
Public Hearing

before

SENATE STATE GOVERNMENT, WAGERING,
TOURISM AND HISTORIC PRESERVATION COMMITTEE

SCR-184 (1R)

“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 7
State House Annex
Trenton, New Jersey

DATE: January 7, 2016
10:00 a.m.

MEMBERS OF COMMITTEE PRESENT:

Senator Jim Whelan, Chair
Senator Gerald Cardinale
Senator Thomas H. Kean Jr.



ALSO PRESENT:

Raysa J. Martinez Kruger
Frank J. Parisi
Office of Legislative Services
Committee Aides

Louis Couture
Senate Majority
Committee Aide

Brian Ahrens
Senate Republican
Committee Aide

Hearing Recorded and Transcribed by
The Office of Legislative Services, Public Information Office,
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey



JIM WHELAN
Chairman

SHIRLEY K. TURNER
Vice-Chair

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SENATE STATE GOVERNMENT, WAGERING,
TOURISM AND HISTORIC PRESERVATION COMMITTEE
STATE HOUSE ANNEX
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REVISED
PUBLIC HEARING NOTICE

The Senate State Government, Wagering, Tourism & Historic Preservation Committee will hold a public hearing on Thursday, January 7, 2016 at 10:00 AM in Committee Room 7, 2nd Floor, State House Annex, Trenton, New Jersey.

The public may address comments and questions to Frank J. Parisi, Raysa Martinez Kruger, Committee Aides, or make bill status and scheduling inquiries to Brittany Hample, Secretary, at (609)847-3890, fax (609)777-2998, or e-mail: OLSAideSSG@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 accordance with Article IX, paragraph 1 of the New Jersey Constitution and Rule 24:3 of the New Jersey Senate on the following Senate Concurrent Resolutions:

- | | |
|--|---|
| *SCR-184 (1R)
Sweeney/Turner/
Greenstein | 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. |
| SCR-188 (1R)
Scutari | Proposes constitutional amendment to change membership of legislative Apportionment Commission; imposes certain requirements on commission for process and legislative district composition. |

Persons presenting written testimony are asked to provide 10 copies on the day of the hearing.

Issued 12/30/15

*Revised 01/04/2016 (SCR-184 (1R) added)

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[First Reprint]
**SENATE CONCURRENT
RESOLUTION No. 184**

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED DECEMBER 7, 2015

Sponsored by:

Senator STEPHEN M. SWEENEY
District 3 (Cumberland, Gloucester and Salem)
Senator SHIRLEY K. TURNER
District 15 (Hunterdon and Mercer)
Senator LINDA R. GREENSTEIN
District 14 (Mercer and Middlesex)

Co-Sponsored by:

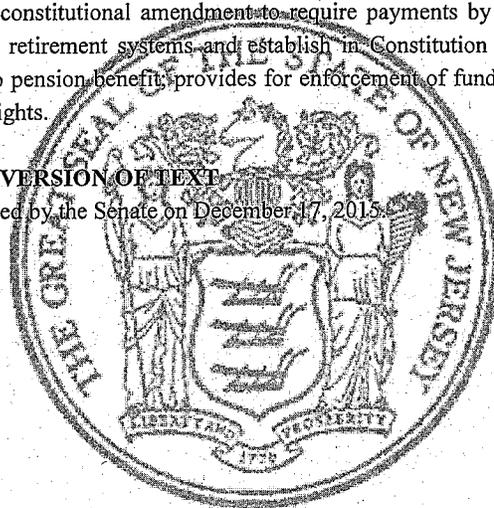
Senator Stack

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

As amended by the Senate on December 17, 2015.



(Sponsorship Updated As Of: 12/18/2015)

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 Senate of the State of New Jersey (the
6 General Assembly concurring):

7
8 1. The following proposed amendment to the Constitution of
9 the State of New Jersey is agreed to:

10
11 PROPOSED AMENDMENT

12
13 a. Amend Article VII by adding a new Section IV to read as
14 follows:

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

26 The State shall commence making its annual required
27 contribution in full to each retirement system and pension fund for
28 public employees administered by the State in the State fiscal year
29 that commences July 1, 2021 and shall make the required
30 contribution in full in each fiscal year thereafter. Commencing July
31 1, 2017, the State shall make a payment to each retirement system
32 and pension fund of at least ¹~~6/10ths~~ ¹4/8ths of the full annual
33 required contribution for each system and fund for that State fiscal
34 year and a payment that increases by at least an additional
35 ¹~~1/10th~~ ¹1/8th of the full annual required contribution for each
36 system and fund for each subsequent fiscal year until payment of
37 the full contribution is required to be made commencing July 1,
38 2021. The required contribution to be made by the State shall be
39 paid in each State fiscal year to each system and fund on the
40 following schedule: at least 25 percent by August 1; at least 50
41 percent by November 1; at least 75 percent by February 1; and at
42 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

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted December 17, 2015.

1 of the required contributions to be made by the State pursuant to
2 this subparagraph shall be an indefeasible obligation of the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38
39 2. When this proposed amendment to the Constitution is finally
40 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
41 shall be submitted to the people at the next general election
42 occurring more than three months after the final agreement and
43 shall be published at least once in at least one newspaper of each
44 county designated by the President of the Senate, the Speaker of the
45 General Assembly and the Secretary of State, not less than three
46 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

		<p style="text-align: center;">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

1

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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SENATOR JIM WHELAN (Chair): I think everyone knows why we're here and what we're going to try to do.

There are two -- technically, two separate hearings.

Senate President, welcome; Minority Leader, welcome. We have the heavyweights in the room.

There are two separate hearings. The first one we will do will be on the pension constitutional amendment--

SENATOR KEAN: He says that over the holiday season. Over the holiday season, you're saying that, sir?

SENATOR WHELAN: And then there, technically, will be a break. We will adjourn that hearing and then, within a matter of seconds, start the second hearing on the redistricting. Obviously, you know, some people may be here for both, some people may only be here for one. But regardless, we will -- that's the procedure we will follow.

Secondly, for clarification, this is strictly a hearing. There is no vote taken by the Committee and, as such, you may see members come in and out -- as we've just been by joined by our two leaders here -- because there are other hearings taking place on other topics in other rooms, so on, and so forth. Most of us are familiar with that. So since there is no vote, you will see people in and out -- members of the Senate in and out on this.

So we will start with the constitutional amendment on the pensions.

Frank.

MR. PARISI (Committee Aide): Okay. The synopsis for that Bill, SCR-184, proposes constitutional amendment to require payments by State to State-administered retirement systems, and establish in the

Constitution the right of public employees to pension benefit. It provides for enforcement of funding obligations and benefit rights.

SENATOR WHELAN: Thank you.

Senate President.

SENATOR STEPHEN M. SWEENEY: Thank you, Chairman.

I just want to talk about the importance of this; and an understanding of why we need to do this, and why we need to do it now.

You know, every time we delay \$1 today, it costs \$3 on the back end. And if you listen to the court case -- and I actually sat in there and listened to the arguments and read the decision from the judges -- they didn't tell us we have to pay it, but they told us we owe it. So when we hear about, "Well, it's going to build up to \$5 billion -- the payment," yes, it is, because we owe that money. Then it flattens out; and 30 years from now, it's \$1 billion. The reality is, the payment would -- really, what we're putting in now would probably be significant if there was never a skipping of the payments.

But if we don't do this, by 2026, 2027, when the pensions go broke, it's \$9 billion or \$10 billion; and that's coming out of the budget -- directly out of the budget.

