
Public Hearing

before

ASSEMBLY JUDICIARY COMMITTEE

Assembly Concurrent Resolution 109

“Proposes constitutional amendment to require payments by State to State-administered retirement systems and establish in Constitution right of public employees to pension benefit; provides for enforcement of funding obligations and benefit rights”

LOCATION: Committee Room 12
State House Annex
Trenton, New Jersey

DATE: June 20, 2016
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John F. McKeon, Chair
Assemblyman Gordon M. Johnson, Vice Chair
Assemblyman Ralph R. Caputo
Assemblywoman Elizabeth Maher Muoio
Assemblyman Andrew Zwicker
Assemblyman Michael Patrick Carroll
Assemblyman Declan J. O’Scanlon Jr.



ALSO PRESENT:

Miriam Bavati
Rafaela Garcia
Office of Legislative Services
Committee Aide s

Kate McDonnell
Senate Majority
Committee Aide

Kevin Logan
Senate Republican
Committee Aides

Meeting Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
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JOHN F. McKEON
Chair

GORDON M. JOHNSON
Vice-Chair

JOSEPH A. LAGANA
ELIZABETH MAHER MUOIO
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New Jersey State Legislature
ASSEMBLY JUDICIARY COMMITTEE
STATE HOUSE ANNEX
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PUBLIC HEARING NOTICE

The Assembly Judiciary Committee will hold a public hearing on Monday, June 20, 2016 at 10:00 AM in Committee Room 12, 4th Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Rafaela Garcia, Miriam Bavati, Committee Aides, or make bill status and scheduling inquiries to Denise Darmody, Secretary, at (609)847-3865, fax (609)292-6510, or e-mail: OLSAideAJU@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.

The public hearing is being held in compliance with Article IX, paragraph 1 of the New Jersey Constitution and Rule 19:3 of the General Assembly on the following Assembly Concurrent Resolution:

ACR-109
Prieto/Jimenez/Giblin/
Caputo

Proposes constitutional amendment to require payments by State to State-administered retirement systems and establish in Constitution right of public employees to pension benefit; provides for enforcement of funding obligations and benefit rights.

Issued 6/10/16

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**ASSEMBLY CONCURRENT
RESOLUTION No. 109**

**STATE OF NEW JERSEY
217th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

**Assemblyman VINCENT PRIETO
District 32 (Bergen and Hudson)
Assemblywoman ANGELICA M. JIMENEZ
District 32 (Bergen and Hudson)
Assemblyman THOMAS P. GIBLIN
District 34 (Essex and Passaic)
Assemblyman RALPH R. CAPUTO
District 28 (Essex)**

Co-Sponsored by:

**Assemblymen Taliaferro, Johnson, Assemblywomen Caride, Chaparro,
Quijano, Assemblymen Holley, Moriarty and Benson**

SYNOPSIS

Proposes constitutional amendment to require payments by State to State-administered retirement systems and establish in Constitution right of public employees to pension benefit; provides for enforcement of funding obligations and benefit rights.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/7/2016)

1 **A CONCURRENT RESOLUTION** proposing to amend Article VII of
2 the New Jersey Constitution by adding a new Section IV and to
3 amend Article VIII, Section II, paragraphs 2 and 3.
4

5 **BE IT RESOLVED** by the General Assembly of the State of New
6 Jersey (the Senate concurring):
7

8 1. The following proposed amendment to the Constitution of
9 the State of New Jersey is agreed to:
10

11
12 **PROPOSED AMENDMENT**
13

14 a. Amend Article VII by adding a new Section IV to read as
15 follows:

16 1. a. The State shall make its annual required contribution to
17 each retirement system and pension fund for public employees
18 administered by the State as that contribution is determined by the
19 board of trustees of each system or fund in consultation with the
20 actuary for that system or fund. The annual normal contribution
21 plus the annual unfunded accrued liability contribution together
22 shall be the annual required contribution. The actuary for each
23 system or fund shall compute the annual required contribution
24 based on an annual valuation of the assets and liabilities of the
25 system or fund pursuant to consistent and generally accepted
26 actuarial standards.

27 The State shall commence making its annual required
28 contribution in full to each retirement system and pension fund for
29 public employees administered by the State in the State fiscal year
30 that commences July 1, 2021 and shall make the required
31 contribution in full in each fiscal year thereafter. Commencing July
32 1, 2017, the State shall make a payment to each retirement system
33 and pension fund of at least 4/8ths of the full annual required
34 contribution for each system and fund for that State fiscal year and
35 a payment that increases by at least an additional 1/8th of the full
36 annual required contribution for each system and fund for each
37 subsequent fiscal year until payment of the full contribution is
38 required to be made commencing July 1, 2021. The required
39 contribution to be made by the State shall be paid in each State
40 fiscal year to each system and fund on the following schedule: at
41 least 25 percent by August 1; at least 50 percent by November 1; at
42 least 75 percent by February 1; and at least 100 percent by May 1.

43 The amount of the contribution to be made to each retirement
44 system and pension fund by the State shall be included in the
45 general appropriation law for each State fiscal year. The payment
46 of the required contributions to be made by the State pursuant to
47 this subparagraph shall be an indefeasible obligation of the State.

1 b. Vested members of a retirement system or pension fund for
2 public employees administered by the State who were members of a
3 system or fund prior to May 21, 2010 and who attained five years of
4 service credit in the system or fund and were provided pursuant to
5 law with a non-forfeitable right to receive benefits shall have an
6 indefeasible non-forfeitable right to receive benefits as provided
7 under the laws governing the system or fund upon the attainment of
8 five years of service credit in the retirement system or fund. A
9 "non-forfeitable right to receive benefits" shall mean that the
10 benefits program, for any employee for whom the right has
11 attached, cannot be reduced.

