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# Public Hearing

before

## SENATE BUDGET AND APPROPRIATIONS COMMITTEE

*“Testimony on SCR-166, which invalidates or prohibits adoption of rule proposed by Civil Service Commission to establish job banding program”*

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**LOCATION:** Committee Room 4  
State House Annex  
Trenton, New Jersey

**DATE:** 1:00 p.m.  
December 5, 2013

### MEMBERS OF THE COMMITTEE SIGNED IN AS PRESENT:

Senator Paul A. Sarlo, Chair  
Senator Brian P. Stack, Vice Chair  
Senator Sandra B. Cunningham  
Senator Linda R. Greenstein  
Senator M. Teresa Ruiz  
Senator Stephen M. Sweeney  
Senator Jeff Van Drew  
Senator Jennifer Beck  
Senator Steven V. Oroho  
Senator Kevin J. O’Toole  
Senator Joseph Pennacchio



### ALSO PRESENT:

Catherine Z. Brennan  
Peter J. Kelly  
Howard K. Rotblat  
*Office of Legislative Services  
Committee Aides*

George J. LeBlanc  
*Senate Majority  
Committee Aide*

Christopher Emigholz  
*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

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Chairman

BRIAN P. STACK  
Vice-Chairman

SANDRA B. CUNNINGHAM  
LINDA R. GREENSTEIN  
NELLIE POU  
M. TERESA RUIZ  
JEFF VAN DREW  
LORETTA WEINBERG  
JENNIFER BECK  
ANTHONY R. BUCCO  
STEVEN V. OROHO  
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**New Jersey State Legislature**  
**SENATE BUDGET AND APPROPRIATIONS COMMITTEE**  
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**REVISED PUBLIC HEARING NOTICE**

**&**

**REVISED  
COMMITTEE NOTICE**

**TO: MEMBERS OF THE SENATE BUDGET AND APPROPRIATIONS COMMITTEE**  
**FROM: SENATOR PAUL A. SARLO, CHAIRMAN**  
**SUBJECT: COMMITTEE MEETING – DECEMBER 5, 2013**

*The public may address comments and questions to Catherine Z. Brennan, Howard K. Rotblat, Committee Aides, or make bill status and scheduling inquiries to Amanda Hinkle, Secretary, at (609)847-3835, fax (609)943-5995, or e-mail: OLSAideSBA@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.*

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**The Senate Budget and Appropriations Committee will meet on Thursday, December 5, 2013 at 1:00 PM in Committee Room 4, 1<sup>st</sup> Floor, State House Annex, Trenton, New Jersey.**

The following bill(s) will be considered:

*S-613 (1R) Sweeney/Madden	Concerns certain workers' compensation supplemental benefits.
S-1557 Smith, B A-2641 Spencer/Ramos	Authorizes creation of stormwater utilities for certain local government entities.
S-1623 Whelan/Weinberg A-1214 (1R) Stender/Conaway/ Webber/Benson/Quijano	Establishes pilot program to utilize value-based benefit design in SHBP to increase health benefits coverage for certain employees concerning chronic health conditions.

(OVER)

Senate Budget And Appropriations Committee

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S-1682 Beach	Permits registered voters to receive mail-in ballots automatically for all elections under certain conditions; limits number of sample ballots transmitted to each residence.
S-2143 (1R) Gordon/Norcross	Establishes State Transportation Infrastructure Bank within New Jersey Environmental Infrastructure Trust.
S- 2254 (1R) Beach/Allen A-3360 (1R) Tucker/Milam/Wilson	Creates Veterans Haven North Council; renames current Veterans Haven Council to Veterans Haven South Council.
S-2469 Norcross/Sacco	Creates crime of cyber-harassment.
S-2513/2522 (SCS) Norcross/Weinberg/ Kean, T	Expands notification when an offender is released from custody or transferred within the criminal justice system.
S-2578 (1R) Van Drew A-2658 (2R) Prieto/Rible/Conaway/ Sumter	“Common Interest Community Manager Licensing Act.”
S-3029/3010 (SCS) Beach/Sweeney/Van Drew/Norcross/Allen/ Connors	Enables collection of voluntary contributions for New Jersey Nonprofit Veterans Organizations through gross income tax returns.
**SCR-166 Gordon (pending intro and referral)	***Invalidates or prohibits adoption of rule proposed by Civil Service Commission to establish job banding program.

**The Senate Budget and Appropriations Committee will hold a public hearing immediately following the committee meeting.**

**\*\*The public hearing will be held on SCR-166 (\*\*\*Invalidates or prohibits adoption of rule proposed by Civil Service Commission to establish job banding program.)**

Issued 11/27/13

\* Revised 12/2/13 – S-613 (1R) was added. SR-111 was removed. Please note the addition of a public hearing.