So we can do -- we can ignore the problem, act like this situation doesn't exist. But as I have said over and over again, if you don't pay your mortgage, you lose your house; if you don't pay your car payment, you lose your car. I'm not blaming this Administration; there are many Administrations that fought for delaying pension payments and not funding them. But we are, basically, no different than the TTF; at the end of the

road, it needs to be fixed now. I think this is a fair way of doing it. Just minor changes, and making quarterly payments, make a big difference.

I manage two pension funds; I do this for a living. But you can't make enough changes-- And when the Administration talks about, "Well, we need more give-backs" -- well, they've increased their contributions; we've raised the retirement age. We've made many changes.

You know, now is time for us to do our part. And, listen: Ask the voters if they think we should pay it. I don't think we want to be in a situation -- I know I won't be here in 2026, sitting in this chamber. But I wouldn't want to be that Legislature having to come up with \$9 billion. You know, right now, our budget is \$34 billion. People say that we don't have the money. When the recession hit, we went from a \$34 billion budget to a \$28 billion, \$29 billion budget. Our State's economy has grown slowly, but it has grown by \$5 billion. We've changed our bill. This Bill matches what the Governor's numbers are -- what the Governor says he was going to put in. So I don't know why there would be an objection to this at this point.

But I just wanted to put that on the record, Chairman. This is important to the entire state; it's important to the economic future of the State. And to go back-- And I want to add one more thing, because it was said. I have a great deal of respect for the people who Governor Christie appointed to his pension panel. They're respected leaders, good people who worked extremely hard. But someone should have explained to them that you can't take everyone's healthcare plans, change them unilaterally, and take all the savings from everyone's healthcare plans to pay for this. That's their thought. You can't do it. In Gloucester County, we negotiate health

care every three years -- or every four years, whatever the contract is. And when we get savings, you know what we do with them? We put them in to reduce the burden of local government.

So the pension committee, well-intended, missed a big piece here. And I will finish with this: You just can't skip the payments anymore.

So thank you, Chairman, for allowing me to have a couple of words.

SENATOR WHELAN: Thank you, Mr. President.

Senate Minority Leader Kean.

SENATOR KEAN: Thank you, Mr. Chairman.

I think the question here today -- and I know we've had many people come and testify on both of these constitutional amendments, neither of which should be on the ballot this year; that's a point for going forward. The question is not saying whether you're going to pay or not. I think that's a false premise. Whether you're a Senate Republican or a Senate Democrat, whether you're in the Administration you've all put forth plans that focus on responsible payment schedules over a certain period of time -- whether in legislation, or whether in budgets, or what have you. And the actual pension payments, over the last several years, are higher than any of the predecessors. I think we all know that.

So the question is not whether anybody thinks it's a responsibility to pay, or that you're going to focus on a responsible plan, going forward. The question is whether you're going to put it -- to amend the Constitution to have a quarterly payment system, on top of the more immediate growth rate, in the first instance. And I believe that we can do

this together as a Legislature, working in partnership with -- whether this Administration or future Administrations to meet that responsibility and that obligation. And we've been on the forefront of that effort going forward.

But the question is, if you put this in the Constitution, in the first instance, in the end it will, by definition, force tax increases on -- or a reduction in assistance to a variety of different programs. So, for example, you could have that school teacher who will lose her job -- as it happened in the economic downturn, in the first instance; we saw that across-- You could see the individual senior who may not get that property tax freeze payment. I mean, these are individuals who could be significantly and adversely impacted, in the first instance, from government resources; or that person who is trying to get through and seeing that the property tax burden has gone up and up. This could have an adverse implication on the tax burden on citizens in the State of New Jersey on both ends.

A more responsible approach, as I and my colleagues have done, is do this on an annual basis; meet the obligation; and work, on a bipartisan basis, to find a real solution. And we can do that in a responsible manner. But to simply do it in this fashion, at this time, when we have a -- there is a better opportunity -- this is an irresponsible approach.

SENATOR SWEENEY: Not to debate, but I have to add one more thing, now -- since I'm Mr. Irresponsible. (laughter)

You know, there are other states that have done this; in fact, our neighboring state, New York state, has this -- and they don't have a pension problem. And if we're going to base everything -- that we're not going to have any growth in this state -- which I think I recall recently,

Senator Beck and Senator Dougherty basically agreeing with the ratable projections that we see. And when we did the initial bill -- when we did the initial bill to change benefits, the Governor, and I, and others were basing it on average growth -- national growth, average growth. Well, the Republicans -- my Republican colleagues just agreed with OLS' projections on ratable growth. We need \$600 million a year in order for it to increase each year. Everyone's agreeing that's the way it is going. And the bigger problem would be, the really irresponsible thing would be, to put off an obligation that you have today until tomorrow -- because what will it do when it's doubled and you have to pay \$9 billion? What happens, at that point, is that's Armageddon. So we need to address this now. Tom and I have a great deal of respect for each other, and I respect his opinions. It's just that this is responsible. This is paying your bill and not getting foreclosed on later.

So we need to fix this. So we're not debating, because we have to let everyone else talk.

SENATOR KEAN: We will. And we will clarify your comments, my good friend, the Senate President (laughter), in that now that you mentioned specifically the Beck and Dougherty approach--

SENATOR SWEENEY: Yes.

SENATOR KEAN: --would have, on a tenths basis, made that payment obligation based on a 3.34 percent growth rate and expectation, which was a -- it wasn't generated by anybody here.

SENATOR SWEENEY: We agree.

SENATOR KEAN: But we agree. So therefore, there is a plan on the table that not only meets the Transportation Trust Fund obligations

to a \$1.6 billion number, but there is also a tenths payment that can be done statutorily over a -- to meet that obligation. So there is a legislative approach that can find common sense and common ground on the table. What we are simply saying is that to put it in the Constitution, and then, on top of that, put in quarterly payments within the Constitution, is a flawed approach; and the better approach is one that the Senate Republicans have already put in. (laughter)

SENATOR WHELAN: Hold on.

SENATOR SWEENEY: Chairman, I have to finish with this.

SENATOR WHELAN: We'll hear you for one minute, Mr. President.

SENATOR SWEENEY: And I will.

SENATOR WHELAN: I hate to do that to our leader, but this is a hearing for--

SENATOR KEAN: I thought he was taking 30 seconds.

SENATOR WHELAN: This is a hearing for the public--

SENATOR SWEENEY: You're right--

SENATOR WHELAN: --and we want to hear from them.

SENATOR SWEENEY: --but I have to add this.

We amended the Constitution to stop the raiding of the Unemployment Fund and Second Injury Fund -- something that me and Tom are very proud of, and the business community applauded.

SENATOR KEAN: Yes.

SENATOR SWEENEY: If there was a track record -- and Tom, your word has always been good; and I think mine has always been good.

SENATOR KEAN: Yes.

SENATOR SWEENEY: But unfortunately, there have been legislators, over and over again, who have not kept their words and have not kept their promises. So to tell people, "Trust us--" I watched the movie, *Animal House*, you know? (laughter) I think there's a point where people give up trusting, and I think we're at a point where we have to honor our obligations.

So Chairman, thank you. I know it wasn't meant to be a debate between me and Tom, and I will not debate any further.

SENATOR KEAN: Well, when the Germans bombed Pearl Harbor, we-- (laughter) The historical fact is, Steve and I were on that constitutional amendment together--

SENATOR SWEENEY: Yes, yes.

SENATOR KEAN: --we were on the Open Space bond proposal together--

SENATOR SWEENEY: Yes, we were.

SENATOR KEAN: --and on the Higher Ed construction bonds.

SENATOR SWEENEY: That's right.

SENATOR KEAN: Those were good, strong, bipartisan approaches. This, unfortunately, is not.

SENATOR SWEENEY: Okay.

SENATOR WHELAN: All right.

SENATOR SWEENEY: We agree to disagree.