12 Vested members of a retirement system or pension fund for
13 public employees administered by the State for whom the non-
14 forfeitable right was not provided by law who attain ten years of
15 service credit shall have an indefeasible right to receive the benefits
16 earned each year under the laws governing the system or fund.

17 This paragraph shall not be construed to preclude forfeiture,
18 suspension, or reduction in pension benefits for dishonorable
19 service by a member.

20 c. Except as expressly provided in this paragraph and only to
21 the extent so expressly provided, nothing in this paragraph shall be
22 deemed to (1) limit the right of the State to alter, modify, or amend
23 retirement systems and pension funds for public employees
24 administered by the State, or (2) create in any member a right in the
25 corpus or management of such a retirement system or pension fund.
26 The rights reserved to the State in this paragraph shall not diminish
27 or reduce the indefeasible obligations of the State and the
28 indefeasible rights of members established by subparagraphs a. and
29 b. of this paragraph.

30 d. The obligations and the rights set forth in this paragraph and
31 in Article VIII, Section II, paragraph 2 shall be enforceable in the
32 courts of this State. The courts of this State shall have jurisdiction
33 over any action brought by a member of any system or fund or any
34 board of trustees of such system or fund to enforce the obligations
35 and rights set forth in this paragraph. The State shall submit to the
36 jurisdiction of the courts and shall not assert sovereign immunity in
37 such an action.

38 e. The provisions of this paragraph shall be given effect
39 notwithstanding any other provision of this Constitution, provided,
40 however, that the appropriation obligation in subparagraph a. of this
41 paragraph is subject to and subordinate to appropriations for State
42 general obligation bonds heretofore authorized in accordance with
43 Article VIII, Section II, paragraph 3 of this Constitution.
44

45 b. Amend Article VIII, Section II, paragraphs 2 and 3 to read
46 as follows:

47 2. No money shall be drawn from the State treasury but for
48 appropriations made by law. All moneys for the support of the State

1 government and for all other State purposes as far as can be
2 ascertained or reasonably foreseen, shall be provided for in one
3 general appropriation law covering one and the same fiscal year;
4 except that when a change in the fiscal year is made, necessary
5 provision may be made to effect the transition. No general
6 appropriation law or other law appropriating money for any State
7 purpose shall be enacted if the appropriation contained therein,
8 together with all prior appropriations made for the same fiscal
9 period, shall exceed the total amount of revenue on hand and
10 anticipated which will be available to meet such appropriations
11 during such fiscal period, as certified by the Governor. No general
12 appropriation law for a fiscal year shall be enacted without
13 including appropriations for the State contributions to each
14 retirement system and pension fund for public employees
15 administered by the State required pursuant to other provisions of
16 this Constitution.

17 (cf: Art.VIII, Sec.II, par. 2)

18

19 3. a. The Legislature shall not, in any manner, create in any
20 fiscal year a debt or debts, liability or liabilities of the State, which
21 together with any previous debts or liabilities shall exceed at any
22 time one per centum of the total amount appropriated by the general
23 appropriation law for that fiscal year, unless the same shall be
24 authorized by a law for some single object or work distinctly
25 specified therein. Regardless of any limitation relating to taxation in
26 this Constitution, such law shall provide the ways and means,
27 exclusive of loans, to pay the interest of such debt or liability as it
28 falls due, and also to pay and discharge the principal thereof within
29 thirty-five years from the time it is contracted; and the law shall not
30 be repealed until such debt or liability and the interest thereon are
31 fully paid and discharged. Except as hereinafter provided, no such
32 law shall take effect until it shall have been submitted to the people
33 at a general election and approved by a majority of the legally
34 qualified voters of the State voting thereon.

35 b. On and after the date on which this subparagraph b. becomes
36 part of the Constitution, the Legislature shall not enact any law that,
37 in any manner, creates or authorizes the creation of a debt or
38 liability of an autonomous public corporate entity, established either
39 as an instrumentality of the State or otherwise exercising public and
40 essential governmental functions, which debt or liability has a
41 pledge of an annual appropriation as the ways and means to pay the
42 interest of such debt or liability as it falls due and pay and
43 discharge the principal of such debt, unless a law authorizing the
44 creation of that debt for some single object or work distinctly
45 specified therein shall have been submitted to the people at a
46 general election and approved by a majority of the legally qualified
47 voters of the State voting thereon. Voter approval shall not be
48 required for any such law providing that the ways and means to pay

1 the interest of and to pay and discharge the principal of such debt or
2 liability shall be subject to appropriations of an independent non-
3 State source of revenue paid by third persons for the use of the
4 single object or work thereof, or from a source of State revenue
5 otherwise required to be appropriated pursuant to another provision
6 of this Constitution.

7 c. No voter approval shall be required for any such law under
8 subparagraphs a. or b. of this paragraph authorizing the creation of
9 a debt or debts in a specified amount or an amount to be determined
10 in accordance with such law for the refinancing of all or a portion
11 of any outstanding debts or liabilities of the State, or of an
12 autonomous public corporate entity, established either as an
13 instrumentality of the State or otherwise exercising public and
14 essential governmental functions, heretofore or hereafter created, so
15 long as such law shall require that the refinancing provide a debt
16 service savings determined in a manner to be provided in such law
17 and that the proceeds of such debt or debts and any investment
18 income therefrom shall be applied to the payment of the principal
19 of, any redemption premium on, and interest due and to become due
20 on such debts or liabilities being refinanced on or prior to the
21 redemption date or maturity date thereof, together with the costs
22 associated with such refinancing.

23 d. All money to be raised by the authority of such law shall be
24 applied only to the specific object stated therein, and to the payment
25 of the debt thereby created.