\*\* Revised 12/3/13 – SCR-166 (Gordon) was added. Please note change to public hearing synopsis.

\*\*\* Revised 12/5/13 – Please note change to SCR-166 synopsis and public hearing synopsis.

For reasonable accommodation of a disability call the telephone number or fax number above, or TTY for persons with hearing loss 609-777-2744 (toll free in NJ) 800-257-7490. The provision of assistive listening devices requires 24 hours' notice. Real time reporter or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, call 800-792-8630 (toll-free in NJ) or 609-292-4840.

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**PAUL A. SARLO (Chair):** We are going to conduct a public hearing on SCR-166: invalidates or prohibits adoption of rules proposed by Civil Service Commission to establish job banding program.

We need to do a roll call. We need to record this and transcribe the hearing. We need to have a roll call.

Roll call, please.

**MS. BRENNAN (Committee Aide):** On the Senate Concurrent Resolution 166 -- Senator Beck. This is-- We are voting--

**SENATOR SARLO:** This is a roll call.

We'll begin the hearing.

**MS. BRENNAN:** This is a roll call for attendance at the public hearing to the SCR.

**SENATOR SARLO:** We're having a roll call.

**SENATOR BECK:** Okay.

**MS. BRENNAN:** It's just--

**SENATOR SARLO:** You're here.

**SENATOR BECK:** Well, I am clearly here, but I'm not--

**SENATOR SARLO:** Senator Pennacchio, you can't abstain -- you're here. You're physically here. (laughter)

**SENATOR PENNACCHIO:** Okay.

**SENATOR BECK:** No, we're here. But we're curious how we're having this public hearing.

**SENATOR SARLO:** I will explain in a moment.

**SENATOR BECK:** Okay. I'm here.

**SENATOR SARLO:** As the Chairman--

SENATOR PENNACCHIO: So we have to vote on the bill before we find out what's in it. (laughter)

SENATOR SARLO: As the Chairman, I am able to call for a roll call. Whether you agree or disagree with me, you have to acknowledge that you're here.

SENATOR PENNACCHIO: All right.

SENATOR BECK: That you're here -- you're present.

SENATOR SARLO: Roll call.

MS. BRENNAN: Senator Beck.

SENATOR BECK: Here.

MS. BRENNAN: Senator Pennacchio.

SENATOR PENNACCHIO: Here.

MS. BRENNAN: Senator Oroho.

SENATOR OROHO: I am here.

MS. BRENNAN: Senator O'Toole was here and signed the attendance sheet.

Senator Sarlo.

SENATOR SARLO: Here.

MS. BRENNAN: Senator Stack.

SENATOR SARLO: He's here.

MS. BRENNAN: Senator Greenstein.

SENATOR GREENSTEIN: Here.

MS. BRENNAN: Senator Cunningham.

SENATOR CUNNINGHAM: Here.

MS. BRENNAN: Senator Ruiz.

SENATOR RUIZ: Here.

MS. BRENNAN: Senator Van Drew.

SENATOR VAN DREW: Here, and I'm thoroughly enjoying this. (laughter)

MS. BRENNAN: And Senator Sweeney also signed the attendance slip for the public hearing.

SENATOR SARLO: Okay. I'm assuming there's a procedural question. Is there a procedural question?

SENATOR BECK: Yes.

SENATOR SARLO: Okay.

SENATOR OROHO: Yes. Just as far as the-- Just one quick question, because looking in the Constitution-- When was the, I guess, concern about the regulation transmitted to the agency, or the Governor? I guess in the Constitution it requires that it be transmitted to the Governor and the Executive Director of the agency. Can somebody tell me when that was done?

SENATOR SARLO: That was done yesterday.

SENATOR OROHO: So how much time do they get? Don't they get 30 days to respond?

SENATOR SARLO: Yes.

SENATOR OROHO: So what are we doing in a public hearing now, if they haven't had 30 days to respond? I mean, I guess, in those 30 days they can either change it, or they can leave it alone, or they can adopt new regulations, right?

SENATOR SARLO: Correct.

SENATOR OROHO: So what it is this hearing--

SENATOR SARLO: They have 30 days before we can act as a full body on the floor.

SENATOR OROHO: Right.

SENATOR SARLO: It doesn't prevent us from having a public hearing, and it doesn't prevent us from having a Committee hearing on -- having the bill voted out of Committee.

SENATOR OROHO: But what are we having a public hearing for? On the regulations they might change, or regulations they did submit?