SENATOR WHELAN: Okay. Let's go to the public.

My intention here is to bring people up in small groups, two or three at a time. And just in the interest of trying to move this ahead, we'll try to alternate a little bit between those in favor and those opposed.

So let's bring up Tom Bracken and Mike Egenton from the New Jersey State Chamber of Commerce; along with Michele Siekerka -- can you help me with that pronunciation, Michele?

MICHAEL E G E N T O N: (off mike) Chairman, I'm going to let Tom speak.

SENATOR WHELAN: Okay; thank you, Mike.

Mr. Egenton: Yes.

SENATOR WHELAN: And we'll have some AFL-CIO and IBEW people on deck, if you will.

Tom, thank you for being here.

T H O M A S A. B R A C K E N: Thank you, Mr. Chairman; and thank you Committee members, and Mr. Senate President, and Senator Kean for being here.

We are here to talk about the constitutional amendment for the pension payments.

And first of all, let me say that we understand we have a major problem. This is a problem that needs to be resolved; it does impact the entire State of New Jersey. There is a way to do this, I'm convinced. But because there are a lot of great minds in the State of New Jersey, and I think if those great minds would get together, and sit down, and talk about compromises and talk about solutions, we can come to a solution of this issue.

But what I'm talking about today is the *how* we get there -- not what we need to do, but how we get there.

And let me first say that our Legislature was elected to legislate issues. It was not elected to be a conduit of items from inception to our

Constitution. The Legislators were entrusted with several things. They took an oath of office, and in that oath of office every legislator said they would defend the State Constitution. They also said that they would defend the rights of the citizens of New Jersey. And to me, the “citizens of New Jersey” talks about the plurality of the citizenship, not the minority of the citizenship.

Our Constitution is a sacred document. It’s a document of principles; it’s a document of the unalienable rights of the citizens of New Jersey; and it’s meant to have a positive impact on a majority of the citizens of our state. So those are the things that are underlying our Constitution that should never be violated.

Any issue that is proposed to go into the Constitution needs to be properly vetted. Proper vetting means the populous needs to be educated because they’re going to be asked, on a ballot question -- which is about one paragraph in length -- something that’s going to be embedded in our Constitution that is going to be very difficult to ever get out. So the issue of vetting and education for issues that do warrant inclusion in our Constitution has to take place with any of those items.

With regard to the constitutional inclusion of pension payments -- first of all, the majority of the people here are not being benefited by inclusion of the pension payment system in our Constitution. The pension payments are meant to, I believe, accommodate about 800,000 people. That’s in a population of our state of 8 million people. So 10 percent of the people would benefit directly. I mean, I realize there’s benefit to the entire state in doing this, but the direct benefit is to 10

percent of the population. That does not warrant inclusion in our Constitution because it does not benefit the majority of our people.

Secondly, the Constitution talks about the absolute need to include only the principles that guide our State. If you read the Articles of our Constitution -- the first part of our Constitution -- until last year, there were 22 Articles; and they were motherhood and apple pie. And you can read them, and they're very sound principles that govern how our State operates.

Then we included the minimum wage -- which, when you look at our Articles, it is absolutely out of place. It does not belong in our Constitution. And any of these issues we're talking about today fall into that category of not belonging as a principle of life in the State of New Jersey. That's what our Constitution is all about.

So with regard to the constitutional amendment to embed the pension payments in the Constitution, I would say we are against it. I think it's absolutely the wrong thing to do. It is irresponsible from the standpoint that the legislators were elected to do their job, and this is not the job they were elected to do. It violates the oath of office that the legislators took, by putting this into the Constitution. And it would cause irreparable harm to the Constitution and irreparable harm to our State.

Thank you.

SENATOR WHELAN: Thank you.

Michele.

MICHELE N. SIEKERKA, Esq.: Good morning, everyone. Thank you for the opportunity to present to you this morning.

On behalf of NJBIA's 20,000 businesses, which represent 1.2 million jobs across the State of New Jersey, I'm here this morning to respectfully oppose Senate 184.

I'd like to echo the comments on the process that Mr. Bracken stated. I'd like to focus my comments, though, on the other side of the impact to New Jersey's economy for the long-term.

New Jersey's economy is just now rebounding from the recession. And as we know, it's still lagging the nation's recovery. Our percentage of growth is not up to the nation's recovery, and so when we look forward to say what we think we predict the future nation's recovery to be, we're lagging now and we have no reason to think that lagging is not going to continue.

Mandating a significant portion of the annual State budget to one prescribed purpose is extremely problematic. Let me say why. It ties the hands of future Governors and legislators -- all of you, it ties your hands in the future. Isn't the budget process tough enough, right now? It removes your ability to balance all the priorities against available revenue -- all the priorities against available revenue.

It allows this one, express purpose to become a super priority -- and to the detriment of what? To the detriment of what? Other essential services and safety-net programs, that you already have a difficult time balancing, for all of the residents of the State of New Jersey.

Why is this problematic? There is no clear evidence of how this is going to be funded in years to come. And I believe, and I submit, that our legislators have a fiduciary duty to show us where those numbers will be in the future, not just right now.

And when the revenue is not there, what happens? What happens when you have to fill the gap? What's going to not get funded? That quarterly payment comes up and you have priorities you have to balance, what's going to not get funded? School aid, public safety, healthcare priorities? How are you going to make those determinations when your hands are tied?

And how will you fill the revenue gap if history presents itself again? First, it will be on the back of small business. We hear the threat consistently, every year, of a millionaire's tax -- a suggested millionaire's tax. We know a millionaire's tax is a tax directly on small business -- those who file through their personal returns, LLCs, and partnerships. That is the bedrock and the foundation of New Jersey's economy -- small business.

Increases in CBT will be threatened once again. And rest assured, that when that's not enough money -- because, when we look at the numbers, it won't be enough -- rest assured, every taxpayer in the State of New Jersey is going to be affected in ways like we've never been affected before. And we know we're already the highest-taxed state in the country.

I have to tell you, even just this discussion alone has sent shock waves across the business community -- the small business community; the small business community. And I suggest to you that an amendment of this type -- making a super priority for one designated purpose -- will have a chilling effect on businesses' investment, now and into the future.

I want to share a few comments from our recent business outlook survey that we just conducted this fall. This was businesses' outlook for 2016 in the State of New Jersey. And this year, for the first

time, we asked them some questions about the long-term impact that they see for the State of New Jersey.

Two-thirds told us that, in the future, if they were to build a new facility for their company, they would not do it in the State of New Jersey because of this cost of doing business. Two-thirds told us that they do not intend to make New Jersey their domicile in their retirement; and two-thirds told us that they take into consideration a State inheritance tax when doing their long-term business succession planning.

Out-migration in the State of New Jersey is real; net out-migration is real. Over the last decade, we have lost \$18 billion of adjusted gross income in the State of New Jersey. Think what that money could do in our General Fund if we had it today.

We have a red flag in front of us; a very clear red flag, a caveat. And we need to stop the bleed out of the State of New Jersey. This amendment will not help that.

So in closing, let me say we absolutely need a comprehensive solution to the pension. No one is sitting here today saying that we do not need to find a way to meet our obligation. However, the process is not the right one. A constitutional amendment for a vast minority of the population of the State of New Jersey is not the way to do it. And we sit here ready to work with you in the future on a better process to get us there.

Thank you.

SENATOR WHELAN: Thank you.

Any questions? I'm going to try and move this along. Any questions or comments? (no response)

Again, we thank both of you. I'm sure this discussion will continue.

We're going to have Eric Richard and Robert Klausner from NJ AFL-CIO; and Debra Bradley from New Jersey Principals and Supervisors.