26 e. This paragraph shall not be construed to refer to any money
27 that has been or may be deposited with this State by the government
28 of the United States. Nor shall anything in this paragraph contained
29 apply to the creation of any debts or liabilities for purposes of war,
30 or to repel invasion, or to suppress insurrection or to meet an
31 emergency caused by disaster or act of God. Nor shall anything in
32 this paragraph apply to the indefeasible obligation of the State to
33 make contributions to each retirement system and pension fund for
34 public employees administered by the State as required pursuant to
35 other provisions of this Constitution.

36 (cf: Art.VIII, Sec.II, par. 3; amended effective December 4, 2008)

37

38 2. When this proposed amendment to the Constitution is finally
39 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
40 shall be submitted to the people at the next general election
41 occurring more than three months after the final agreement and
42 shall be published at least once in at least one newspaper of each
43 county designated by the President of the Senate, the Speaker of the
44 General Assembly and the Secretary of State, not less than three
45 months prior to the general election.

1 3. This proposed amendment to the Constitution shall be
2 submitted to the people at that election in the following manner and
3 form:

4 There shall be printed on each official ballot to be used at the
5 general election, the following:

6 a. In every municipality in which voting machines are not used,
7 a legend which shall immediately precede the question as follows:

8 If you favor the proposition printed below make a cross (X), plus
9 (+), or check (✓) in the square opposite the word "Yes." If you are
10 opposed thereto make a cross (X), plus (+) or check (✓) in the
11 square opposite the word "No."

12 b. In every municipality the following question:

13

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|--|-----|--|
| | | <p>CONSTITUTIONAL AMENDMENT CONCERNING STATE PENSION PAYMENTS AND PUBLIC EMPLOYEE PENSION BENEFITS</p> <p>Do you approve amending the Constitution to require the State to make its payment to the pension systems for public employees each year and to establish in the Constitution the rights of public employees vested in these pension systems to receive earned pension benefits?</p> <p>The State would have until July 1, 2021 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.</p> |
| | YES | |

14

| INTERPRETIVE STATEMENT | |
|------------------------|--|
| NO | <p>This amendment to the Constitution concerns the State's payment to the pension systems for public employees and the pension benefits of those employees.</p> <p>Current law, adopted in 2011, required the State to make its pension payment each year. The New Jersey Supreme Court ruled that the State could not be compelled to make the payment because of certain provisions in the Constitution. This amendment is a response to that ruling.</p> <p>This amendment would require the State to make its pension payment each year as a constitutional obligation. The obligation would be enforceable in the State courts. Payment of the full amount would start July 1, 2021. Until then, partial, but increasing, payments would be made each year. Quarterly payments would be made on the first day of August, November, February, and May of each year.</p> <p>This amendment requires the annual State budget law to include the pension payment.</p> <p>Current law provides a non-forfeitable right to receive a pension benefit for vested public employees who were employed before May 21, 2010. This amendment would incorporate that right into the Constitution. This amendment would establish the right of vested public employees hired after May 21, 2010 to receive earned pension benefits after ten years of service. These rights would be enforceable in the State courts. This amendment does not increase any pension benefit.</p> |

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STATEMENT

The purpose of this amendment to the State Constitution is to require the State to fund the pensions of public employees on a timely basis. Current law requires the State to do this under the provisions set forth in subsection c. of N.J.S.A.43:3C-9.5, as

1 enacted by section 26 of P.L.2011, c.78, commonly referred to as
2 Chapter 78. However, currently these provisions cannot be
3 enforced by the courts of this State.

4 Chapter 78 requires the State and local government employers to
5 make annual contributions to the various pension systems
6 administered by the State: Teachers' Pension and Annuity Fund;
7 Judicial Retirement System; Prison Officers' Pension Fund; Public
8 Employees' Retirement System; Consolidated Police and Firemen's
9 Pension Fund; Police and Firemen's Retirement System; and State
10 Police Retirement System. The pension funding provisions of
11 Chapter 78 were part of a historic bipartisan compromise, endorsed
12 by the Governor, to ensure the solvency of the public employee
13 pension systems. Chapter 78 increased pension contributions by
14 public employees and suspended the payment of cost of living
15 adjustments (COLA) to retirees until certain funding threshold
16 levels are achieved. Chapter 78 also established a constitutionally
17 protected contractual right to the payment of the annual required
18 contributions to the pension systems by the State and all other
19 public employers.

20 This amendment to the Constitution is necessary to reverse a
21 2015 decision of the New Jersey Supreme Court, *Burgos v. State*,
22 222 N.J. 175, which held the contractual obligation of the State to
23 make its annual required contributions to the pension systems
24 unenforceable because it was "subject to appropriation" and
25 contravened the Debt Limitation Clause of the Constitution unless
26 approved by the voters. This amendment overrules that holding and
27 ensures that the commitment and requirement for annual funding to
28 eventually reach full funding for the pension systems are protected
29 by the New Jersey Constitution.

30 In *Burgos*, the Supreme Court relied on certain provisions of the
31 New Jersey Constitution, including the Debt Limitation and
32 Appropriations Clauses, to declare unenforceable the contractual
33 promise made in statute to public employees that the State will
34 make its annual required contributions to the pension systems.
35 Therefore, this amendment provides that its provisions will be given
36 effect notwithstanding any other provision of the Constitution.

37 As a result of the State's failure to fund the pension systems at
38 levels determined to be necessary by the actuaries of the pension
39 systems, the pension systems are approaching insolvency.

40 Notwithstanding the enactment of Chapter 78, in each of the last
41 three State fiscal years, the Governor has made contributions to the
42 pension systems that were less than that required of the State by
43 law. The purpose of this amendment to the Constitution is to ensure
44 full funding of the pension systems under generally accepted
45 actuarial principles.

46 To ease the financial burden on the State, the amendment
47 requires the State to make its full pension contribution payment
48 commencing July 1, 2021, and in each fiscal year thereafter, but

1 requires partial increasing contributions over a period of four years,
2 starting in State fiscal year 2017 when only 60 percent of the
3 payment is required.