SENATOR SARLO: We are having a -- SCR 166, which "invalidates or prohibits the adoption of the rules proposed by Civil Service Commission to establish job banding program."

SENATOR OROHO: Because we voted on this once, right?

SENATOR PENNACCHIO: We're going to be voting on this? Because we don't know what we're voting on.

SENATOR OROHO: Mr. Chairman, my point being-- If the agency does not amend or withdraw -- I'm reading from the Constitution -- the existing or proposed rule or regulation, the Legislature may invalidate it. So I'm kind of like, aren't we putting the cart before the horse here?

SENATOR SARLO: Well, the Constitution I don't believe specifies when the hearing has to happen.

SENATOR BECK: Can OLS provide some guidance for us on this? That is our point of confusion -- is that it is our understanding that the notice gives them 30 days for a response and then, at that time, the Legislature acts. So we're really just not sure why we're holding a hearing when they haven't responded. So we don't know if they're withdrawing, they're changing, they're amending, they're clarifying. So what do we-- So

what exactly are we doing? And just if OLS could, maybe, give us some guidance on process--

SENATOR OROHO: Right.

SENATOR BECK: -- we just want to make sure that we're following appropriate process.

SENATOR OROHO: I'm looking specifically at Article V, Section IV, subset 6, where it says the "agency shall have 30 days to amend or withdraw the existing or proposed rule or regulation." It's been, I think, a day, technically.

MS. BRENNAN: There is technically nothing prohibiting the two processes from occurring concurrently.

SENATOR PENNACCHIO: But the problem is, we may be discussing something that may not even be in existence--

SENATOR OROHO: It could be a moot point.

SENATOR PENNACCHIO: They can change the bill entirely or not change it at all. So what are we discussing today?

SENATOR SARLO: Well then, the message is delivered, then. Then it's a new proposal, then.

SENATOR PENNACCHIO: All right, Chairman, we can talk about it, but to vote, quite honestly, that's a little specious because what are we voting on?

SENATOR SARLO: Well, we can't have a full vote of the membership. It's not binding until we have a full vote of the full Senate on the floor of the Senate. That can't happen from -- 30 days from today.

SENATOR PENNACCHIO: But even the Committee-- Chairman, what are we voting on? What are we voting out of Committee? We don't know.

SENATOR SARLO: Yes, we do know what we're voting on in Committee. We're voting--

SENATOR OROHO: What if the agency acts?

SENATOR SARLO: This would prohibit the adoption of the Civil Service Commission's proposed rule on job banding -- the program.

SENATOR PENNACCHIO: All right. Now, the agency -- which, I assume, is the Civil Service Commission -- and the Governor's Office--

SENATOR SARLO: The agency put out -- promulgated the set of rules--

SENATOR PENNACCHIO: Now, they could answer us back saying, "We agree, we disagree, or we just disagree a little bit." But that's ultimately what we're going to be voting for or against -- isn't it, Chairman?

SENATOR SARLO: I mean, you have to remember: They're not sitting there blind. Back in June, ACR-199 was given to the agency. Over 161 days ago they made a notification.

SENATOR PENNACCHIO: All right.

SENATOR SARLO: Okay? And they were invited to a hearing and they didn't come -- on the resolution. There was a little bit of a process situation where the papers were served by the Secretary of the Senate on the--

SENATOR OROHO: I'm looking at the Constitution. It says the Governor--

SENATOR SARLO: Hold on. It was sent to the Secretary of State instead of going to the Executive Branch -- agency.

SENATOR PENNACCHIO: Now, can we talk about--

SENATOR SARLO: Right. So this has been around since June -- this has been discussed.

SENATOR PENNACCHIO: But legally it had to go up to the agency and the Governor, which just happened yesterday.

SENATOR SARLO: So it's been around since June. Everybody-- They're aware of this; everybody knows what's happening. So today we -- because the Constitution is silent on when the public hearing is -- we're having a public hearing. And we're going to vote out SCR-166 30 days from now. If the Senate President so desires, he will post it on the floor of the Senate.

SENATOR PENNACCHIO: But we agree that it may be-- What we are voting on may be either entirely or partially different than what the Civil Service Commission and the Governor are looking at right now.

SENATOR SARLO: I don't know what they're thinking. We haven't heard from them.

SENATOR PENNACCHIO: Well, don't you think we should wait to hear from them first? That's the point.

SENATOR SARLO: I believe, in all fairness to the sponsors, they've tried to have a discussion with them.

Senator Greenstein, do you want to weigh in as one of the sponsors of the bill?

SENATOR GREENSTEIN: Well, I do believe that they are fully aware of this, and perhaps they didn't formally get it sent to them. But they're totally aware because this has been going on for awhile. We have attempted to talk to them.