And while they are coming, let me read -- Lisa Ginther, MBI-GluckShaw, representing IBEW Local 30, in favor, no need to testify; New Jersey Firefighters Mutual Benevolent Association, in favor, no need to testify; George Borek, Professional Firefighters Association of New Jersey, in favor, no need to testify.

And we'll go with that.

E R I C R I C H A R D: Good morning, Chairman; good morning, Senate President; good morning, Minority Leader Kean. Thank you very much for the opportunity to come before you during this extremely important public hearing.

My name is Eric Richard, representing the State AFL-CIO. Being the third time that we've spoken on this constitutional amendment, I thought it would be appropriate to try to bring a different perspective before you this morning.

And so we have brought with us Robert Klausner, who is the attorney who currently represents all three boards of trustees in their funding dispute with the State. He has argued -- was one of the three attorneys who argued before the New Jersey State Supreme Court on the Burgos decision. He's argued before the United States Supreme Court on public pension issues. And so we thought it would be appropriate to have a legal perspective, as we move forward.

Before I hand it off to Robert, Chairman, I just really want to say one issue to present to you, and reiterate what the Senate President has mentioned. And I really want to commend the Senate President for moving forward on this. I know he tried this a few years back. Since that time, there have been several developments. Now is the right time to pass this.

And the example I'm going to use is what the Senate President mentioned earlier, which was the UI Fund. I hate to say it, but we needed to save ourselves from ourselves. Each and every year, during the budget process we said, "This year we're not going to raid the UI Fund." Sure enough, \$300 million, \$400 million would find its way into the General Fund.

Likewise, in about an hour, we're going to hear about the Transportation Trust Fund -- which is also, unfortunately, on the brink of insolvency. The same constitutional amendment is being debated to dedicate funds for the TTF, just as a constitutional amendment was passed by the voters of the state to dedicate funds for the Unemployment Insurance Fund several years ago.

And what were the results of that? Solvency. We fixed the problem. And that's why we feel that the precedent that was set with the UI -- the precedent that is now moving forward through the Transportation Trust Fund and, hopefully, with the passage of this pension amendment.

So with that, I'd like to pass it on to our attorney, Robert Klausner.

ROBERT D. KLAUSNER, Esq.: Thank you, Mr. Chairman, Minority Leader. I think the Senate President has stepped out.

New Jersey's out of time. One of the lessons in the Burgos case -- in fact, the first sentence -- says that Chapter 113 of the Laws of New Jersey, 1997, established a non-forfeitable right of benefits which the public employees have earned; it's deferred compensation for service performed. That's the debt you're being asked to pay. This isn't about tomorrow's benefits; it isn't about what pensions are going to look like for the next generation of New Jersey workers. This is wages earned and deferred for which there is not sufficient money set aside.

The Supreme Court also said, in Burgos -- they said, "That these men and women must be paid their pension benefits when due is not in question." So while the Court said that it would not insert itself between the two political branches of government as to how New Jersey would run its finances; it did say, as a matter of law, these pension benefits are owed when due.

The pension funds are running out of money. I have the privilege of representing, probably, 150 state and local government retirement systems in more than half of our states. The average funding level for retirements -- public retirement systems in the United States -- is 72 percent. The average funding level for a state retirement system is approaching 90 percent. New Jersey's pension system's funding is in the 30s. They will be insolvent within the foreseeable future. The only other states that have a similar problem -- Illinois and Kentucky -- are also states that don't have a guaranteed funding methodology for their pensions and that have, for generations, passed along this cost by skipping pension payments.

It was interesting -- the speaker from the Chamber of Commerce talked about a fiduciary duty. Your sister state across the river in New York faced this question about funding in the early 1990s. New York had a budget crisis at the state level, and so the state assembly in New York passed a bill to change the funding methodology for the pensions, which would have allowed the state a 10-year funding holiday. And all that excess money to them -- all of the money which should have gone into the pension system, which would now not be required to be spent -- would be used to resolve the budget crisis.

The New York Court of Appeals held that it was a breach of the legislature's fiduciary duty to undermine the funding, and that New York (*sic*) has a constitutionally guaranteed right to a pension. The word *funding* is not in the New York state constitution. It says that the participation in the system is a right. And what the New York Court of Appeals recognized is, that without the funding, the benefit is meaningless.

The New Jersey Supreme Court has said these benefits will be paid; they must be paid. And as you heard from the Senate President, the cost of pay-as-you-go is 3-to-1 against what it is with funding.

According to the U.S. Bureau of the Census, 60 percent of the value that's used to pay public pensions comes from investment return. All of the billions that have been skipped have deprived the pension fund of billions which it could have invested. State investment councils returns would have added several billion dollars more to the \$17.5 billion in pension payments that have been skipped just during the Christie Administration. As the Senate President said, there is a lot of blame to go around, and it goes back generations.

Ironically, New Jersey first addressed public pension funding shortfalls right after the First World War. At a conference in 1919, it was recognized that without creating funding discipline, the pension funds for public workers in New Jersey would face insolvency in the early decades of the 21st century. Well, guess what? That time is here.

I'm not here to tell the citizens of New Jersey how to run their finances, or to tell this body or to tell the Assembly how you should run the finances. But I am here to tell you -- someone who has been doing this kind of work for almost 40 years, now -- that the only way to assure that the pension systems are able to pay for themselves is to make the contributions when due. There are many state plans that I work with that are fully funded, and that the ongoing cost to the employer is 2 to 3 percent of the state budget in the course of a year. The budgetary impact on New Jersey -- because you will owe these payments; they are owed every year. We pay them every month, and we are running out of the money to do it. But the impact on your budget will be substantially greater than what the guaranteed discipline that this proposed resolution will do.

And I just want to quote -- and then I'd be happy to take any questions that you may have -- is the New Jersey Constitution was mentioned by the folks from the Chamber of Commerce. And in the work that I have done -- that I have been privileged to do on behalf of your pension boards of trustees -- I read the Constitution too. Article I says all powers reside in the people. All you're doing is saying to the people of New Jersey, by putting this on the ballot, "Here's a solution. You approve it or don't approve it. You take the risk of paying it in an orderly fashion, or you take the risk of this cost that is sure to befall you."

You know, I represent -- I was on the team that represented the pension funds in Detroit during their bankruptcy. One thing I want to make clear: States cannot engage in bankruptcy. You're a sovereign within our Federal Republic system. You can't escape your debt by simply saying, "We don't want to pay." States do not-- Insolvency is not an option for a state. This is wages earned, a debt that's owed, and a debt that you cannot escape through any legal means.

And while it is unfortunate that prior generations of legislators have placed the current incumbents in this body in the position of this difficult decision, it is in, respectfully, my view that legally this is the only reasonable solution before you -- is put it to the electors of New Jersey to say, "Do you want to pay this debt, or lead the state to even greater cost; and a greater loss of services, and the ability to deliver services through the workers who have earned these wages?"

And I'd be pleased to answer questions. And thank you for the opportunity to address you.

SENATOR WHELAN: Thank you.

Could we, maybe, switch some chairs and have Debra come and testify?

Robert, you can stay there--

MR. KLAUSNER: Okay.

SENATOR WHELAN: --just in case there is a question. And we will call Eric back up if we need to.

DEBRA BRADLEY, Esq. Thank you very much.

Good morning, Mr. Chairman and members of the Committee. My name is Debra Bradley, and I'm here to express the strong support of over 8,000 active and retired members of the New Jersey Principals and Supervisors Association for this proposed constitutional amendment.

Our members are career public employees who have dedicated their professional lives to leading our public schools and educating the children of New Jersey. They are also members of the Teachers' Pension and Annuity Fund who have made their pension payments on time and in full.