4 The amendment requires that commencing July 1, 2017 the State
5 shall make a payment to each retirement system and pension fund
6 of at least 4/8ths of the full annual required contribution for each
7 system and fund for that State fiscal year. The amendment also
8 requires a payment that increases by at least an additional 1/8th of
9 the full annual required contribution for each system and fund for
10 each subsequent fiscal year until payment of the full contribution is
11 required to be made commencing July 1, 2021.

12 Quarterly payments are required to accelerate the return on
13 investment of the pension systems. Under current law, State
14 instrumentalities and local governments will continue to be
15 obligated to make full payments.

16 This amendment requires the pension payment to be included in
17 the annual State budget law. However, the appropriation obligation
18 would be subject to and subordinate to appropriations for State
19 general obligation bonds heretofore authorized in accordance with
20 Article VIII, Section II, paragraph 3 of the Constitution.

21 This amendment to the Constitution also incorporates in the
22 Constitution subsections a. and b. of N.J.S.A.43:3C-9.5 to protect
23 the contractual right of vested members of pension systems hired
24 prior to May 21, 2010, the effective date of P.L. 2010, c. 1, to the
25 pension benefits in effect upon the attainment by a public employee
26 of five years of service credit in a pension system. This means that
27 the pension benefit program for any employee for whom the right
28 has attached, inclusive of all pension service earned during their
29 employment, cannot be reduced. The amendment also establishes
30 the rights of all other employees, meaning that they will have vested
31 contractual rights to earned pension benefits after ten years of
32 service credit, and to the benefit earned each year thereafter;
33 however, the benefit formula can be reduced prospectively. These
34 provisions of the amendment are necessary because the Supreme
35 Court in the *Burgos* case left unresolved the issue as to whether
36 laws that create non-forfeitable and vested rights to pension benefits
37 are enforceable. The amendment does not alter current law that
38 authorizes pension service credit or benefits to be reduced or
39 forfeited for an employee's crime or misconduct.

40 This amendment does not impose any obligations on the State
41 concerning post-retirement health care benefits, which will continue
42 to be addressed through lawmaking and the State budget process.

43 The substantive constitutional rights and obligations established
44 by this amendment are enforceable by the courts of this State,
45 which can issue declaratory, injunctive, or other orders appropriate
46 to secure compliance with these rights and obligations. This too is
47 a necessary part of the amendment because in the *Burgos* decision,
48 the Court expressed concern that under the separation of powers

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1 doctrine it would be inappropriate for the courts to enmesh
2 themselves in the enforcement of contractual rights to pension
3 contributions and benefits. By providing for enforcement through
4 the courts, the amendment allows State courts to issue necessary
5 remedial orders to ensure compliance with the State's pension
6 payment obligations.

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ASSEMBLYMAN JOHN F. McKEON (Chair): Welcome, everyone.

I'm sorry; we got a little late start, and I know it's a crowded room. I'm going to try to move things logistically so we can get more and more people more comfortable and out.

So we're actually going to start with the Public Hearing. So the -- do we need to take roll and-- Tell me the procedure.

MS. BAVATI (Committee Aide): No, you just start the Public Hearing.

ASSEMBLYMAN McKEON: Okay.

MS. BAVATI: Take roll for the meeting.

ASSEMBLYMAN McKEON: We'll take roll for the meeting.

So we're just going to start the Public Hearing; but we are going to--

Michael, would you lead us in the Pledge of Allegiance? (all recite pledge)

Welcome to everyone, again, and happy Father's Day, a day after the fact, to all applicable, and to all of our dads.

We have a number of individuals who have signed up to note their support of the bill, but with no need to testify; and I am going to run through those now.

If you would like to testify, as it relates to the Public Question concerning the pension, feel free to. But I'd like you to limit your testimony to about a minute or two. This Committee has heard that testimony, now, at probably a half-a-dozen different meetings since December. So I think all of us understand how the issue frames out. Please

exercise your right to be heard publicly, but I just ask you all to keep that in mind.

Chance Lykins, of the New Jersey Firefighters Mutual Benevolent Association, in favor, no need to testify; Pat Colligan, of the New Jersey State PBA, in favor, no need to testify; Christina Renna, Vice President of the Chamber of Commerce of South Jersey. Christina -- thank you for your written testimony, and we'll consider that as a part of the public record -- opposed, no need to testify; Eric Richard, of the AFL-CIO, in favor, with no need to testify; Jeff Kaszerman, of the New Jersey Society of CPAs, opposed, with no need to testify; Tom Bracken and Mike Egenton-- Gentlemen, Tom and Mike--

M I C H A E L A. E G E N T O N: (off mike) Yes, Chairman, I'm going to let Tom go up and speak. Thank you.

ASSEMBLYMAN McKEON: Tom, we should have held you to last this time. (laughter)

T H O M A S A. B R A C K E N: You should have, yes. Good memory.

Thank you, Mr. Chairman, for letting me testify; and I will be brief. I won't reiterate what I said the last time I was here, but I would like to just recap a few things that I think are important to the State and every citizen in the State of New Jersey about this constitutional amendment.

ASSEMBLYMAN McKEON: Feel free to, Tom. And if you could do your best to consolidate it to a couple of minutes, we'd appreciate it much.

MR. BRACKEN: It will be short; I will be short.

Let me just recap where we are with regard to this. Number one, as I said before, we cannot afford to propose this -- or have this amendment passed for a number of reasons. Number one, one of the primary sources of payment is growth in the state. That is not happening. We are in the beginning of the second or third month of job loss in New Jersey. We have budget shortfalls in the State of New Jersey. And one of the primary sources of payment, as I said, is growth; that is not happening. Yet the proposed sources of payment are equally ugly -- which is cutting services or increasing taxes -- none of which are very popular. So the affordability factor is key here. We can't afford to do this.