SENATOR PENNACCHIO: As some of us read it, it was delivered yesterday; they have 30 days; then they can come back to us. And we can agree or disagree entirely -- or whatever -- and then we can get the process going.

But having a hearing is okay, but to vote on something that we don't know what we're voting on to me doesn't make legislative sense.

SENATOR GREENSTEIN: I hear what you're saying; I don't agree with you, but I do hear.

SENATOR BECK: I think we have--

SENATOR SARLO: Hold on. Senator Pennacchio, you keep saying you don't know what you're voting on. There's a document in front of you; it's on your computer screen. That is what you're voting on.

SENATOR PENNACCHIO: Okay. So we're discussing this. Now, it's constitutionally--

SENATOR SARLO: You keep saying you don't know what you're voting on, but you're voting on a document.

SENATOR PENNACCHIO: Fine. But constitutionally, now, it's going to the Governor and the Civil Service Commission, who may change it, correct? Do they have the ability to change or promulgate the rules--

SENATOR BECK: Yes.

SENATOR PENNACCHIO: Ultimately, that's really what we're voting for -- not this. How about if they change it and they give us a document that's different and we vote on that twice. The Constitution-- Does that become law, then? Even though it's different? Because it followed the constitutional process, and yet it's changed.

SENATOR SARLO: I can't predict a future act of the Executive Branch, in all fairness. I can't predict a future act of the Executive Branch of government.

SENATOR PENNACCHIO: But again, as we see, we can't even vote on that unless we have a 30-day response. And you're saying that it was given to them in June, and yet we heard testimony that it was given to them yesterday. So when was the clock ticking, in June or yesterday?

SENATOR OROHO: And there are two clocks that tick, right? I mean, you have the 30 days, and then it has to sit on our desk 20 days after the 30 days.

SENATOR SARLO: No, it's concurrent. There is nothing in the Constitution that prohibits the two time periods -- the 20 and 30 days -- from running concurrently.

SENATOR OROHO: I'm glad I brought my Fitzgerald.  
(laughter)

SENATOR BECK: Okay, we have a clarification. It is our understanding -- and I am not an attorney, but maybe OLS can guide me if I am understanding the language of our Constitution correctly. Once the agency has acted, either to amend, withdraw, or move forward with their regulations -- that they have already promulgated -- then the Legislature has to hold a hearing and we have 20 days from that time of the hearing then to

cast a vote to either remove the regulations in full or in part. So that is how we understand the process, and that is really the point of confusion -- is that--

SENATOR SARLO: Where is that coming from?

SENATOR OROHO: The Constitution.

SENATOR SARLO: That's not how it reads.

SENATOR BECK: This is Article V, Section IV, paragraph 6. So I think we're probably all looking at the same language.

SENATOR OROHO: I'm going to read--

SENATOR BECK: So it is just, in terms of process, if we're going to do this, we should do it correctly so that we don't end up doing two public hearings. And I think maybe the second piece of this is, if we're going to discuss the regulations -- which is what the purpose of the hearing would be -- it's awkward to discuss them if they're changing. So if the agency is going to amend or provide clarifying language to address the concerns in the next 30 days, then we've now held a hearing on regulations that are different than what they are now going to put forward.

SENATOR SARLO: And my response to you is, in all fairness to the Commission, they've known about this almost 161 days ago -- June 27 they were aware of this. They haven't made any changes. They haven't corresponded with the Senate President or the sponsors of the bill. They have made-- They've ignored it, quite frankly. The Legislature has been ignored. The Senate President was ignored, the sponsors were ignored.

SENATOR BECK: So Chairman--

SENATOR OROHO: Somebody might suggest that the Constitution was not followed, because it does specifically say the Governor

and the Executive-- Now, I just happen to be reading this now, and when I saw this-- So what happens if they do -- and I haven't thought through this -- but what happens if they come back and they amend? So what's the process then?

SENATOR SARLO: I'm sorry -- if they come back?

SENATOR OROHO: Let's say that, now that they have it for a day, according to the Constitution they come back and they amend their regulations.

SENATOR SARLO: Okay. That's it; the process-- They amend the process, and they-- That's what we're hoping they do.

SENATOR OROHO: So this hearing is a moot point.

SENATOR SARLO: We just spent more time together. Yes, we spent more time together.

SENATOR OROHO: We spend a lot of time together.  
(laughter)

SENATOR SARLO: Yes. We spent more time than we needed together -- some time that you could have spent elsewhere, but I know you enjoy spending time with me, and Senator Van Drew, and others. (laughter)

SENATOR OROHO: That goes without saying.

