this means that no funds will be transferred to ERSRI during a pre-reform retiree's lifetime.

Despite the allegation that the new statutory program still includes COLA provisions, that is illusory. Under the provisions of the statutory changes, every four years, beginning in 2017, all retirees receiving a maximum \$31,318.00 dollars or more in retirement only will receive \$231.75 for a four year duration or \$4.82 per month. It is my understanding that this will apply to ALL retirees, regardless of when they retired, not just the pre-2009 retirees.

- d. Since passing the RIRSA, The State has consistently earmarked funds for the following:

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- i. Across the Board wage increases:
  - January 1, 2018 2.0%
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  - July 1, 2019 2.5%
  - January 1, 2020 1.0%
  - 2.5% salary increase retroactive to June 21, 2020,
  - 2.5% salary increase retroactive to June 20, 2021 ,
  - 2.5% salary increase on June 19, 2022
  - 2.5% increase on July 18, 2023
  - All employees currently employed by the State received a payment of \$1500.00
  - Employees actively employed by the State on July 1, 2022, received an additional \$1500.00
  
- ii. Other Earmarked Commitments (To name a few)
  - Voluntary Retirement Incentive: The State of Rhode Island is offering a Voluntary Retirement Incentive (VRI) payment to state employees in the Executive Branch who participate in the Employees' Retirement System of Rhode Island (ERSRI), who are currently eligible to retire and who are the recipients of longevity payments under the state's longevity program. Eligible employees who elect to retire within the enrollment periods designated above will receive a one-time payment in the amount equal to two times (2X) the employee's current annualized Longevity amount to a maximum payment amount of forty thousand dollars (\$40,000.00) (the "Incentive Payment"). This places a greater financial commitment on the ERSRI.
  - Promise Program: Free college tuition at CCRI for all students without regard to income. COST: \$30M
  - Bond issues, most recently to bail out the City of Providence Pension System
  
- e. If the State was in SERIOUS financial peril at the time, it would have took all reasonable interim steps/alternatives prior to the total elimination of the COLA to include;
  - iii. Increasing the 8.5% employee contribution rate. It has not been adjusted in approximately 20 years.
  - iv. Re-amortization of the COLA shortfall at historically low rates during the period 2016 to 2021 which many municipalities did.
  - v. Re-organizing State Government
  - vi. Raising Taxes
  - vii. Return on retirement funds investments are bound to increase once artificial low interest rates set by the FED end and rates increase.
  - viii. Consistent and active communication with the RI Congressional delegation about the impact of federal decisions and actions by the Federal Reserve and the U.S. Treasury Secretary and President on meager pension system returns not only for Rhode Island but nationally.

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- ix. No initiatives to request federal support of Rhode Island's pension reform objectives were initiated by the Governor or General Treasurer or the General Assembly to the RI Congressional delegation or to the President or to the Chairman of the Federal Reserve. (California and Illinois have started such initiatives, for example,)
- f. Most recently the state has received an excess of One Billion Dollars in discretionary funds as a result of COVID related economic hardships. The legislature and the governor had the opportunity to make re-reform retirees whole with these funds. This was not even a consideration.
- g. There is no one single entity with enforcement power (hold individuals accountable) to ensure the State Employees Retirement System receives it's required annual funding ,or to advise the General Assembly and the Governor formally and publicly of the actuarial impact of their actions, most importantly regarding contractual decisions or special purpose legislation impacting pension system membership eligibility. It appears the General Treasurer Lacks this authority. If there is, then a gross negligence of responsibility has taken place and those leaders responsible disciplined.
- h. The State still has a legal obligation to pay funds due to retirees or their heirs when funds are available and to take prompt actions, including either requesting federal support and grants or to initiate long term debt obligations to meet the primary status of the retiree claims for their proper deferred compensation.
- i. It's been documented that the investment strategy focusing on hedge funds conducted by the State Treasurer's Office has been a failure due to excessive administrative fund fees. This was noted in the report, "Rhode Island Public Pension Reform: Wall Street's License To Steal" by Edward Siedle. Mr. Siedle is a Forbes columnist and former SEC investigator who investigates pension-fund abuses.\
- j. If over the period of pre-reform retiree's employment of 25 or more years instead of having 8.75% removed from their bi-weekly paycheck had been allowed to keep that money and invest it, they would have done better than with the present system. But that was a choice they were not permitted to make. Pre-reform retirees paid for their retirement, and that included COLA provisions.
- k. Most pre-reform retirees are currently 70 years old or older, and too old to start a new career. Even acquiring basic part time employment is difficult. And yes, it's because of age. Legislation must be submitted for pre-2011 retirees, to re-institute the previous COLA provisions. Since the State has sufficient funds to grant large pay raises to current employees, sufficient funds to propose free tuition for Rhode Island residents, and the most receipt of Covid Related Funds, the State in 2022-23 currently has the funds to pay pre-2011 retirees their COLA.
- l. It was recently reported in the Providence Journal on February 21, 2023 under the headline, "Bonuses in Every Contract Since '21" that averaged an additional \$3,000.00. These bonuses went to State Employees.
- m. It was reported in the Providence Journal on July 1, 2022 that Rhode Island's part-time lawmakers got a 4.7% pay raise when the new budget year began on Friday.

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Salaries for state lawmakers are governed by Article VI, Section 3 of the state Constitution, which calls for legislators' pay to be adjusted annually based on "changes in the cost of living," as determined by the United States government during a 12-month period ending in the immediately preceding year. "This dates back to 1994, when the voters of Rhode Island approved a constitutional change, this dates back to 1994, when the voters of Rhode Island approved a constitutional change.

- n. The makeup of Pension Advisory Working Group {PAWG} appears to be skewed towards favoring active union employees. I base this observation on the fact there is no representation of Retired State Workers or Teachers. Of the ten members of the commission, three are directly related to the interests of active dues paying union members. They are the secretary treasurer of the AFL-CIO, The President of the AFL-CIO who also functions as the co-chairperson and the active teacher representative on the ERSRI Board. The President of the RI League of Cities and Towns is a recently retired state employee, but he is representing his organization. There have also been several statements that were published in The Providence Journal by the Treasurer of the AFL-CIO and The President of the AFL-CIO that would indicate they have already formed an opinion in regards to the Restoration of the 3.0% Annual Cost of Living Adjustment (COLA) for retired State Workers and Teachers.

The Director of Administration and a former Director of Administration who is currently the CEO of the RI Public Expenditure Council which are also on the PAWG which gives the State Administration 20% influence on the final report preparation.

- o. The 80% Funding Myth

Documentation provided by the American Association of Actuaries brief as well from Prof Tom Sgouros' testimony before the PAWG on December 14, 2023 verified the following:

1. A funded ratio of 80% should not be used as the primary criterion for identifying a plan as being either in good financial health or poor financial health. The AAA's guidance to the 80% Benchmark dates from 2012 -2021 continues today. (Ref: [https://www.actuary.org/sites/default/files/2021-10/80percent Myth Issue Brief.pdf](https://www.actuary.org/sites/default/files/2021-10/80percent%20Myth%20Issue%20Brief.pdf)) Hard copy also attached.
2. No single level of funding should be identified as a defining line between a healthy and an unhealthy pension plan. (Ref: <https://Treasury.ri.gov/media/1411download?language=en>)

**RIGL 36-10-35(g)(3) must be amended.**

- p. COLA restoration can be accomplished within the financial parameters of the current ERSRI financial structure, **NO GENERAL FUNDS ARE REQUIRED.**