Secondly -- and I say this with all due respect to everybody -- we have not considered alternative solutions to this problem. We have the Byrne-Healy amendment that has been proposed; it has gotten no air time. Assemblyman O'Scanlon has proposed some changes that have not been given any air time. We have a rush to judgement here on something that is extremely important. And anything this important cannot be properly passed on the State and on all the citizens of the state without proper and thorough analysis of all the alternatives. And no other alternative has been considered.

Also, the voters-- You know, the legislators are relinquishing their obligation to legislate by proposing to put this on the ballot and having the voters vote on this very important amendment. The problem with that, quite simply, is the voters are not educated on this issue. This is an issue that could be economic Armageddon for the State of New Jersey. You're asking people to vote on this without any proper education. That is very, very bad.

So the bottom line of this is it makes no logical sense. And one thing I would add. We, as a group -- my organization and many other business organizations, and I will reiterate this -- we are all in favor of having the pensioners be treated fairly. We are only opposed to the method that you are proposing to do this. And I've heard many people say that we have a legal and moral obligation to do this for the pensioners. That is correct. But we also -- and you all, as legislators -- have a legal and moral obligation to do what's right for all the citizens of the State of New Jersey.

So I think you have to get your priorities straight. Which is more important: Doing this for the pensioners, or doing what is right for the rest of the citizenship?

So at the end of the day, I think there should be two questions asked about this. Why are we proposing this solution? And secondly, why are we doing this now? The reason I say *now* is, I heard the Senate President say that we have a problem with the pension in 2026, 10 years from now. That's plenty of time to find the right solution to this problem.

So I reiterate: Why are we doing this solution, and why are we doing it now? And I hope, at the end of the day, whatever legislators vote on this, that they could properly answer those questions with thorough analysis and conviction that they have done their job in analyzing every possible solution as to the timing and as to the method of payment of this pension obligation.

Thank you very much.

ASSEMBLYMAN McKEON: Thank you, Tom.

Seth Hahn, of CWA, in favor.

Seth, not taking sides -- we're going to try to keep this to a couple of minutes. Your thoughtful comments have been before this Committee on a number of occasions.

S E T H H A H N: I shall be happy to be here as short as possible today, Mr. Chairman.

Thank you for having this public hearing again.

I'll sort of dispatch with what I said a couple of weeks ago, but I would like to reiterate -- I work for the Communications Workers of America. We have 55,000 or so families in the PERS, TPAF, and PFRS plans. So we're very familiar with this pension.

And I would just like to start by saying that the normal cost this year of what we actually owe to benefits earned this year is about \$700 million. It's a little more than 2 percent of the State budget. So the problem isn't that the pensions are overly generous; the problem is, we haven't made a payment in 21 years.

So we've come up with different ways to deal with this. And finally, in 2011, on the fourth round of pension cuts, the Legislature said, "We're actually serious about getting back to the payments this time." And so they put into the bill -- and everybody thought, everyone who voted on that thought that they were putting a contractual obligation to the funding formula in that bill. Well, the Supreme Court said that was unconstitutional. So if the Legislature can't make the payments, and we can't put something in a law that says the payments have to be made, then the only option left is to reform the Constitution.

So I would just like to say that this plan is one that will save, on the worst day of the year -- if we have to go out and borrow for the

quarterly payments, get the worst interest rate we could possible get on the worst day of the year -- will save \$10 billion over 30 years. So we're coming to the table with a plan that saves \$10 billion, right off the bat. We have another plan to limit hedge funds -- the overinvestment in high-risk, high-fee funds that we're trying to work through the State Investment Council. We've got a plan that will conservatively save another \$10 billion.

So the unions have come to the table and come up with a plan that will save, conservatively, \$20 billion over the next 30 years. And somehow, it's controversial, and we're talking about the affordability.

And I want to talk about the affordability. There are people here who say we can't afford this, right? I think the word I just heard was *economic Armageddon*. With the expiration of the income tax -- on the surtax on income of more than \$400,000 in 2009, and the bipartisan Corporate Business Tax cuts in 2010, we are on track, under this Administration, to hand out \$14 billion in tax relief to the wealthiest among us. We've done another \$6 billion in future revenue through the Economic Development Authority. And now, I guarantee you that the people who will tell you that this is unaffordable today will, next week, be just down the hall saying, "We can afford to give \$500 million more in tax cuts to the wealthiest 4 percent among us." And by the way, OLS says that, in year five, that's \$750 million. So if we can afford yet another round of tax cuts for people -- the wealthiest among us, then we can afford to pay every last dime of benefits that have been promised to workers who have gone -- who go in, every day, day in, day out, and do their jobs servicing this State.

And so I would just like to close -- and again, I always come back to the people who do this work. These are people who go in

dangerous neighborhoods alone at nights, where police go in pairs with bulletproof vests and guns, and say, "I need to make sure your kids are safe." These are people -- they work with the most profoundly disabled to ensure that they can have a life with dignity. They are doctors who care for military veterans. These are the people who have been promised a modest retirement benefit for, often, 30, 35 years of work. And we ask that you put this in front of the voters so that we can actually solve this problem once and for all.

And that's all I have, Mr. Chairman.

Thank you.

ASSEMBLYMAN McKEON: Seth, thank you for your passion and your thoughtful comments.

Mark Worobetz, in favor.

MARK J. WOROBE T Z: (off mike) Yes.

ASSEMBLYMAN McKEON: Mark, please come on up. I didn't see-- I was just looking for a group; but you're here as a citizen.

MR. WOROBE T Z: Yes, as a citizen.

First of all, thank you very much for the time. It's an honor to be in front of you right now.

ASSEMBLYMAN McKEON: That's nice of you to say, and it's a pleasure to have you.

MR. WOROBE T Z: Thank you.

I grew up in Union County; my wife and I live in Sussex County. I'm a lifelong resident of the State of New Jersey, which means, basically, I'm a lifelong taxpayer in the State of New Jersey. I also collect a New Jersey State pension.