SENATOR SARLO: We're spending quality time together -- with some of our friends in the audience. (laughter)

SENATOR PENNACCHIO: Chairman, I think regardless of where we sit on any potential side of this issue, I think we're opening ourselves to -- whoever -- legal challenges by doing what we're doing today; I really do.

SENATOR BECK: So Chair, the guidance that we have from OLS on legislative review and veto of Executive Branch agency rules and regulations, which they put forward May 30, 2002, suggests the following: That a public hearing must be held if the Executive Branch agency fails to amend or withdraw the rule or regulation. And then after that moment, a second concurrent resolution must be adopted by both houses to invalidate or prohibit the adoption of the rule. So until the agency acts we-- In terms of process, the public hearing happens after the agency either does not act, or does act to amend.

SENATOR SARLO: Okay. What I'm going to do is just make sure, as the Chairman, our process-- I'm comfortable with the process today. Mr. Kelly is here from the Office of Legislative Services and I want for him to address the Committee to ensure the process that we are undertaking is correct.

**PETER J. KELLY, Esq.:** Good afternoon, everybody.

Regarding Article V, Section IV, paragraph 6, our assessment was that there are actually two processes here that don't necessarily have to occur consecutively, although they could. They can occur concurrently. So that during the 30-day period that we are waiting for agency action there will be no impediment here to the Legislature conducting a public hearing as long as they don't take any action until at least 20 days thereafter -- after the placing on the desks of the members of the transcript of the public hearing. So the entire process could be completed within 30 days from service on the appropriate Executive Branch agency -- which occurred yesterday.

SENATOR PENNACCHIO: If I may -- that argument would almost, in my mind, be valid if we knew for sure that the Executive Branch and the Civil Service Commission wasn't going to change any of the rules; wasn't going to change any of the rules -- anything at all in the resolution. But we don't know that. You change one comma, one sentence -- it's changed. It has to legally be at a hearing and voted on again because it has changed.

MR. KELLY: Senator, I think it would have to be more than changing punctuation. I think it would have to be a substantive change that would turn it into something different.

SENATOR PENNACCHIO: But do we know that there's going to be any substantive or not any substantive change? We don't know that.

MR. KELLY: Well, the public hearing does not necessarily have to address that.

SENATOR PENNACCHIO: I'll give you the public hearing, respectfully, but a vote on a bill that we haven't seen the final bill just seems a little odd.

MR. KELLY: All the resolution does is prevent the implementation of the final adoption of a proposed regulation; or, if the regs were to be adopted in the interim it would invalidate those regulations. And that's something that's independent of the public hearing.

SENATOR PENNACCHIO: But the rub is that the actual language of what you're preventing -- you just can't throw a giant carpet on top of something and say we're preventing something. You have to be

specific, legally, on what you're preventing and not preventing. We don't know that right now.

MR. KELLY: Well, the resolution simply being reported out of Committee -- it can't be acted on by the two houses of the Legislature until 30 days have passed.

SENATOR SARLO: Senator Pennacchio, I think you have to understand: This is, regardless of what the recommendations or what the response is from the Commission -- what we're saying here today is, quite frankly, we're invalidating. We're moving forward to invalidate these regulations.

SENATOR PENNACCHIO: On a presumption, Chairman. Because you--

SENATOR SARLO: No, based upon what has been proposed and promulgated -- not presumption.

SENATOR PENNACCHIO: We have 30 days to really know what's going to be proposed and promulgated; we don't know, Chairman. So the hearing I'll give you; I'm fine with that, okay? And we can make-- If you have any issues with the legislation you can express that; it's your right to do that. But to vote on something that we don't know what we're voting on because we haven't gotten that back from the Executive Branch--

SENATOR SARLO: You know what you're voting on. You're voting to invalidate the rules. You're voting to invalidate the rules -- that's what you're voting on -- as proposed. The rules have been proposed and promulgated and today we're having a public hearing on whether or not this legislation should invalidate them. The first step is for the Committee to act; we have to wait the proper -- the 30 days and the 20 days. We've

heard they can run concurrently, and then at that point in time the Senate President has the ability to post this Concurrent Resolution on the floor of the Senate, and that is the action that will invalidate the rules. Today is a step in the process.

SENATOR PENNACCHIO: Fine; we're voting on the rules and that's absolutely fine. But what happens if the Civil Service Commission or the Governor's Office changes the rules? Then do we have to come and vote again?

SENATOR SARLO: No, we can go ahead with the invalidation regardless. They have to re-propose the rules if they change them.