So we're here to add our voice of support, along with our colleagues throughout the public sector, to a solid, long-term solution to the chronic underfunding and, in some fiscal years, the total lack of State funding of public employee pensions across two decades.

Despite significant reforms on the elements of public employee pensions available to current and future employees, the State of New Jersey has consistently failed to meet its fiscal obligations to support our pensions. Public employees, as a result, have exclusively borne the burden of pension reform through increases in retirement age, employee contribution rates, restrictions on enrollment eligibility, limits on the pensionability of critical income, the loss of a COLA, and the development of a five-tiered pension system.

So today, we wanted to go on record to express our support and to thank Senate President Sweeney, Senator Turner, and the members of the Committee for your collective leadership in ending this dysfunctional cycle. We applaud your efforts to protect the interests of both public sector employees and New Jersey taxpayers. This constitutional amendment

recognizes that public employee pensions are a form of deferred compensation for services already rendered -- as has just been stated -- and that the State must honor its obligations. It establishes, through a constitutional amendment with voter approval, a return to a phased-in payment schedule which balances public employee pension obligations with other critical state needs.

Significantly, the legislation also makes this enforceable in our courts. Further, the legislation promotes growth in the investment arm of public pension funding through a system of quarterly payments on an annual basis, which will lead to a deeper pool for investment returns and, ultimately, savings for the taxpayers.

Most importantly, it firmly and responsibly addresses a major fiscal obligation of the State, which will lead to future fiscal stability, positive credit ratings, and the avoidance of a future shifting of this burden to our children.

And for these reasons, we support the legislation.

Thank you.

SENATOR WHELAN: Thank you.

I'm here alone. I don't have questions. (laughter) But we do appreciate your testimony.

MS. BRADLEY: Thank you.

SENATOR WHELAN: We're going to have William Eames, Morris Patriots; and Barbara Eames, listed as "citizen." I don't know if you're together or not, but you are both opposed. After which we'll have NJEA, as well as CWA come up.

W I L L I A M E A M E S: Senators, I appreciate it very much; Mr. Chairman, I appreciate the opportunity.

SENATOR WHELAN: Thank you.

MR. PARISI: Turn your mike on. (referring to PA microphone)

MR. EAMES: Okay; sorry, I couldn't see the red.

I appreciate, Senator, the opportunity to speak before you.

The issues here are very serious. The State and its political subdivisions do face a moral dilemma. These are legal contracts that were negotiated, in my opinion, by irresponsible public representatives in the past, with excessive promises of benefits that were never fully funded. That's a problem.

Having failed to fully fund in the present political environment of this Legislature and in the courts, this is now a maneuver to try and serve organized labor without a balancing regard for the fiscal integrity of the State, and the ability and flexibility -- as was said, actually, by both of our leaders -- for the future.

The State's taxpayers are going to face a great financial burden either way, and reduced services if full funding is done by constitutional amendment. The ability to balance things will be lost each time we take a dedicated chunk of funding and move it off into the Constitution.

Taxpayers did not negotiate the original contracts, but they will be the ones who cannot escape accountability.

The State faces great financial stress. It's evidenced by the lower credit ratings; it's evidenced by the report that I just saw this morning that, of the in-migration, out-migration, 67 percent right now of the moves in New Jersey are out. The information that I have from Realtors is that

since the last election, that pace is accelerating further. So we may not be able to legally declare fiscal insolvency, but it's going to happen.

As the significant block of funding is dedicated, as I said, it's a problem in being able to manage all of the priorities. And I understand the contract end of it. Particularly troubling to me is misleading and inadequate wording of a public statement that does not explain the full ramifications. It's a concern. In our opinion, doing this will further disadvantage New Jersey in competition with other states; we heard the Chamber of Commerce and the BIA say that. Our ability to attract business and taxpayers -- residents -- and hold them is being jeopardized at this point in time.

This proposal removes legislative and executive discretion; I mentioned that. It's a great concern to me. So I would say that this issue obviously has to be addressed. I believe firmly that doing it by constitutional dedication is a very bad policy move. I would ask that this bill not be passed. I understand it's a public hearing.

Thank you for your time.

SENATOR WHELAN: Thank you.

B A R B A R A E A M E S: Good morning, and thank you for the opportunity to speak.

I am a member of the public; I am not one of the special interests that have sat up here. However, I would like to affirm the things that the business interests said.

I'm a life-long resident of New Jersey; I am also a recently retired teacher, so I have a little skin in the game. I figure I lose either way. I figure if they're dedicated through the Constitution, it will bankrupt the

State of New Jersey; if they're not paid, if there's not money in the fund -- I figure I lose either way.

The interests of the people of the State of New Jersey have not been the interests of this government for too long. And as Mark Twain famously said, "Man's life, liberty, or prosperity are never safe when the legislature is in session;" and I have to say that that's been going on for decades in this state. It's why we're where we are with a 67 percent exodus rate. I read this morning we're the highest exodus in the state (*sic*). I'm born and raised in New Jersey; I can tell you the only reason I'm here is family. I would be gone from this God-forsaken state if-- And I'm not sure that that's not going to happen anyway.

A former U.S. President, with more wisdom and moral compass than anyone else in this room today, said, years ago, "All obstructions to the execution of the laws, all combinations and associations, under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberations and action of the constituted authorities are destructive of this fundamental principle of liberty, and of fatal tendency. They serve to organize factions" -- which is what we're seeing going on in New Jersey, which don't mirror the public interest, but rather the interests of faction. And no matter how popular their ends, they serve to enable "cunning, ambitious, and unprincipled men who will be enabled to subvert the power of the people and to usurp for themselves the reins of government, destroying afterwards the very engines that lifted them to unjust dominion."

Those are the words of George Washington from his farewell address in 1796. How relevant to today.

The Legislature will hide behind the excuse that they're giving the people the right to decide when, in fact, the people will be so ignorant, uninformed, and even misled because those who put these amendments on the ballot want them to approve them. We've seen that time and time again in New Jersey.

In closing, Washington spoke about the preservation of our government and warned that "you resist with care the spirit of innovation upon its principles; however specious the pretext." He continued, "One method of assault may be to effect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown."

And that, I think, is exactly what's going on -- and that was written more than 200 years ago.

So manipulation of the system by pandering to constituencies for personal benefit betrays the sacred trust placed in elected officials and undermines the integrity of the entire governmental system. The Legislature may have the ability to pass these amendments to the Constitution, but that does mean it has the moral authority to do so.

Please vote "no" on these.

And the redistricting also -- it doesn't seem to be getting much attention, but--

SENATOR WHELAN: It's a separate hearing.

MS. EAMES: A separate-- Okay, all right.

Thank you very much.

SENATOR WHELAN: Thank you.

Marie Blistan and Sean Spiller from NJEA; along with Seth Hahn from CWA -- both groups in favor. Then we'll have, after them, James Simonetti and Cathy Fulton.

M A R I E B L I S T A N: Good morning, Mr. Chair and everyone else who's in the room.

I am Marie Blistan; I'm a very proud 30-year classroom teacher of students in special education in our great state. And I am equally as proud to say that I am the Vice President of New Jersey Education Association.

And with me today is another classroom teacher and a fellow officer, Secretary-Treasurer for NJEA, Mr. Sean Spiller.

And what brings us here today is that we represent over 200,000 active and retired members who have paid faithfully-- paycheck by paycheck their entire waking lives -- for their pension, and now need a constitutional amendment to collect what they have contributed and earned.

I have testimony that I will be submitting to the Committee; I'm not going to read it, but I am going to ask for your attention while I highlight just a few key parts.

In 2011, we had the Chapter 78 law which, as you well know, mandated certain pension payments being made. In 2014 and 2015, this State Legislature passed a fiscally responsible budget that included those payments.