When I began my career as a teacher in the early to mid-1980s, Governor Kean was our Governor at that time. Not only did he increase public teachers' salaries at the time, he also--

Thank you. Should I start again, or-- I hope not.

UNIDENTIFIED MEMBER OF COMMITTEE: No.

MR. WOROBEZ: Not only did he increase teachers' salaries, he fortified the pension at the time. In 1991, I was at a National Science Teachers' conference. Somebody found out I was from New Jersey, and they were from Georgia. And he came up to me and said, "You're from New Jersey. You have the second-most solvent pension program in the country. You should feel lucky." And I was; it felt good.

Things have changed. I find now that as we go through broken promises, after broken promises, after broken promises; we've gone from the most solvent -- or one of the most solvent pension programs in the nation to one of the worst. There's a blame game going on. They want to blame people -- the people getting the pension -- the firemen, the teachers, the State workers -- for the problem. Yet the State, over that period of time, has failed to make all their payments; while every pensioner has made every one of theirs.

I think this is why the constitutional amendment is required. It will require the State to keep its promises and mandate that the payments be made, as per the 2011 law.

The idea of a political blame game -- blaming people -- will solve nothing in the State of New Jersey. I believe this constitutional amendment will do just the opposite. It will solve a lot of our problems. And as a taxpayer, we need this to happen.

Again, thank you for your time.

ASSEMBLYMAN McKEON: Thank you for your thoughtful discussion. I appreciate it much.

Melanie Willoughby. The varsity is back -- NJBIA. (laughter) We're all very proud of you, and the direction that you've taken in running the organization. And it's nice to see you testifying again.

MELANIE WILLOUGHBY: Thank you very much, Mr. Chairman.

I still do have my laryngitis, though. It's all that talking about the TTF and the comprehensive tax cuts -- that we endorse.

Thanks for my plug.

Okay, so, I'm here representing New Jersey Business and Industry Association, which has 20,000 member companies and employs 1.2 million people.

And respectfully, we do oppose the ACR-109. We believe that this is a profound game changer and that we feel that our Constitution should not be amended in order to make these types of decisions in the Constitution. That is overall our policy, and this amendment is no different.

We feel that -- in the past, we've supported constitutional amendments because of the fact that there were difficulties with dedication of funds. But this is not something that we feel needs to be in the Constitution because it is coming out of the State budget. And when it's coming out of the State budget -- unlike the dedication of the Unemployment Insurance Tax, that was coming out of the employee and employer accounts, which could be dedicated; or the TTF, which is coming

out of the gas tax, which could be dedicated -- this is actually coming out of the State budget, which then makes a significant difference in how you, then, fund everything else that also comes out of the State budget. This is a super priority, which would take precedence over education, health care, and public safety.

And we feel that before you make this kind of determination, that you really need to significantly look at how it is you're going to make additional reforms. You can't fund something that's already broken. You need to make additional reforms -- particularly in health care, which is a very substantial cost -- and which, if we were to look at how we could effectuate those savings, then perhaps we'd feel more comfortable with how we would be able to ensure that this would be funded in the State budget. Because then we would be able to make those accommodations.

We do not feel that we should have the State short on resources because of the constitutional amendment.

So we feel that it's very, very important to look forward at how our State's economy is going to fare and what the type of recession that might come again -- as you know, it's very cyclical. And so, what will we do when there's a recession, and how will we fund the State budget with the requirements now that would be in the Constitution? We really need to think about what those cuts would look like.

And when you think about the fact that our cost of living here is already very difficult, and is driving significant tax revenue from the state, we need to look at not driving any more of that revenue out of the state -- so that we can be a state where the income growth is going to be substantial and large, and not be an out-migration state.

New Jersey experienced an outflow of over \$3 billion in net adjusted gross income. How does that stack up nationally? Well, using the GDP as a standard, New Jersey again ranks dead last among all states and the District of Columbia, with a net income outflow, as a percentage of GDP, of 0.55 percent. I have included charts in the handouts, so that you can see where we stand.

So we need to look at the total picture -- before we pass a constitutional amendment -- of what New Jersey's economy looks like; how we are going to build that economy; how we're going to reduce the cost of living for our state's residents so that they stay here. And passing this constitutional amendment to the ballot, we believe, is not the way to do it.

Thank you, Mr. Chairman, and members of the Committee. I appreciate the honor to be here before you today.

ASSEMBLYMAN McKEON: It's so nice to see you again. And thank you for your thoughtful testimony.

MS. WILLOUGHBY: Well, thank you very much; it's great to be here. And you'll be seeing a lot more of me. (laughter)

ASSEMBLYMAN McKEON: Pete Guzzo, New Jersey Fraternal Order of Police and the Professional Firefighters Association, as well as the AFT.

Peter is showing his support, but with no need--

P E T E R G U Z Z O, Ph.D.: (off mike) Mr. Chairman, I would like to say a few words.

ASSEMBLYMAN McKEON: Oh, I'm sorry.

DR. GUZZO: I had indicated no testimony.

ASSEMBLYMAN McKEON: It also says, "no need to speak."

But Pete, we are happy to have you.

DR. GUZZO: I changed my mind. (laughter)

ASSEMBLYMAN McKEON: Yes.

DR. GUZZO: And it will be brief.

Thank you very much.

I want to speak on behalf of the Fraternal Order of Police and Professional Firefighters Association. Just a couple of facts to throw out, in terms of the pension system and what the participation has been.

Up until Chapter 78, police and fire were contributing 7.5 percent; that is now 10 percent. It is the highest contribution in the country that is being contributed to a pension system.