SENATOR PENNACCHIO: But is it--

SENATOR SARLO: They have to start all over. They have to have the proper notice; they have to re-propose the rules; they have to have a proper hearing on it. It's a whole long process. You just can't make amendments after they've been promulgated. They have to go back to the public and the public registry.

SENATOR PENNACCHIO: Okay, what we're really arguing here is the promulgation of the legislation -- the rules and the regs that they want to set forth. That's what we're arguing. Now, they have constitutionally-- My understanding is they have 30 days to respond to us -- yes, no, maybe, or in a different way. But again, just to throw a blanket on the entire thing and just say that we're not -- we're going to go ahead and just invalidate everything, again, what are we invalidating?

SENATOR SARLO: We're invalidating what was proposed and promulgated; that's what we're invalidating. That's what the sponsors and the Senate President--

SENATOR PENNACCHIO: The potential promulgations.

SENATOR SARLO: The Senate President and the sponsors want us to act to invalidate the rules that were proposed and promulgated dealing with banding in the Civil Service titles.

SENATOR PENNACCHIO: Chairman, again, I'm fine, we're here, and we'll hear everybody. But I think we're opening up ourselves to a legal challenge.

SENATOR SARLO: From?

SENATOR PENNACCHIO: Well, it could be from anybody. I mean, if we're breaking the law, we're breaking the law. I don't think we're at a hearing for the Constitution; I don't.

SENATOR SARLO: Senator Van Drew.

SENATOR VAN DREW: Thank you, Chairman.

Just one quick question, and tell me if I'm wrong. It's kind of a moot point because -- I understand the concern you have, but the concern really kicks in if the vote was taken on the floor of the General Assembly and the vote was taken on the floor of the Senate, and then it was moved forward. At this point it is just a matter of having the hearing and having a vote in Committee. Once we have the vote, if a change occurs then they're going to have to go through a whole other public process, I would assume. Correct?

SENATOR SARLO: That's correct.

SENATOR VAN DREW: And they are going to have to, obviously, have hearings with that process. If they don't change, then I think they would move forward and the Senate President and the Speaker would probably post the bill. But at this point I understand the concern

that you have, but this wouldn't be the first time that, even in a routine bill that's been moved out of Committee, some changes occur in the environment around you and you don't move the bill to the floor of the Senate or the General Assembly, or both. Do you follow what I'm saying, Chairman?

SENATOR SARLO: Yes. There have been many times that legislation moves out of Committee, and then there's an action by the courts--

SENATOR VAN DREW: Exactly.

SENATOR SARLO: --or there's an action by the Executive Branch. There's an executive order put in place.

SENATOR VAN DREW: And which negates the piece of legislation.

SENATOR SARLO: And things--

SENATOR VAN DREW: And quite frankly, sometimes we find out the legislation is not even exactly what we want and we amend it on the floor. That's what that whole process is for. I just wanted to make sure that you're not--

SENATOR SARLO: Senator Van Drew, your observations are correct.

SENATOR OROHO: If I just may -- just one, real quick: Apparently, I mean, the voters voted on this in 1992. And they had very specific language. So me, personally, I'm very concerned that we're going against the wishes of the voters who voted specifically in 1992. But what's the big deal if we wait the 30 days? Why have the hearing now? Why don't we just wait 30 days?

SENATOR SARLO: There's no reason why we can't.

SENATOR OROHO: So why don't we--

SENATOR SARLO: I mean, there's no reason why we can't.

SENATOR OROHO: --so we don't have a problem?

SENATOR SARLO: We're coming to the end of the session; get it done in this session.

SENATOR OROHO: Me, personally -- I would rather make sure we stay strictly--

SENATOR SARLO: I am comfortable, based upon the representations and the advice we have received from the Office of Legislative Services, that we are acting in good faith today.

All right, we'll begin the hearing. I believe only two people have signed up.

SENATOR GREENSTEIN: Mr. Chairman, I did want to say a few words, but I can do that after.

SENATOR SARLO: Okay.

Seth Hahn from CWA; and Eric Richard, AFL-CIO.

**S E T H H A H N:** Mr. Chairman and members of the Committee, my name is Seth Hahn. I represent CWA. We have 40,000 State workers in New Jersey and 15,000 local government workers, both in and out of Civil Service. We appreciate the opportunity to spend some quality time with you here today.

The 1947 New Jersey Constitution made our State's Executive one of the most powerful governors of any state in the country. And in the nearly 70 years since, the people of New Jersey have restricted the influence of such a powerful executive only one time: In 1992, the voters approved a

modest check on the Executive through an amendment empowering the Legislature to declare that a proposed or enacted regulation does not meet the legislative intent of the law the Legislature passed.