However, the Governor of this State vetoed both of those budgets and we wound up in court.

The New Jersey Supreme Court, in June, absolutely stated, unequivocally, that the pension obligation was still the State's responsibility. However, there was a constitutional loophole that allowed this State to continue to kick the bucket down the road so that future taxpayers have even a greater burden.

And that is exactly what has happened in this great state because the Governor has chosen to ignore not only the same law that he signed into place, but the will of this Legislature. New Jersey has continued to suffer. Our taxpayers have suffered, our members and their families, and the very State economy has suffered. It's been devastating to all.

The amendment before you, however, is designed to guarantee -- and we are in education -- some discipline, some order, and some structure to make sure that this does not continue. The amendment provides the legal framework that would mandate future Governors and legislators, now and in the future, to obey the pension funding law. And the amendment is also very fiscally responsible. It does not add one single cent to the State's pension liability and, in fact, it would quickly begin to reduce that liability, providing real relief to taxpayers concerned about the fiscal future of our State.

The numbers are quite impressive. Simply by moving to those quarterly payments, without increasing any contribution, the State will save nearly \$13 billion over the next 30 years; and it does that by generating over \$8 billion simply in investment income, while cutting the unfunded liability to almost \$5 billion. And that's just by making, again, the same exact contributions but not waiting until the very last minute to pay them.

Public employees have done their part. We have never skipped a payment, and we have never waited until the last minute and then decided not to pay. And since Chapter 78, our members have done much, much more. Our own pension contributions have increased from more than 5 percent to well over 7 percent -- and that number is still increasing. Our members had their cost of living adjustment ripped right out from under them. And under Chapter 78, because of the increased healthcare premium costs, ladies and gentlemen, our members and their families are paying out thousands of dollars and living paycheck to paycheck. Sean and I could personally attest to paychecks whose income -- their take-home pay has decreased since that law has been put into place.

I will sum up by saying that this amendment is needed because it is fair to both the women and the men who have contributed to stabilize this pension system. We are not asking for a new benefit. We are not asking for special treatment. We are asking for this State to live up to its promise and pay out the pensions that our members have contributed to and earned.

We urge your support for the constitutional amendment.

Thank you.

SENATOR WHELAN: Thank you.

Sean.

SEAN SPILLER: Thank you, Mr. Chairman.

I just want to add -- reiterate a couple of points that Marie made, because they are things that I have heard before in some of the previous testimony.

First, and I think very importantly, this Legislature did act. You did act. You acted in 2011, and you passed a law. And this Constitutional amendment is to close the loophole that was created when the Governor ignored that very law. So you have acted, and this is to shore that up.

Secondly, when we talk about helping some or the few, instead of looking after the many -- the many hundreds of thousands of taxpayers that we represent -- our members -- along with every other taxpayer in this state are the ones that we're talking about with this constitutional amendment. As the courts have said, as the Supreme Court has said, this payment is due; members will get that benefit. It's just a matter if we pay it responsibly, over time, or we let it build up and build up and build up, and try to pay it at the end. It's about being fiscally responsible. That's what this constitutional amendment is about, and that's why I applaud your efforts to make sure that this goes before the voters.

Thank you.

SENATOR WHELAN: Thank you.

Seth.

S E T H H A H N: Mr. Chairman, thank you for holding this hearing.

My name is Seth Hahn; I represent the Communications Workers of America. We represent 70,000 families in New Jersey, including 55,000 public sector workers. We represent members in both the State and local Public Employee Retiree System, the Teachers' Pension Annuity Fund, and the Police and Firemen's Retirement System.

I'd like to thank the Senate President for his leadership on this issue.

There's a very simple reason the pension plans in New Jersey are in worse shape than in almost every state in the country. It's not because the pensions are too generous. The average State worker represented by CWA will earn a pension of \$26,000; and the average county or local government worker in the PERS plan will earn a pension of \$20,000.

It's not because workers aren't paying enough. The members we represent in the PERS system pay almost 80 percent of the normal cost of their benefit. It's not because the plan hasn't been cut enough. Benefits have been cut four times in the past decade, and workers have paid more into the system in 6 of the past 10 years. In fact, workers in the PERS system in New Jersey now pay more than workers in every state in our region -- except Massachusetts -- and they will receive the least generous pension of any state in our region.

The reason the pension plan is on the brink is because, for 20 years, the Legislature treated its very modest portion of the pension contributions as optional, causing a large unfunded liability that only grows every time a payment is missed. In 2010, after 15 years of completely or partially skipped payments, the Legislature realized that skipping payments was irresponsible and it passed a law that said the Legislature was going to get on track to making full payments. And every year since, the Legislature has kept its commitment to remain on its schedule -- sometimes with the support of the Executive, and sometimes in spite of the lack of support from the Executive.

Unfortunately, the New Jersey Supreme Court ruled against acting responsibly in *Burgos v. New Jersey*, by ruling that the Legislature

cannot enter into a multi-year contract in order to pay its bills. But in the same decision, the Supreme Court also ruled that employees vested in the fund have a right to benefits already accrued. And if we continue on the road to insolvency -- as has been said today -- that will cost at least \$8 billion a year, maybe \$9 billion or \$10 billion a year, moving forward.

The Supreme Court has therefore said that the Legislature cannot mandate a \$3 billion payment next year. But it can mandate an \$8 billion, \$9 billion, or \$10 billion payment if the funds run out of money.

The Supreme Court in New Jersey has created a crisis that only the voters of New Jersey can resolve. The constitutional amendment is not the only responsible path forward; it's the only path forward.

There is complete agreement that this is affordable -- there is complete agreement that this is affordable. By moving to a phase-in of 10 years toward a full payment, instead of only the 7-year phase-in originally in the law, there should be bipartisan agreement that this can be made without increasing taxes and, in fact, there is. The tenths schedule was unilaterally written into this year's budget by a Republican Governor. There was broad Republican support for a constitutional amendment to mandate payments in 2010; and Republican leaders in the Legislature recently outlined a plan that includes revenue growth that will more than cover the annual increased costs of the payments proposed in this amendment. Combined with an identical proposal from Democratic leadership, there is no question that this proposal is one New Jersey can afford without raising taxes.

By contrast, here are your alternatives. First, the State can continue to skip its payments and let the funds run out of money. If that happens, the funds will run out of money and the money to pay benefits

already accrued will have to come out the General Fund. If the State can't afford to make \$3 billion payments mandated in the current fiscal year, it's completely irresponsible to think that the State could make three times that large of a payment, moving forward.

The second option is that the fund goes into bankruptcy, and the retirement fund that 800,000 New Jersey families depend on is destroyed -- sending New Jersey's economy into a tailspin and revenues plummeting. Either way, it's clear that anyone who cares about fiscal responsibility must agree the Constitution must be changed in order to require payments be made.

And by the way, if you're concerned about teachers being paid, or property tax rebates going to seniors -- letting either of those two options happen ensures that there will be no money for teachers and no money for property tax rebates for the foreseeable future, moving forward.

This amendment is simple; it will force the Legislature to live up to agreements it has already agreed to. And not only is amending the Constitution the responsible thing to do, the Supreme Court has said it is the only thing left that we can do. And not only that, but the Constitution is exactly the place for this. Paying our bills is a fundamental responsibility. This is fundamental; this is exactly the place for where this should go. Paying workers what you've agreed to pay them after they've completed the work -- that's a bedrock principle of our society. And if that's not in our Constitution currently, it needs to be.

And it's not just a small minority of people this benefits. If you pay teachers, you are benefiting children, you are benefiting families. If you pay people who care for the developmentally disabled, you're benefiting the

most profoundly disabled among us. If you pay people who inspect our bridges, then everyone who goes over a safe bridge benefits from that. It's not just a small minority.