The second thing I would like to point out to you is how important the solvency of the pension is for police and fire. Most police and fire do not receive Social Security; they don't contribute to the system, and they don't receive it. They rely on their pension. I had a phone call last week from a police officer who is retired and who lives on his pension, has no COLA -- as COLA was ended, as you know -- suspended. He's panicking. We have police officers who are panicking after putting in 25 years -- firefighters -- of service, putting their lives at risk, being told that they may not be entitled to a pension or won't be able to receive a pension. I just find that unbelievable that the State feels they have no obligation to these people, even though they've been contributing faithfully, as all public employees have.

That's really the essence of what I wanted to say. And obviously, they support this.

ASSEMBLYMAN McKEON: Thank you, again, Peter.
Wendell Steinhauer, NJEA.

W E N D E L L S T E I N H A U E R: Thank you, Mr. Chairman.

So I gave you a lengthy talk last time; hopefully, I can summarize up a little better and hit some points.

Wendell Steinhauer, President of the New Jersey Education Association, representing 200,000 public school employees, pre-service, active and retired.

I've listened to the doom and gloom, both last time-- You had me up early last time, so I didn't get to--

ASSEMBLYMAN McKEON: I was trying to reverse it around.

MR. STEINHAUER: Yes, I appreciate that.

I've heard *alternatives*. We've been going through 20 years of alternatives; we've gone through every court you can imagine. We've gone through the pension reforms of 2006, 2008, and the grand one in 2011 that was going to fix it, once and for all. And yet, here we are again, in 2016, with the exact same problem.

There is only one thing left to do, and that's to get this constitutional amendment on the ballot and to pass it, and do the right thing.

The talk about taxes and what will happen. Over the last 20 years -- we've just finished the great recession, and yet, here we are, still working together finding solutions. There will be other problems as we come about them. But what we're doing here today is alleviating one. And the one problem that I'm talking about is, in 2027, when the TPAF fund goes insolvent two years after the CWA's and State PERS goes insolvent.

And your bill for the ongoing, out-of-pocket -- because there's no pension fund funded -- then will be \$8 billion. We're trying to get on a plan that tops out at \$5.6 billion, and solves your problem, and then reduces it as it goes into the future, all with the same system that we have now.

I've heard our system is *broken*. Our system isn't broken; the only thing that's broken in this is that money hasn't been put in that was specified by the State.

Seth Hahn said \$700 million, right now, would be the normal cost. If we had a healthy pension system right now -- if all those payments over the last 20 years would be made, you'd be looking at less than \$1 billion. And now, today, you owe \$4.3 billion, soon to go to \$4.8 billion next year, and on the way to \$5.6 billion -- which has never, ever been paid.

It's time to stop all the nonsense and become accountable to the taxpayers of this state, and not deliver an \$8 billion bill in 2027. But indeed, today, take the right steps; get quarterly payments in so you're not dumping whatever is left at the end of the year -- which is never enough -- into the stock market to think that you're going to come home with everything.

And this plan ramps up to the full payment. We're not even at the full payment. If it passes, in 2017 you'll get half of the payment, which is \$2.4 billion, moving up to \$5.6 billion just 5 years before the pension fund goes insolvent. There is no other alternative; we've gone through this. Even the Supreme Court said the pensioners must be paid; it's just how you fund it has been the problem, and that's what we're here to solve today.

I thank you for your votes to move this out of Committee, and I look forward to working with you on getting this passed on the November ballot.

Thank you.

ASSEMBLYMAN McKEON: Wendell, thank you, and thank you for your leadership on behalf of the NJEA.

Ed Komczyk and Miriam Reichenbach; Miriam of the NJEA, in favor.

MIRIAM REICHENBACH: Good morning, Chairman, members of the Committee.

I'm Miriam Reichenbach. I taught for 35 years, 34 of them in the Pennsauken Public School system. I was a reading specialist, an English teacher, and a librarian.

When I began teaching in Pennsauken in 1974, I still owed the bank student loans; I had to purchase my first car and car insurance, and I started grad school at night -- all on \$9,000. And yet, I managed to make every single pension payment that was required of me. During my career, I made a total of 680 payments to the pension. Those contributions were made on time, in full, and without ever missing a single one.

People wonder, "Why do we go into teaching if salaries and pensions are an issue?" No one chooses a career as a teacher to get rich; we all know that's not possible. However, I loved teaching because I enjoyed seeing the changes in my youngsters, watching their growth and understanding, helping them meet challenges and overcome difficulties. These are the rewards of good teaching that you can't put in the bank for retirement.

The time I spent before and after school with students who needed extra help, or more time to take a test or finish a project was time well spent. I wrote letters of recommendation, assisted with college and/or job applications, met with parents, spoke with recruitment officers.

Working with kids and helping them to be creative, and making them think for themselves and make good decisions was a hugely rewarding part of my job. There's no adequate monetary reward for being a good teacher, working hard, and dedicating yourself to the education of tomorrow's citizens and taxpayers. However, there was always the promised security of a moderate pension. So while individuals earning larger salaries were able to bank for their later years, teachers knew they had a pension -- to which they contributed with every paycheck -- that would be there at the close of their careers.

ASSEMBLYMAN McKEON: Miriam, I don't mean to interrupt you.

MS. REICHENBACH: Yes, sir.

ASSEMBLYMAN McKEON: But if you can summarize. And I imagine that your written comments can be copied and we could make them a part of the public record. So please do your best.

MS. REICHENBACH: Mr. Chairman--

ASSEMBLYMAN McKEON: I'm not asking--

MS. REICHENBACH: --it is our belief that the proposed amendment -- the proposed constitutional amendment to fully fund pensions is absolutely essential. People have worked for those pensions, they have contributed to those pensions over the course of their careers.

The history of pension funding in this State indicates that this is the only way to go to make our pension system solvent.

ASSEMBLYMAN McKEON: I think that the passion that you just showed in that statement is even better than your prepared remarks. I appreciate that.

MS. REICHENBACH: Thank you. Thanks for your attention.