Today we are discussing a regulation that would gut more than 100 years of taxpayer protection from corruption in public service, crafted specifically to circumvent the elected Legislature -- in which public participation has been discouraged at every step.

Counting floor debate on the resolution in June, today is only the sixth opportunity for anyone in New Jersey to publicly discuss the most sweeping changes to public service since before World War I. We've heard unions, workers, elected leaders, veterans, women, people of color, the disabled, the LGBT community, and more speak about how the proposed regulation would move New Jersey back decades; and to date only a single person has spoken in favor of the proposal -- and even then it was not clear the regulations would solve that person's concern.

Such an overreach is exactly what voters had in mind when they gave the Legislature this power. The issue is whether promotions in jobs funded by taxpayers should happen according to a transparent process based on objective criteria and merits, or whether they should occur without oversight in an environment that encourages more nepotism, cronyism, and corruption in New Jersey's public services.

The current system is a constitutionally required one that develops objective criteria for promotions. It requires management to post notice of promotional titles. Objective criteria such as experience and education are required for eligibility. It then requires a test which is scored, and management can then select someone for promotion according to the

“Rule of Three,” or the top three scores. So for example, say eight people score an 89, seven score 88, and ten score 87. Management would then have 25 people from which to select a candidate for promotion.

The only meaningful restriction on the ability to pick anyone in the top three scores is that a veteran cannot be passed over for someone who scored lower than the veteran. It is quite common for management to have 25 choices or more from which to pick the successful candidate for promotion.

This proposal would obliterate that system. It would allow Civil Service executives to place thousands or even tens of thousands of workers into a broad band of titles and, instead of promotions, workers would be advanced through the broad band. Instead of qualifications and objective measurements, workers would be advanced based on unilateral determinations of competency by managers.

With regard to veterans, the Administration has been careful to say that veterans will still receive preference in promotions. What it has failed to mention is that this proposal is written so broadly that it could allow Civil Service executives to eliminate 90 percent of the instances in which promotions -- and, therefore, the very meager veterans' preference that we have -- will exist.

The proposal would eliminate the only third-party process for workers to appeal decisions believed to have been based on discrimination, and replace it with a system where a worker can only appeal to the department that made the determination of competency in the first place.

Voters and legislators consistently want more oversight and more information about government operations, but this regulation would

gut a system of oversight and replace it with one where a worker's only recourse is to say, "Are you sure?" to the person who just made the decision.

The Civil Service Commission points to a pilot program within the State's Judiciary as justification for the new rules. To be clear, in Judiciary, a series of mostly uniform job titles in a uniform system across 21 counties were broad banded. That process took many months to complete, was bargained with the unions involved, and represents less than 1 percent of the titles in Civil Service.

This process, on the other hand, where Civil Service seeks to band titles across the State, county, and municipal government that are often very different from town to town, has been done in a manner so secretive the only possible conclusion is that it was deliberate. Civil Service held only one meeting with the unions, the minimum required by law -- and only after we pointed out it was required by law -- to discuss the proposal. In many cases we were told that basic questions about the proposal would not be answered, but that we should put our questions in our comments to the proposal. For the record, we put our questions in our comments document last June, and they remain unanswered.

Civil Service held one public hearing -- again the minimum requirement -- and it did so on a weekday in Trenton at 3:00 p.m., in a room that sat only 30 people. Not one Civil Service commissioner attended the hearing, and not one Civil Service commissioner attended either of the two oversight hearings held by the Legislature. Civil Service denied our request for more hearings throughout the state and at times when workers and local elected officials impacted could attend, even though previous

Administrations -- both Democratic and Republican -- have granted more hearings for changes far less sweeping than this.

This entire proposal came less than two years after the Legislature and the Governor could not agree to broad changes in the State's Civil Service. The Governor proposed a system of opting out of Civil Service as part of his toolkit of reforms in 2009, and in 2010 the Legislature passed a bill that would have allowed for government entities to change certain policies covered by Civil Service in the collective bargaining process. The bill was conditionally vetoed, and the Governor sent his initial toolkit proposal back to the Legislature, where it died.

So today we have an issue that is actually much larger than just changes to Civil Service: If the Executive can decide that if it can't find compromise and common ground with the Legislature then he or she can simply circumvent the Legislature to achieve his or her policy priorities, then the integrity of the Legislature is fundamentally compromised.