But even if it were just one worker-- If we could say that after a worker completes this job that the worker has done, now we're going to unilaterally say that worker is not entitled to what that worker was promised -- then that's a problem. And that worker should be protected by the Constitution.

And by the way, I think this is a very transparent process. This is our third public hearing; there's going to be another in a minute. The Legislature is going to vote on this. And in a few months, we're going to have several more public hearings. The Legislature will vote again. And then every single voter in the State of New Jersey will get a chance to weigh in. I can't imagine a more transparent process. I've never seen a more transparent process happen in government in New Jersey.

So not only will this save taxpayers money by eliminating the ballooning effect of future unfunded liabilities, it will also significantly reduce current unfunded liabilities by mandating quarterly payments. If we continue to work together to reign in the ridiculous fees going to Wall Street to manage funds at subpar performance, we believe we can achieve savings of nearly half of the unfunded liability -- saving taxpayers up to \$40 billion over the next 30 years without destroying the modest retirement for a single worker.

And speaking of those workers -- I'd like to close by reminding everyone that this is about the services provided by workers employed by our State, counties, towns, and communities. The workers we represent are

some of the most dedicated people you will ever meet. They don't get into this to raise money; and if you talk to them, they actually love providing the services they provide. They're social workers who go alone in darkened neighborhoods where police go armed and in pairs, and they knock on doors and they say, "I need to make sure your kids are safe tonight." They work with the profoundly disabled to ensure all of our citizens can lead a life with dignity and respect. They clean up hazardous waste sites; they work with troubled teens; they make sure day care centers are safe for our children; they provide medical care to veterans.

Some people can call them *pigs* for wanting to have a modest retirement benefit. I choose to call them *dedicated workers* who aren't thanked enough for doing the most difficult jobs in our communities, and who need their legislative leaders to make sure they don't have to live their senior years in the poor house.

On behalf of those workers, I thank you for holding this public hearing so that the amendment can move forward to the voters next fall.

SENATOR WHELAN: Thank you, Seth.

Senator Cardinale has joined us. Welcome, Senator.

We have two more signed-up speakers, and then we may have some comments among ourselves, even though there's no vote to be taken.

James Simonetti and Cathy Fulton; both indicate that they are opposed. If they will--

JAMES SIMONETTI: (off mike) Mr. Chairman, mine is for the next topic, redistricting; not for pensions.

SENATOR WHELAN: Oh, okay. You are James Simonetti?

MR. SIMONETTI: Yes, sir.

SENATOR WHELAN: All right. We'll hold you for that.

Cathy Fulton.

And while Cathy's coming, Carlos Mercado, Jr., from the NJFMBA, which I think is the Firefighters Mutual Benevolent Association, is in favor, no need to testify. Thank you for that.

And Cathy, you will be our last signed-up person to testify today.

Thank you.

CATHY FULTON: Okay.

Good morning; it's still morning. I am here--

SENATOR WHELAN: Push the button. (referring to PA microphone)

MS. FULTON: Oh. My testimony here will be brief, but I am expressing how I feel as a citizen in New Jersey to publicly state my awareness of the egregious conduct and actions the Legislature is pursuing in order to pass four New Jersey State Constitution amendments.

These four amendments are being craftily rushed through the last days of this session in order to benefit personal, political, and financial gains. This is a blatant disrespect to the New Jersey citizens in cramming these public hearings on a single work day, right after the holidays, where it is difficult for many people to take off work in order to be here.

The four issues have no place to be even proposed as amendments. Budget policy decisions need to be conducted in the Legislature. These amendments are stripping away the rights of the people of New Jersey.

Words matter. The explanatory statements for these amendments are very misleading, and unclear, and in no way express the broad consequences of these amendments.

The actions being taken here are a mirror image of the dysfunction that is going on at the Federal level in Washington D.C. Americans are tired, frustrated, and angry at the total disregard of the will of the people.

And that's how I feel about all four amendments; as well as most of the people here in New Jersey.

SENATOR WHELAN: Thank you.

MS. FULTON: Probably all the people-- Because they're blindsided; they don't even know that this is happening, and they're not being educated enough about it.

SENATOR WHELAN: Thank you very much. We're here on two amendments today, so--

MS. FULTON: I know--

SENATOR WHELAN: --I will take--

MS. FULTON: --well, I need to express it as a broad support.

SENATOR WHELAN: That's fine, that's fine. We're allowing wide latitude.

I think that's all of those who have signed up to testify.

RICHARD T. MINER: (off mike) I did sign up.

SENATOR WHELAN: Wait just a second; I have a couple of others here.

Michele Liebttag, in favor, no need to testify, from CWA; Richard Miner is opposed.

Richard.

MR. MINER: Yes.

SENATOR WHELAN: Okay.

MR. MINER: I will try to be brief, because a lot of people have already made the points that I wanted to make.

But basically, we are in a race with Connecticut, Indiana, and New Jersey to see who can go into bankruptcy -- or the factual equivalent of bankruptcy -- first. People are leaving New Jersey faster than any other state in the union. There is what's called the *United Van Lines Index*, in which we came out 50th the last four years in a row -- which means more people are leaving than coming. And the people who are leaving are the people who create jobs for the people who want to stay; they are the high net-worth people retiring to Florida or other lower-taxed states who take their wealth with them. And many of these include former State and local employees who are leaving for Florida because their taxes are too high, particularly our property taxes.

When you look at our top four taxes -- the property tax, we're number 50; we're the worst in the nation. Whether you look at it per capita or the value of the house, or income earned, we're last in the nation. When you look at the four main taxes -- the income tax, the property tax, the business tax that affects hiring people and paying them salaries, and the sales tax -- we're dead last in the nation.

So we need the flexibility for the Legislature to appropriate each year how much they can afford. And this isn't a problem that came up this year; this is a problem that came up over the last 20 years. One of the quirks in determining the pension is you discount the present value by the

interest rates, which means that when interest rates are lower you come up with a higher present value. If interest rates go up, you lower the present value. So we think we should -- this should be left to the Legislature to give as much as they can each year; but they should look at their overall budget, because the people in New Jersey are already taxed too much and are leaving at a rapid rate.

Thank you very much.

SENATOR WHELAN: Thank you.

Rex Reid, AFSCME, in favor, no need to testify.

And again, I think that completes who have signed up. If there is anyone else who would want to testify, or whatever-- If not, we will end the public testimony.

As has been alluded to, this will be heard in the next legislative session which, technically, starts next week. I'm not sure when that hearing will be, but it will go through the process twice, I would anticipate. So there will be other opportunities, both in the Senate and in the Assembly, for additional testimony.

I don't know if Senator Cardinale, who joined us late, has a comment or two on this; I suspect he may. And then if Senator Kean wants to add anything to his earlier comments -- and then I will make a few comments, and then we will adjourn this officially. You all get to stand up; some of you get to leave, and then we will go and reopen a hearing for a second constitutional amendment.

Senator Cardinale.

SENATOR CARDINALE: Let me apologize for being late. I had the time of the start of this wrong; I thought it was starting about 20 minutes from now instead of at this moment.

And I am only here at this point in time because my driver got a call saying that we had been misinformed on the time. And I think we may have broken a speed law or two on the way down. (laughter) But we got here safely.

SENATOR KEAN: Your driver broke the speed law; you didn't. (laughter)

SENATOR CARDINALE: Well, I won't testify against him. I will take the Fifth. (laughter)

It is quite obvious that this is a current problem in New Jersey that deserves attention. But does it deserve constitutional attention? I don't think so.