ASSEMBLYMAN McKEON: Thank you.

Ed.

E D W A R D A. K O M C Z Y K: Good morning, Mr. Chairman, Committee.

I've never done this before, so please be gentle with me.
(laughter)

I'm a retired math teacher, and I was born, raised, educated, worked, and paid taxes my whole life -- 77 year's worth -- in New Jersey. (laughter) I taught in Pennsauken High School for 32 years. I had a very rewarding and interesting career also. And I'm proud of my school system and what we provided to the community. My students were very motivated. They went on to schools such as Harvard, Princeton, Yale; some went on to serve in the New Jersey Legislature and the House of Representatives. And one of my students -- one of my trig students is now serving as the President of the New Jersey Senate.

ASSEMBLYMAN McKEON: You're like Mr. Holland.
(laughter)

MR. KOMCZYK: In addition to the success stories such as those, we also, as a school system -- we're proud of our athletic program.

We were fortunate to have three Golden Footballs given to our school for the 50th anniversary by the NFL.

Like so many teachers and people like yourselves, I chose to enter my profession because I wanted to contribute something to the general good, and also to have a positive influence on the lives and futures of youngsters. And as Ms. Reichenbach mentioned, my colleagues and I provided many services beyond our contracted hours, after school, with the letters of recommendations, student activities, and all that.

I started teaching in 1963; I retired in 1996. My salary was never commensurate with the service provided during that time. But I did expect a certain degree of economic security in the future during my retirement years. We, in the teaching profession, viewed this as the *grand bargain* between the profession and the State of New Jersey. Much to my disappointment, the State of New Jersey has started to break its promise to its teachers. Since 1963, I faithfully made 660 payments to the pension plan, never missing one payment. Since 1996, the State has contributed nothing to the pension plan for 12 years, and woefully underfunded the few years that it did contribute. This has occurred both during Republican and Democratic Administrations.

In 2011, as a result of the Chapter 78 law, the State removed the COLA provision, increased employee contributions to the pension, and decreased our benefits as a result. Public employees have given up about \$120 billion over the next 30 years.

Because of the State's irresponsibility, starting 20 years ago and continuing to today, there's now a threat that the whole system is going to go up in smoke. In a sensible system of regular periodic State

contributions, as we are proposing here -- if that had been in effect since 2008, the pension system would be in a much healthier condition due to the robust return of the equity markets. The investment portfolio would have been able to capture more of those investment gains.

The State of New Jersey has a fiduciary responsibility here that it seems to have neglected. We, the public employees, did not cause this crisis. Had our political representatives acted responsibly, we wouldn't be in this mess. By passing the amendment, the State will save money in the long run.

In closing, and speaking for my colleagues, I'd like to say that we're proud of the work that we did. We worked hard to give our students a great start in life. We're not asking for special treatment, just fair treatment. We are New Jersey residents and taxpayers who only want the pension that we were promised, that we paid for, and that we earned.

I want to thank you for your time and your work that you do on behalf of our State.

ASSEMBLYMAN McKEON: Ed, to you and Miriam, thank you for all your years of service, as well as all those who you represent here. And math teachers still make me nervous, so-- (laughter)

Thank you both.

MS. REICHENBACH: Thank you.

ASSEMBLYMAN McKEON: The last individual who has signed up is Robert Murphy of NJPSA, in favor.

Robert.

ROBERT MURPHY: Just the written testimony.

ASSEMBLYMAN McKEON: Oh, okay, fine. Thank you. It didn't denote either way.

As this is a public hearing, is there any member present who wishes to be heard?

ANTHONY RUSSO: (off mike) I filled out a slip. Tony Russo, with--

ASSEMBLYMAN McKEON: Tony, come on up, please; Tony Russo.

MR. RUSSO: I apologize, Mr. Chairman; but you should have my written testimony and a slip.

ASSEMBLYMAN McKEON: Tony, it's okay. But before you leave, fill one out, so we have a record of it.

MR. RUSSO: Okay.

ASSEMBLYMAN McKEON: Or else we'll find it.

MR. RUSSO: But it should be up there; yes, it should be up there.

ASSEMBLYMAN McKEON: We'll find it.

MR. RUSSO: But I'll be brief.

Again, Tony Russo with the Commerce and Industry Association, representing about 900 companies from virtually every business sector.

And I want to just echo what Melanie and Tom said. But I want to highlight what the issue is. And I think this is the fourth time that I'm testifying on this issue.

Again, the business community understands and appreciates that the pensions need to be paid. It's the approach that's being taken here.

Basically, what you're doing is, you're going to change our Constitution in perpetuity. And the previous speaker just mentioned that special treatment. Well, this is a special treatment for the pension folks that rely on a pension, I should say; that, right off the bat, regardless of economic conditions in the future, whatever the pension payment is has to come off the top.

And I thought Assemblyman Carroll brought up, during the discussion two weeks ago, a great exit ramp in the sense that -- in the resolution, there should be language that gives the State the exit ramp should we experience an economic downturn. Our businesses want some surety that the State's not going to turn around when there's a shortage of money, and say, "Now, you are going to have to pay more taxes."

And without that certainty, I'm telling you, it's going to just chase the investment away. And when we think about just this issue, Mr. Chairman -- I'll wrap up -- is we have minimum wage; we have paid sick leave; we potentially have a new gasoline tax that's going to hit us. It seems like businesses are under attack. And I can't stress enough that this is not the right approach to take to lock ourselves in with this constitutional amendment. And I hope that the voters turn it down, should it make the ballot.

Thank you.

ASSEMBLYMAN McKEON: Mr. Russo, thank you very much for your thoughtful testimony.

Any other members of the public who wish to be heard? (no response)

Seeing none, we will gavel close the Public Hearing with respect to the constitutional question, and we'll move forward in the normal course.

(END OF PUBLIC HEARING)