Yes, it is harder for those who aren't (*sic*) able to obtain patronage jobs outside of Civil Service to be promoted if they have to obtain basic qualifications and perform well on tests designed to objectively and transparently measure merit. I have no doubt that it can be annoying when a politician's hand-selected employee isn't able to obtain a promotion. It should be hard and annoying to pass over qualified veterans, women, people of color, gay and lesbian, or disabled workers for promotions. The fact that it is hard and annoying is the very reason that New Jersey has transformed from a largely white male management in the early 1980s to the broad diversity that reflects the diversity of our communities today.

And public service managers should reflect the diversity of their communities, not the diversity of the local political machine's campaign contribution list. If the Administration is not willing to withdraw the proposal, the Legislature must take appropriate action to prohibit it from taking effect.

We thank the Committee, and the Chair, and all the legislators who've worked hard on getting us to this point in the process -- for all their work. And I'd be happy to answer any questions.

Thank you.

SENATOR SARLO: Mr. Richard.

**ERIC RICHARD:** Good afternoon, Chairman, members of the Committee.

My name is Eric Richard, speaking in support of the resolution and in opposition to the proposed regulation submitted by the Civil Service Commission. It is the opinion of the State AFL-CIO that this regulation, if enacted, would take a significant step backwards in regard to ensuring that public employee promotions are based upon merit and not political favoritism.

This proposed rule also opens the door to discriminatory practices based upon race, gender, or sexual orientation -- among others.

The proposed rule gives management wide latitude in determining which public employees are promoted and also eliminates test-based promotions, which undermines veterans' preferences due to changes in the ranking system.

Furthermore, we take exception to the categorization of the proposed rule that because banding is currently being performed in the

Judiciary that it makes sense to broadly implement this for all the State and local government workers. It must be understood that the Judiciary bands were implemented through bargaining -- where employee representatives had a seat at the table to negotiate a program that was in the best interest of employees. The proposal before you today, of course, is not being negotiated.

Furthermore, the proposed rule ignores important information detailing what type of criteria is going to be used to develop these bands. The rule only speaks to this in the broadest of terms and it is completely unclear how these bands will be developed.

Furthermore, we need certain questions answered, such as how many examinations there would be in a particular appointing authority, and then how this would be impacted if titles became banded. What type of impact this would have on employees is an important question that the Civil Service Commission simply refuses to answer. In fact, this is the fourth public hearing on this matter and, to date, the Civil Service Commission has refused to send a representative to any of these hearings to answer questions about the proposed rule.

We have received an outpouring of opposition to this rule at our office at the AFL-CIO. And, in fact, in just one month, when the rule was first published -- June 2013 -- our office was contacted by 781 people objecting to the rule and petitioning the Civil Service Commission to hold additional hearings. Copies of those letters were submitted to the Civil Service Commission during the comment period at the first public hearing.

In closing, it's the responsibility of the Civil Service Commission to administer a system that ensures a balance between the

needs of management and the protection of employee rights. This proposed rule, in the simplest of terms, dismisses this balanced system simply in favor of management. The rule needs to be nullified, and we commend the Legislature for moving forward on this resolution.

Thank you, Chairman.

SENATOR SARLO: Okay.

Any questions?

Michele Liebttag, CWA Local 1036, in favor, no need to testify; Beth Schroeder Buonsante, NJEA, in favor, no need to testify; and Jonathan Chowansky, Manager of Government Relations, Chamber of Commerce of Southern New Jersey, opposed, no need to testify.

Thank you to the two speakers.

Before we close the hearing, Senator Greenstein would like to be heard.

SENATOR GREENSTEIN: Thank you. I will be extremely brief.

I would just like to say that, as you heard from our speakers, Civil Service was created more than 100 years ago to ensure that State workers are not at the whim of the spoils system; and that hiring, and firing, and promotion decisions are made based on merit and fitness of the employee.

With this process that is being proposed, the New Jersey Civil Service Commission is trying to dismantle a system that protects our public employees from political patronage and favoritism. With the new job banding scheme, managers would no longer have an objective means to determine an employee's qualifications for a particular position -- currently

provided through the Civil Service examination -- but would be able to arbitrarily determine promotions; which would mean that qualified and experienced public workers could be overlooked for promotions based on their relationship, or lack thereof, with office management.

This rule would also have implications for veterans' preference for promotions, which certainly is not a way to treat our heroes.

We're moving to prohibit adoption of these proposed rule changes to ensure that cronyism, bias, nepotism, and unfairness do not seep back into our public workforce -- as they were so many years ago -- and to continue to provide the public employees with the necessary protections offered through Civil Service.

Thank you.

SENATOR SARLO: Thank you, Senator Greenstein.

Okay. At this point in time I am now going to officially close the public hearing on SCR-166. Let me adjourn it (raps gavel); it's adjourned.

**(HEARING CONCLUDED)**

**APPENDIX**

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