Now, we've heard folks who have said, "Oh, yes, it should be in the Constitution," but they all have something -- they're not independent people. They all represent special interests. And if there was ever anything that is special interest, it is a series of constitutional amendments that we are going to be dealing with. But this one is particularly heinous because we're going to ask that this particular class-- And I happen to be a member of that class, as we all are. We're all in the pension system. How can we protect, constitutionally, the people in that class against all of the rest of the people of the State of New Jersey? We shouldn't be doing this.

Now, suppose the people vote "no," all right? Ultimately, this is subjected to a public vote. Suppose the people vote "no." Will that give us the impetus to say we shouldn't have pensions anymore for any public

employee in the State of New Jersey? We established these pensions by legislative, deliberative process. We changed the pensions and the proposal by deliberative process. We may be wrong; we may be right. But we do it in a deliberative fashion. We don't lock in any items of expenditure forever.

And that's what this is doing. It's unwise public policy, in my view. And I know there is disagreement; I know there are people who think differently. But I would urge all of us to understand that the people who are testifying in favor of this are special interests who have a great deal to gain, and maybe-- You know, I do happen to agree that they're entitled to their pensions. I don't think they're *not* entitled to their pensions; I think they've earned them. But I think we need to have the flexibility to make the contributions in such a way that we do not have a negative impact on all the rest of the people of the state.

Thank you, Mr. Chairman, for indulging me.

SENATOR WHELAN: Senator Kean.

SENATOR KEAN: Thank you, Mr. Chairman.

And I want to thank all the individuals who came to testify in regards to this amendment. I appreciate your comments and your points of view. I look forward to seeing you when we have future public hearings across the state, if this goes to the next stage, as well.

I think it is a false choice about whether to pay or not. There is nobody, Republican or Democrat, who said that you wouldn't be paying. In fact, when you look at the last five or six years, under this Administration, the State has contributed \$4.2 billion to the public pension

system, compared to a combined total of \$3.6 billion paid to the system in the prior 16 years, by Democrat and Republican governors.

So the pension is being funded in a responsible way. The Senate Republicans have put forth a plan that responsibly puts through, in legislation, the tenths payment. So we are doing it by legislation, just as when the pension denominator was changed from *n-over-60* to *n-over-55*, and then back again, by legislation. And we were all here during the legislative process when those pension metrics were debated, changed, and then re-changed -- as well as many other steps along the way.

But what I have great concerns about -- in my other memory -- is when this Administration came in, and the prior Administration had said that there would be no budget shortfall. And there was a budget shortfall that everybody recognized walking in the door that January, of \$2 billion at least. And because of the nature of how New Jersey gets its revenues and everything else-- I mean, there was a period of time that, within a couple of weeks, if we hadn't taken immediate action the State would not have met payroll within a couple of weeks. I remember that clearly. I remember, also clearly, at that exact same time, going forward, when you had-- And because of that, there were some school aid numbers that were impacted because the prior Administration used up \$1 billion that was supposed to be used up in \$500 million a year over two fiscal years. They used it in one; so there was a shortfall, functionally, in school aid numbers as well, coming into this new Administration.

And I remember when you saw, in my daughter's school, the newly hired teachers who lost their jobs. I remember the other individual costs -- as individuals were concerned about what these dramatic changes in

the economy meant to their individual lives. I saw the impact on parents; I saw the impact on the schools; I saw the impact on the individual teachers; on the individual senior citizens; on the individual family -- very clearly -- with that uncertainty.

And the inflexibility of having this quarterly payment structure put into the Constitution -- when all these banking decisions were made in June, but most of the revenue comes in in April -- that type of inflexibility would mean if there is a future Superstorm -- not hurricane -- Superstorm Sandy, there would be inflexibility in a response. If there is a major economic downturn on -- in a three-month period or on an annual basis, or a five-year basis, there would be inflexibility.

Isn't the more responsible measure simply to say, as a number of colleagues have said, "We have an obligation to meet these payments." But the Legislature, especially over the past five years, has been paying more into the pension system than the previous five governors had. We've been doing that in a responsible fashion. We have been working in a bipartisan way to find an affordable solution. Everybody says we have the obligation to make this over a period of time. And, by and large, we agree at what that timeframe is. But to lock this in a quarterly pension structure -- to have it be that inflexible-- If there is a natural disaster, if there's an economic problem, a financial problem -- that type of uncertainty and those types of irresponsible financial controls create real problems for households across the State of New Jersey, and is an extraordinarily flawed way to promote public policy -- to go and use this platform in this regard, as well as in the future hearing. This is an irresponsible way to approach this problem, and will cause dramatic problems for senior citizens, for families

who are coming to the State of New Jersey. And it has a real potential impact for massive tax increases on a quarterly basis, that we--

I mean, usually -- and thank you for your time, Mr. Chairman; I know I've been going on. But usually people are concerned when they are in Trenton. Every June, people would be concerned around the State of New Jersey: What type of tax was the Legislature going to try to increase? Was it going to be on a motor vehicle issue; was it going to be on a rental car; was it going to be on what have you to meet whatever priorities that, doing budget, were done.

That would happen every single quarter across the State of New Jersey if you are locking in these spending provisions in the first -- from June and July, all the -- and every September, and then on January 1, and then in March. That exact same concern, this would force-- My concern is, because of the constitutional obligations, it would force tax increases on everything from -- it could be sales, it could be income, it could be a variety of things. It's the wrong way to approach public policy.

Thank you for your generosity of time, Mr. Chairman.

SENATOR WHELAN: Thank you, Senator.

Let me just offer a few comments, and then we will close this part.

I'm going to do Senator Cardinale one better: I'm the dreaded double dipper. Not only am I a member of PERS, but I'm also a retired public school teacher, just in the interest of full disclosure.

SENATOR KEAN: And a life guard.

SENATOR WHELAN: No, I don't get a pension for being a lifeguard. (laughter) It was the best job I ever had, but I don't get a pension.

SENATOR KEAN: Everybody from (Indiscernible) County.

SENATOR WHELAN: Let's acknowledge that this constitutional amendment, this effort, is only a partial solution to this problem. It says, "You have to pay the money." Unfortunately, it doesn't prescribe how that money is going to be paid. And I wish this were -- I wish we had that prescription. But I think if you put the obligation with the kind of approach that Senator Kean is talking about, maybe we can get where we need to be.

The problem with the approach that says, "Well, we're going to put another bill in" -- we did that; we did that in 2011, and we all agreed-- And frankly, I was still teaching then; I took a lot of flak for it, and that's okay. It comes with the job. That well, you know, we're going to take more money from the teachers, and the factor is going to change, and your benefits are changing -- all for the worse. But we're going to pay one-seventh, one-seventh, one-seventh, one-seventh. It didn't last. Future legislators can come along and say, "Well, this great idea that they did back in 2016 on the pension -- we can't afford to do that. So we're going to ignore it; we're going to change it. We're going to amend it." If you do a constitutional amendment, that's it, it's locked in.

So the other reality is, is that this doesn't solve all the problems in the state. People talked about the exodus of people leaving, and so on, and so forth. Those are other issues that are not related to the pension at

all. Do we need to fix our inheritance tax structure? Absolutely. Are there other things we need to do to encourage business? Absolutely.

Not acting doesn't make this debt go away; it only compounds it, as we've heard. And again, I know this conversation and this debate will continue, both in the Legislature in the next session -- which is, as I say, a week away, when we'll probably do this sometime early in the year -- I'm not sure what that schedule will be -- and then to the public at large.

We thank all those who came, especially those who testified, either for or against. I suspect, as I say, we will be seeing you some time in the new session.

I want to thank my colleagues here.

We are technically going to-- Not technically, we are going to adjourn this hearing on the constitutional amendment for pension and take a five-second recess. And then go to a second hearing.

(HEARING CONCLUDED)